COURT OF BOSNIA AND HERZEGOVINA

Number: X-KR-07/442
Sarajevo, 30 October 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, the Panel composed of Judge Šaban Maksumić as the Presiding Judge and Judges Marie Tuma and Carol Peralta as members of the Panel, with the participation of the Legal Advisor Lejla Konjić as the records-taker, in the criminal case against the accused Predrag Kujundžić for the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with paragraphs (a), (c), (d), (e), (f), (g), and (k) in conjunction with Articles 29, 30 and 31 as read with Article 180(1) and (2) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), deciding upon the Indictment by the Prosecutor's Office of BiH, number: KT-RZ-131/05 of 26 December 2007, amended on 29 May 2009, upon the public main trial in a part of which the public was excluded, in the presence of the Prosecutor with the Prosecutor's Office of Bosnia and Herzegovina, Božidarka Dodik, accused Predrag Kujundžić and the Defence Counsels for the accused, lawyers Miroslav Ristić and Goran Nešković, on 30 October 2009 rendered and publicly announced the following

V E R D I C T

Accused: PREDRAG KUJUNDŽIĆ a.k.a. Predo, son of Vasilije and Dušanka née Tomić, born on 30 January 1961 in the village of Suho Polje, Doboj municipality, personal identification number: 3001961120044, Serb by ethnicity, citizen of BiH, welder by occupation, average financial situation, with residence in the village of Suho Polje bb (no number), Doboj municipality, apprehended on 10 October 2007,

1.

IS GUILTY

Because:

During the period from spring 1992 until autumn 1993, within a widespread and systematic attack of the army and the police of the so called Serb Republic of BiH, later Republika Srpska, and the paramilitary formations directed against the civilian non-Serb population of the Doboj municipality, knowing of such attack, as the commander of the unit called *Predini vukovi* /Predo's Wolves/, which acted within the military until July 1992 and then within the police forces, committed, incited and knew, but not prevented: killings, severe deprivations of physical liberty in contravention of the fundamental rules of international law; sexual slavery; rapes; persecution of non-Serb civilian population on political, national, ethnical, religious and cultural grounds; and other inhuman crimes

committed with the intention of inflicting great suffering, severe physical injuries and health damage, in the way that:

1. On 10 May 1992, after several hours of an artillery attack by the units of the Army of the so-called Serb Republic of BiH on the village of Grapska, Doboj municipality, together with other units, he participated in the infantry attack on this village as the commander of the members of his unit, the so called *Predini vukovi*, after which attack the civilians who survived and did not manage to escape were forcibly resettled from the village by being bussed to the place of Kostajnica, and then the women, children and the elderly were transported to the territory controlled by the Army of BiH, while the able-bodied men were deprived of liberty and detained in the *Bare* barracks.

2. On 12 June 1992, during the attack on the village of Bukovačke Čivčije, Doboj municipality, by the units of the armed forces of the so-called Srpska Republika of BiH, on which occasion the village mosque was blown up, several houses torched and about 160 Bosniak men of age 17 to 65 were exposed to a several hours long inhuman treatment in front of the village centre building by the members of the armed forces of the so-called Srpska Republika of BiH, members of the unit *Predini vukovi*, and by the accused's brother Nenad Kujundžić, in the way that they punched and kicked them, hit them with rifle buts and other items over all parts of their bodies, forced them to lie down in water paddles with their faces down to the ground, beat them and jumped on their backs, threatened them and demanded to say where the protected witness "6" was, abused and intimidated this witness's mother in order to get that information, while the accused himself singled out two villagers – officers of the former Yugoslav National Army (the JNA), including the protected witness "32", and ordered him to lie down on the ground cupping his hands behind his head and then he was kicking him while he was lying helplessly; and then he ordered the civilians to board buses and, while escorted by the armed soldiers, they were transported and unlawfully detained in the establishment called *Perčin disco.*

3. On 12 July 1992, together with other units of the armed forces of the so-called Srpska Republika of BiH, and paramilitary formations, commanding his unit, the so-called *Predini vukovi*, he participated in the inhuman treatment of 50 civilians of Bosniak and Croatian ethnicity whom the members of his unit and the unit called Red Berets took out of the establishment *Perčin disco,* in which they were unlawfully detained, and were used as human shields in the settlement of Makljenovac during active combat operations between the units of the BiH Army and the units of the RS Army; in a way that he failed to take necessary and reasonable measures to prevent that, although he was aware that these civilians were treated in a prohibited manner and that they would be exposed to a life threatening situation, since he could see them walking in front of the units and combat vehicles of the Serb units in the direction of the positions of the Army of BiH, lined up in five lines comprised of ten detainees each, stripped off their upper parts of the clothes and with their hands cupped behind their heads; and at

least 17 civilians were killed on that occasion, namely: Anto Kalem, Ramiz Hamidović, Safet Hamidović, Arif Omerčić, Mehmed Omerčić, Hasib Omerčić, Zijad Ahmić, Hasan Ahmić, Bećir Šehić, Ešef Ahmić, Senad Ahmić, Mehmedalija Kadić, Hasib Kadić, Muhamed Zečević, Meho Mujanović, Halid Mujanović, Muhamed Husanović, and the bodies of Anto Kalem, Ešef Ahmić, Hasan Ahmić, Zijad Ahmić, Ramiz Hamidović, Hasib Kadić, Halid Mujanović, Muhamed Husanović, Meho Mujanović, Arif Omerčić, Hasib Omerčić, Mehmed Omerčić, Bećir Šehić and Muhamed Zečević were exhumed from the mass grave in the place of Makljenovac during 1998, while the bodies of Senad Ahmić, Safet Hamidović and Mehmedalija Kadić have not been found to this date and they are reported as the persons unaccounted for,

4. On a precisely unidentified day in June 1992, armed and escorted by 4-5 members of his unit, so-called *Predini vukovi*, he came to the house in which the protected witness "4" lived with her children - at the time minor witness "2" and a year and a half old child, and hit with his rifle the minor witness "2" on her head due to which she fell on the floor, and thereupon he started tearing her clothes off her, and said to one of his subordinates: "Golub!" thus encouraging him to take a similar act, so "Golub" took the witness "4' to a room where he raped her, while at the same time, the accused raped the minor witness "2", during which he kept punching her and tearing her hair, cursing her "balija's mother",.

5. On the same day, at the same place, as under Count 4), after he had raped the minor witness "2", he told her that as of that day she would have to comply with all that he requested from her, or otherwise he would kill her mother and the younger sister, thus during the period from June to December 1992, he forced her into sexual slavery, because by the use of force and threats he established the exclusive right to dispose of her, the control over her movement, the mental control and the control of her sexuality, in the way that he requested her to do all that he ordered her, so he forced her to read a statement at the Radio Doboj in which it was stated that Muslims were guilty of the war, that Muslims had killed her brother, and she invited other Muslims to convert to Christianity; he ordered her to wear a small chain with a cross pendant around her neck, to wear the Serb army camouflage uniform and a red beret on her head; he changed her Muslim name into a Serb name without any consent of hers or her parents, he acquired for her the identification documents, he requested her to always introduce herself and to everyone with her Serb name; he was taking her away from the home, and returning her back at his whim, while she was not allowed to make any independent action without his approval; he raped her, or forced her into sexual acts equaled with a sexual intercourse at his whim, having done that alone, or together with other persons, he repeatedly brutally tortured and humiliated her by putting different items into her mouth and her sexual organ, by calling her abusive names and insulting her on an ethnic basis; on several occasions, he forced her into sexual intercourses with soldiers, inciting them into that by saying that "they could have some fun" with her because they had deserved that, so the injured

party was repeatedly raped and physically and mentally abused on these occasions.

6. On a precisely unidentified day during 1992 and 1993, alone or together with other unidentified persons, he treated in an inhuman way Bosniak civilians in the way that, during 1992, he came to the Central Prison in Doboj, where the protected witness "6" had been detained, and pointed his pistol at his head asking him "should we play some Russian roulette", after which he pulled the trigger, but the pistol did not go off, so he slapped the injured party and left the room; during 1993, together with 5 unidentified soldiers, all of them armed and wearing uniforms, he came to the apartment of the protected witness "14", where they physically abused him and beat him up in his head and walked over his bear feet having boots on their legs, while the accused hit him on his head with the rifle so that "blood covered him all over".

Therefore,

during a widespread and systematic attack against the non-Serb civilian population in the Doboj municipality, knowing of such an attack, as the commander of the unit called *Predini vukovi*, he committed, incited, knew about and did not prevent: killings, severe deprivations of physical liberty in contravention of the fundamental rules of international law; sexual slavery; rapes; persecution of civilian non-Serb population on national, ethnical, religious and sexual grounds, and other inhuman crimes committed with the intention of inflicting great sufferings, serious physical injuries and damage to health,

Whereby he committed

the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with the actions under:

- subparagraph (d), in conjunction with Article 29 and Article 180(1) of the CC of BiH, as regards Section 1 of the operative part of the Verdict
- subparagraphs (e) and (k) in conjunction with Article 29 and Article 180(1) of the CC of BiH, as regards Section 2 of the operative part of the Verdict
- subparagraphs (a) and (k) in conjunction with Article 180(2) of the CC of BiH, as regards Section 3 of the operative part of the Verdict
- subparagraph (g) in conjunction with Article 30 and Article 180(1) of the CC of BiH, as regards Section 4 of the operative part of the Verdict
- subparagraphs (g) in conjunction with Article 29, Article 30 and Article 180(1) of the CC of BiH, as regards Section 5 of the operative part of the Verdict
- subparagraph (k) in conjunction with Article 29 and Article 180(1) of the CC of BiH, as regards Section 6 of the operative part of the Verdict

Therefore, pursuant to Article 285 of the CPC of BiH, by applying the provisions of Articles 39, 42 and 48 of the CC of BiH, the Panel of this Court

S E N T E N C E S

him to long-term prison sentence of 22 (twenty two) years

II

Pursuant to Article 56 of the CC of BiH, the time which the Accused spent in custody upon the Court Decision as from 10 October 2007 onwards shall be credited towards the pronounced sentence of imprisonment.

III

Pursuant to Article 188(1) of the CPC of BiH, the Accused shall reimburse the costs of the criminal proceedings in the convicting part of the Verdict. The Court shall render a separate decision on the amount of costs the Accused shall be obliged to bear.

IV

Pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties are instructed to take civil action to pursue their claims under property law.

2.

Unlike the foregoing, pursuant to Article 284(1)(c) of the CPC of BiH, the Accused

IS ACQUITTED OF CHARGES

That he:

1. under the circumstances as described under Section 1 of the operative part of the Verdict, by shooting from fire arms at a group of Bosniak civilians, who were trying to escape toward the woods, he wounded the underage witness "2", inflicted on him a through-and-through wound to his right forearm, and killed minor D.D. (born in 1981)

by which he would have committed murder as referred to in Article 172(1)(a) of the CC of BiH in conjunction with Article 180(1) of CC of BiH.

2. On 19 July 1992, the members of his unit, so-called *Predini vukovi,* came to the *Perčin disco* camp and exposed the detained non-Serb civilians to a several hours long torture and inhuman treatment by punching and kicking them, hitting them with chains, batons,

cables and other items all over their bodies, thereby inflicting on them severe physical injuries; they forced several detainees, including Edin Memić, to eat soap, forced them to beat each other, particularly insisting that close family members beat each other, thus they forced the protected witness "8" to beat his cousin; the Accused knew about all these actions, but did nothing to prevent them, or to punish the perpetrators.

by which he would have committed the act of torture as referred to in Article 172(1)(f) of CC of BiH, in conjunction with Article 180(2) of CC of BiH.

II

Pursuant to Article 189(1) of the CPC of BiH, the Accused is hereby relieved of the obligation to reimburse the costs in the acquitting part of the Verdict, and these costs shall be paid from within the Court budget.

R e a s o n i n g

1. By the Indictment of the Prosecutor's Office of BiH, number KT-RZ-131/05 of 26 December 2007, which was subsequently amended on 29 May 2009, Predrag Kujundžić was charged with having committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH in conjunction with subparagraphs (a), (c), (d), (e), (f), (g) and (k) of the CC of BiH, as read with Articles 29, 30, 31 and Article 180(1) and (2) of the CC of BiH.

2. On 11 January 2008, the Accused pleaded not guilty under any Count of the Indictment whatsoever.

3. The main trial commenced on 16 April 2008 by reading the Indictment, on which occasion the Prosecutor's Office made its opening statement. The opening statement was made on the same day by the defence for the Accused as well.

1. The Evidence Adduced

4. A large number of witnesses were examined during the main trial and ample documentary evidence was tendered into the case file.

5. The following witnesses for the prosecution were heard: Senada Ahmić, Vahida Šehić, Ferida Ahmić, Rukija Mujanović, Fatima Hamidović, Sead Kikić, Redžo Delić, Enver Šehić, Mirza Lišinović, Nađa Šerić, Žarko Gavrić, Edin Memić, Muharem Hamidović, Kazimir Barukčić, Hasan Mustafić, Emsud Herceg, Edin Hadžović, Ibro Spahić, Nezir Bečić, Mirsad Tokača, Ibrahim Hadžikadunić, and witnesses "2", "4", "6", "8", "10", "12", "14", "16", "20", "22", "24", "26", "32", "34".

6. The following expert witnesses for the prosecution were also heard: dr. Alma Bravo-Mehmedbašić (on behalf of the team of expert witnesses in neuropsichiatry), dr. Senadin Fadilpašić, dr. Hasib Mujić and dr. Zdenko Cihlarž.

7. In the course of the evidentiary procedure, the Prosecutor's Office presented the following documentary evidence: (T-1) Witness Examination Record for Žarko Gavrić, Prosecutor's Office of BiH number KT RZ – 131/05 of 31 October 2007; (T-2) Witness Examination Record for Enver Šehić, Prosecutor's Office of BiH number KT RZ – 131/05 of 23 November 2007; (T-3) Witness Examination Record for „32“, Cantonal Court in Zenica, number Ki. 339/97 of 10 March 1998; (T-4) Witness Examination Record for Rukija Mujanović, Prosecutor's Office of BiH number KT RZ – 131/05 of 19 December 2007; (T-5) Witness Examination Record for Ferida Ahmić, Prosecutor's Office of BiH number KT RZ – 131/05 of 19 December 2007; (T-6) Witness Examination Record for Vahida Šehić, Prosecutor's Office of BiH number KT RZ – 131/05 of 19 December 2007; (T-7) Witness Examination Record for Senada Ahmić, Prosecutor's Office of BiH number KT RZ – 131/05 of 19 December 2007; (T-8) Witness Examination Record for Fatima Hamidović, Prosecutor's Office of BiH number KT RZ – 131/05 of 19 December 2007; (T-9) Witness Examination Record for „2“, Prosecutor's Office of BiH number KT RZ – 131/05 of 16 July 2007; (T-10) Witness Examination Record for „4“, State Investigations and Protection Agency number 342/06 of 15 June 2006; (T-11) Witness Examination Record for „6“, Prosecutor's Office of BiH number KT RZ – 131/05 of 22 November 2007; (T-12) Witness Examination Record for „8“, Prosecutor's Office of BiH number KT RZ – 131/05 of 17 April 2007; (T-13) Witness Examination Records for „10“, Prosecutor's Office of BiH number KT RZ – 131/05 of 18 April 2007, and of ZDC MUP of 23 April 2004; (T-14) Witness Examination Record for „12“, Prosecutor's Office of BiH number KT RZ – 131/05 of 7 June 2007; (T-15) Witness Examination Record for „14“, Prosecutor's Office of BiH number KT RZ – 131/05 of 12 June 2007; (T-16) Witness Examination Record for „16“, State Investigations and Protection Agency number 386/06 of 30 June 2006; (T-17) Witness Examination Record for „34“, Prosecutor's Office of BiH number KT RZ – 131/05 of 29 June 2006; (T-18) Witness Examination Record for „20“, Prosecutor's Office of BiH number KT RZ – 131/05 of 22 May 2007; (T-19) Witness Examination Record for „22“, Prosecutor's Office of BiH number KT RZ – 131/05 of 18 October 2007; (T-20) Witness Examination Record for „24“, Prosecutor's Office of BiH number KT RZ – 131/05 of 29 May 2007; (T-21) Witness Examination Record for „26“, Prosecutor's Office of BiH number KT RZ – 131/05 of 23 May 2007; (T-22) Witness Examination Records for Mirza Lišinović, Prosecutor's Office of BiH number KT RZ – 131/05 and KT RZ – 133/05 of 4 April 2007; (T-23) Witness Examination Record for Redžo Delić, Prosecutor's Office of BiH number KT RZ – 133/05 of 6 April 2007; (T-24) Witness Examination Record for Sead Kikić, Prosecutor's Office of BiH number KT RZ – 131/05 of 16 April 2007;(T-25) Witness Examination Record for Kazimir Barukčić, Prosecutor's Office of BiH number KT RZ – 131/05 of 26 October 2007; (T-26) Witness Examination Record for Edin Hadžović, State Investigations and Protection Agency number 1155/07 of 30 November 2007; (T-27) Witness Examination Record for Emsud Herceg, Prosecutor's Office of BiH number KT RZ – 131/05 of 30 October 2007; (T-28) Witness Examination Record for Hasan Mustafić, Prosecutor's Office of BiH number KT

RZ – 131/05 of 29 October 2007; (T-29) Witness Examination Record for Ibro Spahić, State Investigations and Protection Agency number 391/06 of 5 July 2006; (T-30) Witness Examination Record for Nezir Bečić, State Investigations and Protection Agency number 269/06 of 4 May 2006; (T-31) Witness Examination Record for Muharem Hamidović, Cantonal Court in Zenica of 13 November 1998; (T-32) Witness Examination Record for Ibrahim Hadžikadunić, State Investigations and Protection Agency number 1041/07 of 23 October 2007; (T-33) Witness Examination Record for Nađa Šerić, State Investigations and Protection Agency number 419/06 of 27 July 2006; (T-34) Decision on Verification of the Proclaimed Serb Autonomous Regions in BiH (Excerpt from Official Gazette of Serb People in BiH, No. 1/92 of 15 January 1992), (T-35) Report of the HUMAN RIGHTS HELSINKI organization under the title "Bosnia and Herzegovina, the influence of masters of the war in Bosnia continues", from December 1996; (T-36) Excerpt from the Document of the State Bureau for Statistics of R BiH – population national composition for 1991, for the Doboj territory; (T-37) Tabular review of the non-Serb victims for the Doboj territory during the 1992-1995 period, Investigation-Documentation Centre Sarajevo; (T-38) Letter of the Department for War Veterans and Disabled Persons Protection of Doboj municipality, number strictly conf. 08-835-3/2007 of 20 November 2007; (T-39) Letter of the SSB Doboj, number: conf. 11-02-272/07 of 7 November 2007, with the attachments (Excerpt from the Register of members of the SRM Doboj, ordinal numbers 53 and 69; Record of participation of the MoI RS members in the combat activities); (T-40) ICTY Document, number: 0360826 - List of Companies, Formations Deployment and Members of the Companies within the PSC Doboj (Company X – suspect Predrag Kujundžić); (T-41) Official note of the Security Services Centre, National Security Service Sector Banja Luka, dated 28 September 1992 – ICTY document, number: B 0082889; (T-42) Information from the Ministry of Interior, Security Services Centre, National Security Service Sector Banja Luka, dated 16 November 1993 - ICTY document, number: B 0011313; (T-43) Photos of the Suspect seized during the search of his apartment on 10 October 2007; (T-44) Search Warrant of the Court of BiH, number X-KRN-07/442 of 8 October 2007; (T-45) Apartment Search Record of the State Investigation and Protection Agency, number: 17-04/2-04-2-17/07 of 10 October 2007; (T-46) Receipt of Temporarily Seized Objects of the State Investigation and Protection Agency, number: 17-04/2-04-2-29/07 of 10 October 2007; (T-47) Medical documentation of the General Hospital „Sveti Apostol Luka" in Doboj to the name of the suspect Predrag Kujundžić, for the periods 20-25 May 1992; 20-27 August 1992; 20-23 October 1992 and 23-24 December 1992; (T-48) Exhumation and Forensic Medical Examination Record, Makljenovac, made by the Cantonal Court in Zenica, in the period from 3-14 November 1998; (T-49) Continued Exhumation Record, made by the Cantonal Court in Zenica of 4 December 1998; (T-50) Official Note concerning the graves marking, exhumations and identifications, MAK-1, MAK-2, MAK-3, by the Zenica Ministry of Interior on 9 November 1998; (T-51) Official Note concerning the autopsy of 11 bodies, Makljenovac, Zenica Ministry of Interior of 16 November 1998; (T-52) Official Note concerning the bodies exhumation at the location of Makljenovac and Putnikovo Brdo by the Zenica Ministry of Interior of 13 November 1998; (T-53) Identification Record for Ešef Ahmić, MAK-8, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 December 1998; (T-54) Forensic Medical Examination Report for Ešef Ahmić, MAK-8, Expert Team Tuzla of 7

December 1998, with photo-documentation; (T-55) Identification Record for Hasan Ahmić, MAK-4/4, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-56) Forensic Medical Examination Report for Hasan Ahmić, MAK-4/4, Expert Team Tuzla of 7 November 1998; (T-57) Identification Record for Zijad Ahmić, MAK-4/6, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-58) Forensic Medical Examination Report for Zijad Ahmić, MAK-4/6, Expert Team Tuzla of 6 November 1998; (T-59) Identification Record for Ramiz Hamidović, MAK-4/3, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-60) Forensic Medical Examination Report for Ramiz Hamidović, MAK-4/3, Expert Team Tuzla of 7 November 1998; (T-61) Identification Record for Hasib Kadić, MAK-4/2, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-62) Forensic Medical Examination Report for Hasib Kadić, MAK-4/2, Expert Team Tuzla of 7 November 1998; (T-63) Identification Record for Anto Kalem, MAK-3/6, Forensic Medicine Institute of the Clinical Center in Tuzla of 12 November 1998; (T-64) Forensic Medical Examination Report for Anto Kalem, MAK-3/6, Expert Team Tuzla of 6 November 1998; (T-65) Identification Record for of Halid Mujanović, MAK-7, Forensic Medicine Institute of the Clinical Center in Tuzla of 14 November 1998; (T-66) Forensic Medical Examination Report for Halid Mujanović, MAK-7, Expert Team Tuzla of 14 November 1998; (T-67) Identification Record for Meho Mujanović, MAK-3/1, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-68) Forensic Medical Examination Report for Meho Mujanović, MAK-3/1, Expert Team Tuzla of 7 November 1998; (T-69) Identification Record for Atif Omerčić, MAK-3/7, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-70) Forensic Medical Examination Report for Atif Omerčić, MAK-3/7, Expert Team Tuzla of 7 November 1998; (T-71) Identification Record for Hasib Omerčić, MAK-1, Forensic Medicine Institute of the Clinical Center in Tuzla of 14 November 1998, with the letter of the MoI ZDC, number 10-01/2-4-1-222-184-2/98 of 2 December 1998; (T-72) Forensic Medical Examination Report for Hasib Omerčić, MAK-1, Expert Team Tuzla of 7 November 1998; (T-73) Identification Record for Mehmed Omerčić, MAK-3/2, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-74) Forensic Medical Examination Report for Mehmed Omerčić, MAK-3/2, Expert Team Tuzla of 7 November 1998; (T-75) Identification Record for Bećir Šehić, MAK-3/3, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-76) Forensic Medical Examination Report for Bećir Šehić, MAK-3/3, Expert Team Tuzla of 7 November 1998; (T-77) Identification Record for Muhamed Zečević, MAK-4/5, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-78) Forensic Medical Examination Report for Muhamed Zečević, MAK-4/5, Expert Team Tuzla of 7 November 1998; (T-79) Identification Record for Muhamed Husanović, Mak-4/1, Forensic Medicine Institute of the Clinical Center in Tuzla of 7 November 1998; (T-80) Forensic Medical Examination Report for Muhamed Husanović, MAK-4/1, Expert Team Tuzla of 7 November 1998; (T-81) Exhumation Record by the Cantonal Court in Tuzla, number: Kri: 110/00 of 30 October 2000; (T-82) Forensic Medical Examination Report for Denis Delić, D.GRA-8/1, Expert Team Tuzla of 7 November 1998; (T-83) Excerpt from the Register of Deaths for Senad Ahmić; (T-84) Excerpt from the ICTY Missing Persons Register for Senad Ahmić; (T-85) Excerpt from the Register of Deaths for Safet Hamidović; (T-86) Excerpt from the ICTY Missing

Persons Register for Safet Hamidović; (T-87) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-117/98 of 12 November 1998 concerning the grave „7“ examination, in Makljenovac place; (T-88) Crime scene sketch of the ZDC MoI, number 10-01/2-4-233-116/98 of 12 November 1998 – the grave „7“ exhumation; (T-89) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-118/98 of 14 November 1998 concerning the corpse examination from the grave „7“; (T-90) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-97/98 of 3 November 1998 concerning the grave „1“ exhumation in the place of Makljenovac; (T-91) Crime scene sketch of the ZDC MoI, number 10-01/2-4-233-96/98 of 3 November 1998 – the grave „7“ exhumation; (T-92) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-104/98 of 7 November 1998 concerning the corpse examination from the grave „1“; (T-93) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-103/98 of 4-6 November 1998 concerning the corpse examination from the grave „4“ in the place of Makljenovac; (T-94) Crime scene sketch of the ZDC MoI, number 10-01/2-4-233-102/98 of 4-6 November 1998 – the grave „4“ exhumation; (T-95) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-107/98 of 7 November 1998 concerning the corpses examination from the grave „4“, MAK 4/1-6; (T-96) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-101/98 of 4-6 November 1998 concerning the grave „3“ exhumation in the place of Makljenovac; (T-97) Crime scene sketch of the ZDC MoI, number 10-01/2-4-233-100/98 of 4-6 November 1998 – the grave „3“ exhumation; (T-98) Photo-documentation of the ZDC MoI, number 10-01/2-4-233-106/98 of 7 November 1998 concerning the corpses examination from the grave „3“, MAK 3/1-7; (T-99) DVD exhumation recording in the place of Makljenovac, Doboj, 3-7 November 1998; (T-100) Finding and Opinion of the team of expert witnesses-neuropsychiatrists of the Clinical Center of the University in Sarajevo of 26 September 2007 for the protected witness „2“; (T-101) Finding and Opinion of the expert witness – psychologist of the Clinical Center of the University in Sarajevo of 25 September 2007 for the protected witness „2“; (T-102) Medical documentation for the protected witness „2“, namely the findings of 26 April 2005, 27 April 2005, 28 April 2005, 29 April 2005, 30 May 2005, 10 June 2005 and 18 June 2007; (T-103) Finding and Opinion of the expert witness-surgeon of 18 December 2007 concerning the bodily injuries of the protected witness „2“; (T-104) Certificate of the General Hospital „Sveti Apostol i Luka“ Doboj, number: 3368-1/07 of 14 September 2007, for the protected witness „2“, and the excerpt from the Patients Admission Register of the General Hospital „Sveti Apostol i Luka“ Doboj for the protected witness „2“ – ordinal number 7802; (T-105) Letters of the PSC Doboj, number: 11-05/2-206-272-2/07 of 2 August 2007 and number: 11- 05/2-206-272-1/07 of 2 August 2007, with the attachments concerning the change of the protected witness „2“ name, as follows: ID card certified copy, number 455/92, Certified copy of the excerpt from the Births Register of 15 December 1992, Certified copy of the excerpt from the Register of Personal Name Changes, Certified copy of the residence report card; (T-106) Letter of the PSC Doboj – PS Derventa, number: 11-5/05-207-101/07 of 1 August 2007, with the attachments as follows: Certified copy of the residence report-cancellation of 20 March 2001, Certified copy of the excerpt from the ID Cards Register from 2001 – ordinal number 376, Certified copy of the residence card of 20 March 2001, ID card certified copy of 20 March 2001, Certified copy of the excerpt from the Register of Births of 25 January 2001, Certified copy of the ID card payment slip, Certified copy of the application for the

ID card issuance-change of 16 March 2001, Certified copy of the excerpt from the ID Cards Register from 1994 – ordinal number 1523, ID card certified copy of 10 October 1994; (T-107) Excerpt from the criminal record for the suspect Predrag Kujundžić, PSC Doboj, number Conf. 11- 02-341/07 of 18 December 2007; (T-108) Crime Scene Investigation Record by the Basic Court in Gračanica, number: Kri.24/95 of 15 June 1995 concerning the damaged religious facilities in the places of Mala Brijesnica, Velika Brijesnica, Klokotnica, Stanić Rijeka and Lukavica Rijeka; (T-109) Photo-documentation of the damaged religious facility – the mosque in Velika Brijesnica, Doboj municipality and the PSC Doboj criminal report, number: KU:3/96 of 6 February 1996; (T-110) Photo-documentation of the damaged religious facility – the mosque in Mala Brijesnica, Doboj municipality and the PSC Doboj criminal report, number: KU 2/96 of 5 February1996; (T-111) PSS Doboj criminal report of 13 February 1996 against NN perpetrator for the destruction of religious facility – the mosque in Stanić Rijeka, Doboj municipality; (T-112) Photo-documentation of the damaged religious facility – the mosque in the place of Lukavica Rijeka, Doboj municipality; (T-113) PSS Doboj criminal report, number: KU 5/96 of 13 February 1996; (T-114) Photo-documentation of the damaged religious facility – the mosque in Klokotnica, Doboj municipality; (T-115) PSS Doboj criminal report, number: KU 4/96 of 12 February1996; (T-116) Official Note of 22 October 1992 concerning the damage of religious facility – the mosque in Matuzići, Doboj municipality; (T-117) PSS Doboj criminal report of 18 December 1995 against NN perpetrator for the damage of religious facility – the mosque in Matuzići, Doboj municipality; (T-118) Official Note of 21 August 1992 concerning the damage of religious facility – the mosque in Mravići, Doboj municipality; (T-119) Criminal Report against NN perpetrator for the damage of religious facility – the mosque in Mravići, Doboj municipality; (T-120) Photo-documentation of the damaged religious facility – Donja džamija (*mosque*) in Kotorsko, Doboj municipality; (T-121) Photo-documentation of the damaged religious facility – Gornja džamija in Kotorsko, Doboj municipality; (T-122) PSS Doboj criminal report of 14 March 1996 against Milovan Stanković for the damage of religious facilities – Gornja and Donja džamija in Kotorsko, Doboj municipality; (T-123) Decision on allocation of apartment for temporary use JF PIO RS – Branch Office Doboj of 4 May 1993; (T-124) OG –Doboj – Letter of Head of 18 July 1993, (T 125) Official Gazette of Republika Srpska of 19 September 1998 (page 856, No. 30); (T-126) Letter of 3rd Tactical Group to Colonel Lisica of 8 July 1992 in Doboj; (T-127) Official Gazette of Republika Srpska of 26 November 1993 (page 866, No. 22.); (T-128) SDS BiH (Main Board) Instructions for Organisation and Operation Acting of the Authorities of the Serb people in BiH in emergency situations, of 19 December 1991 in Sarajevo; (T-129) Srpska Republika BiH, Letter to Crisis Staff of the Serb Municipality of Doboj, number: 02-404-34/92 of 12 July 1992; (T-130) PB RTV BiH, Information on taking over the facilities of RTV BiH, former RTV Sarajevo of 30 May 1992; (T-131) Srpska Republika BiH, Serb Municipality of Doboj, National Defence Secretariat, Letter – Information on Mobilisation in Doboj of 7 August 1992; (T-132) Serb Republic of BiH, MUP, SSC Doboj, Financial Service, May 1992 Payroll List for Reserve Police Officers of 13 July 1992; (T-133) Srpska Republika BiH, MUP, SSC Doboj, Financial Service, June 1992 Payroll List for Reserve Police Officers of 13 July 1992; (T-134) Srpska Republika BiH, MUP, SSC Doboj, List of Officers to receive advance payment for April 1992 salary; (T-135) Financial and Technical Service, List of Employees to receive May

1992 salary, of 19 June 1992; (T -136) Clinical Centre Banja Luka, Department for General Affairs, number 01-641-1/09, Notification of 3 February 2009; (T-137) Newspaper *Alternativa*, year I, Doboj of 8 May 1996; (T-138) Republic of Croatia, University of Zagreb, Faculty of Philosophy, Diploma for Senadin Fadilpašić number 2079 FF 15292 of 14 November 2008; (T-139) District Prosecutor's Office in Doboj, Letter – submission of information of 5 May 2009, number RR 426734490BA.

8. The following witnesses for the defence were heard: Borisav Paravac, Dragan Bošković, Cvijetin Sarić, Radivoje Gojković, Srđan Bogdanović, Obren Lazić, Pero Tubić, Božo Lazić, Ratko Trifunović, Dragoljub Milutinović, Milenko Bilić, Milenko Gligorić, Brane Jekić, Veljko Šolaja, Branislav Petričević, Vojislav Sarić, Zoran Đekić, Slobodan Đukić, Predrag Lazić, Slobodan Jaćimović, Vojo Narić, Branko Jošić, Željko Ristić, Dragiša Marković, Želibor Borota, Živko Kuzmanović, Momčilo Kovačević, Milorad Novaković, Zoran Dević, Đorđo Kujundžić, Mirsad Omerčić, Vlado Petrović, Desimir Đukić, Savo Pijetlović, Svetozar Milojević, Radomir Džigerović i Ljilja Karanović.

9. Furthermore, the defence also examined the following expert witnesses: Ljubomir Curkić, Milan Stojaković and Željko Popović.

10. The defence also presented the following documentary evidence: (O 01) Forensic Medicine Expertise Report of 14 January 2009 in Doboj; (O 02) Ballistic Expertise of expert witness Željko Popović, of 20 February 2009 in Banja Luka; (O 03) Forensic Medicine Expertise for the witness „2", expert witness Milan Stojaković of 4 March 2009 in Banja Luka.; (O 04) CD Record; (O 05) Witness Examination Record for witness „8" of 13 March 1998 at the Cantonal Court in Zenica; (O 06) Statement of witness „8" of 15 October 1995, SSS (State Security Station) Doboj; (O 07) Witness Examination Record for witness „16" of 22 June 1998 at the Cantonal Court in Zenica; (O 08) Witness Examination Record for witness „16", State Investigations and Protection Agency, number 386/06 of 30 June 2006 (the same as exhibit T 16); (O 09) Witness Examination Record for Ibro Spahić, State Investigations and Protection Agency, number 391/06 of 5 July 2006 (the same as exhibit T 29); (O 10) Witness Examination Record for Emsud Herceg of 30 October 2007 in the Prosecutor's Office of BiH; (O 11) Witness Examination Record for Emsud Herceg of 16 April 1998 at the Cantonal Court in Zenica; (O 12) Witness Examination Record for witness „6" of 22 November 2007 in the Prosecutor's Office of BiH (O 13) Witness Examination Record for witness „6" of 12 October 2006 on the SIPA premises; (O 14) Witness Examination Record for witness „6" of 3 August 2006 on the SIPA premises; (O 15) Witness Examination Record for Nađa Šerić of 27 July 2006 on the SIPA premises; (O 16) Witness Examination Record for the witness „12" of 7 June 2007 in the Prosecutor's Office of BiH; (O 17) Witness Examination Record for the witness „20" of 22 May 2007 in the Prosecutor's Office of BiH; (O 18) Witness Examination Record for Muharem Hamidović of 13 November 1998 at the Cantonal Court in Zenica; (O 19) Witness Examination Record for the witness „2" of 16 July 2007 in the Prosecutor's Office of BiH; (O 20) Witness Examination Record for the witness „4" of 15 June 2006 on the SIPA premises; (O 21) Witness Examination Record for the witness „4" of 21 December 2004 in MUP Zenica;

(O 22) Witness Examination Record for Hasan Mustafić of 16 April 1998 at the Cantonal Court in Zenica; (O 23) MUP of BiH Order of 29 April 1992; (O 24) Decision by the Military Court in Bijeljina of 7 August 1992; (O 25) Minutes from the session of the Republika Srpska Presidency of 9 October 1992; (O 26) Bijeljina MUP Order of 23 October 1992; (O 27) Statement of witness „16“ of 19 October 2001, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991; (O 28) Statement of witness „16“ of 11 November 2001, International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the former Yugoslavia since 1991; (O 29) Concentration camp „Perčin disco“ – organisational scheme (no date); (O 30) Information on situation in prisons and collection camps for prisoners of war, RS MUP of 22 October 1992; (O 31) Police detachment for special purposes SSC Banja Luka; (O 32) Excerpt from the Register of Deaths for Ahmet Aličić, number 04-13-342/08 in Vogošća of 10 October 2008; (O 33) Excerpt from the minutes from the 18th special session of the Executive Board held on 19 January 1994 on the premises of the Municipal Secretariat for Town-planning and Residential-utility Affairs Doboj, at 10:00 hrs; (O 34) Information on telephone lines, Telekom Srpske, number 4-06-760/08 of 19 August 2008; (O 35) Certificate of the Surgery Service, General Hospital „Sveti apostol Luka“, Doboj, number 3368-1/07 of 14 September 2007; (O 36) Certificate of PSC Doboj, Police Station I, number 11-01/2-058-602/07 of 31 January 2007; (O 37) Certificate of wounding for Petar Kujundžić, number 05-33/94 of 10 February 1994; (O 38) Excerpt from the Register of the Baptised and the Anointed of the Zvornik-Tuzla Serb Orthodox Church for 1996, number 115 of 23 September 1998, attachment (Excerpt from the Register of Births and the Baptised of the Serb Orthodox Church for 1996, *Assumption of the Most Holy Virgin* in Derventa of 21 March 1996, Request to the administration of the Serb Orthodox Parish; (O 39) Response from General Hospital „Sveti apostol Luka“, Doboj, number 3207/08 of 21 August 2008; (O 40) Response from General Hospital „Sveti apostol Luka“, Doboj, number 2629/08 of 31 July 2008, attachment (a photocopy of the protocol page); (O 41) Information from the District Prison in Doboj, number 02-713-1487/08 of 12 August 2008, attachment (List of persons from Bukovačke Čivčije who were in the District Prison in Doboj in May, June and July 1992, Decision of the Basic Court in Doboj, number K1.63/92 of 24 August 1992, Decision of the Basic Court in Doboj, number K1.80/92 of 31 August 1992, Order by the warden of the District Court in Doboj , number 01-08-31/93 of 9 March 1993, Decision of the Basic Court in Doboj, number K1.29/92 of 30 June 1992, Health Card for Šaban Ibraković of 1 September 1992, Order for custody of 14 June 1992, Order for custody number 13-5/02-sl of 10 May 1992, Decision of the Basic Court in Doboj, number K1.22/92 of 28 May 1992, Official Note of 8 December 1992, Decision of the Basic Court in Doboj, number Kž-30/92. of 24 July 1992, Decision of the Basic Court in Doboj, number Ki.-41/92. of 25 August 1992, Decision of the Basic Court in Bijeljina, number Ki.70/92. of 2 September 1992; (O 42) Letter, PSC Doboj, number 11-05/2-206/272-1/07 of 2 August 2007, attachment (photocopy of the place of residence card); (O 43) Photocopy of the certified documents, PSC Doboj-Police Station Derventa, number 11-5/05-207-101/07 of 1 August 2007; (O 44) Supplement to the documentation, PSC Doboj, number 11-05/2-206-272-2/07 of 2 August 2007, attachment (Photocopied

card of personal identification card, reg. number 4555/92 issued for Aleksandar Kujundžić, photocopied excerpt from the Birth Register of 15 December 1992 for Aleksandar Kujundžić, photocopied excerpt from the Register of Personal Name Changes); (O 45) Decision of the Department for Veteran-Disability Protection Doboj, number 08-560-1-309/2005 of 15 June 2005; (O 46) Submission of information on Predrag Kujundžić, PSC Doboj, number 11-02/4-230-127/08 of 20 February 2008; (O 47) Information of the General Administration Service, Register (*MK)* of „Bukovica Velika", number 03/200-89/08 of 15 September 2008; (O 48) Information on Predrag Kujundžić, PSC Doboj, number 09-05-404-1413/08 of 17 September 2008; (O 49) Notification, PSC Doboj, number 09-02/3-230-762/08 of 13 August 2008; (O 50) Notification of the General Hospital" Sveti apostol Luka" Doboj, number 3500/08 of 15 September 2008; (O 51) Submission of information sought, number 1582/08, of 15 September 2008 in Doboj, attachment (Letter of *ZP* „Elektro Doboj" a.d. Doboj, number 2503-1/08 of 8 September 2008); (O 52) Work schedule in the Ozren Police Station Suvo Polje, PSC Doboj (no date); (O 53) Letter, PSS Doboj, number 09-04/2-207-1-1080/08 BC of 5 September 2008; (O 54) Letter of the Basic Court in Doboj, number 085-0-Su-08-000 031, Doboj 22 January 2007; (O 55) Submission of data sought, Submission of data requested, Automobile and Motorcycle Association „Doboj" Doboj, number 302 of 10 June 2008, attachments (Decision on Appointment of War Director number 75 of 19 November 1992, February 1993 payroll, March 1993 Payroll, List of employees to receive March 1993 salary, List of employees to receive April 1993 salary, List of employees to receive May 1993 salary, June 1993 Payroll, List of employees in relation to whom July contributions were paid, List of employees in relation to whom July 1993 healthcare contributions were paid, List of employees in relation to whom August 1993 healthcare contributions were paid, September 1993 advance payments, September 1993 salary, Company-paid meal number 248, for August 1993, Payment number 229, August 1993 travel costs, List of employees for healthcare contributions payment for October 1993, List of employees for healthcare contributions payment for November 1993, List of employees for healthcare contributions payment for December 1993), (O 57) Excerpt from the Birth Register for Neda Kujundžić, number 03/200-1-52016/2008 of 16 September 2008 in Doboj, Excerpt from the Birth Register for Daliborka Kujundžić, number 03/200-1-52014/2008 of 16 September 2008, Excerpt from the Birth Register for Dijana Kujundžić, number 03/200-1-52012/2008 of 16 September 2008, Excerpt from the Register of Marriages number 03-201-24-2-229/08 of 18 September 2008, Tax Administration Certificate, number 06/01.04/0804-455.7-3093/08 of 16 September 2008 in Doboj; (O 58) Submission of information requested, Automobile and Motorcycle Association „Doboj" Doboj, number 458 of 24 September 2008 in Doboj, attachments (Decision on the work obligation assignment for Mira Miletić number 14/A of 5 March 1993, Application for a short-term bank loan of 4 March 1993, Contract on lease and use of a classroom for theoretic classes - M. Šuka number 20 of 11 March1993, Contract on lease and use of a classroom for theoretic classes - Ratomir Narić, number 20 of 11 March 1993, Notification of the commenced functioning of the driving school *Radio Doboj* number 21 of 11 March 1993, Bidding, number 22 of 11 March 1993, Decision on establishment of the Bidding Board, number 21 of 11 March 1993, Request for exemption from military service for Žarko Bardak, number 25 of 12 March 1993, Decision on the change of stamp, number 26 of 15 March 1993, Request for utilisation of

petrol station number 28 of 16 March 1993, Decision on employment of Anđelka Miloradov, number 27 of 15 February 1993, Decision on vehicle sale number 30 of 11 March 1993, Request for repossession of vehicle, number 29 of 16 March 1993, Auction Record, Contract on payment for vehicles from the auction, number 31 of 16 March 1993, Decision on compulsory work for Nermin Bašić, number 32 of 17 March 1993, Request for military service exemption for Dušan Marković, number 33 of 18 March 1993, Request for military service exemption, number 33 of 10 May 1993, Contract on short-term bank loan, number 35 of 30 March 1993, Request for decision issuance, number 36 of 1 April 1993, Working hours notification, number 37 of 3 April 1993, Request for repossession of vehicle, number 44 of 3 April 1993, Request for authorised supply of building material, number 43 of 7 April 1993, Decision on compulsory work, number 42 of 7 April 1993, Decision on establishment a foreign currency treasury, number 41 of 2 April 1993, Decision on the manner of payment for the provided service, number 40 of 6 April 1993, Request filed with the Executive Committee of the Municipal Assembly, Doboj, number 39 of 5 April 1993, Statement number 38 of 3 April 1993, Request number 47 of 14 April 1993, Decision on the amount of daily allowance, number 48 of 14 April 1993, Notification of the conclusion of the Executive Committee of the Municipal Assembly Doboj, number 49 of 20 April 1993, Contract on lease and use of a classroom, number 50 of 21 April 1993, Contract on maintenance and technical inspection of vehicle, Notification number 53 of 26 April 1993, Request for issuance of automobile registration cards of 28 April 1993, Decision on employment, number 55 of 7 April 1993, Decision on employment, number 55 of 24 March 1993, Decision on taking employment, number 56 of 15 March 1993, Contract on short-term bank loan, number 630/93 of 28 April 1993, Request for short-term loan, number 58 of 27 April 1993, Request for vehicle commandeering, number 65 of 12 May 1993, Certificate of completed practical training, number 64 of 7 May 1993, Request for legal assistance number 63 of 4 May 1993, Statement on lost vehicle registration licence, number 62 of 4 May 1993, Lease Contract number 61/A, Request for vehicle commandeering, number 61 of 3 May 1993, Decision on compulsory work, number 60 of 30 April 1993, Contract number 59 of 10 May 1993, Request number 66 of 12 May 1993, Pricelist number 68 of 15 May 1993, Decision on integration of funds No. 69 of 17 May 1993, Request for official summons for compulsory work, No. 70 of 17 May 1993, Contract on technical maintenance of vehicles No. 73 of 17 May 1993, Decision on deployment to compulsory work No. 75 of 19 May 1993, Request for authorised use of the catering establishment No. 77 of 28 May 1993, Certificate No. 78 of 28 May 1993, Contract of 29 May 1993, Decision on deployment to compulsory work No. 81 of 31 May 1993, Contract No. 79 of 30 May 1993, Information on number of employees, No. 82 of 4 June 1993, Reprimand No. 83. of 4 June 1993, Decision on employments No. 84 of 5 June 1993, Decision on aid to military No. 84./a of 7 June 1993, Notification of the fuel reservoir presented as a gift, No. 85 of 9 June 1993, Decision on deployment to compulsory work No. 86 of 15 June 1993, Request for Official Note on traffic Accident No. 87 of 15 June 1993, Contract on vehicle maintenance and technical inspection No. 88 of 16 June 1993, Decision on deployment to compulsory work No. 89 of 16 June 1993, Decision on deployment to compulsory work No. 90 of 17 June 1993, Decision on employment No. 92 of 19 June 1993, Record on services rendered No. 93 of 23 June 1993, Notification of a present No. 94 23 June 1993, Request for participation in a part of paying off a short-term bank loan

No. 110/93 of 15 July 1993, Contract on assignation No. 6-93 of 12 July 1993, Receipt No. 101 of 7 July 1993, Notification of employee leaving No. 103 of 12 July 1993, Inspection of motor vehicles No. 105 of 19 July 1993, Request for exemption from a new compulsory work No. 123 of 3 August 1993, Official Note of 27 July 1993); (O 59) Certificate by the Department of War Veterans – Disability Protection, No. 08-835-1057/2008, of 15 July 2008; (O 60) Employment record card, series E, number II 365413, registry number 32/81; (O 61) Notification, PSC Doboj, number 09-02/1-134/09 of 14 April 2009; (O 62) Submission of information, District Prosecutor's Office Banja Luka, No. A-157/09 of 7 April 2009 in Banja Luka; (O 63) Response to the request for access to information, District Prosecutor's Office Doboj, number IT-17/09 of 10 March 2009 on Doboj; (O 64) PSC Doboj letter No. 09-04/2-206.1-44/09 VS of 9 March 2009, attachment (a copy of the identification card file for Aleksandra Kujundžić, daughter of Esad, reg. number 4555/92 issued on 16 December 1992 in Bukovačke Čivčije, Municipality of Doboj, a copy of the identification card file for Ramiza Delić, daughter of Ibrahim, reg. number 5156/87issued on 7 August 1987 in Grapska Gornja, Municipality of Doboj); (O 65) Notification, PSC Doboj, No. 09-02/1-230-134/09 of 12 March 2009; (O 66) Submission of information, District Prosecutor's Office in Bijeljina, No. IT-5/09 (IVTK-68/92) of 23 March 2009, with the following cases as attachments (I VKT-59/92- against Senad Mešić and others transferred on 23 February 1993, I VTK-79/92- against Mešin Begunić and others, transferred on 25 February 1993, I VTK 51/92- against Teufik Mešinović, transferred on 23 February 1993, I VTK 78/92- against Ahmet Aličić and others, transferred on 26 March 1993, I VTK-86/92 – against Jozo Mandić and others, transferred on 25 February 1993, I VTK-83/92 – against Šaban Ibraković and others, transferred on 25 February 1993); (O 67) Submission of information, Basic Court in Doboj, number 085-0-Su-09-000 157 of 5 March 2009, with the following attachments (criminal charges No. 13-5/02-230-118/92 of 23 June 1992 and Official Note, Request by the Municipal Public Prosecutor's Office for conducting investigation No. Kt.70/92 of 26 June 1992, Decision of the Basic Court in Doboj on ordering custody No. Ki.31/92 of 22 July 1992, Verdict of the Basic Court in Doboj No. K.78/92 of 21 September 1992 and the Verdict of the District Court in Doboj No. Kž.126/92 of 17 November 1992); (O 68) Notification, Cantonal Court in Tuzla, No. 003-0-Su-08-001 389 of 10 October 2008; (O 69) response to request, Public Municipal Company „Komemorativni centar" d.o.o. (Commemorative Centre) Tuzla, No. 917-10/08 of 30 October 2008; (O 70) Response to request for access to information, Prosecutor's Office of BiH, No. KT-RZ-131/05 of 14 January 2009, with the following attachments (Letter of the Cantonal Prosecutor's Office in Tuzla, No. Kta-rz-237/00 of 7 January 2009, Photo-documentation from re-exhumation of the mortal remains of bodies marked as D.GRA-8/1, Official Note of Tuzla Canton MUP, Crime Investigation Technique Sector of 28 November 2000 and of 20 December 2008, Record on re-exhumation of the mortal remains of bodies marked as D.Grapska-8/1 of 13 December 2007, Letter of the TC Cantonal Prosecutor's Office); (O 71) Letter of the Serb Orthodox Parish of Bijeljina, No. 89 of 14 November 2008; (O 72) Submission of requested information, Radio Doboj of 7 October 2008; (O 73) Notification, University Clinical Centre, No. 01/1-37-1-4-988/08 of 7 October 2008, attachment (Notification of the Psychiatry Clinic, No. 311-1/08 of 2 October 2008); (O 74) Letter of RS Pension and Disability Fund (PDF), No. 04-19689/08 of 20 October 2008, with the following attachments (Request of Slobodan Konjević PDF Doboj of 3

May 1993, Certificate of 21 April 1993, Report for the Public PDF insurance beneficiary of 14 April 1993, Record on control of use and maintenance of a flat, Residential Community Doboj of 30 April 1993, Certificate, Municipal Administration for public revenues Doboj, No. 03/6-458-2-81 1993 of 22 April 1993, Statement of Slobodan Konjević, Decision on assignment of a flat for temporary use, Republika Srpska Public Fund for Pension and Disability Insurance, No. 04/145 of 4 May 1993); (O 75) Index for Daliborka Kujundžić, College of Education in Bijeljina of 14 September 2007, Index for Dijana Kujundžić, University of Novi Sad of 11 July 1995; (O 76) Letter, PSC Doboj, No. 09-02/1-230-134/09 of 30 March 2009, with the following attachments (OKO Letter, No. OKO-3-168-170309 of 17 March 2009, Letter of PSC Doboj, No. 09-02/1-230-134/09 of 12 March 2009, Letter of PSC Doboj, No. 09-02/1-230-134/09 of 30 March 2009); (O 77) Criminal charges, PSC Doboj, No. 13-5/02-230-130/92 of 21 July 1992 (Samir Žepčan and others.); (O 78) Criminal charges, PSC Doboj, No. 13-5/02-230-131/92 of 21 July 1992 (Muhamed Hidić and others.) ; (O 79) Criminal charges, PSC Doboj, No. 13-5/02-230-132/92 of 27 July 1992 (Nedžad Begović and others); (O 80) Criminal charges, PSC Doboj, No. 13-5/02-230-143/92 of 27 August 1992 (Muhamed Herceg and others); (O 81) Criminal charges, PSC Doboj, No. 13-5/02-230-142/92 of 28 August 1992 (Fahrudin Didić and others); (O 82) Photographs presented to the witness Zoran Dević; (O 83) Photographs presented to the witness Želimir Borota; (O 84) Photographs presented to the witnesses for the defence; (O 85) Photographs presented to the witnesses; (O 86) Photographs of Grapska presented to witnesses; (O 87) Map of „Villa“, presented to the witness Želimir Borota; (O 88) Map of „Villa“, presented to the witness Dragiša Marković; (O 89) Map of „Villa“, presented to the witness Slobodan Jaćimović; (O 90) Map of „Villa“, presented to the witness Zoran Dević; (O 91) Map of „Villa“, presented to the witness Mirsad Omerčić; (O 92) Letter of Thanks to Predrag Kujundžić by the Suho Polje congregation of a mosque, of 20 October 2003; (O 93) Photographs presented to the witness „2“; (O 94) Photographs of the witness “4”; (O 95) ICTY Indictment against Jovica Stanišić and Franko Simatović; (O 96) Magazine “Express” of 4 September 2008; (O 97) Record on Examination of the Witness Nermin Ahmić of 13 July 1997; (O 98) Verdict of the Republika Srpska Supreme Court, No. Y-308/98 of 9 March 2001; (O 99) Decision on constituting the Assembly of the Serb people of the Municipality of Doboj, No. 1, year I, of 27 March 1992; (O 100) Magazine “Express” of 28 August 2008; (O 101) Statement of Nezir Bečić, Agency for Investigations and Documentation, No. 490/97 of 13 November 1997; (O 102) Statement of witness “20”, Agency for Investigations and Documentation of R BiH, 519/98 of 17 March 1998; (O 103) Statement of witness “32”, Agency for Investigations and Documentation of R BiH, No. 478/97 of 6 August 1997; (O 104) Statement of Edin Memić, Agency for Investigations and Documentation of R BiH, No. 319/96 of 25 January 1996; (O 105) Statement of witness “2”, Agency for Investigations and Documentation of R BiH, No. 549/99 of 5 May 1999; (O 106) Statement of witness “4”, Agency for Investigations and Documentation of R BiH, No. 419/96 of 25 October 1996; (O 107) Statement of Hasan Mustafić, Agency for Investigations and Documentation, No. 369/96 of 10 May 1996; (O 108) Statement of Ibro Spahić, Agency for Investigations and Documentation, No. 483/97 of 8 August 1997; (O 109) Statement of Edin Hadžović, MUP Doboj, No. 417/92 of 11 August 1992; (O 110) Statement of witness “14”, SSC Doboj of 15.-2.1995 (NOTE: date is vague); (O 111) Statement of witness “12”, PSS

Doboj, No. 15-1/02-212-95/96, of 22 February 1996; (O 112) Statement of Emsud Herceg, SSC Doboj, No. 15-1/027212-74/95 of 21 August 1995; (O 113) Magazine "BUM" of 12 August 2009; (O 114) Magazine "Express" of 22 August 2009; (O 115) Magazine "BUM" of 26 August 2009.

2. Closing arguments

2.1. Prosecutor's Office

11. In the course of its closing argument, the Prosecutor's Office referred to the legal qualification of the criminal offence with which the Accused has been charged, and reasoned the following individual facts: widespread and systematic attack, direction of the attack to the civilian population, knowledge of the Accused of the attack and the connection between the attack and the Accused's actions, conduct of the Accused with the discriminatory intent comprising an element of persecution, and the command role of the Accused. Furthermore, the Prosecutor's Office referred to the individual incriminations under every particular Count of the Indictment. Thus, the Prosecutor's Office submits that the actions under Count 1 of the Indictment have been corroborated by the witnesses for the prosecution "2" and "4", witnesses from the neighbouring village of Bukovačke Čivčije who observed the event, documentary evidence and some witnesses for the defence. Moreover, the Prosecutor's Office notes that the attack on the village constituted the violation of the provisions of international humanitarian law. With regard to Count 2 of the Indictment, the Prosecutor's Office argues that the witnesses Nezir Bečić, Ibro Spahić, Emsud Herceg, Edin Memić, Muharem Hamidović, and witnesses "8", "16", "20" and "32" credibly confirmed the perpetration of the relevant actions by the Accused. The Prosecutor's Office argues that the facts under Count 3 of the Indictment, pertaining to taking out the civilians in order to form human shields, were corroborated through the testimonies of the witnesses for the prosecution "16", "4", "2", Edin Hadžović, as well as witnesses for the defence Zoran Dević and Dragiša Marković. In addition, the Prosecutor's Office submits that the testimonies of the witnesses "16", "8", "10", "4", "12" and witness Edin Memić proved that the Accused had not taken the necessary and reasonable measures to prevent the torture and inhuman treatment of detainees at *Perčin disco* on 19 July 1992, nor had he taken measures to punish his subordinates for the offence committed. Furthermore, the Prosecutor's Office submits that the witnesses for the prosecution "2" and "4" entirely described the perpetration of the criminal offence under Counts 5 and 6 of the Indictment, and that their testimonies have been supplemented by the testimonies of the witness "22", Fatima Hamidović and Muharem Hamidović, including the expert evaluation of the psychological condition of the person "2", which was provided by the expert witness team of the Clinical Centre of the University of Sarajevo. The Prosecutor's Office argues that the facts under Count 7 of the Indictment have been corroborated by the testimonies of the witnesses "6" and "14" and the documentary evidence.

12. Finally, the Prosecutor's Office moved the Court to find the Accused guilty under all of the Counts of the Indictment and to sentence him to a long-term imprisonment.

2.2. Defence

13. In its closing argument, the defence referred to the application of law, and also to each individual Count of the Indictment. Therefore, the defence argues that, with regard to Counts 2 and 3 of the Indictment, the Prosecutor's Office examined 16 witnesses. The defence is of the view that not one of them has confirmed that the Accused was present in the village of Bukovačke Čivčije at the time of the referenced actions, and that their testimonies were actually a "hearsay" platitude. The defence furthermore states that the Prosecutor's Office did not prove that the Accused commanded the unit at the time of taking out the civilians to form human shields (Count 3 of the Indictment), nor did it prove that that particular unit participated in the referenced actions. With regard to Count 4 of the Indictment, the defence argues that the Accused, as well as his unit's members, has never participated in the actions as stated in the Indictment. In the further course, the defence referred to Count 7 of the Indictment. According to the Defence Counsel Miroslav Ristić, witness "6" has never stated in his statements that he was hit by the Accused or his brother Nenad Kujundžić. In addition, the defence submits that the witness "6" has been instructed by someone, and notes that his statements (made earlier in relation to the one he made before the Court) were mutually contradictory. Moreover, with regard to the argument under Count 7 of the Indictment, the defence states that the existing statements of the witness "14" are illogical and contradictory from many aspects, being the reason for which his testimony cannot be accepted as truthful and credible. With regard to the circumstances under Count 1 of the Indictment, the defence states that the Prosecutor did not present any evidence proving that the Accused or his unit forcibly transferred civilians, as described in the Indictment. The defence further notes that the statements of the female witnesses "2" and "4" on the murder of the underage D.D. and wounding the witness "2" are inaccurate. With regard to the circumstances under Counts 5 and 6 of the Indictment, the defence submits that the testimony of the witness "2" is not truthful, that the relationship between the witness "2" and the Accused was voluntary and it argues that everything with which the Accused has been charged, witness "2" actually experienced with Vinko Topalović.

3. Procedural decisions of the Court

3.1. Decision to exclude the public

14. Pursuant to the provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses (Witnesses Protection Law), the preliminary proceedings judge of the Court granted the protection measures to a certain number of witnesses by assigning them pseudonyms "2", "4", "6", "8", "10", "12", "14", "16", "18", "20", "22", "24", "26", "28" and "32" (Decisions of the Court of BiH of 29 November 2007 and 6 December 2007).

15. By the referenced Court Decisions, the real names and family names and other personal information of the witnesses have been proclaimed secret for a period of no longer than 30 years after the decision has become final. At their request supported by

the reasoned motion of the Prosecutor's Office and having been informed of the positions of the defence, the Panel granted the additional protective measures to most of the protected witnesses.

16. The additional protective measures were deliberated on by the Panel prior to the testimony of every individual witness. These additional measures were granted in order to protect the appearance of the witness, therefore, while some of the witnesses were giving their testimony, the public was moved into another room from which it could follow the trial through audio-transmission, with no possibility to see the person who testified while, at the same time, the Panel, the parties in the proceedings and the Defence Counsels for the Accused were present in the courtroom and examined the witnesses[1]. Besides, a certain number of witnesses testified "behind the screen"[2].

17. Furthermore, with regard to some witnesses to whom pseudonyms were previously granted and who simultaneously asked to testify without the presence of the public, the Panel, upon their request and provided reasoning, that is, after the parties and the Defence Counsels commented on that, pursuant to Article 235 of the CPC of BiH, entirely excluded the public throughout the examination of these witnesses in order to protect their interest, that is, their private life.[3] In deciding upon the exclusion of the public, the Panel kept in mind that such a measure is an exception from the rule of publicity of the proceedings. However, in this particular case, the Panel evaluated the ratio between the witnesses' right to the protection of their privacy and the right of the public to be properly and timely informed, therefore the Panel found that, by excluding the public, the desired objective would be met as long as the harmful consequences for the witness could be prevented. On the other hand, informing the public shall be enabled in another, more acceptable manner.

18. During the evidentiary procedure, the Prosecutor's Office abandoned the possibility to examine the witnesses under the pseudonyms "18" and "28", but asked for the protection measures to be granted to one of the witnesses who was presented as a public witness at the time when the Indictment was filed. The Prosecutor's Office stated that the witness requested for a pseudonym to be assigned to him and that he should be hidden from the public behind a screen. The Prosecutor's Office reasoned such a request by stating that the witness was in fear for his life and the lives of his family members, since he was a returnee to the area of Doboj, and he believes that someone close to the family of the Accused might take revenge for his testimony.

19. The Defence did not object to the referenced motion for granting the protective measures.

20. For the aforementioned reasons, having in mind the consent of both parties in the proceedings, the Panel assigned the pseudonym "34" to the witness, pursuant to Article

[1] For witnesses under the pseudonyms 8, 12, 20, 14.
[2] For witnesses under the pseudonyms 22, 34, 10, 6, 16, 32, 24.
[3] For witnesses under the pseudonyms 2, 4.

12 and 13 of the Witness Protection Law and, as an additional measure, allowed him to testify "behind a screen" in the courtroom.

21. Therefore, in addition to the protection measure of assigning the pseudonyms, the Panel granted to some of the witnesses the aforementioned additional protection measures as stipulated by law, taking into consideration every specific and individual situation, finding it necessary to strengthen the measure pertaining to pseudonyms, being the basic measure to protect the witness's identity. The Panel found that the aforesaid protection measures served the purpose of complete implementation and achievement of the aim of assigning the pseudonyms, that is, preventing the disclosure of the witness's identity. Thereat, in every specific case the Panel considered justifiability of the application of a certain protection measure, pursuant to Article 4 of Witness Protection Law. The Panel is satisfied that all of the referenced measures were required to protect the witnesses' interests, having in mind that the requests for the protection measures were filed by the witnesses themselves, since, for the reason of testifying in the referenced case, they felt fear for their personal safety and for the safety of their family members whom they visit on a regular basis, or the witnesses who returned to the Doboj Municipality area, for their testimony in the referenced case. This is particularly so because some of the witnesses received certain threats during the proceedings, which the Panel finds to justify additionally the referenced protection measures, although the existence of the specific threats and intimidation is not a required pre-condition for granting the protection measures. Specifically, those are primarily vulnerable witnesses, who are seriously mentally and physically traumatised by the circumstances surrounding the committed crime, as well as the witnesses under threat who requested the protection measures due to the existence of a reasonable ground for fear that the danger for their personal safety or the safety of their families might be a consequence of their testimony.

22. Guided by the provisions of Article 3(1) and (3) of the Witness Protection Law, the Panel assigned the foregoing protection measures to the witnesses, finding that the rights of the Accused to a public and fair trial, that is, the equality of arms, would not be violated. In the situations when a certain witness is granted a stricter protection measure, the Panel previously established in every specific case that the same purpose could not be achieved by a more lenient measure.

23. Having in mind that the identity of these witnesses has been protected (even 30 years after the final verdict), throughout the proceedings the Panel paid due attention not to disclose any information that could result in the disclosure of their identity. Therefore, in the Verdict, the witnesses will be addressed to by the pseudonyms that were previously granted to them.

24. The Panel notes that in each and every of the aforesaid situations the Accused and his Defence Counsels were informed of the identity of the protected witnesses and the entire contents of their testimonies.

25. Apart from the witnesses for the prosecution, the Panel rendered a decision to exclude the public during the examination of defence witness Mirsad Omerčić at the trial

held on 27 January 2009. The Panel decided that the identity of this witness be disclosed to the public, but the content of his testimony was proclaimed secret. The Panel rendered this decision pursuant to Article 235 of the CPC of BiH, in order to protect this witness's interests. In acting so, the Panel evaluated the circumstances stated by the Defence Counsel for the Accused during the part of the session which was closed for the public, which circumstances will not be explicitly stated in order not to threaten the interests of the witness who expressed fear for his safety and for the safety of his family because of his testimony.

3.2. The Court decisions on acceptance of the established facts (motions by the Prosecutor's Office and the defence granted in part)

26. Deciding upon the motion of the Prosecutor's Office to accept as established the facts in the judgements of the International Criminal Tribunal for the former Yugoslavia (ICTY), having elaborated thoroughly on the arguments stated by the parties in the proceedings, in its Decision of 7 May 2008[4], the Panel accepted the following facts from the Trial Chamber Judgement in *Duško Tadić* (IT-94-1-T):

> 1. "In the Serb autonomous regions the Crisis Staffs were set up to assume the role of the authorities and general administration in the municipalities. The members of the Crisis Staff were the leaders of the Serb Democratic Party (SDS), commanders of the Yugoslav National Army (JNA) in those areas, the Serb police commanding officers and a commander of the Serb Territorial Defence" (para. 103)
>
> 2. "… The camps were basically set up and run under the directives of the Serb Crisis Staff or in cooperation with them, armed forces and police. During imprisonment, imprisoned women and men were subjected to severe mistreatment, among other thing, to beating up, sexual abuse, torture, executions". A part missing " Upon taking Prijedor and the neighbouring areas, the Serb forces imprisoned thousands of Muslim and Croatian civilians in the camps in Omarska, Keraterm and Trnopolje. Setting up of these camps was a part of the Great-Serbian plan to expel non-Serbs from the Prijedor municipality" (para.154)

27. The Panel did not accept the other facts proposed by the Prosecutor's Office (facts from 3 through 10 in the Annex to the Decision on the motion of the Prosecutor's Office), which were adopted from the ICTY Judgements in *Goran Jelisić (IT-95-10-T)*, *Simo Zarić, Blagoje Simić and Miroslav Tadić (IT-95-9-T), Milomir Stakić (IT-94-24-T),* as it inferred that these facts do not satisfy the acceptance criteria.

28. In this case, the motion for the acceptance of the established facts was also filed by the defence for the Accused. The defence motion included five facts, four of which were taken from the following ICTY cases: *Prosecutor versus Simo Zarić, Blagoje Simić and Miroslav Tadić (IT-95-9-T), Prosecutor versus Zejnil Delalić, Zdravko Mucić, Hazim*

[4] Decision of the Court of BiH number X-KR-07/442 of 7 May 2008.

Delalić and Esad Landžo (IT-96-21-T) and one which was taken from the Judgement of the International Court of Justice in the case *Bosnia and Herzegovina versus Serbia and Montenegro of 26 February 2007*. Of the proposed facts, in its Decision of 8 May 2008[5], the Panel accepted the following facts as being established:

> 1. "The Trial Chamber is satisfied that a state of armed conflict existed in the Republic of Bosnia and Herzegovina during the above mentioned period (17 April 1992 to 31 December 1993). (Trial Panel Judgement in *Simo Zarić et al.* para 978).
>
> 2. "In early April of that year, with the increase in violence, the Bosnian State Presidency declared a "state of imminent war danger" and the Parliament was subsequently dissolved. The Presidency also issued a decision announcing a general mobilisation of the Bosnian TO, which was gradually transformed into the Bosnian Army. This Army was formally established on 15 April 1992, under the supreme command of the President of the Presidency and a General Staff based in Sarajevo. On 20 June 1992, the Presidency proclaimed a "state of war" and identified the aggressors as "the Republic of Serbia, the Republic of Montenegro, the Yugoslav Army and the terrorists of the Serbian Democratic party." (Trial Chamber Judgement in *Zejnil Delalić, Zdravko Mucić, Hazim Delalić and Esad Landžo,* para 109).

29. The Panel did not accept the facts proposed by the defence from the Judgements of the International Court of Justice in the case *Bosnia and Herzegovina versus Serbia and Montenegro*, as well as the other facts proposed by the defence from the ICTY case *Zejnil Delalić, Zdravko Mucić, Hazim Delalić and Esad Landžo* (IT-96-21-T), finding that they do not satisfy the acceptance criteria.

30. Article 4 of the Law on Transfer of Cases provides the Court with the possibility to use the previously rendered conclusions of ICTY for the purpose of judicial economy on one hand, and protecting the rights of the Accused to a fair trial on the other[6]. This Article reads: "At the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY or to accept documentary evidence from proceedings of the ICTY relating to matters at issue in the current proceedings." Furthermore, the Panel finds that the Law on Transfer of Cases must be interpreted as a *lex specialis* relative to Article 15 and Article 273 of the CPC of BiH.

31. It is a common understanding of the established facts, as indicated by the Court of BiH jurisprudence[7] and the case-law of the ICTY, that is, ICTR (International Criminal

---

[5] Decision of the Court of BiH, number X-KR-07/442 of 8 May 2008.

[6] *See* Decision in *Željko Mejakić et al.,* number X-KR-06/200 of 22 August 2007, and Decision in *Paško Ljubičić* number X-KR-06/241 of 7 January 2008, and Decision in *Zdravko Mihaljević* number X-KR-07/330 of 7 April 2008.

[7] Decisions on established facts rendered by Trial Panels of the Court of BiH:
Decision in *Radovan Stanković*, case number X-KR-05/70 of 13 July 2006; Decision in *Gojko Janković*, case number X-KR-05/161 of 4 August 2006; Decision in *Miloš Stupar et al.* (Kravica), case number X-

Tribunal for Rwanda)[8], that they establish a legal assumption regarding the value of that individual fact. Through that assumption, the burden of proof which is on the side of the prosecution has been satisfied.[9]

32. Pursuant to Article 6(2) of the CPC of BiH and the relevant Article 6(3)(d) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Convention), the Accused retains the right to contest any established fact that has been accepted by the Court. Thus, the principle of a fair trial and the equality of arms has been satisfied. Likewise, the principle of immediacy of the evidentiary procedure has also been satisfied, since all pieces of evidence accepted as the established facts may be contested at trial by using all legal or factual arguments or counter-evidence.[10] If the Accused contests any established fact, the Prosecutor may introduce additional evidence at trial in order to contest the denial. Likewise, the Court of BiH is not obliged to ground its verdict on a fact adjudicated in the ICTY Judgements. Instead, the established facts shall be accepted and evaluated in the light of all evidence presented at the trial,

---

KR-05/24 of 3 October 2006; Decision in *Momčilo Mandić*, number X-KR-05/58 of 5 February 2007; Decision in *Krešo Lučić*, number X-KR-06/298 of 27 March 2007; Decision in *Nenad Tanasković,* case number X-KR-06/165 of 26 June 2007; Decision in *Željko Lelek,* case number X-KR-06/202 of 3 July 2007; second Decision in *Momčilo Mandić,* case number X-KR-05/58 of 5 July 2007; Decision in *Željko Mejakić et al.,* case number X-KR-06/200 of 22 August 2007; Decision in *Mitar Rašević and Savo Todović,* case number X-KR-06/275 of 2 October 2007; Decision in *Jadranko Palija,* case number X-KR-06/290 of 14 November 2007; Decision in *Milorad Trbić*, case number X-KR-07/386 of 13 December 2007.

Oral decisions on established facts, subsequently inserted into the Trial Chamber Judgement:

Trial Panel Verdict in *Neđo Samardžić*, case number X-KR-05/49 of 7 April 2006, pages 10-13; Trial Panel Verdict *Dragoje Paunović*, case number X-KR-05/16 of 26 May 2006, page 13; Trial Panel Verdict in *Boban Šimšić*, case number X-KR-05/04 of 11 July 2006, par. 49; Trial Panel Verdict in *Nikola Kovačević*, case number X-KR-05/40 of 3 November 2006, page 19.; Trial Panel Verdict *Marko Samardžija*, case number X-KR-05/07 of 3 November 2006, pages 15-18; Trial Panel Verdict in *Radislav Ljubinac*, case number X-KR-05/154 of 8 March 2007, pages 15-20.

Reconsideration of the first-instance decisions on the established facts in the second-instance verdicts:

Appellate Panel Verdict in *Dragoje Paunović*, case number X-KRŽ-05/16 of 27 October 2006, page 5; Appellate Panel Verdict in *Neđo Samardžić*, case number X-KRŽ-05/49 of 13 December 2006, pages 8-12; Appellate Panel Verdict in *Radovan Stanković*, case number X-KRŽ-05/70 of 28 March 2007, page 10 (page 9 in English version); Appellate Panel Verdict in *Nikola Kovačević*, case number X-KRŽ-05/40 of 22 June 2007, pages 5-6.

[8] *See*, as the hitherto best elaborated example reviewing the ICTY/ICTR jurisprudence: Decision on facts adjudicated in *Vujadin Popović et al*, case number IT-05-88-T of 26 September 2006, which additionally elaborates on the criteria already elaborated upon in two ICTY decisions on facts that have been adjudicated, in *Momčilo Krajišnik*, case number IT-00-39-T of 28 February 2003 and 24 March 2005.

[9] Unlike general understanding, Decision of the Court of BiH on established facts in *Jadranko Palija*, case number X-KR-06/290 of 14 November 2007, upon detailed analysis of the proposed facts in terms of their content, not only their admissibility and established facts, on page 8, may be understood as rendering a final decision on the existence of a "widespread and systematic attack" in the area relevant to the case.

[10] The Panel does not interpret the second decision of the Court of BiH on the accepted facts in *Momčilo Mandić*, case number X-KR-05/58 of 5 July 2007, on page 3, as an indication that there are restrictions pertaining to the instruments by which the defence may contest the facts which are accepted or established. The established facts are evidence and, as any other evidence, they may be contested by all instruments permissible in the proceedings. The decision as to whether the denial was successful or not is to be rendered by the Court, in its final verdict. The same inference was rendered by the Court of BiH in its Decision on the established facts in *Jadranko Palija*, case number X-KR-06/290 of 14 November 2007, page 5.

according to the principle of free evaluation of evidence under Article 15 of the CPC of BiH.

33. By the adoption of this approach, the basic principle of assumption of innocence under Article 3(1) of the CPC of BiH and Article 6(2) of the Convention has been satisfied. The relevant jurisprudence of the European Court of Human Rights supports this approach, provided that the Accused may contest the accepted facts.[11]

34. The reasons that justify the application of this procedural instrument pertain to the overall judicial economy, including the reason for which severely traumatised witnesses should be spared of repeated testimonies in several cases related to one and the same event or region. This approach also enables harmonisation of the Court of BiH jurisprudence and the relevant ICTY jurisprudence. Finally, the utilisation of the established facts may be considered a vehicle to secure the right of the Accused to a speedy trial as referred to in Article 13 of the CPC of BiH and Article 6(1) of the Convention, particularly in case of custody, because the trial can be considerably shortened if the facts are accepted at an early stage of the proceedings.

Criteria for the decision on the proposed facts

35. Considering that neither the Law on Transfer of Cases nor the CPC of BiH provides criteria being the basis for the discretion of the Court to either accept or dismiss certain facts proposed by the parties in the proceedings, the standards developed by the ICTY and the ICTR concerning the *Rule 94(B)* of the Rules of Procedure and Evidence may serve as the guidelines thereof. By accepting such an approach, the Panel is mindful of its obligations under the Convention and the CPC of BiH.

36. With regard to the criteria, as the Panel previously stated in its decisions in other cases[12], it grounds its inferences on the decision of the ICTY Trial Chamber of 26 September 2006 in the ICTY case *Prosecutor versus Vujadin Popović et al.* (IT-05-88-T). This decision further elaborates on the criteria established in two decisions of the ICTY Trial Chamber rendered in *Prosecutor versus Momčilo Krajišnik* (IT-00-39-T), which are decisions that the Court of BiH Appellate Panel has partially taken into account in its Verdict in *Neđo Samardžić* (case number X-KRŽ-05/49) of 13 December 2006 and *Radovan Stanković* (case number X-KRŽ-05/70) of 28 March 2007, as well as in a number of the decisions rendered by the Trial Panels of this Court.

1. A fact must be relevant to an issue in the ongoing proceedings

[11] Judgement of the European Court of Human Rights in *Salabiaku vs. France*, rendered on 7 October 1988, 13 EHRR 379, par. 28-29. *See* the reasoning of the Decision on the established facts in *Milorad Trbić*, case number X-KR-07/386 of 13 December 2007, page 12.

[12] The Court cases *Željko Mejakić and others* (X-KR-06/200), *Paško Ljubičić* (X-KR-06/241) and *Zdravko Mihaljević* (X-KR-07/330), *Momir Savić* (X-KR-08/478)

37. Considering that the acceptance of the established facts constitutes a part of the evidentiary proceedings, it is clear that the Court only accepts the relevant evidence as such.

38. The formulation of this criteria, which is closely related to the formulation of Rule 94(B) of the Rules of Procedure and Evidence and Article 4 of the Law on Transfer of Cases, indicates that it is not necessary for the proposed fact "not to be the subject of the dispute" of the parties in the proceedings (which has the same meaning as if it were not "disputable"), as stated in the earlier jurisprudence of the ICTY and some cases of the Court of BiH[13]. Such a conclusion would not be logical, because the parties in the proceedings only discuss the facts relevant to the case that should be proved by the evidentiary instruments, such as the established facts, witness testimonies or documentary evidence. Considering that the established fact is nothing but an assumption in favour of one party in the proceedings, such an assumption – as stated above – may always be contested by the arguments and/or other evidence.[14] If the relevant fact is "not the subject of dispute" between the parties in the proceedings, the need to prove that fact by using the established facts as an instrument is diminished because the parties may reach a mutual agreement upon such facts. If the Court could have the possibility to reduce the scope of evidence presented during the evidentiary procedure by applying the established facts as instruments only with regard to indisputable issues, the judiciary economy would not be achieved.

39. The facts listed under number 2 (in parts), and under numbers 3, 5, 6, 7, 8, 9 and 10 in the Annex to the Decision deciding on the motion by the Prosecutor's Office, have been refused as irrelevant based on this criterion. Specifically, the proposed facts pertain to the events that took place in quite a different area of BiH (Municipalities of Prijedor, Brčko, Bosanski Šamac and Odžak), not in the region relevant to the Indictment in this case (Municipality of Doboj).

40. On the other hand, not a single fact listed in the Motion by the Defence was refused based on this criterion.

2. A fact must be distinct, concrete and identifiable

41. According to the ICTY Decision in *Popović et al*., the proposed fact may not indistinctibly interfere with either other facts which do not satisfy the criteria for the

[13] *See* this criterion stated in the first ICTY Decision on the facts adjudicated in *Momčilo Krajišnik* of 28 February 2003, page 7, which is explicitly taken out from the second Decision on the facts adjudicated in the same case, which decision was rendered on 24 March 2005, page 8, footnote 45. This criterion is also stated in the following Court of BiH Decisions on the established facts: in *Gojko Janković*, case number X-KR-05/161 of 4 August 2006 *see* page 2. of the Decision; in *Marko Samardžija*, case number X-KR-05/07 of 3 November 2006, *see* page 17 of the Trial Panel Verdict; in *Radislav Ljubinac*, case number X-KR-05/154 of 8 March 2007, *see* page 17 of the Trial Panel Verdict; in *Jadranko Palija*, case number X-KR-06/290 of 14 November 2007, *see* Decision, pages 3-4 and 6, and *Milorad Trbić*, case X-KR-07/386 of 13 December 2007, *see* Decision, pages 10-11.

[14] *See* the ICTY Decision on the adjudicated facts in *Vujadin Popović et al.*, ICTY case number IT-05-88-T of 26 September 2006, para. 5, footnote 19.

established facts themselves, or with other facts which obscure the main fact. In order to evaluate as to whether this is so, the Court must evaluate the proposed fact in the context of the original judgement.[15] Besides, the proposed quotation must contain the factual information which makes it relevant to the referenced case. If the proposed fact only contains the general (not legal) inferences without stating the ground for such inferences, the information which is to be presented to the Court is unidentifiable, therefore, that fact should be refused.

42. The Panel did not refuse any fact in the motion of the Prosecutor's Office based on this criteria. More specifically, the Panel finds the proposed facts specified, thus being identifiable and distinct.

43. The facts stated under numbers 3 and 4 of the Annex to the Decision on the defence motion may be considered the commonly known facts. It is unclear though to which period of time the proposed facts pertain, that is, whether this is a period of time relevant to the indictment in this case at all. Here, the fact under number 3 in the Annex refers to quite a general context (therefore, to an unspecific period of time), while the fact under number 4 pertains to the period of time until "*the signing of the Dayton Peace Agreement*". The Panel finds this timeframe ambiguous, that is, insufficiently specific and concrete. Therefore, based on this criterion, the Panel refused the facts under 3 and 4 of the Annex to the Decision on the motion by the defence.

3. A fact defined by a proposing party must not substantially differ from the definition in the original Judgement

44. The Panel adopts the principle referred to in the foregoing quoted jurisprudence of the ICTY according to which, in case of minor inaccuracies or ambiguities arising from extracting the facts from the original Judgement, the Court may at its discretion correct the inaccuracies or ambiguities *proprio motu*.

45. Not a single fact in the respective motions of the Prosecutor's Office and Defence was refused based on this criteria, since the Panel finds that the facts proposed by the Prosecutor's Office, as well as those proposed by the defence, satisfy the requirements of this criteria.

4. A fact must not be unclear or deluding in the context of the motion by the proposing party

46. In order to evaluate as to whether the context in which the fact is proposed creates certain confusion about its actual meaning, the fact must be analysed in its original context. If the meaning of the fact in the original verdict considerably differs in its strength or content from the meaning indicated in the context of the proposal, the fact should not be accepted.

[15] The ICTY Decision on the adjudicated facts in *Vujadin Popović et al.*, ICTY case number IT-05-88-T of 26 September 2006, para. 6

47. Based on this criterion, the Panel has not refused any fact proposed by either the Prosecutor's Office or the defence. The Panel is satisfied that not a single proposed fact (by the Prosecutor's Office or the defence) is ambiguous or deluding, and it finds that in the specific case the facts are distinct and identifiable, therefore they do not create any confusion with regard to the meaning in relation to which they are proposed.

5. The proposing party must identify the facts with sufficient preciseness

48. This criterion requires a precise identification of the paragraphs in the Judgement from which the proposed facts are taken. Again, like with the criterion 3, the Court may accept the facts under the circumstances where a party mistakenly quoted a wrong paragraph from the Judgement, provided that the closeness of the intended factual inference and the wrongfully quoted paragraph makes that mistake so obvious that the other party in the proceedings could understand what the intended factual inference was.

49. The Panel finds that, as already stated, all of the facts are distinct and identifiable and precisely defined, so that the Panel did not refuse any proposed fact (by the Prosecutor's Office or the Defence) under this criterion.

6. A fact must not be a characterisation of an essentially legal nature

50. As already noted in the foregoing quoted second decision in *Krajišnik: "*Many findings have a legal aspect, if this expression is interpreted broadly. Thus, it is necessary to determine on a case-by-case basis whether the proposed fact contains findings or characterizations which are of an essentially legal nature." *16*

51. When the ICTY case-by-case approach is analysed, in the Decision on adjudicated facts in *Mejakić et al*., for example, the ICTY Trial Chamber excludes the facts indicating the existence of the "policy of committing the inhuman acts against civilians" and the "widespread and systematic acts" due to their legal characterisation.[17] However, unlike this Decision, another ICTY Appellate Chamber decided in *Krajišnik* to accept the proposed facts stating that the crimes were "committed during the armed conflict as part of a widespread and systematic attack on civilian population", the facts that indicate that the "ethnic cleansing (...) was committed in the context of the armed conflict", and that the perpetrator participated in the "joint criminal goal of ethnic cleansing of the Prijedor region from non-Serbs by committing inhumane acts".[18] Finally, in *Ljubičić,* the ICTY Trial Chamber accepted the facts about the attack "targeting the civilian population with the aim of ethnic cleansing", about the detainees who were "subjected to severe psychological and physical ill-treatment", or which

[16] *The Prosecutor v. Momcilo Krajisnik*, case no. IT-00-39-T, ICTY Decision on Adjudicated Facts, 24 March 2005, para. 15

[17] *The Prosecutor v. Željko Mejakić et al.* case no. IT-02-65-PT, ICTY Decision on Adjudicated Facts, 1 April 2004, p 6

[18] *The Prosecutor v. Momcilo Krajisnik*, case no. IT-00-39-T, ICTY Decision on Adjudicated Facts, 24 March 2005; Annex: A list of adjudicated facts accepted by the Chamber, facts no. 323, 321 and 316.

describe the living conditions in the camp as an ”unacceptable violation of international human rights (...)[19]

52. The Court of BiH Trial Panels have hitherto mostly taken the position that the facts containing the qualifications such as indirect legal characterisations of criminal offences committed as part of a “widespread or systematic attack” are suitable to be accepted as the established facts[20], although a number of recently rendered decisions reflecting a different position has been on the increase.[21]

53. This Panel is of the view that the facts containing any legal findings should not be accepted as established facts. Therefore, according to this Panel, facts that contain legal elements of the criminal offense or legal characterisations stating the acts of perpetration should be accepted as established, either. Notwithstanding its acknowledgement that the examples cited in this paragraph also contain a factual component, this Panel is of the view that that criterion excludes their acceptance, even if they only include the “general facts which put the specific act of perpetration into the broader context of wartime events.”[22] The terms such as “widespread and systematic attack” or “armed conflict” constitute the legal characterisations of the incriminating criminal offences and should not be considered the established facts in order to set clearly defined limits for the employment of this new instrument.[23]

---

[19] *The Prosecutor v. Paško Ljubičić,* case no. IT-00-41-PT, ICTY Decision on Adjudicated Facts, 23 January 2003

[20] *See* Decisions on established facts in the cases against: *Radovan Stanković,* case no. X-KR-05/70 of 13 July 2006; *Gojko Janković*, case no.X-KR-05/161 of 4 August 2006; *Momčilo Mandić*, case no.X-KR-05/58 of 5 February 2007; and *Krešo Lučić*, case no.X-KR-06/298 of 27 March 2007.
Also *see* the decisions included in the first instance Verdicts of the Court of BiH against: *Neđo Samardžić*, case no. X-KR-05-49 of 7 April 2006, p. 10-13 (p. 12-16 of English version); first instance Verdict in the case against *Dragoje Paunović*, case no. X-KR-05/16 of 26 May 2006, p. 13 (p. 15 of English version); first instance Verdict in the case against *Boban Šimšić*, case no. X-KR-05/04 of 11 July 2006, par. 49 (English and BHS versions); first instance Verdict in the case against *Marko Samardžija*, case no. X-KR-05/07 of 3 November 2006, p 15-18 (p. 16-19 of English version); first instance Verdict in the case against *Radislav Ljubinac*, case no. X-KR-05/154 of 8 March 2007, p. 15-20 (p. 17-22 English version)

[21] *See* also the first Decision reflecting a more restrictive approach: Decision in the case against *Miloš Stupar and others* (Kravica), case no. X-KR-05/24 of 3 October 2006, concerning the facts listed in Annex to the Motion of the Prosecutor’s Office of 10 March 2006; Decision on established facts in the case against *Nenad Tanasković*, case no. X-KR-06/165; Decision of 26 June 2007 in the case against *Željko Lelek*, case no. X-KR-06/202 of 3 July 2007; Decision in the case against *Željko Mejaković and others,* case no. X-KR-06/200 of 22 August 2007 and a Decision in the case against *Mitar Rašević and Savo Todović*, case no. X-KR-06/275 of 2 October 2007, Decision in the case *Zdravko Mihaljević* number X-KR-??/??? of ??.??.2008, and a Decision in the case against *Milorad Trbić*, case no. X-KR-07/386 of 13 December 2007, p. 9-10, tending to this more cautious approach.

[22] *See* the formulation of the Appellate Panel Verdict in *Dragoje Paunović*, case number X-KRŽ-05/16 of 27 October 2006, p. 5

[23] Second Decision of the Court of BiH on the established facts in the case against *Momčilo Mandić*, case number X-KR-05/58 of 5 July 2007, p. 3. (p. 4 in English version) and a Decision in the case against *Jadranko Palija,* case number X-KR-06/290 of 14 November 2007, p. 4. (p. 4. of English version), reason their approach to the acceptance of the facts which contain a legal finding on the existence of a “widespread or systematic attack”, along with the argument that these facts do not reflect an individual criminal responsibility of the accused persons, but they rather reflect the broader context within which the crimes had been committed. This argument confronts two different criteria for the acceptance of the established facts. This Panel is of the view that the criterion under which the facts which include legal

54. The Panel will not accept any legal findings, but it accepts certain facts by strictly reducing the proposed quotation to its factual part. When only facts are evaluated, the Court is not bound by legal characterisation attached to them in the original ICTY Judgement.

55. The Panel finds that where only the state of facts is accepted as an established fact, the fact is considered to be proven, as is the evidence obtained from the witnesses or documentary evidence presented during the trial. Therefore, pursuant to Article 15 of the CPC of BiH, this Panel is free to render its own legal inferences based on the factual findings which it accepted as the established facts.[24]

56. Annex to the Decision (upon the motion of the Prosecutor's Office), under number 5, includes a fact the acceptance of which is proposed by the Prosecutor's Office and which, as the Panel finds, encompasses the specific findings related to the act of perpetration ("*that attack covered....and acts of persecution and deportation of non-Serb civilians...*"). Then, Fact 6 in the Annex constitutes a clear legal finding of the ICTY Trial Chamber in the case against *Simo Zarić et al*. concerning the existence of a widespread and systematic attack in the region of Bosanski Šamac and Odžak. Facts 7, 8, 9 and 10 of the Annex to the Decision on the motion of the Prosecutor's Office also include the legal characterisations pertaining to the existence of the armed conflict, that is, the existence of a systematic and widespread attack in the municipality of Prijedor.

57. Accordingly, finding that this criterion has not been satisfied either, the Panel refuses to accept the proposed facts under numbers 5, 6, 7, 8, 9 and 10, as stated in the Annex to the Decision on the motion of the Prosecutor's Office (the Panel refused to accept these facts for the reason of irrelevance as well).

58. With regard to the motion of the defence, no fact whatsoever has been refused based on this criterion, because the Panel submits that the facts proposed by the defence do not contain legal characterisation of the referenced criminal offence.

7. Facts must not be based on the agreement of the parties in the original proceedings

59. For a certain fact to be accepted as adjudicated, it is important that it has previously been contested at the trial. Therefore, a fact taken from the Verdict, which stemmed from the plea agreement or an agreement stating that certain facts are not subject of dispute between the parties in the previous proceedings, does not satisfy the prerequisite for being accepted as an established fact. If not contested in the previous

---

findings are not to be accepted reflects an outstanding privilege and duty of the Court trying the case to reach its own legal findings. The criterion requesting that no facts which directly indicate the criminal responsibility of the Accused should be accepted is still a more direct protection measure for the Accused in terms that he will not be tried on the grounds of evidence presented at another trial in which he is not involved and based on the findings of another court which pertain to another Accused person based on this evidence. Due to their different goals, these criteria should be satisfied independent of each other.

[24] *See* the ICTY Decision on adjudicated facts in the case against *Miroslav Kvočka et al.*, ICTY case no. IT-98-30/1-T of 8 June 2000, p. 6

proceedings, the evidentiary value of the fact does not reach the level of assurance which is required for the prosecution to be considered as satisfying its initial obligation to present evidence in favour of its arguments.

60. As one of the facts, the motion of the Prosecutor's Office also proposes the one under paragraph 55 of the ICTY Trial Chamber Judgement in the case *Prosecutor versus Goran Jelisić.* However, this Judgement is based on the Accused's plea agreement in part pertaining to the criminal offences of Violations of Laws and Customs of War and the Crimes against Humanity. Therefore, considering the criteria for the acceptance of the established facts, the Panel refused to accept the fact stated under number 4 of the Annex to the Decision on the motion of the Prosecutor's Office.

61. The Panel finds that the facts stated in the motion of the defence satisfy the requirement of this criterion, therefore not a single fact has been refused based on this criterion.

8. Facts must not pertain to deeds, behaviour or state of mind of the Accused

62. The ICTY Decision in *Popovic et al.* reasons the latest jurisprudence of ICTY with regard to this criterion: "The exclusion focuses narrowly on the deeds, behaviour, and mental state of the accused - that is, on the conduct of the accused fulfilling the physical and mental elements of the form of responsibility through which he or she is charged with responsibility. It does not apply to the conduct of other persons for whose criminal acts and omissions the accused is alleged to be responsible through one or more of the forms of responsibilities (...)."[25]

63. Unlike this restricted definition, in *Mejakić et al*. the ICTY Trial Chamber excluded all of the facts pertaining to the living conditions in the Omarska camp as being too tendentious, without providing a more specific explanation of its decision.[26] In contrast, the ICTY Trial Chamber in *Ljubičić* accepted a number of facts implying that members of the military police were direct perpetrators, although the accused was alleged to be a superior commander of all these units.[27]

64. The Court of BiH jurisprudence also differs in this regard: some panels follow the definition provided in the ICTY decision in *Popovic et al.* and accept all of the facts that do not mention the Accused as the direct perpetrator,[28] while others have a more restrictive approach, thus additionally excluding the facts that could indirectly imply the

[25] *The Prosecutor v. Vujadin Popović et al.,* case no. IT-05-88-T, ICTY Decision on Adjudicated Facts, 26 September 2006, para. 13

[26] *The Prosecutor v. Željko Mejakić et al.,* case no. IT-02-65-PT, ICTY Decision on Adjudicated Facts, 1 April 2004, p. 6

[27] ICTY Trial Chamber, *Prosecutor v. Paško Ljubičić,* case no. IT-00-41-PT, ICTY Decision on Adjudicated Facts, 23 January 2003, *see* facts no. 47, 65, 221, 237, 281 in Annex to the Decision.

[28] *See,* for example, Decision in *Momčilo Mandić*, case no. X-KR-05/58 of 5 February 2007, p. 4 (p.4 in English version) to accept as established the fact that *Miroslav Krnojelac* was appointed by Momčilo Mandić, in his capacity as the then Minister of Justice of Republika Srpska.

criminal responsibility of the accused through his superior position or his participation in a common plan.[29]

65. Just like in its earlier Decisions on established facts[30], this Panel is of the view that indirectly incriminating facts should not be excluded from being accepted as established facts. Considering that every piece of evidence presented at the trial must be relevant to the case, every piece of evidence presented by the Prosecution should at least indirectly lead to the establishment of the Accused's responsibility. Therefore, it would be illogical to take any indirect connection of the Accused and the proposed facts as a reason to exclude them.

66. The Panel submits that no fact in the motion of either the Prosecutor's Office or the defence pertains to the deeds, behaviour or state of mind of the Accused, therefore, not a single proposed fact has been refused under this criterion.

9. A fact must not be a subject of an ongoing appeal procedure

67. This criterion pertains to the requirement that the facts in the ICTY first-instance judgements must also be upheld in the second-instance proceedings, that is, that these facts are not contested in second-instance proceedings.

68. This criterion must be carefully evaluated where the proposed facts are part of the first instance judgement currently appealed before ICTY. Under such circumstances, a fact stemming from the judgement currently subjected to review may only be accepted if the fact itself has not been appealed.[31] For instance, this is a frequent ICTY practice in case where the superior military commanders or political leaders have not denied that the crimes had been committed indeed, but they appealed the first instance judgements only because the Judgment attributes to them effective control over the direct perpetrators of the criminal offences.

69. The judgements from which the facts have been derived for the respective motions of both the Prosecutor's Office and the Defence were appealed however, but in those appeals the referenced facts were either not contested or were contested

[29] *See*, for example, Decision in *Gojko Janković*, case number X-KR-05/161 of 4 August 2006, page 3; Decision in *Miloš Stupar and others* (Kravica), case number X-KR-05/24 of 3 October 2006, page 8 (page 8 i English version); Decision in *Nenad Tanasković*, case number X-KR-06/165 of 26 June 2007, page 5 (page 5 in English version); Decision in *Željko Lelek*, case number X-KR-06/202 of 3 July 2007, page 5 (p. 5 in English version); Decision in *Mitar Rašević and Savo Todović*, case number X-KR-06/275 of 2 October 2007, page 5 (p. 5 in English version) and Decision in *Milorad Trbić*, case number X-KR-07/386 of 13 December 2007, pages 10-11 (pages 10-11 English version).

[30] In *Mejakić and others* (X-KR-06/200), *Ljubičić* (X-KR-06/241), *Mihaljević* (X-KR-06/330), *Savić* (X-KR-07/478)

[31] *The Prosecutor v. Vujadin Popović et al.,* case no. IT-05-88-T, ICTY Decision on Adjudicated Facts, 26 September 2006, para. 14

unsuccessfully.[32] Consequently, no fact in the referenced motions has been refused under this criterion.

A comprehensive test: Discretion exercised by the Court with regard to established facts

70. Having analysed individually all of the proposed facts under the foregoing criteria, the Panel had to decide as to whether the acceptance of all of the referenced and admissible facts in the motions of the Prosecutor's Office and the defence, in their composition, number and content, satisfies the judicial economy and protects the right of the Accused to a fair, public and expeditious trial.

71. Such a test is deemed to be necessary since *the principle of judicial economy is more likely to be frustrated in this manner where the judicially noticed adjudicated facts are unduly broad, vague, tendentious, or conclusory*.[33] In its final analysis the Panel, at its own discretion, may refuse even the facts that satisfy all of the foregoing preconditions, if the facts taken altogether frustrate the right of the Accused to a fair trial. In essence, this final test constitutes the exercising of the discretionary right of the Court to either accept or refuse the proposed facts as established.

72. In this specific case, in order to achieve an efficient balance between the judicial economy on the one hand and the rights of the Accused on the other, the Panel only accepted the facts listed under the numbers 1 and 2 (in parts) in the Annex to the Decision on the Motion of the Prosecutor's Office, finding them to be an important part of the prosecution arguments, which do not imply the direct criminal responsibility of the Accused. Accordingly, the Panel decided to accept these facts being satisfied that it is only them that satisfy the foregoing nine criteria.

73. The fact stated under number 7 in the Annex to the referenced Decision is not contested by the defence. Specifically, this pertains to the fact stated in the Judgement of the ICTY Trial Chamber in the *Prosecutor versus Milomir Stakić (IT-97-24-T)*: "*The Trial Chamber is satisfied that there existed an armed conflict in the territory of the municipality of Prijedor in the period between 30 April to 30 September 1992*". The Panel finds that this fact does not satisfy the foregoing criteria for the acceptance of the fact as established. However, considering the position of the Defence, the Panel is of the view that there exists a mutual agreement between the parties in the proceedings upon that fact, so that it can be deemed uncontested ("not a subject of dispute" between the parties in the proceedings).

74. The Panel refused the motion of the Prosecutor's Office that the entire judgements in the referenced ICTY cases be tendered into evidence. More specifically, the Panel submits that neither the provisions of the CPC of BiH, nor the provisions of the Law on

[32] *See* ICTY Appeals Chamber judgements in: *Prosecutor v. Duško Tadić (IT-94-1-T), Prosecutor v. Goran Jelisić (IT-95-10-T), Prosecutor v .Simo Zarić et al (IT-95-9-T) and Prosecutor v. Milomir Stakić (IT-97-24-T).*

[33] *The Prosecutor v. Vujadin Popović et al.,* case no. IT-05-88-T, ICTY Decision on Adjudicated Facts, 26 September 2006, para. 16

Transfer of Cases, provide sufficient ground for the acceptance of the entire judgements without having the facts, the acceptance of which is proposed, specified.

75. With regard to the defence motion, in order to achieve efficient balance between the judicial economy on the one hand and the rights of the Accused on the other, the Panel only accepted the facts under the numbers 1 and 2 in the Annex to the referenced Decision, finding them relevant to these proceedings, with those facts not directly referring to the criminal responsibility of the Accused. The Panel accepted these two facts, being satisfied that it is only them that meet the conditions under the foregoing criteria.

76. Apart from the aforementioned facts (under numbers 1, 2, 3 and 4 in the Annex to the Decision), the defence for the Accused moved the Court to accept as established those facts that were stated as adjudicated in the judgement of the International Court of Justice in the case *Bosnia and Herzegovina versus Serbia and Montenegro*. These facts have been listed under number 5 of the Annex to the Decision.

77. Article 4 of the Law on Transfer of Cases provides for the acceptance as proven those facts that are established by the legally binding decisions in any other ICTY proceedings or the acceptance of documentary evidence from ICTY proceedings relating to the matters at issue in the current proceedings. It is indisputable that this specific case involves facts that have not been adjudicated in the proceedings before ICTY, therefore they have not been encompassed by the referenced Article 4 of the Law on Transfer of Cases. Accordingly, the Panel refused to accept the motion of the defence pertaining to the facts adjudicated in the referenced judgement of the International Court of Justice.

3.3. (Non)acceptance of certain evidence by the Court

3.3.1. (Non)acceptance of evidence proposed by the Prosecutor's Office

78. When the documentary evidence was presented by the prosecution during the evidentiary procedure, the defence objected to the relevance of some of the proposed evidence while, with regard to some evidence used before the ICTY, it noted that those were undated and unsigned documents which were, therefore, not authentic. With regard to the objections concerning relevance, the Panel accepted the evidence proposed by the prosecution because it found them relevant to the proceedings in this case (which is contrary to the position of the defence). This Panel's inference particularly refers to the evidence that has already been the subject of the evidentiary procedure in other cases before ICTY.

79. The Panel also finds ill-founded the next objection by the defence referring to the authenticity of the evidence obtained from ICTY. Specifically, Article 3 of the Law on Transfer of Cases stipulates that *evidence collected in accordance with the ICTY Statute and RoPE may be used in proceedings before the courts in BiH.* Furthermore, Article 8 of the same Law foresees that original documents, certified copies (evidence collected by

the ICTY) *shall be used and that the copies may be certified, inter alia, jointly for more documents (or more pages of a single document), and may be performed electronically by ICTY*. Evidence objected to by the defence was obtained exactly from the ICTY, and those were the electronically certified copies. Therefore, the Panel accepted the evidence being satisfied that its authenticity was actually confirmed in a manner as stipulated by Article 8(2) of the Law on Transfer of Cases.

80. At the trial of 18 September 2008, the Prosecutor's Office gave up on the presentation of the evidence stated in the Indictment under ordinal number 10 (Part IV – Documentary Evidence), which is a letter of the UN Secretary-General of 24 May 1994 forwarded to the Chairman of the Security Council. In addition, the Prosecutor's Office withdrew its proposal to have the ICTY judgements in *Simo Zarić et al., Goran Jelisić, Duško Tadić and Milomir Stakić* reviewed. However, it adhered to its proposal that the following should be reviewed: the ICTY judgement in *Momčilo Krajišnik* of 26 September 2006, the ICTY judgement in *Biljana Plavšić* of 27 February 2003, verdict of the High Regional Court in Dusseldorf of 26 September 1997 in the *Nikola Jorgić* case, and the verdict of the Federal Supreme Court of the FR of Germany of 30 April 1999, in the case against *Nikola Jorgić*.

81. The defence for the Accused objected to this proposal by the Prosecutor's Office stating that, in the hitherto jurisprudence of the Court of BiH, the ICTY judgements have been used for the acceptance of adjudicated facts and not at all as a document in the proceedings. The Defence Counsel for the Accused, Goran Nešković, states that a judgement cannot be considered to be a document under Article 8 of the Law on Transfer of Cases, and he additionally noted that judgements cannot be treated as documents obtained from the local authorities either. With regard to the judgement in the ICTY case against *Biljana Plavšić*, the Defence Counsel for the Accused added that that was a judgement pronounced based on a plea agreement.

82. The Panel refused the motion of the Prosecutor's Office to review the referenced judgements, as it found that the Law on Transfer of Cases, or the CPC of BiH, does not foresee the introduction of entire judgements into any case whatsoever. Besides, the Panel holds that the Prosecutor's Office could have introduced the relevant parts of the referenced judgements through its motion for acceptance of established facts under the Law on Transfer of Cases.

83. At the main trial held on 19 May 2009, among other things, the Prosecutor's Office also proposed that the following be tendered into the case-file: Excerpts from the book *I Begged them to Kill Me* (testimony of D.H.'s wife, testimony of S.H.' husband), Letter of the District Prosecutor's Office in Doboj number KT-RZ No. 1686/05 of 5 May 2009 (investigation against Branko Jošić) and the ICTY testimony of the witness Drago Ljubičić pursuant to Article 5 of the Law on Transfer of Cases.

84. The defence objected to the introduction of the referenced evidence by the Prosecutor's Office.

85. With regard to the excerpts from the book *I Begged them to Kill Me*, the defence submits that, considering that those were witness testimonies, the referenced witnesses should be summoned to be cross-examined by the defence. Furthermore, the defence believes that by the presentation of this evidence and the additional defence evidence relative to this evidence the Court would be needlessly and additionally burdened.

86. With regard to this evidence regarding the investigation against Branko Jošić, the defence notes that the referenced document cannot constitute any evidence at all, that is, the conduct of the investigation does not mean anything specific and concrete.

87. With regard to the testimony of Drago Ljubičić before the ICTY, the defence noted that this was a person who lived and stayed in Doboj, and it is therefore possible for that person to be directly summoned to the Court for examination and cross-examination by the defence.

88. The Panel thoroughly evaluated the Motion of the Prosecutor's Office and the defence's objections thereto, and granted the Motion of the Prosecutor's Office to tender into the case-file the document on the conduct of investigation against Branko Jošić (Letter of the District Prosecutor's Office in Doboj, number KT-RZ 1686 of 5 May 2009). More specifically, after both parties had presented their positions, the Panel decided that the evidence proposed by the Prosecutor's Office be tendered into evidence, and stated that it would subsequently decide on its probative value. In rendering such a decision, the Panel was mindful of the special principles following from Articles 10, 15, 239(2), 263(2) and 281(2) of the CPC of BiH. Specifically, the evidentiary procedure is based on the principle of free evaluation of evidence, therefore in the course of the proceedings the Court is not bound by formal evidentiary rules. In parallel, the Court is certainly obliged to consider thoroughly all the matters and pay due attention to the authenticity, relevance and legality of evidence, that is, its probative value in isolation and in mutual connection.

89. The Panel finds that the defence does not contest the legality or authenticity of this evidence. The objection by the defence for the Accused could be understood as a denial of relevance of this evidence. However, the nature of the evidence clearly indicates that it is relevant for rendering a decision, that is, that it refers to the credibility of a witness in this case. Considering these circumstances, the Panel finds that the data stated in the referenced letter are certainly important for this case, which is why the Panel accepted it as evidence, at the same time stating that it shall subsequently decide on its probative value.

90. The Panel refused to tender the other two proposed pieces of evidence into the case records, being mindful of the equality of arms and the defence's arguments suggesting that the presence of these witnesses could be secured for the purpose of cross examination. The Panel was also mindful of the provision set forth in Article 5(3) of the Law on Transfer of Cases that reads: "Nothing in this provision shall prejudice the defendant's right to request the attendance of witnesses as referred to in Paragraph 1 of this Article for the purpose of cross-examination....".

91. In this particular case, this is about the persons who are available to the Court. Besides, the Defence notes that in case the Court accepts their testimonies given before the ICTY it will demand that they be summoned before the Court for cross-examination. In addition, the defence stated that the acceptance of the proposed evidence would initiate the presentation of additional evidence by the defence.

92. Along with the fact that the proposed witness testimonies do not contribute to the decision and thorough evaluation of the case, which would also unnecessarily delay the proceedings, the foregoing constituted the grounds for the decision of the Panel to refuse to tender the proposed evidence into the case records pursuant to Article 239(2) of the CPC of BiH.

3.3.1.1. Non-acceptance of the Accused's statement which he gave during the investigation as a suspect

93. On 29 May 2009, the Prosecutor's Office filed a Motion to, pursuant to Article 276 of the CPC of BiH, read as evidence the Suspect Questioning Record for the suspect Predrag Kujundžić, number KT-RZ-131/05 of 10 October 2007.

94. In its written submission of 3 June 2009, the defence stated its objection to this motion of the Prosecutor's Office because, as argued by the defence, it would violate the rights of the Accused to not being obliged to present his defence. The defence submits that the Accused, when interviewed during the investigation phase, was not cautioned that his statement could be used as evidence at the main trial which, according to the defence, constitutes the violation of Article 78(2)(c) of the CPC BiH.

95. At the main trial held on 3 June 2009, the Prosecutor's Office stated that it adhered to its proposals and it additionally noted that the Accused had been interviewed under the then applicable procedural code, that the interviewing had been audio-visually recorded and that his rights had been fully respected. Besides, the Prosecutor's Office noted that the Accused had given his previous statement consciously, willingly and voluntary and that his subsequent decision to defend himself by silence cannot have a retroactive effect thus making the lawfully taken investigative activities null and void.

96. The defence for the Accused also stated that it adhered to the arguments stated in its written response and noted that, by the amendments and supplements to the CPC of BiH, it was stipulated that the Suspect must be instructed of the possibility that his statement could be used at the main trial. The defence noted that such instructions had not been given to the Accused in this case.

97. The Panel evaluated the arguments of both parties and decided to refuse the motion filed by the Prosecutor's Office, and not allow the statement of the Accused that he had given as a suspect to be tendered into the case records. The Panel rendered such a decision for the following reasons.

98. The right of the Accused not to present his defence or to answer the questions

("the right to remain silent") is guaranteed by Article 6(3) of the CPC of BiH. In the specific case, the accused Predrag Kujundžić exercised the referenced right by not presenting his defence at the main trial. Pursuant to Article 273(3) of the CPC of BiH, the statement of the accused given during the investigation may, upon decision of the judge or the presiding judge, be read out and used as evidence at the main trial, but only "if during his questioning in the investigation the accused was instructed pursuant to Article 78(2)(c) of this Code." The accused Kujundžić was interviewed as a suspect on 10 October 2007 and during the interview he was informed of his rights and duties in the manner prescribed by the then CPC of BiH. However, the provisions of Article 78 of the CPC of BiH that was applicable in 2007 did not prescribe the duty of the authorities interviewing the suspect to caution him that his statement given during the investigation would be admissible as evidence and that it could be read and used at the main trial.

99. Although the Accused was, as already noted, informed of his rights, pursuant to the procedural law that was applicable at the relevant time, the Panel finds that the warnings given to him during the interview (that he is not obliged to present his defence nor answer the questions, that he can comment on the offence with which he has been charged and present all facts and pieces of evidence in his favour) do not enable the Prosecutor's Office to subsequently, during the trial, and after the amendments to the CPC of BiH had come into force, introduce as evidence the previous statement of the Accused without his consent.

100. The Panel believes that the intention of the legislator is to correct the previous imprecision of Article 78(2) of the CPC of BiH by the amendments to the referenced law, for the purpose of securing the possibility that the suspect's statement may be used at the main trial, and to harmonise this provision with the Convention which, pursuant to Article 2 of the Constitution of BiH, has priority over the application of any other law. This is exactly what was done by the supplement to Article 78(2)(c) of the CPC of BiH so that it stipulates that the suspect may comment on the offence with which he has been charged and state all of the facts and pieces of evidence in his favour and, if he does that in the presence of the his Defence Counsel, his statement will be admissible as evidence at the main trial and it can be read and used at the main trial even without his consent. Based on the foregoing, it is evident that the duty of the Prosecutor's Office, that is, the authorised official person performing the examination, has now been specified and that it must warn the suspect before he gives his statement that his statement provided during the investigation is admissible as evidence at the main trial and that it can be read and used at the main trial even without his consent. Only when these conditions are satisfied can the Prosecutor's Office present this evidence, that is, request that the statement of the accused given during the investigation be read at the main trial.

101. Pursuant to Article 125 of the Law on Amendments and Supplements to the CPC of BiH, in cases in which the Indictment has been confirmed, before the applicable law comes into effect, the proceedings shall continue under the provisions of the then CPC of BiH, unless the provisions of the new law are more favourable to the suspect, that is, the accused.

102. Based on the previously analysed, it can be concluded that the provisions of the currently applicable CPC of BiH are more lenient to the accused since they are explicit and imperative and require that the accused be cautioned about the possibility of having his statement given during the investigation as a suspect used as evidence at the main trial and that his consent is not needed that his statement provided during the investigation may be read and used at the main trial. Considering that the accused Predrag Kujundžić in the specific situation (during the interview he gave as a suspect) was not cautioned of the possibility, the Panel decided that there existed no conditions that the motion filed by the Prosecutor's Office to read his statement given in the investigation be granted.

3.3.2. (Non)acceptance of evidence proposed by the defence

103. During the evidentiary procedure, the Defence Counsels for the Accused moved the Court to approve that the expert-witness Milan Stojaković, dr. neuropsychiatrist, thoroughly exam the witness "2" in order to provide a supplementary finding on her health condition. This motion of the defence followed the Court's permission to the expert-witness Stojaković to provide findings and the opinion on the health condition of this witness based on the available documents, but without direct examination of the aggrieved party.

104. The Prosecutor's Office objected to the referenced motion of the defence stating that the Court had previously reached a decision on the matter, therefore, according to the Prosecutor's Office, there is no need for the Panel to reconsider the motion.

105. The Panel evaluated the arguments of both parties and refused the referenced motion of the defence, finding that the expert-witness Stojaković was enabled to examine the existing medical records of the witness "2", and the findings and the opinions provided by the expert-witnesses for the prosecution, and the transcripts of the testimony of witness "2" in the case. Expert-witness Stojaković had already produced an extensive and detailed finding and opinion on the health condition of the aggrieved party based on the referenced documents, and he presented his findings at the main trial giving his personal opinion. In addition, it is necessary to keep in mind that this is a victim of rape who would be more traumatised by the re-examination and psychological analyses, which is not justified at all under the existing circumstances. Moreover, the aggrieved party has been carefully examined and the necessary psychological and psychiatric tests were performed with her, as well as interviews with the doctors from the team of expert-witnesses who produced their findings and opinions for the prosecution.

106. For the referenced reasons, the Panel concluded that the re-examination of the witness "2" is not needed, and it therefore refused the motion of the defence.

107. The second proposal of the defence was that the expert-witness, Doctor Milan Stojaković should examine the accused considering his possible sexual impotence as a result of wounding. The Prosecutor's Office objected to this proposal too, stating that Dr. Ljubomir Curkić had already stated his opinion about the illness of the accused, on the side of the Defence. The Prosecutor's Office noted that the defence implies that the

sexual (im)potence should be connected with the consequences of the Accused's being wounded, on which, according to the Prosecutor's Office, dr. Curkić would most certainly offer arguments during the presentation of his own opinion at the main trial. According to the Prosecutor's Office, this would mean that this would then concern a physiological cause as a result of sexual impotence, of which an expert-witness neuropsychiatrist cannot provide his opinion.

108. The Panel evaluated all of the presented arguments and refused the proposal of the defence, finding that the circumstances from which it could be concluded that it was necessary to present this evidence were not stated during the evidentiary procedure. The findings and opinion of Dr. Curkić, as the Panel finds, do not provide the basis indicating the need to conduct the requested expert analysis of sexual (im)potence of the Accused. During the presentation of evidence, the defence did not present to the Panel the documents which would lead to a conclusion that the allegation stating that the accused was sexually impotent at the relevant time was well-founded. Therefore, the question remains based on what Dr. Neuropsychiatrist Stojaković would analyse the sexual (im)potence of the accused. Besides this, as already stated, based on the provided medical documents, Dr. Curkić presented in detail his findings and opinion on the injuries sustained by the Accused.

109. Furthermore, during the evidentiary proceedings by the Defence, the Defence Counsels for the Accused moved that the statement given by Nermin Ahmić to SIPA No. 17-04/2-04-2-726/07 dated 13 July 2007 be tendered into the case file pursuant to Article 273(2) of the CPC BiH. The Defence noted that the reason why this statement should be tendered without directly hearing witness Ahmić was the fact that he lives in the United States of America (USA) and that neither the Defence nor the Prosecutor's Office of BiH (from which the Defence could potentially obtain this information) knows his address. In the opinion of the Defence, this witness's statement is important for the reason that he was a direct victim of the crimes noted in Counts 2 and 3 of the Indictment, and the Defence claims that his statement was retold by witness Ferida Ahmić while she was testifying for the Prosecution.

110. The Prosecutor's Office raised objections to the tendering of this statement for the reason that, as the Prosecutor's Office submits, this case does not concern any of the exceptions from the direct presentation of evidence stipulated by the Code (in Article 273 of the CPC BiH). The Prosecutor's Office alleges that the witness's mother knows the address at which this witness resides in the USA and that it is possible to contact her with the aim of obtaining the necessary information.

111. Having considered the presented arguments, the Panel decided to accept the statement given by Nermin Ahmić during the investigation.[34] The Panel was primarily guided by its right to a free evaluation of evidence (set forth in Article 15 of the CPC BiH), as well as by Article 273(2) of the CPC BiH which reads: *Notwithstanding Paragraph 1 of this Article, records on testimony given during the investigative phase, and if judge or the Panel of judges so decides, may be read or used as evidence at the*

[34] Statement given by Nermin Ahmić to SIPA No. 17-04/2-04-2-726/07 dated 13 July 2007.

main trial only if the persons who gave the statements are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons.

112. The Panel notes that the statement was taken by authorized official persons of SIPA pursuant to the procedure prescribed by the law, so that its authenticity and legality are indisputable. However, based on the information the parties in the proceedings presented before the Court it clearly follows that it would be difficult for this witness to appear before the Court for the reason that the Defence Counsel, and even the Prosecutors' Office, are not familiar with his address. To wit, the Defence tried to learn the witness's address through the Doboj CJB */Public Security Centre/*, as well as from SIPA[35], however these institutions only conveyed to them the information that Nermin Ahmić canceled his place of residence in Tuzla in 1993, that he maintains residence in the USA and that they do not have any data on his place of residence. Besides, given that he is now in the USA, the fact is that, even in case his address was known, the Court would not be able to oblige the witness to obey the summons to testify in this case (which stems from Article 14 of the Law on International Legal Assistance, as well as from Article 8 of the European Convention on Mutual Assistance in Criminal Matters). The aforementioned leads us to the conclusion that this witness can be described as falling into the category of persons whose presence is *very difficult due to important reasons* (as prescribed in the above quoted Article).

113. The Panel was also mindful of the fact that the referenced testimony is not of the decisive importance in terms of any of the factual allegations from the Indictment, as well as of the fact that there are other pieces of evidence related to the issues from the witness's statement, so that the testimony of Nermin Ahmić itself does not represent a key-evidence concerning specific facts. Therefore, the disputable statement is certainly not decisive and it is not directly linked with the crucial facts based on which the Panel established the guilt of the Accused.

114. Furthermore, the Defence moved that the ICTY Indictment against Jovica Stanišić and Franko Simatović No. IT-03-69 be tendered into the case records. Namely, the Defence for the Accused noted that the factual description in the abovementioned Indictment is identical to the one in the Indictment against Predrag Kujundžić, and it stressed that "Crvene beretke" */the Red Berets/*, the Accused and his unit "Predini vukovi" */Predo's wolves/* are charged with the same offences.

115. The Prosecutor's Office objected to having this statement tendered, alleging that the factual descriptions in the abovementioned Indictments are not identical and it noted that this was a document of the ICTY Prosecutor's Office and not a case completed in a legally binding manner that could be used in other proceedings (in case the established facts were admitted).

[35] Submission by the Defence for the Accused at the main trial hearing held on 11 May 2009.

116. The Panel admitted the evidence proposed by the Defence, holding that it was legal and authentic, but at the same time it noted that the probative value of this document would be considered during the evaluation of evidence.

117. The Defence for the Accused gave up on hearing witnesses Čedo Lukić, Mladen Panić, Anđelka Miloradov, Ljubo Radulović and Zoran Bijelić. Also, the Defence gave up on presenting evidence through the testimony of Ljubo Urumović for the reason that, in the meantime, he passed away.

118. Furthermore, the Panel granted the Motion by the Defence for the Accused to hear, in addition to other witnesses, Dragan Ostojić and Vinko Topalović too. However, the aforementioned persons were not heard during the evidentiary proceedings in this case for the reasons noted below.

119. Both persons are residing outside BiH, that is, Dragan Ostojić maintains residence in the Republic of Slovenia, while Vinko Topalović maintains residence in the USA.

120. On 28 April 2009 the Witness Support Section[36] submitted to the Court the Information that it failed to get in contact with Dragan Ostojić, that is, that he did not answer telephone calls. At the main trial held on 25 June 2009, the Panel pointed out the aforementioned fact and again noted that the Defence could still summon witness Dragan Ostojić for as long as the presentation of evidence lasts in these proceedings.

121. Also, with regard to Vinko Topalović, on 14 April 2009[37] the Witness Support Section informed the Court that the officers of the Section contacted Vinko Topalović on 1 April 2009 and informed him about the potential dates of his testimony. The Information by the Witness Support Section reads that on this occasion Vinko Topalović expressed his readiness to testify before the Court and he kindly asked the officers of the Witness Support Section to contact him again on the following day so that he could inform them about the dates that are suitable to him. However, the Information noted that although the officers of the Witness Support Section tried to get in contact with Vinko Topalović on several occasions after this phone call, he did not answer the phone again.

122. Thereafter, on 12 June 2009 the Witness Support Section submitted new Information[38] noting that they got in contact with Vinko Topalović again, on which occasion he informed them that he could not appear and testify before the Court of BiH on 25 June 2009 (which when his testimony was scheduled for) due to his financial situation and problems at his workplace. On this occasion Vinko Topalović noted that he could arrive in BiH not sooner than in August 2009 and he stressed that he needed the official summons by the Court of BiH in order to be able to negotiate with his employer about his days off. Regardless of the aforementioned, on 7 July 2009 Vinko Topalović informed the Witness Support Section that he could not appear and testify before the Court of BiH due to his financial situation and problems at his workplace, as well as due

[36] Information on witness Dragan Ostojić dated 28 April 2009, Witness Support Section.
[37] Information on witness Vinko Topalović dated 14 April 2009, Witness Support Section.
[38] Information on witness Vinko Topalović dated 12 June 2009, Witness Support Section.

to the fact that, in addition to his own family, he also supports two children of his brother who died several moths ago.[39]

123. All the foregoing information was also delivered to the Defence Counsels for the Accused, who maintained their motion that both persons be heard as Defence witnesses.

124. Taking into account the right of the Accused to a speedy trial, as well as the principle of efficiency and judicial economy, the Panel decided to complete the evidentiary proceedings against the Accused Predrag Kujundžić on 3 September 2009 regardless of the fact that Dragan Ostojić and Vinko Topalović were not heard.

125. While rendering this Decision, the Panel was mindful of the following:

126. Article 241(1) of the CPC BiH stipulates the following: *It is the duty of the judge or the presiding judge of the Panel to ensure that the case is heard in a universal manner, that the truth is established and that everything that is delaying the proceedings and not contributing to resolving the issue is removed*.

127. Furthermore, Article 262(3) of the CPC BiH stipulates the following: *The judge or the presiding judge shall exercise an appropriate control over the manner and order of the examination of witnesses and the presentation of evidence so that the examination of and presentation of evidence is effective to ascertain the truth, to avoid loss of time and to protect the witnesses from harassment and confusion*.

128. In this specific case, while being aware of its obligation related to *resolving the issue* and ensuring the fair and speedy trial, the Panel found that further postponement of the evidentiary proceedings would lead to unnecessary delay. At the same time, during the course of the main trial the Panel left sufficient room for the parties in the proceedings and the Defence Counsels for the Accused to present all the relevant evidentiary material before the Court, as well as to summon the aforementioned persons. During the evidentiary proceedings the Defence Counsels for the Accused had an opportunity to summon the aforementioned persons at any moment. To wit, on several occasions the Panel stressed that, considering the fact that those persons reside outside BiH, the Defence Counsels had the right to summon them at any time convenient until the completion of the evidentiary proceedings in this case.

129. Even following the information submitted by the Witness Support Section (which was mentioned above in detail) the Panel granted the possibility that the Defence Counsels summon Vinko Topalović and Dragan Ostojić also during the period after 8 July 2009, for as long as the evidentiary proceedings were not completed. During this period the Panel held another main trial hearing in order to provide the opportunity for ensuring the presence of these persons. However, regardless of that, Vinko Topalović and Dragan Ostojić did not obey the summonses to testify.

[39] Information on witness Vinko Topalović dated 7 July 2009, Witness Support Section.

130. In relation to this, the Panel notes the fact that the evidentiary proceedings by the Defence lasted for one year and that during this period the Defence Counsels for the Accused had an opportunity to ensure the presence of the aforementioned persons before the Court of BiH.

131. Furthermore, the Panel notes that there was no other way, a forcible one, to bring those persons to testify before the Court.

132. Article 14 of the Law on International Legal Assistance stipulates the following: *The summons sent to a suspect, a sentenced person, an accused, a witness, an expert or another party in the proceedings who is summoned from the territory of the country to which the request is sent must not contain threats with a measure of restrain in case he does not obey the summons. If the summoned person does not obey the summons, a measure of restrain must not be imposed in that case*.

133. Also, Article 8 of the Extradition on Mutual Assistance in Criminal Matters (adopted upon the Decision by the Presidency of BiH on the Ratification of the European Convention on Mutual Assistance in Criminal Matters, the Official Gazette No. 4/2005): *A witness or expert who has failed to answer a summons to appear, service of which has been requested, shall not, even if the summons contains a notice of penalty, be subjected to any punishment or measure of restraint, unless subsequently he voluntarily enters the territory of the requesting Party and is there again duly summoned*.

134. The abovementioned articles clearly show that the Panel had no possibility to apply measures of restrain on the persons who decide not to obey the summonses of the Court.

135. Pursuant to all the aforementioned, bearing in mind the fact that further delay of the proceedings would be in contrast with the principle of efficiency and the right of the Accused to a speedy trial, the Panel has decided as noted above.

3.3.3. Expiration of the deadline longer than 30 (thirty) days

136. Article 251(2) of the CPC BiH prescribes the following: *The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defence attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead*.

137. In the case at hand, a time period longer than 30 days passed between the main trial hearings held on 11 July 2008 and on 19 August 2008, and between 11 December 2008 and 19 January 2009, as well as between the main trial hearings held on 8 July 2009 and on 3 September 2009.

138. In all the aforementioned situations, given that it was evident that the 30-day deadline would be missed, the Panel requested that the parties to the proceedings and the defense counsel state whether they agreed with the schedule of hearings. Accordingly, in all the foregoing situations the parties to the proceedings and the defense counsel agreed that the witnesses and expert witnesses should not be heard anew, but that their testimony given during the previous main trial should be used instead.

139. The Panel would particularly like to note the fact that the main trial hearings were scheduled pursuant to the deadlines stipulated by the law and by paying special attention to the rights of the Accused.

4. Application of the CC BiH

140. At the beginning the Panel considered which law is applicable in the case at hand. While doing so, the Panel was mindful of Articles 3, 4 and 4a) of the CC BiH, as well as of Article 7 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (the ECHR).

141. The offence charged against the Accused is prescribed in the Criminal Code of BiH which was adopted in 2003 and, therefore, after the period in which the events described in the Indictment took place. The Panel notes the fact that the fundamental principles stipulated in Articles 3 and 4 of the CC BiH are qualified with Article 4a) of the CC BiH, as well as with Article 7(2) of the ECHR.

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

143. The principle of legality is also included in Article 7(1) of the ECHR which, pursuant to Article 2(2) of the Constitution of BiH, has priority over all other codes in BiH. The aforementioned Article of the ECHR prohibits the imposing of a heavier penalty than the one that was applicable at the time the criminal offence was committed, however it does not prescribe the application of a more lenient law.

144. Article 15 of the International Covenant on Civil and Political Rights (ICCPR) stipulates the following: *No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was*

committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

145. It is clear that the aforementioned articles prohibit imposing a heavier penalty, however they do not stipulate the obligation to apply the (most) lenient law (in case if the law was amended on several occasions) to the perpetrator in relation to the punishment that was in application at the time the criminal offence was committed.

146. Nevertheless, Article 7(2) of the ECHR stipulates the following: *This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according the general principles of law recognized by civilized nations*. This principle was noted in the same manner in Article 15(2) of the ICCPR. At the same time the Panel recalls the fact that BiH, as a successor state of the former SFRY, has ratified the ECHR and the ICCPR, whereby all the abovementioned agreements are obligatory and the courts in BiH must apply them.

147. The same exception (as in Article 7(2) of the ECHR and Article 15(2) of the ICCPR) is foreseen in Article 4a) of the CC BiH. Article 4a) of the CC BiH stipulates that Articles 3 and 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was *criminal according to the general principles of international law*. In this manner the provisions set forth in Article 7(2) of the ECHR and Article 15(2) of the ICCPR were adopted, thereby providing for an exceptional derogation from the principle enshrined in Article 4 of the CC BiH as well as a derogation from the mandatory application of a more lenient law in the proceedings involving criminal offences pursuant to international law.[40]

148. In this specific case the offences charged against the Accused undoubtedly constitute criminal offences pursuant to international law and therefore they undoubtedly fall into the general principles of international law, as foreseen in Article 4a) of the Law on Amendments to the CC of BiH and *the general principles of law recognized by civilized nations* foreseen in Article 7(2) of the ECHR.

149. Besides, the Panel recalls the fact that, at the time period which refers to the relevant period in the Indictment, not a single provision of the CC SFRY explicitly referred to crimes against humanity, as now stipulated by Article 172 of the CC BiH.

150. Based on the aforementioned, the Panel finds that the CC BiH is applicable in these criminal proceedings.

151. Among others, the clarification of the status that the crimes against humanity and the individual criminal responsibility have in customary international law are contained in the Report of the UN Secretary-General pursuant to paragraph 2 of the Resolution 808 of the Security Council of 3 May 1993. By their comments on the draft Code of Crimes against the Peace and Security of Mankind (1996) and the respective jurisprudence of the

[40] The identical conclusion was presented in the Verdict of the Appellate Panel of the Court of BiH in the *Željko Lelek* case No. K-KRŽ06/202 dated 12 January 2009, paragraph 141.

ICTY and the International Criminal Tribunal for Rwanda (ICTR), the stated institutions established that punishability of the crimes against mankind constitute an imperative norm (*ius cogens*) of international law.[41] It is therefore indisputable that the crimes against humanity at the time relevant to the Indictment (1992 and 1993) were part of customary international law.

152. Furthermore, although the crimes against humanity were not stipulated by the CC of SFRY as a separate offence in a manner in which they are in the CC of BiH, the fact is that the modes of perpetration of criminal offences listed under Article 172 of the CC of BiH were also encompassed by the law that was applicable at the relevant period of time - at the time of the perpetration of the criminal offences (CC of SFRY), that is, in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the CC of SFRY. Therefore, it is evident that those criminal offences were punishable under the then applicable criminal code as well, which additionally corroborates the Panel's inference concerning the principle of legality.

153. In addition, the Panel finds that the application of the CC of BiH is additionally justified by the fact that the sentence foreseen by the CC of BiH is anyhow more lenient than the capital punishment which was in force at the time of the perpetration of the criminal offence; therefore, the principle of the time-related applicability of the law and the application of the law more lenient to the perpetrator has been satisfied.

154. Such a position of the Court is consistent with the position taken in the Verdict of Section I of the Appellate Division of the Court of BiH, in *Abduladhim Maktouf* (No. KPŽ 32/05 of 4 April 2006), which was also upheld by the Decision of the Constitutional Court of Bosnia and Herzegovina, number: AP-1785/06 of 30 March 2007, as well as in the case-law of this Court in other cases pertaining to the criminal offence of Crimes against Humanity.

5. Elements of the Criminal Offense and Evaluation of Evidence

5.1. General Considerations Regarding the Evaluation of Evidence

155. In the referenced proceedings, the Panel evaluated the evidence in accordance with the applicable procedural law, having applied to the Accused the presumption of innocence as prescribed by Article 3 of the CPC BiH, which embodies the general principle of law according to which the burden of proving the guilt of the Accused beyond any reasonable doubt lies on the Prosecutor's Office.

156. Considering the statements of the witnesses who testified in the referenced proceedings, the Panel particularly evaluated their conduct, behavior and character, having also considered the other evidence and the circumstances regarding this case in relation to them. Furthermore, the Panel took into account that the witnesses credibility

[41] International Law Committee, Commentaries on the draft Articles on the state responsibilities for internationally unlawful acts – 2001, Article 26.

depends on their knowledge about the facts they testified about, their personal integrity, credibility and the fact that they must tell the truth pursuant to the previously given oath.

157. Upon a detailed evaluation of the adduced evidence, both individually and in the mutual correlation, the Panel established the following.

Crimes against Humanity – General Elements

158. The Accused is charged with the commission of the criminal offense of Crimes against Humanity in violation of Article 172 of the CC BiH. In the relevant parts, this Article reads as follows:

> "Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:
> - Depriving another person of his life;
> - Deportation or forcible transfer of population;
> - Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
> - 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), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity;
> - Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health
>
> shall be punished by imprisonment for a term not less than ten years or long-term imprisonment."

159. In order for a criminal offense to be characterized at all as the criminal offense of „Crimes against Humanity" it is necessary that the general elements[42] be primarily satisfied, as explained below:

- Attack directed against any civilian population means a course of conduct involving the multiple perpetration of acts referred to in paragraph 1 of this Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack
- The attack must be "widespread or systematic"
- The attack must be "directed against any civilian population"
- The acts of the perpetrator must be part of the attack and the perpetrator must know that his acts are part of the wider context of widespread or systematic crimes directed against civilian population, and that his acts fall within this pattern.

[42] See *Kunarac et al.* case, Judgment of the ICTY Trial Chamber, paragraph 410.

160. The Panel took into account the facts established in the ICTY cases: *Goran Jelisić* (IT-95-10-T), *Simo Zarić et al.,* (IT-95-9-T), *Milomir Stakić* (IT-94-24-T), *Zejnil Delalić et al.* (IT-96-21-T).

5.2.1. Existence of Wide(spread) or Systematic Attack

161. In the ICTY jurisprudence, an attack can be described as a course of conduct involving the commission of acts of violence [43], and a similar description is also incorporated in the definition of the term in the ICTY Statute (Article 7). The foregoing is also reflected in Article 172(2)(a) of the CC BiH which incorporates in the definition of the term „attack", *inter alia*, a course of conduct involving the multiple perpetration of acts (Paragraph 172(1)) against any civilian population. The terms "attack" and "armed conflict" are not identical. According to the customary international law, an attack can occur prior to an armed conflict, it can last longer than the conflict or it can be continued during the conflict, but it does not necessarily have to be part of it. The term "attack" in the context of a crime against humanity carries a slightly different meaning than in the laws of war. In the context of a crime against humanity, "attack" is not limited to the conduct of hostilities. It may also encompass situations of mistreatment of persons taking no active part in hostilities, such as keeping someone in detention. However, both terms are based on a similar assumption, namely that war should be a matter between armed forces or armed groups and that the civilian population cannot be a legitimate target[44].

162. What makes a distinction between the crimes against humanity and a common crime (including other crimes punishable under the international humanitarian law) is the fact that it must be committed within the context of an attack which must be either widespread or systematic in nature[45]. Only the attack, not the individual acts of the accused, must be "widespread or systematic"[46]. Accordingly, the attack is not only defined by an object (civilian population), but also by its strength (the large-scale nature of the attack) or its systematicity (the systematic nature of the attack). These two requirements are established alternatively, which means that it is not necessary to prove the existence of both requirements. Although the existence of only one of these two requirements is sufficient, the Panel established the existence of both requirements in this specific case.

163. A crime may be widespread or committed on a large scale due to the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude[47]. Inhumane acts must be committed on a large scale, meaning that the acts are directed against a multiplicity of victims.[48]

---

[43] See *Kunarac et al.* case, Judgment of the ICTY Appeals Chamber, paragraph 415.
[44] See *Kunarac et al.* case, Judgment of the ICTY Trial Chamber, paragraph 416.
[45] See *Naletilić and Martinović* case, Judgment of the ICTY Trial Chamber, par. 236.
[46] See *Kunarac et al.* case, Judgment of the ICTY Trial Chamber, par. 431.
[47] See *Kordić and Čerkez* case, Judgment of the ICTY Trial Chamber, par. 179.
[48] See *Blaškić* case, Judgment of the ICTY Trial Chamber, par. 206.

164. In the ICTY case *Jelisić*[49], the view was expressed that the existence of an acknowledged policy targeting a particular community, the establishment of parallel institutions meant to implement this policy, the involvement of high-level political or military authorities, the employment of considerable financial, military or other resources and the scale or the repeated, unchanging and continuous nature of the violence committed against a particular civilian population are among the factors which may demonstrate the widespread or systematic nature of an attack.

165. From the testimony of the witnesses in this case and the adduced documentary evidence to be presented bellow, it was established that a widespread and systematic attack existed during the period from spring 1992 to autumn 1993 in the territory of the municipality Doboj. The attack was launched by the Serb military and the police of the so called Srpska Republika BiH (subsequently Republika Srpska), and paramilitary formations against the town of Doboj on 3 May 1992.

5.2.1.1. Widespread Attack

166. The town of Doboj is located in north-east Bosnia. According to the 1991 Census, 102,546 persons lived in the territory of the municipality Doboj, including 40.2% Bosniaks, 39% Serbs, 13% Croats, 5.5% Yugoslavs and 2.3% others. These facts ensue from the document „National Composition of the Population in 1991"[50].

167. Among other things, the Prosecutor's Office tendered into evidence the "Instructions for the Organization and Activities of the Serb People Authorities in BiH in Extraordinary Circumstances" (published by the SDS on 19 December 1991), containing a description of the manner to carry out certain activities in all municipalities with the Serb population. In January 1992, Srpska Republika BiH was proclaimed which comprised autonomous provinces and regions, including the Serb Autonomous Province of North Bosnia with the seat in Doboj[51]. In addition, the Serb Municipality Doboj[52] was established on 26 March 1992. The Crisis Staff was also established which included the Serb police and military officers and the SDS leaders. Exhibit T 131[53] speaks about the decisive role of the established Crisis Staff. It ensues from this Exhibit that the Crisis Staff ordered the activation of the Secretariat for Peoples Defense in order to carry out the activities concerning the compulsory military service and mobilization. Exhibit T 126[54] also showed that the Crisis Staff was the highest authority in the territory of Municipality Doboj. It can be also seen in this Exhibit that, supported by the army and the police, the Crisis Staff organized and "liberated" all Serb territories in the

[49] See *Jelisić* case, Judgment of the ICTY Trial Chamber, par. 53.
[50] National Composition of the Population in 1991 (Exhibit T 37)
[51] Decision on Verification of Proclaimed Serb Autonomous Provinces, Official Gazette of the Serb People in BiH No. 1/92
[52] Decision on the Constitution of the Serb People Assembly in Doboj Municipality (Exhibit O 99)
[53] Information on the Mobilization of 4/5 August 1992, Str. Conf. No. 4/92 of 7 August 1992 (Exhibit T 131)
[54] Letter of the III Tactical Group to Colonel Slavko Lisica of 8 July 1992 (Exhibit T 126)

Municipality. Exhibit T 129[55] showed that the Crisis Staff was aware of the existence of camps in the territory of Municipality Doboj.

168. Among other things, the Defense witness Borisav Paravac stated that the Crisis Staff task was exclusively the civilian life organization in the territory of Municipality Doboj. This witness denied that he knew about the existence of detention facilities, except for the Central Prison in Doboj. His testimony is contrary both to the information referred to in the foregoing materials and the testimony of other witnesses (for both the Prosecution and the Defense).

169. In the case at hand, the Panel has already accepted the facts established earlier in the *Tadić* case, from which it ensues that the state of armed conflict existed in the Republic of Bosnia and Herzegovina during the period from 17 April 1992 to 31 December 1993. In early April 1992, with the escalation of violence, the Bosnian State Presidency proclaimed the state of imminent danger of war, and thereafter dismissed the Parliament. The Presidency also issued a decision on general mobilization of the Bosnian Territorial Defense (TD) which was gradually transformed into the BiH Army. This Army was officially established on 15 April 1992 under the supreme command of the President of the Presidency and the Main Staff in Sarajevo. On 20 June, the Presidency proclaimed the state of war and identified as aggressors the Republic of Serbia, the Republic of Montenegro, the Yugoslav Liberation Army (JNA) and terrorists from the Serb Democratic Party (SDS).

170. By the facts accepted under the earlier decision of this Panel (the Decision of 7 May 2008) it was established that crisis staffs were organized in self-established Serb autonomous provinces in the BiH territory in spring (April, May) in order to take over the functions of the authorities and the general administration in municipalities. Crisis staffs members were the SDS leaders, the JNA Commanders in those areas, the highest Serb police officers and the Serb TD Commander. It was also established that the camps in the territories controlled by the Serb forces (of the so called Srpska Republika BiH) were mostly established and managed following either the directives of Serb Crisis Staffs or in cooperation with them, the armed forces and the police. The Defense failed to contest these facts which are also supported by a series of evidence adduced in this case (to be explained in detail below).

171. On 12 May 1992, the Assembly of the Serb People in BiH issued the Decision on Strategic Goals of the Serb People in Bosnia and Herzegovina[56] including, *inter alia*, "the state demarcation line from the other two national communities and a corridor between Semberija and Krajina". This decision constitutes one of the fundamental elements for the implementation of military activities.

172. Witnesses for the Prosecution, Mirza Lišinović, Redžo Delić, Sead Kikić, Žarko Gavrić, Edin Hadžović, Enver Šehić, Hasan Mustafić, Witness „14" and Witness „6"

[55] Letter of the Crisis Staff of the Serb Municipality Doboj, number 02-404-34/92 of 12 July 1992 (Exhibit T 129)
[56] Decision on Strategic Goals of the Serb People in BiH (Exhibit T 127)

described the events in Doboj after the 1991 multi-party elections that were won by the SDS. It follows from their testimony that:

173. The engagement of reserve police force and the JNA reserve force started in September 1991. The transport of soldiers from the R Serbia and the R Montenegro toward the R Croatia was obvious in Doboj. In the spring of 1992 (March, April, May), the same soldiers (the JNA reservists) were deployed in the territory of the Doboj region. Military equipment was transported from the barracks in Miljkovac (Doboj) in the direction of Pridjel and Lipac, and on the Ozren Mountain. Witness Mirza Lišinović testified that the military formations of "Beli orlovi"/*White Eagles*/, "Knindže*"* and "Crvene beretke" */Red Berets/* could be seen in the Doboj town territory. Witness Sead Kikić mentioned the presence of "Crvene beretke" and "Vukovi sa Vučjaka" /*the Wolves from Vučjak*/. He testified that rumors about "Predini vukovi" /*Predo's Wolves*/ started in spring. Witness Redžo Delić testified that the domicile Serb population also had uniforms in the places of Jabučić Polje and Rječica. Witness Žarko Gavrić also testified about the presence of a large number of different military units (from Krnjin, Vučjak, Trebava and Ozren) in Doboj.

174. Killings, explosions, destructions of property owned by Muslims and Croats started in early 1992. Anxiety was present among the citizens of Doboj in spring 1992. A large number of members of different military units comprised of Serbs moved around the town. Check points were set up (*inter alia*, at the entrance to Doboj, in the places of Svjetliča Gavrići and Rudanka). The check points were manned by the military and the civil police. It was prohibited to leave Doboj while the movement around the town itself was restricted by a curfew.

175. The witnesses further testified that in early May 1992 (that is, after the state holiday of 1st May), Bosnian Muslims and Croats were fired from work and replaced by Serb employees. Before the war, the witness "6" worked within the Police Station (PS) Doboj as a Police Unit Commander in the place of Johovac. He testified that in late March or early April, the person holding the function of a Chief of the Security Service Center (CSB) Doboj within the PS Doboj informed the employees that the police had to be divided along the ethnic lines. Accordingly, the Secretariat for Internal Affairs (SUP) was divided along the ethnic lines. Following the ethnic principle, the territory was firstly divided pursuant to the war police stations. Witness Mirza Lišinović, who was also an employee of the CSB Doboj just before the outbreak of war activities in the territory of the Municipality, where he was as a Commander, also testified that the police structure was changed after the SDS victory.

176. After the Doboj occupation in early May 1992 by the army and the police of the so called Srpska Republika BiH (subsequently the RS), and paramilitary formations too, it was broadcast on the radio that the Serb forces had liberated Doboj and that safety was guaranteed for everybody. With regard to this, Mirza Lišinović, Redžo Delić and the witness "10" testified consistently. In addition, witness Žarko Gavrić testified that the Muslim population of Doboj was called to surrender their weapons and that if they did so their safety and peace would be guaranteed.

177. Witness Redžo Delić testified that on 3 May he saw smoke and fire in the part of Doboj inhabited by Muslims (Stara čaršija), and that he could also hear shell explosions around this part of Doboj.

178. After the Serb authorities had established their control over the town, a series of attacks were launched on the surrounding settlements inhabited by Muslims and Croats, as it will be explained in the paragraphs below (179-185).

179. The villages of Grapska, Bukovačke Čivčije, Mala Bukovica, Dragalovci, Kotorsko, Johovac and Ševarlije were attacked by the RS Army in collaboration with the police and paramilitary formations. The attacks on these villages mostly began after the expiration of deadline for the non-Serb population to surrender their weapons. The attacks were carried out by shelling the houses in Muslim and Croat villages, after which armed soldiers would enter the villages, looting and burning the houses, and expelling and depriving of liberty all the inhabitants found there.

180. On 10 May 1992 the village of Grapska was shelled, followed by an infantry attack. After the attack, the women, children and the elderly were displaced to the territory under the BiH Army control, while the able-bodied men were transported to the *Bare* military barracks. Testifying about the foregoing events were witnesses „2“, „4“, „34“, „22“, Emsud Herceg, Žarko Gavrić, Obren Lazić, Božo Lazić, Srđan Bogdanović and Vojislav Sarić.

181. Grapska was followed by the village of Kotorsko, on which Witness „8“ said „the artillery kept pounding at Kotorsko all night long, Kotorsko was up in flames“.

182. Witness Redžo Delić testified about the attack on the village of Ševarlije. He said that uniformed men first showed up in Ševarlije on around 6 May, which is when negotiations were held about the surrender of weapons by the locals. The witness said that following the negotiations Slobodan Karagić said that the locals were surrendering weapons because they were surrounded from all sides. The shelling began in the morning hours of 18 June 1992, after which Serb soldiers entered the village and captured the men hiding in the woods, and shot dead some of them by summary execution.

183. The village of Dragalovci, which was mostly Croat-populated, was attacked on 2 June 1992, as testified about by Kazimir Barukčić. He said that a group of military and police entered the village of Dragalovci on 2 June 1992 and ordered the locals to surrender all the weapons they had. After they surrendered their weapons, a large number of Dragalovci inhabitants were transferred to the Doboj Central Prison and further on to the hangars at Usora.

184. The Serb army also destroyed religious facilities in the Doboj municipality, so that the mosque in the village of Bukovačke Čivčije was demolished on 12 June 1992, while Muslim and Croat religious facilities were subjected to demolition in Doboj too.

185. In addition to others, the witnesses „32“, “8”, “16”, “20”, Emsud Herceg, Ibro Spahić, Muharem Hamidović and Edin Memić testified about the abduction of men from Bukovačke Čivčije to the *Perčin disco* camp on 12 June 1992. All these witnesses are direct victims of physical and mental abuse in front of the Culture Center in Čivčije, and subsequently in the detention facilities, the *Perčin disco* camp and the military hangars in Usora. The Panel notes that the military hangars in Usora to which non-Serbs were taken were not the subject of the factual description of the Indictment, and therefore the Panel will not address in detail the events in the foregoing facilities. The *Perčin disco* (a prewar catering facility – a disco club in the place of Vila) was turned into a camp where men were brought and subjected to inhumane treatment and taken to form human shields. A number of civilians were transferred to the Central Prison in Doboj where non-Serbs were also interrogated and abused.

186. During the critical period, the Defense witness Zoran Đekić was an Assistant Commander of the Rear and Logistics Detachment. He knew that non-Serbs were detained in the *Perčin disco*, the Usora military hangars and the Central Prison in Doboj. The testimony of the Defense witnesses Ratko Trifunović and Dragan Bošković are consistent with the foregoing.

187. The Panel found that numerous crimes were committed against the Bosniaks and Croats of the Doboj municipality, including murders, unlawful detention, inhumane treatment and rapes. Villages were shelled, and throughout the Doboj municipality detention camps were set up where Bosniak and Croat civilians were incarcerated *en masse*.

188. Further, the Panel concluded that the Serb authorities systematically carried out the policy of „ethnic cleansing” of the non-Serb population from the territory of the Doboj municipality, in the framework of which a large number of Bosniaks and Croats were transported by convoys of buses to the BiH territories under the BiH Army control. One such case was the exodus of the Čivčije population in June 1993, as testified about by Senada Ahmić, Vahida Šehić, Ferida Ahmić i Rukija Mujanović. These witnesses said that the entire Bosniak population of Bukovačke Čivčije was forced to leave Čivčije, pay around 50.00 KM for their transport, and sign certificates that they voluntarily left their property behind.

189. It can be undoubtedly concluded from the described events that the attack on the non-Serb population was widespread and included the entire territory of the Municipality Doboj during the period from spring 1992 to autumn 1993. Although most part of the Doboj municipality was „captured” by the Serb forces during 1992, the persecution of the non-Serb population continued throughout 1993. Bosniak and Croat civilians were held in prisons throughout 1993, where they were exposed to physical and mental abuse by Serb soldiers and policemen (which was, *inter alia*, testified about by Witness „6”). Also during the autumn of 1993 the non-Serb population was exposed to mistreatment and arbitrary treatment in their own homes by Serb soldiers (as testified about by witnesses „14” and „24”).

190. It can be undoubtedly concluded from the described events that the attack on the non-Serb population was widespread and included the entire territory of the Municipality Doboj during the period from spring 1992 to autumn 1993.

5.2.1.2. Systemic Attack

191. The Panel also concluded from the described events that the attack was systematic for the reasons that follow.

192. The non-accidental repetition of similar criminal conduct on a regular basis is a common expression of such systematic occurrence[57]. The element "systematic" requires an organized nature of the acts and the improbability of their random occurrence[58].

193. It follows from the testimony of the witnesses mentioned earlier that a clear pattern of civilians' treatment, particularly the men who were taken to detention facilities existed in a large number of events. For example, after being arrested, a large number of men were brought to the building of the Central Prison in Doboj and detained there. The same happened to the men who were taken to the *Perčin disco*. The men were arrested, thereupon taken to the detention facilities where they were beaten up, and from the *Perčin disco* taken to form human shields. All other incidents about which a large number of witnesses testified, which will be further described in detail, clearly speak that these could not have been actions planned by individuals, but the actions based on a joint action of the Serb army that acted in concert with paramilitary formations and the police. The Panel concluded from the foregoing that this attack against the non-Serb civilian population of the Municipality Doboj implied the disarmament of this population, their unlawful detention into camps, killings, rapes, mass and forcible relocations, and other different forms of inhumane acts.

5.2.1.3. Conclusion on the Existence of Widespread and Systemic Attack

194. Bearing in mind all the foregoing circumstances, the Panel established that in the territory of Municipality Doboj, during the period referred to in the Indictment, a widespread and systematic attack of the Serb army, paramilitary formations and the police was launched against the civilian non-Serb population.

5.2.1.4. Policy to Commit the Attack

195. Article 172(2)(a) of the CC BiH prescribes: "Attack directed against any civilian population means a course of conduct involving the multiple perpetrations of acts referred to in paragraph 1 of this Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack".

196. It can be stated for the „**policy**" element that it comprised four sub-elements, namely:

[57] See the *Kunarac et al.* case, the ICTY Appeals Chamber Judgment, Paragraph 94.
[58] See the *Naletilić* and *Martinović* case, the ICTY Trial Chamber Judgment, Paragraph 236.

- there was a State or organizational
- policy
- to commit such attack; and
- the attack was in fact undertaken pursuant to or in furtherance of that policy.

197. In interpreting this "policy" element, the Panel starts from Article 7 of the Rome Statute that BiH ratified by the Decision on Ratification ("Official Gazette of BiH", International Agreements No. 2/02). In addition, the Law on Application of the Rome Statute of the International Criminal Tribunal and Cooperation with the International Criminal Court ("Official Gazette of BiH" No. 84/09) was adopted.

198. When it comes to the first sub-element, the Panel submits that while "State" is a specific term with the clearly defined meaning under international law, "organization" is a much broader concept. This sub-element should be interpreted liberally to cover a wide variety of organizations, and the relevant consideration should focus on the organization's capacity as a group to conceive and adopt the policy to attack a civilian population in a widespread or systematic manner, rather than on the organization's formal characteristics and taxonomy[59].

199. Relative to the second sub-element, "policy" should be understood as distinct from "plan" or policy in terms of state organizations. In this context, policy should be interpreted in the manner that it defines goals that are then to be implemented through individual decision-making on lower levels.

200. Article 7(2)(a) of the Rome Statute prescribes that: "Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack". The third sub-element „policy to commit such attack" also ensues from the quoted Article. This policy does not have to refer to the specified criminal offenses under Article 7(1) of the Rome Statute (that were committed), but it should refer to the commission of an attack in general terms[60].

201. In order to establish the existence of a causal nexus between the "policy" and the attack, it is necessary to analyze each individual case in the light of the specific facts and circumstances. In doing so, the existence of an attack does not necessarily imply the existence of a „policy". In order to establish this nexus, some of the factors that can be considered are as follows: a concerted action by members of an organization or State; distinct but similar acts by members of an organization or State; preparatory acts prior to the commencement of the attack; prepared acts or steps undertaken during or at the conclusion of the attack; the existence of political, economic or other strategic objectives of a State or organization furthered by the attack; and in the case of omissions, knowledge of an attack or attacks and willful failure to act. The existence of a pattern of attacks against civilian populations, regardless of whether they individually are

[59] See the *Rašević and Todović* case*,* Verdict of the Trial Panel of the Court of BiH, pg. 39.
[60] Ibid, str. 39.

widespread or systematic, in some circumstances may be evidence of policy to commit such attacks, although it is necessary to prove whether each attack individually was widespread or systematic.

202. The view of the Panel is that in this specific case, it can be concluded from the foregoing circumstances that the mentioned witnesses testified about and that were also addressed in the accepted facts established in the *Duško Tadić*, *Simo Zarić et al., Zejnil Delalić et al.* cases, and from the adduced documentary evidence that a pattern of attack against civilian population existed (as earlier explained).

203. On 12 May 1992, the Assembly of the Serb people in Bosnia and Herzegovina issued the "Decision on Strategic Goals of the Serb People in Bosnia and Herzegovina"[61]. It clearly indicated that the strategic goals, that is, the priorities of the Serb people in BiH, were *inter alia* "the state demarcation from the other two ethnic communities". Furthermore, the "Decision on Verification of Proclaimed Serb Autonomous Provinces in BiH"[62] among other things, verifies the Decision on Proclamation of the Serb Autonomous Province of North Bosnia, with its seat in Doboj, which was comprised of parts of the municipalities with the majority Serb population, namely: Teslić, Doboj, Tešanj, Derventa, Bosanski Brod, Odžak, Bosanski Šamac, Modriča, Gradačac, Gračanica, Lukavac, Srebrenik, Živinice, Banovići, Zavidovići, Maglaj and Orašje. In accordance with the then policy, already on 19 December 1991 the SDS issued the "Instructions for the Organization and Activities of the Organs of the Serb People in BiH in a State of Emergency"[63]. All these documents were passed in accordance with the existing policy that was led by the SDS and directed at "cleansing" the Municipality of Doboj from the non-Serb population.

204. In the opinion of the Panel, it is indisputable that the described pattern of conduct (that is the attack) could not have been a product of an individual or an isolated behavior of an individual. Conversely, all the foregoing circumstances clearly point to the existence of a joint action of the army and the police of the so called Srpska Republika BiH, including paramilitary formations, to expel the non-Serb population from the territory of the Municipality Doboj. Such acting can be undoubtedly viewed as the implementation of a policy that existed at a higher level, as clearly expressed in the mentioned documents.

205. As the Panel concludes, all the foregoing events resulted from the detailed planning, organization and coordination whose goal was to launch an attack against the non-Serb civilian population, which included multiple commission of criminal offenses. In this specific case, this organization was represented by the Serb authorities, that is, the established crisis staffs that took over the authorities mandate and the general administration in the municipalities, having acted through local actors such as, *inter alia*, the army and the police of the so called Srpska Republika BiH (subsequently the RS).

[61] Decision on Strategic Goals of the Serb People in BiH (Exhibit T 127)
[62] Decision on Verification of Proclaimed Serb Autonomous Provinces in BiH (Exhibit T 34)
[63] Instructions for the Organization and Activities of the Organs of the Serb People in Extraordinary Circumstances of 19 December 1991 (Exhibit T 128)

Members of crisis staffs were SDS leaders, the JNA commanders in these regions, officers of the Serb police and commanders of the Serb Territorial Defense. Camps for civilians were mostly established and managed either following the directives of the Serb Crisis Staffs or in cooperation with them, the armed forces and the police. While they were detained, the prisoners were systematically subjected to severe abuse. Accordingly, there is no doubt that the widespread and systematic attack was launched based on and for the purpose of the SDS policy and the plan to attack the non-Serb population of the Municipality Doboj and expel it from this Municipality.

206. As illustrated by the foregoing, during the attack of the Serb army and paramilitary formations in the territory of the Municipality Doboj the non-Serb population was expelled, killed and intimidated, all with a view to changing the ethnic picture of the entire territory of the Municipality Doboj and taking the control over this region by the authorities of the Bosnian Serbs.

207. During the proceedings, the Defense for the Accused tried to prove that Bosniak civilians were also armed and that they initiated some attacks. The Panel, however, considers these allegations unjustified and irrelevant in the given context, bearing in mind that the international humanitarian law absolutely prohibits the use of armed forces against civilians, and therefore the principle *tu quoque* does not represent any defense.[64] In addition, the ICTY Appeals Chamber concluded in the *Kunarac et al.* case: „When establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent's civilian population. The existence of an attack from one side against the other side's civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side's forces were in fact targeting a civilian population as such. Each attack against the other's civilian population would be equally illegitimate and crimes committed as part of this attack could, all other conditions being met, amount to crimes against humanity."

5.2.2. Attack Directed against Any Civilian Population

208. Identification of the population that is an object of the attack is used for achieving higher goals. Firstly, the concept of population represents a minimum standard for defining the group that can be the object of an attack. Secondly, the definition of population that was attacked is important for achieving the widespread and systematic nature of the attack. Thirdly, the Prosecution does not have to prove that an individual victim was a member of a specific group that is the object of attack, such as a certain ethnic or religious group. It is only necessary to show that he/she was a civilian and that he/she was the object of the attack as a part of the attack directed against civilian population. Fourthly, in any case, the „innocent" nature of civilian population guarantees

[64] See the cases: *Mitar Rašević and Savo Todović*, X-KR/06/275 (the Court of BiH), Trial Verdict of 28 February 2008, pg 45; *Kunarac et al.*, IT-96-23-A and IT-96-23/1-A, Judgment of 12 June 2002, par. 88; *Prosecutor* v. *Marijan Kupreškić et al.*, IT-95-16-T, Judgment of 14 January 2000, par. 517; *Kupreškić et al.*, Decision on the Evidence on the Good Character of the Accused and the Defense "*Tu Quoque"*, IT-95-16-T, 17 February 1999, pg 3-4.

protection pursuant to the international humanitarian law. In order to satisfy all requirements for the existence of this criterion, the population that is being an object of the attack must be predominantly civilian in nature[65].

209. The phrase "population" does not mean that the entire population of the geographical entity in which the attack is taking place must be subjected to the attack. It is sufficient to prove that a sufficient number of individuals were targeted, or that they were targeted in such a way so that the court is satisfied that the attack was in fact directed at the civilian "population", rather than at a number of limited and randomly selected individuals [66].

210. Article 3(1)(a) of the 1949 Geneva Convention on the Protection of Civilian Persons (the Fourth Geneva Convention) defines the category of civilians as „persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause." This Article prescribes that this category of population shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or creed, gender, birth or wealth, or any other similar criteria.

211. It ensues from the testimony of the witnesses for the Prosecution, Sead Kikić, Mirza Lišinović, Redžo Delić, Edin Hadžović and the witness "10" that the attack of the Serb army was directed at the non-Serb civilian population in the territory of the Doboj Municipality and that none of the persons who were victims of certain criminal legal actions was armed or participated in combats.

212. Furthermore, the Prosecution witnesses Edin Memić, Muharem Hamidović, Ibro Spahić and Emsud Herceg, and the witnesses "32", "8", "16", "6" and "20" (who are at the same time the injured parties) testified about the events before the Culture Center in the place of Bukovačke Čivčije. It ensues from their testimony that all men in front of the Culture Center were unarmed. The witness for the Defense, Živko Kuzmanović, also stated that at the critical place in Čivčije, on 12 June 1992 he saw "approximately a hundred of persons" who had neither uniforms nor arms. Accordingly, the gathered men certainly did not constitute a part of any combat context.

213. In addition to the foregoing, it ensues from the testimony of the witnesses for the Prosecution that the military fit men from Bukovačke Čivčije and Grapska were taken, *inter alia*, to the *Perčin disco* detention camp in which they were physically and mentally abused (as it will be explained in detail in the part of the Verdict addressing the specific Counts of the Indictment). Conversely, women, children and the elderly were forced to leave their homes. Their removal and transfer to the territory under the control of the BiH Army by buses and trucks was organized by the Serb authorities. The Prosecution witnesses described in detail these events testifying that they were called to sign lists and waive their property (with no compensation whatsoever). In addition to others, Ferida Ahmić, Senada Ahmić, Vahida Šehić and Rukija Mujanović testified about this. Women,

[65] See the *Kordić and Čerkez* case, Judgment of the ICTY Trial Chamber, par. 180.
[66] See the *Vasiljević* case, Judgment of the ICTY Trial Chamber, par. 34.

children and the elderly, who remained entirely helpless after the men had been taken away, were exposed to pillaging, rapes and other forms of abuse.

214. Even if a possibility was taken into account that there were armed persons among this civilian population, the number of those persons is irrelevant in the context of the entire group of people which was primarily of a civilian character and as such the target of the attack. The Panel recalls some of the conclusions of the ICTY Chambers.

215. A population may be considered as "civilian" even if certain non-civilians are present, that is, it must simply be "predominantly civilian in nature"[67]. The presence within the civilian population of individuals who do not fall within the definition of civilians does not deprive the population of its civilian character [68]. Crimes against humanity therefore do not comprise exclusively acts committed against civilians in the strict sense of the term but include also crimes against two categories of people:

- those who were members of a resistance movement, and
- former combatants - regardless of whether they wear uniform or not – but who were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or, ultimately, had been placed *hors de combat*, in particular, due to their wounds or their being detained. It also follows that the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his standing as a civilian [69].

216. Individuals who at one time performed acts of resistance may in certain circumstances be victims of crimes against humanity[70].

217. The Panel finds that in the case at hand, the manner in which the attacks were committed, the scope of crimes committed against the non-Serb population of the Municipality Doboj (including the surrounding villages that are the subject of this Indictment) are sufficient to establish beyond a reasonable doubt that these attacks were directed against the civilian population. The Panel established from the foregoing facts and circumstances that people were taken away without any procedure conducted, men were separated from women, children and the elderly and taken to certain detention facilities where many of them were killed.

218. Bearing in mind the foregoing, it is established beyond any doubt that the launched attack was directed against the civilian population.

[67] See the *Kordić and Čerkez* case, Judgment of the ICTY Trial Chamber, par. 180.
[68] See the *Jelisić* case, Judgment of the ICTY Trial Chamber, par. 54.
[69] See the *Blaškić* case, Judgment of the ICTY Trial Chamber, par. 214.
[70] See the *Kordić and Čerkez* case, Judgment of the ICTY Trial Chamber, par. 180.

5.2.3. Nexus between the Acts of the Accused as Charged and the Attack

219. The commission of the acts referred to in Article 172 of the CC BiH implies the existence of a nexus between the acts of the Accused as charged and the attack, with the nexus having an objective and subjective elements.

220. The objective element of the nexus between the acts and the attack would refer to a sufficient connection of the acts of the Accused with the attack, that is, it is necessary that the acts of the Accused can refer to the attack to a sufficient extent. Not all the offenses committed during the attack amount to crimes against humanity. In order to amount to crimes against humanity, the acts of an accused must be part of a widespread or systematic attack directed against any civilian population[71]. A crime would be regarded as an "isolated act" when it is so far removed from that attack that, having considered the context and circumstances in which it was committed, it cannot reasonably be said to have been part of the attack[72]. However, even the acts that are separated in geographical and temporal terms from the center of the attack can be considered part of the act if they are in some manner connected with the attack (for example, by the manner of the commission of acts or the victims identity or in cases when the acts are continued after the peak of the attack). The acts of the accused, by their nature or consequence, must objectively be a part of the attack[73], and only the attack, not the individual acts of the accused, must be widespread or systematic[74].

221. A single act of a perpetrator committed within the context of a widespread or systematic attack against the civilian population implies individual responsibility. An individual perpetrator does not have to commit a number of criminal offenses in order to be held responsible. Although it is true that isolated, random acts should not be included in the definition of the crimes against humanity, the purpose of the requirement is that the acts are directed against the civilian population, and therefore an isolated act can amount to crimes against humanity if it is a result of the political system based on terror and persecution[75].

222. The Defense for the Accused contested the participation of the Accused in the incriminating acts.

223. Pursuant to the customary international law and the provisions of the CC BiH, the perpetrator must know of the existence of an attack against the civilian population and his acts should fall within the scope of this attack, or at least he must take the risk that his act become part of this attack. Although the knowledge is required, it is evaluated at the objective level and it can be factually concluded based on the circumstances such as the following: the Accused's position in the civil or military hierarchy; his membership in a

[71] See the *Tadić* case, Judgment of the ICTY Appeals Chamber, par. 248, the *Kunarac et al.* case, Judgment of the ICTY Appeals Chamber, par 85.
[72] See the *Kunarac et al.* case, Judgment of the ICTY Appeals Chamber, par. 100.
[73] See the *Naletilić and Martinović,* Judgment of the ICTY Trial Chamber, par .234.
[74] See the *Kordić and Čerkez*, Judgment of the ICTY Appeals Chamber, par. 94.
[75] See the *Tadić* case, Judgment of the ICTY Trial Chamber, par 649.

group or organization involved in the commission of the crime; the scope of violence; his presence at the crime scene. The perpetrator of the crime must consciously participate in the widespread or systematic attack, and he must be aware of the nexus between his act and the context. This means not only that the Accused must have the intent to commit the underlying offence or offences with which he is charged, but that he also must know "that there is an attack on the civilian population and that his acts comprise part of that attack, or at least [that he took] the risk that his acts were part of such attack"[76]. However, this does not entail the Accused's knowledge of the details of the attack[77], and he does not have to approve of the context in which his acts occur[78].

224. For the subjective element of the crimes against humanity it is not required that the Accused be identified with the ideology, policy or plan in whose name mass crimes were perpetrated, nor even that he supported it. It suffices that he knowingly took the risk of participating in the implementation of the ideology, policy or plan. This specifically means that it must, for example, be proved that the accused willingly agreed to carry out the functions he was performing; that these functions resulted in his collaboration with the political, military or civilian authorities defining the ideology, policy or plan at the root of the crimes; that he received orders relating to the ideology, policy or plan; and lastly that he contributed to its commission through intentional acts or by simply refusing of his own accord to take the measures necessary to prevent their perpetration[79].

225. In this specific case, the Panel concluded that the acts of the Accused (charged against him in the Indictment) constituted part of the widespread and systematic attack based on the evidence speaking about the Accused's membership in the formations which participated in the attack on the villages of Grapska, Bukovačke Čivčije and the town of Doboj itself. It ensues from the testimony of Defense witnesses Dragoljub Milutinović, Srđan Bogdanović, Vojislav Sarić and Cvijetin Sarić (during the relevant period, these persons were members of the unit which was under the Accused's command), and also from the adduced documentary evidence (to be stated in detail below) that during the relevant period the Accused was a Commander of the unit called *Predini vukovi*.

226. As it ensues from the testimony of the foregoing witnesses for the Defense, at the beginning of the war the Accused was a Commander of the Military Police Detachment in the 1st Ozren Light Infantry Brigade. In early July 1992 the Military Police were transformed into the Civil Police. It ensues from the documentary evidence adduced by the Prosecution, and also from the testimony of witnesses Žarko Gavrić and Dragiša Marković (to be explained in detail below in the part of the Verdict concerning the role of the Accused during the critical period), that even after the unit was transferred into the civil police the Accused further kept the role of Commander of the unit which was among the folk known as *Predini vukovi*.

[76] See the *Kunarac et al.* case, Judgment of the ICTY Appeals Chamber, par. 102.
[77] See the *Kunarac et al.* case, Judgment of the ICTY Appeals Chamber, par. 102.
[78] See the *Kordić and Čerkez* case, Judgment of the ICTY Trial Chamber, par. 185.
[79] See the *Blaškić* case, Judgment of the ICTY Trial Chamber, par. 257.

227. That the Accused had knowledge (about the attack) is best seen from the foregoing fact that the Accused was a member of the police of the so called Srpska Republika BiH (firstly the military police, and thereafter the civil police) during the critical period. In addition, it ensues *inter alia* from the testimony of the Defense witnesses Srđan Bogdanović, Dragoljub Milutinović and Vojislav Sarić that the unit whose members they were was present in Grapska on 10 May and in the combats on Makljenovac on 12 July. With his unit, the Accused was present at the locations where many atrocities occurred, specifically during the period referenced in the Indictment. The Accused committed the crimes in concert with other persons who were members of the police, the military and the paramilitary groups that participated in the widespread and systematic attack in the territory of the Doboj Municipality. Accordingly, the Panel considers that the nexus (both objective and subjective) between the acts of the Accused and the attack was proved beyond a reasonable doubt.

228. All the incriminating acts with which the Accused is charged, for which the Panel has established his guilt, occurred during the widespread and systematic attack in the Doboj Municipality. In addition to the fact that the Accused had a commanding role, the Panel notes that the evidence exists that members of his unit constituted part of this attack and undertook the activities from which it can be undoubtedly concluded that they amounted to a part of this attack. With regard to this, it can be concluded beyond a reasonable doubt from the specific events from the referenced period of time (that the Panel will address in individual Counts of the Indictment) that members of this unit participated in the detention of non-Serb civilians in the *Perčin disco* where they were subjected to physical and mental abuse. This is particularly addressed in the events related to Counts 2 and 3 of the Indictment. In some of these acts, the Accused personally took active role with the awareness and the intent to commit them, and he was aware of some of them but undertook no action whatsoever to prevent his subordinates from committing these acts.

229. Other acts that were committed at the time in the territory of the Municipality Doboj fall within the scope of the overall events and cannot be singled out from the context of the attack. Unlawful detentions, killings, forcible resettlement of the population, rapes and other inhumane acts are the acts about which the Prosecution witnesses testified to have occurred during the attack. That these acts were exclusively committed against non-Serbs ensues from the testimony of all Prosecution witnesses which are consistent with the established facts accepted in this case and with the adduced documentary evidence.

230. From the adduced evidence, the Panel established beyond a reasonable doubt that the Accused is criminally liable for the listed acts, and that none of his acts can be singled out as an individual act or singled out from the overall events. Following the foregoing, the Panel concluded that the incriminating actions were committed during the widespread and systematic attack (during the period from spring 1992 to autumn 1993) by the army and the police of the so called Srpska Republika BiH and paramilitary formations against the non-Serb civilians of the Municipality Doboj, and that the Accused was entirely aware of this attack and knew that he contributed to this attack with his actions.

5.3. The Role of the Accused

231. The Accused Predrag Kujundžić is charged with the commission of the criminal offenses referred to in the Indictment as the Commander of the unit known as *Predini vukovi*.

232. From the adduced evidence (for both the Prosecution and the Defense), the Panel established that the name *Predini vukovi* was not a formal name but the name that was created among the folk and was as such used during the relevant period. Among others, Žarko Gavrić, Mirza Lišinović, Sead Kikić, Kazimir Barukčić and the witness "26" testified about this. They had an opportunity to hear about the existence of this unit in conversations with the inhabitants of Doboj. In addition, the witnesses for the Defense Cvijetin Sarić, Srđan Bogdanović, Zoran Dević and Dragoljub Milutinović also confirmed that this name was known among the folk. This name is also mentioned in the documentary evidence for the Prosecution, namely in the information of the MUP CJB Banja Luka[80] and the Report of the Human Rights Watch[81].

233. Among others, Golub Maksimović was a member of the *Predini vukovi* unit (the witnesses often mentioned Golub's name in the events related to 12 July 1992 and the rape of the witnesses "2" and "4"). Ratko Trifunović, Srđan Bogdanović, Cvijetin Sarić and Dragoljub Milutinović, who testified for the Defense in these proceedings, were also members of this unit. The Prosecution witness, Žarko Gavrić, was also a member of this unit during the relevant period. The foregoing was confirmed by the documentary evidence, that is, by Exhibits T 40[82], T 132 and T 133[83] and the Defense Exhibit O 32[84].

234. When it comes to Exhibit T 40, the Panel noticed that no date was indicated on this document. However, the Panel points to a number of facts. At the back page of the document it was indicated that 23 members of the SJB Doboj were killed and 47 wounded until 15 August 1992. Furthermore, the name of Kazimir Barukčić was indicated on the list of persons from the V Company, while the name of Zoran Dević was indicated on the list of wounded persons. Bearing in mind the testimony of Kazimir Barukčić about the manner in which he became a member of the SJB Doboj, the time when Zoran Dević was wounded, and the information in Exhibit O 48 (it is indicated in this Exhibit that in August 1992 the Accused was on the list of the X Company of the SJB Doboj concerning the activities and work tasks pertaining to the Company Commander), the Panel concludes that the document (Exhibit T 40) concerns the first half of August 1992.

---

[80] Information of the MUP CJB Banja Luka (Exhibit T 43)
[81] Report of the Human Rights Helsinki Organization under the name "Bosnia and Herzegovina, Continued Influence of the Masters of War in Bosnia" of December 1996 (Exhibit T 35)
[82] Document of the ICTY indicating the lists of the companies.
[83] Lists of the reserve police force for the payment of salaries for May and June 1992 (made on 13 July 1992)
[84] Police Station Schedule for 25 and 26 December 1992 (O 32)

235. The unit composition was mostly the same within the military police and subsequently, when the unit was transformed into the civil police. This ensues from the testimony of the Defense witnesses Cvijetin Sarić, Srđan Bogdanović and Zoran Đekić, and also from the testimony of Žarko Gavrić. Bearing in mind that a company was established after the transfer into police (which was comprised of three platoons) it was joined by new members. Thus, there were around 70-80 members in total in the Company. The Panel took into account that the unit composition and the number of its members were constantly changing because some members of the unit were killed, some were wounded, while on the other hand, new persons were joining the unit (now the Company). For the foregoing reasons, and as it can be seen from the lists of members of the XIII Company[85], subsequently the X Company[86], new members appeared, while some names were deleted. With regard to this, witness Žarko Gavrić stated that the number of persons in the Military Police unit that was under the Accused's command was increased before it was transformed into the civil police and that at the time when three platoons were established, a police company was formed. Serbs from the villages of Lipovac, Pridjel and Suho Polje were members of this Company.

236. The Panel further points out that it ensues from Exhibit O 48, and also Exhibits T 132 and T 133 that the *Predini vukovi* unit was kept in the records for May and June 1992 as the XIII Company SJB Doboj while in August 1992 it was kept as the X Company SJB Doboj.

237. It ensues from the testimony of the Defense witnesses (members of the *Predini vukovi* unit), and also from the testimony of the Prosecution witnesses Žarko Gavrić and Kazimir Barukčić, that at the time when this unit was established, its members were not dressed in a uniform manner, that is, some of them wore SMB uniforms (grey-olive color uniforms), while some had camouflage uniforms, or "titovka" caps on their heads. Some of them had berets, and some of them had "camouflage visor caps and small hats". The Panel observes that at the photos which were presented to the Defense witnesses during the evidentiary proceedings[87] it can be clearly seen that the Accused wore a camouflage uniform and a green beret on his head.

238. The theory of the Defense is that the Accused was on a sick leave during the entire period after he had been injured (around 20 May 1992[88]) until his appointment as the Director in the Auto-Moto Association in Doboj (in late 1992), that the Company Commander after him was firstly Goran Cvijanović, then Zoran Dević from 1 July to 12 July 1992, and Đorđo Kujundžić after 12 July.

[85] Exhibits T 132 i T 133
[86] Exhibit T 40
[87] Exhibit O 84
[88] Regarding the time of injury, Exhibit O 39 was tendered into the case file in which it was noted that the Accused was wounded on 21 May, and Exhibit T 47 from which it ensues that the Accused was wounded on 20 May 1992. Since it cannot be established with certainty whether it was 20 or 21 May 1992, and bearing in mind that the difference is only one day, the Panel will use the term „around" 20 May (pursuant to the medical documentation as authentic).

239. The Panel recalls that the Accused was charged with some of the actions based on his command responsibility (in relation to Count 3 of the Indictment). The evidence concerning the foregoing will be analyzed in detail below.

240. As already stated, the Accused was a member of the Military Police within the I Ozren Light Infantry Brigade since October 1991. In early July 1992, this unit was transformed into the civilian police of the so called Srpska Republika BiH. From the document of the MUP CJB Doboj of 7 November 2007[89] it can be clearly seen that on 21 May 1992, the Accused sustained minor injuries. It is stated in the medical documentation made in the *Sveti Apostol Luka*[90] Hospital in Doboj that the Accused spent a total of 5 days in this Hospital (from 20 May 1992). In addition, it is noted in the Discharge Letter of 25 May 1992 that Predrag Kujundžić is discharged due to the satisfactory general health condition. During the main trial, Dr. Ljubomir Curkić presented the finding and the opinion on the injuries that the Accused sustained when he was wounded around 20 May 1992. In his written finding, the expert witness Curkić stated, *inter alia,* that when released from the hospital it was noted that „the general condition was satisfactory with pains in the whole body and the unhealed wounds", and that there was no medical documentation concerning the course of the injuries treatment after the discharge from the Hospital. During the main trial on 9 March 2009, the expert witness presented his opinion that after leaving the hospital, the Accused was not able to endure major physical efforts for the period of 10-15 days. According to him, during this period the Accused could walk slowly without bending down and running. In addition, the witness expert emphasized that he addressed only the mechanical injuries that the Accused sustained. He stated that 'these injuries' do not leave any permanent damage. The testimony of witness Žarko Gavrić is consistent with this. He stated that the Accused spent 10-15 days on a sick leave.

241. The Defense witness Zoran Đekić (a member of the X Company) stated that the Accused had been brought in to the Police through the Ministry of Defense although he had still been on a sick leave. Witnesses Dragoljub Milutinović and Srđan Bogdanović testified that after leaving the hospital the Accused walked on crutches. However, it can be clearly seen on the presented photos[91] that on 22 and 23 June 1992, the Accused was in a camouflage uniform without crutches. In addition, witnesses Slobodan Đukić, Želimir Borota, Milorad Novaković, Vlado Petrović and Željko Ristić testified that they used to see him in a military uniform during the critical period, but did not mention that the Accused had crutches.

242. Although the Panel allows for the possibility that the Accused used the crutches for a shorter period of time after leaving the hospital, it is indisputable that during the relevant periods he walked without crutches. Bearing in mind the foregoing, the Panel concluded that the Accused could be present at the critical places during the incriminating time referred to in the Indictment (June and July 1992).

[89] Letter of the MUP CJB Doboj, No. 11-02-272/07 dated 7 Nov. 2007 (Exhibit O 39)
[90] Medical documentation of the "Sveti Apostol Luka" Hospital in Doboj (Exhibit T 47)
[91] Exhibit O 84

243. The Panel additionally observed that the periods when the Accused was indeed on a sick leave were indicated in the relevant documents (Exhibits O 48 and T 39).

244. The Defense witness Zoran Dević testified that he was a Commander of one Platoon out of three platoons which where within the X Company of the Police, while Golub Maksimović and Slobodan Dević were Commanders of the other two Platoons. Witness Dević further states that during the period from 1 July to 12 July nobody was a commander of the X Company.

245. Regarding these assertions, the Panel particularly evaluated the testimony of Žarko Gavrić, bearing in mind that he was a member of the *Predini vukovi* unit during the relevant period. At the main trial, he testified that after the transfer to the civil police, Zoran Dević was also with the unit all the time. Witness Gavrić was not certain whether Zoran Dević was the Accused's Deputy, but he claims that Dević used to assign tasks and give orders, while the Accused used to come by only occasionally.

246. However, in the statement given during the investigation[92], this witness stated, *inter alia*, the following:

> "Subsequently, the *Predini vukovi* unit, I think in June 1992, joined the Police, that is, the SJB Doboj. I remember that Predrag Kujundžić got a real deputy at the time, who was an active police officer, Zoran Dević. He tried to introduce police rules in the unit…..When our unit *Predini vukovi* was transferred to the police force, Predrag Kujundžić still remained our direct superior. I am not sure who his superior was, and was it Andrija Bjelošević who was the Chief of the CSB…."

247. In explaining the inconsistencies in the statements, the witness stated that he was not sure about the dates and that after the transfer into the police nobody informed him that Zoran Dević was a superior officer. According to him, both the Accused and Zoran Dević had certain roles in the unit.

248. The Panel analyzed in detail the testimony of Žarko Gavrić given at the main trial in the light of the mentioned inconsistencies with the statement given during the investigation. The Panel partially accepted his statement given during the investigation. It ensues from this statement that the Accused remained the Commander of the *Predini vukovi* unit even after the transfer to the civil police. The Panel attributes this uncertainty and hesitation presented by this witness to the fact that he found himself "face to face" with the Accused who was his superior during the critical period, which motivated the witness to back away somehow and withdraw his earlier statement in the described manner.

249. Furthermore, the Panel took into account the information from the Letter of the MUP CJB Doboj of 17 September 2008 in which it was stated that in June, July and August 1992, the Accused was on the list of employees of the reserve police force and executed the tasks of the Company Commander, and that he received his salary in this

[92] Witness Examination Record for Žarko Gavrić number KT-RZ-131/05 of 31 October 2007 (Exhibit T 1)

capacity. Also, it ensues from Exhibits T 40, T 132 and T 133 that the Accused is listed under number 1 on all lists of the Civil Police Companies. From Exhibit T 40 it can be seen that in the formation for each Company, its Commander takes the top place. Furthermore, it ensues from the Defense witness Zoran Đekić and Đorđo Kujundžić that the Commander of each Company is listed under number 1 for each given Company. Accordingly, when the foregoing documentary evidence and the testimony of Zoran Dević and Žarko Gavrić are taken into account, it is clear that even after being wounded the Accused was the Company Commander.

250. Furthermore, it ensues from Exhibits T 35, T 41 and T 42 that the Accused is „a short-tempered and dangerous person" who has, together with his unit, through their engagement in some war operations, gained the reputation of a „combatant" whom personally nobody could stand against[93].

251. In addition, the Panel took into account the testimony of Witness "2" who described the relationship between the Accused and "his men". She testified that the Accused treated them condescendingly, that they respected him and that they "feared him". She also noticed that the Accused treated Golub differently because he treated him as if Golub was his support. The Panel recalls that the testimony of Witness "2" concerned the period from June to December 1992.

252. The Defense witnesses testified that only an active police officer in the SJB Doboj could be a company commander. However, the Panel opines that the mentioned rule certainly was not entirely complied with, particularly bearing in mind the specific circumstances during the critical period of time, at the beginning of the war, when there existed no clearly divided units and their structures. In addition, the Panel observed that it was clearly indicated in the ICTY document[94] which persons were active police officers. When this document is reviewed, it can be seen that in addition to the X Company (in which the Accused is listed under number 1) an active police officer was not listed also in the VI Company under number 1.

253. The Defense for the Accused argued that after 12 July, the Commander of the X Company was Đorđo Kujundžić. However, the name of Đorđo Kujundžić was not stated at all in the referenced ICTY document within the X Company, but within the V Company. Witness Đorđo Kujundžić himself testified that he was taking care about the V Company and that in the X Company he was "only asked to do the line-up".

254. In addition, the Panel recalls that it had earlier established that prior to the unit's transformation into the Civil Police the Accused was the unit Commander, whose members remained mostly the same in the civil police. This is supported by the statement of the Defense witness Cvijetin Sarić that Predrag's unit "followed the Accused even in the police". The Panel took into account the testimony of witness Slobodan Đukić. He testified that at the time of the battle on St. Peter's Day (12 July 1992), the Accused was a member of the police and that he knew the Accused as "the group leader". It can be

[93] Exhibit T 41
[94] Exhibit T 40

concluded from the foregoing that during the relevant period the Accused was not only a member of the civil police, but also had a commanding role. Additionally, it should be taken into account that the Accused enjoyed a supreme authority and awe among the members of his unit. This was confirmed by the witnesses Srđan Bogdanović, Dragoljub Milutinović, Željko Ristić, Zoran Dević and Đorđo Kujundžić. This fact is consistent with the established order-issuing role of the Accused.

255. Regarding the role of the Accused during the relevant period, the Defense also presented the documentary evidence, including *inter alia* the following: Police Station Deployment for 25 and 26 December 1992[95], Letter of the MUP CJB Doboj of 17 September 2008[96] and the Latter of the MUP CJB Doboj[97]. However, the only conclusion that the Panel could draw from this evidence is that the Accused was a member of the Police (within the CSB Doboj). The Defense also presented the Decision Appointing the AMD Director Doboj[98] from which it ensues that on 14 November 1992 the Accused was appointed to this post.

256. Witness Đorđo Kujundžić confirmed that his signature was on one of the foregoing evidence (Exhibit O 32[99]). He stated that the document contained, *inter alia*, a list of the persons on a sick leave, including the Accused's name (under the "minor injuries" item). When this document was presented to the witness, it could be noticed that the Accused's name was written in the Cyrillic script, while the names of all other persons were written in the Latin script. It could be also seen that the names of slightly injured persons under numbers 7 through 14 were handwritten, while all other names were typed. When asked to explain these unclear details, witness Kujundžić stated that he was certain that he personally wrote down all other names (except for the Accused's name), but he did not know who wrote down the Accused's name. In addition to the foregoing, witness Đorđo Kujundžić failed to provide the Court with a convincing explanation of the referenced inconsistencies. The presented circumstances create with the Panel a doubt into the credibility of testimony of this witness.

257. The Panel further recalls that this document concerned December 1992. It can be seen from the earlier Decision appointing the AMD Doboj Director[100] that the Accused was already appointed its Director since 14. November 1992. Accordingly, the period referred to in the disputable document is not relevant for the establishment of the Accused's responsibility for the actions taken in June and July 1992. In addition, the data contained in the mentioned deployment for 25 and 26 December 1992 are contrary to the data from the Defense Exhibit O 48[101] in which it is stated that in December 1992 the Accused was included on the list of employees of the IV Reserve Police Force Ozrensko Suvo Polje (and not in the X Company as indicated in Exhibit O 32).

[95] Deployment of the Police Station Ozrensko Suho Polje for 25 and 26 December 1992 (Exhibit O 32)
[96] Letter of the MUP CJB Doboj of 17 September 2008 (Exhibit O 48)
[97] Letter of the MUP CJB Doboj of 20 February 2008 (Exhibit O 46)
[98] Decision Appointing the War Director of the AMD Doboj number 01-012-2-13/92 of 14 November 1992 (Exhibit O 55)
[99] Police Station - Work Schedule for 25 and 26 December 1992 (Exhibit O 32)
[100] Ibid.
[101] Letter of the MUP CJB Doboj of 17 September 2008

258. The stated contradictions indisputably bring into suspicion the authenticity, reliability and credibility of the Defense witnesses whose testimony is full of unclear issues and contradictions.

259. Contrary to them, during the proceedings, the Prosecutor's Office adduced a number of objective evidence (earlier mentioned) from which it can be concluded with certainty that during the relevant period (in Counts 1, 2 and 3 of the Indictment) the Accused was the Commander of the unit known as *Predini vukovi*.

6. Evidence Evaluation with regard to Specific Counts of the Indictment

260. In evaluating the evidence, or the testimony of the witnesses who testified before the Court, the Panel took into account their conduct, behavior and character to the extent possible. Furthermore, the Panel took into account the credibility and consistency of the witnesses' testimony in relation to the other evidence and circumstances of the case. The Panel further considered the circumstance that the uncertainty is present in testifying about the facts that occurred 16 years ago due to the human perception instability, particularly bearing in mind that this was the testimony about the traumatic events which quite certainly affected the memories of the persons who experienced them or were present while they occurred.

261. When it comes to the acts of commission of the criminal offense *per se*, the Prosecution witnesses who testified with regard to the fact of acts of commission referred to in the Indictment Counts are mostly direct eye-witnesses to the event, while some are direct victims. When it comes to certain offenses that fall within the scope of the crimes against humanity, each act with which the Accused is charged will be elaborated on further below.

6.1. Count 1 of the Indictment

262. In this Count of the Indictment, the Accused is charged with the enforced resettlement of the inhabitants of Grapska, the killing of minor D.D. and inflicting injuries on the witness „2".

263. Having evaluated all the adduced evidence, the Panel concluded that as the Commander of the unit called *Predini vukovi*, with the participation of other units of the army of the so called Srpska Republika BiH, the Accused participated in the attack on the village of Grapska. The factual description referred to in Count 1 of the Indictment concerns Gornja Grapska that was inhabited by the majority Bosniak population.

264. The Defense witnesses Obren Lazić, Božo Lazić, Srđan Bogdanović, Vojislav Sarić and Radivoje Gojković, and the Prosecution witnesses "2", "4", "22", "34", "8", Žarko Gavrić and Emsud Herceg described the attack of Serb forces on the Grapska village on 10 May 1992. It ensues from their testimony that Grapska was firstly attacked with artillery weapons, and thereupon by the infantry fire. This attack was not

particularly contested by the Defense for the Accused. However, the Defense contested the Accused's participation in the attack and the commission of specific actions by the Accused.

265. During the relevant period, the witnesses "2" and "4" lived in Grapska. They are the direct witnesses to the critical events of 10 May 1992. It ensues from their testimony that during the negotiations on 10 May between the villagers of Grapska and JNA representatives, the villagers of Grapska were given an ultimatum to surrender their weapons, or otherwise Grapska would be shelled. As the weapons were not surrendered, the village was shelled around 11:00 hrs on the same day, and thereafter infantry fire started by the soldiers who entered the village. The witness "4" testified that "…when I looked from the above, bullets flied from all directions …". The next what she saw was a soldier calling the villagers of Grapska over a loudspeaker to surrender themselves because Grapska "was captured".

266. The Prosecution witness Žarko Gavrić (who was at the critical time a driver in the unit under the Accused's command) testified that on 10 May, with a dozen of members of his unit, he was deployed at the entrance to Grapska, next to the fountain which was identified on the photos presented to them during the testimony[102] by the Defense witnesses Srđan Bogdanović and Dragoljub Milutinović. Witness Gavrić denied that his unit entered Grapska, stating that during the day he saw the Accused twice, but emphasized that he did not know whether the Accused only came to visit the unit or for some other reason.

267. The Defense witness Cvijetin Sarić stated that he knew that the Accused participated in the attack on Grapska with his military police unit.

268. The Defense tried to explain the attack on Grapska with different arguments. It firstly referred to the strategic importance of the road that connected Doboj with Modriča, which goes through Grapska. The Defense asserts that in May 1992 barricades were set up on this road by the armed Bosniak population, and that Serb units had a task to de-block the referenced road communication. With regard to this, Obren Lazić, Radivoje Gojković and Božo Lazić testified that on May 9 armed Bosniaks captured around 50 Serb civilians. After the negotiations between Major Stanković and Muslim representatives from the Grapska village were finished, the captured persons were released. On the following day (on 10 May), negotiations were conducted between the Muslim and the Serb sides regarding the road de-blocking. Thereafter, an artillery attack was launched at the "Muslim posts". Srđan Bogdanović, Vojislav Sarić, Obren Lazić and Pero Tubić, who were on the spot on that critical occasion, testified about this. They testified that the "Muslim positions" in Grapska were shelled on 10 May 1992 at around 12:00 hrs. Detonations were heard in the village, "shells were falling directly into the village"[103], and bullets fired from the infantry weapons could be heard as well. The attack lasted for 2-3 hours. Thereafter, Major Stanković entered the village by a personnel carrier and called the villagers through the loudspeaker to surrender themselves.

[102] Photos (Exhibit O 86)
[103] Testimony of Srđan Bogdanović

269. Even if they reflected the actual situation in Grapska, the foregoing arguments of the Defense do not justify the attack launched by the soldiers of the so called Srpska Republika BiH against the village. The ICTY jurisprudence crystallized the view that the population must be predominantly of a civilian character[104]. Population can be considered civilian even if some non-civilians are present – it simply should be „predominantly" of a civilian character. Moreover, a broad definition of what amounts to a civilian population was adopted. It was decided that the individuals who at one point in time offered resistance can in certain circumstances be victims of crimes against humanity. Crimes against humanity therefore do not mean only acts committed against civilians in the strict sense of the term but include also crimes against two categories of people: those who were members of a resistance movement and former combatants - regardless of whether they wear uniform or not – but who were no longer taking part in hostilities when the crimes were perpetrated because they had either left the army or were no longer bearing arms or, ultimately, had been placed *hors de combat*, in particular, due to their wounds or their being detained. It also follows that the specific situation of the victim at the moment the crimes were committed, rather than his status, must be taken into account in determining his position as a civilian. Finally, it can be concluded that the presence of soldiers within an intentionally targeted civilian population does not alter the civilian nature of that population[105]. Thus the presence of those actively involved in the conflict should not prevent the characterization of a population as civilian, and those actively involved in a resistance movement can qualify as victims of crimes against humanity.[106] In the decision pursuant to Rule 61 in *Mrkšić et al.* of 3 April 1996, the Trial Chamber goes a step further with the conclusion that crimes against humanity can be committed even in cases when victims carried weapons at certain point in time[107].

270. Accordingly, it is clear that in the specific case the attack was launched against the civilian population.

271. Witnesses Srđan Bogdanović, Vojislav Sarić and Dragoljub Milutinović testified that the task of the unit which was under the command of the Accused was to safe-guard Major Milan Stanković in Grapska and that it did not enter the village.

272. The Panel did not accept the foregoing assertions of the Defense witnesses because this amounted to the presentation of general assertions that were not supported

[104] The ICTY case *Tadić,* Trial Chamber Judgment, par. 638.
[105] *Blaškić* case, Trial Chamber Judgment, par. 638
[106] *Kupreškić et al.* case, Trial Chamber Judgment, par 549.
[107] The view of the Trial Chamber was that "although according to the terms of Article 5 (. . .), the combatants in the traditional sense of the term cannot be victims of a crime against humanity this does not apply to individuals who, at one particular point in time, carried out acts of resistance. As noticed by the Commission of Experts established pursuant to Resolution 780 of the Security Council „it seems obvious that Article 5 primarily refers to civilians, that is, people who are not combatants. This, however, should not lead to any precipitated conclusions regarding individuals who, at one particular point in time, carried weapons ... Information on the general circumstances are relevant for this provision interpretation pursuant to its purpose". (Mrkšić et al. Indictment Review pursuant to Rule 61, 3 April 1996., par. 29., quoted in the Report of the Commission of Experts established pursuant to Security Council Resolution 780, Doc. S/1994/674, para 78.

by any details and concrete facts. They submitted that some unknown units of the reserve military force surrounded Grapska and that they only escorted Major Stanković. However, considering the Prosecution evidence and the assertions of the witnesses for the Defense that the Accused was present on the crime scene with his unit all day long, the Panel finds inadmissible the Defense assertions that *the Predini vukovi* unit did not participate in the attack. Such assertions are contrary to the facts presented by the Prosecution witnesses and the process of drawing logical conclusions.

273. Conversely to such assertions of the defense witnesses, the Panel concluded that the Accused, together with his unit *Predini vukovi,* participated in the infantry attack on Grapska in 10 May 1992.

274. Witnesses "2", "4" and Žarko Gavrić stated that after the village had been shelled, Serb soldiers who entered the village opened fire. This was also confirmed by the Defense witnesses Srđan Bogdanović and Vojislav Sarić.

275. Serb soldiers who participated in the attack on Grapska wore different police and military uniforms. Witnesses "2" and "4" and the Defense witnesses Obren Lazić and Pero Tubić also testified about this. Furthermore, it ensues from the testimony of Pero Tubić that the military police unit also participated in the referenced attack on Grapska (the Panel recalls that the Accused had command over this unit). Accordingly, the assertions of this witness that the military police unit participated in this war theater are contradictory to the assertions of the "coached" members of this unit that was under the Accused's command, who claimed the opposite.

276. Witness Tubić asserted that he did not see the Accused on that critical occasion. However, it cannot be concluded from this assertion that the Accused was not present at the crime scene, particularly bearing in mind that Witness Tubić did not even know the Accused at the time. Even if he had known him, the witness necessarily did not have to see him if the chaotic situation and mayhem on that day are taken into account.

277. Having analyzed in detail the adduced evidence, the Panel finds it established that the units of the army of the so called Srpska Republika BiH attacked the village of Grapska on 10 May 1992 using artillery weapons, and that infantry fire followed after the shelling. A number of different military and police units, including the *Predini vukovi* unit of the Military Police led by the Accused, obviously participated in this attack.

278. The Panel will below mostly address the role of the Accused in the forcible resettlement of the villagers of Grapska.

279. Forced displacement or deportation referred to in Article 172(1)(d) of the CC BiH is defined as „ 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". Accordingly, the essential elements of this criminal offense would be:

- Forced displacement of the persons by expulsion or other coercive acts
- from the area in which they are lawfully present
- without grounds permitted under international law.

280. As the elements of the crime make clear, it is sufficient that the persons concerned be expelled from the area in which they are lawfully present. Deportation, the forcible displacement of persons across internationally-recognized borders, and forcible transfer, the forcible displacement of persons within state borders, are crimes against humanity under customary international law. Article 17 of the Additional Protocol to the Geneva Conventions of 12 August 1949 on the Protection of Victims of Non-International Armed Conflicts (Additional Protocol II) prescribes:

1. "The displacement of the civilian population shall not be ordered for reasons related to the conflict unless the security of the civilians involved or imperative military reasons so demand. Should such displacements have to be carried out, all possible measures shall be taken in order that the civilian population may be received under satisfactory conditions of shelter, hygiene, health, safety and nutrition.
2. Civilians shall not be compelled to leave their own territory for reasons connected with the conflict."

281. Forcible transfer is treated as a crime against humanity also in the jurisprudence of the ICTY. The Appeals Chamber in the *Krnojelac* case concluded that „displacements within a state or across a national border, for reasons not permitted under international law, are crimes punishable under customary international law, and if they were committed with the required discriminatory intent, they represent the crime of persecution referred to in Article 5(h) of the Statute...". Such conclusion is a result of the fact that the ICTY Statute does not include forcible transfer as a separate offense (unlike deportation which is included in Article 5 of the ICTY Statute). Therefore, both the Trial and Appellate Chambers of the ICTY categorized this offense as *other inhumane acts*. Because the CC of BiH recognizes forcible transfer and deportation together as a distinct crime, which encompasses displacement both within and outside a national border, the relevant inquiry under the first element is only whether the victim has been displaced by expulsion or coercive acts, while the location to which they are displaced is not critical[108].

282. Unlawful deportation, or forcible transfer of civilians 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"[109].

[108] Verdict of the Court of BiH in the *Rašević and Todović* case, number X-KR-06/275 of 28 February 2008, p. 96.
[109] Statute of the International Criminal Court, Article 7(2)(d). Also see: Judgment of the ICTY Trial Chamber in the *Blaškić* case, par. 234 and Judgment of the ICTY Trial Chamber in the *Stakić* case, par. 680.

283. The first element of the criminal offense of forced displacement or deportation implies the force that is used in the displacement of persons. This force should be interpreted broadly so that it includes physical force, the threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment, and the essential question that arises is whether all these displaced persons were "faced with a genuine choice as to whether to leave or to remain in the area"[110]. Displacement of persons is generally absolutely prohibited except in specific limited circumstances, such as stated in the earlier quoted Article 17 of the Additional Protocol II. In addition, Article 49(2) of the Fourth Geneva Convention prescribes: „Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".

284. In this specific case, the Panel established that after the attack on Grapska, houses in the village were set on fire, "everything was on fire"[111], and civilians who survived and did not manage to escape were transported by buses to Kostajnica, after which the women, children and the elderly were transported to the territory controlled by the BiH Army, while the military fit men were arrested and detained in the *Bare* barracks.

285. Witnesses "2" and "4", Žarko Gavrić and the Defense witnesses Obren Lazić, Slobodan Đukić, Zoran Đekić, Radivoje Gojković, Dragoljub Milutinović and Borislav Paravac testified about this.

286. Witness Žarko Gavrić testified that during the day he used to see wounded soldiers, that he saw the villagers of Grapska only before the evening when they came out and surrendered the weapons they had, that the children and the elderly entered buses by which they were transported toward Kostajnica, and that men were separated from them. With regard to the foregoing, witness Borislav Paravac asserts that after the attack on Grapska on 10 May he saw civilians who were brought to Kostajnica escorted by soldiers, and thereupon transported toward Tuzla. Witness Radivoje Gojković testified that after the conflict on 10 May, the villagers of Grapska "moved away" and that only Serb population stayed in Grapska.

287. During the critical time, the Defense witness Slobodan Đukić was a driver in the Secretariat of Internal Affairs. On 10 May, he transported the men from Grapska to the hangars in Bare. This is consistent with the testimony of the Defense witness Obren Lazić who testified that he had heard that the men from Grapska, that is, a number of them, ended up in the Manjača camp and that prior to that, they were in Bare.

288. The Defense witnesses Slobodan Đukić, Dragoljub Milutinović, Zoran Đekić and Obren Lazić are consistent in stating that the Accused was also present at the crime scene, and military police officers (members of his unit) who loaded the weapons that were surrendered by the villagers of Grapska.

[110] See the *Simić* case, the ICTY Trial Judgment, par. 125.
[111] Testimony of Witness „4" given at the main trial held on 29 August 2008.

289. When the testimony of the persons who testified with regard to this Count of the Indictment is analyzed, it can be concluded beyond a reasonable doubt that the civilians who were transported from Grapska to Kostajnica on that day left their homes involuntarily, with fear and uncertainty. It should be taken into account that on the critical day, the villagers of Grapska were invited to surrender after the Serb units entered the village with the infantry weapons fire, set houses on fire and fired at the civilians who started running away. In such circumstances, there was no option for the Bosniak population to choose whether to stay in the village or leave. They had no control over their destiny, either regarding their stay or removal to some other location, which constitutes the essence of force in a wider sense. When all these circumstances are taken into account, it is clear that these civilians had no other choice but to surrender. Having surrendered, without any possibility to decide on displacement from Grapska, escorted by Serb soldiers, they were transported to Kostajnica, that is, to the hangars in Bare.

290. The Panel considers that these civilians had full lawful right to remain in Grapska, namely that no justified reason existed for their displacement. These are the persons who had lived in Grapska for years before the war conflicts, and who were forced within the widespread and systematic attack to leave their place of residence, leaving all their property in it. Forced displacement of these persons is certainly a result of the planning of the then Serb authorities that came into power after the 1990 Elections. The atmosphere of uncertainty and fear among the villagers of Grapska that was inhabited by the majority Bosniak population is also a result of this plan. The Serb authorities gave them an ultimatum to surrender their weapons, but the villagers of Grapska refused it having known what was happening in the surrounding villages whose villagers had surrendered their weapons. They all knew that the safety of Bosniak population in this territory had been already jeopardized for a longer period of time.

291. Furthermore, the evidence adduced in this case clearly indicates that the forced displacement of the population of Grapska was not carried out for the reasons admissible pursuant to international law. Forced displacement of this population followed immediately after the artillery and infantry attack, and after the Serb units had entered the village. In the described circumstances, the villagers did not at all have a possibility to choose whether to stay in Grapska or not. Escorted by soldiers, the elderly, women and children were taken to Kostajnica, while the military fit men were taken to the camps.

292. The Panel recalls the earlier quoted Article 17 of Additional Protocol II which clearly prohibits forcing civilians to leave their territory for the reasons related to the conflict. In this specific case, the reason for displacement quite certainly was not to secure their safety which would require their evacuation in order to enable necessary military operations, because these specific civilians were the target of the attack, and the forced displacement was carried out by the forces which participated in the attack against them. In addition, there were no natural disasters or other circumstances that would justify the relocation of these persons for humanitarian reasons. Victims of these actions were civilians lawfully present in the territory of Grapska who left their long-year homes involuntarily and who were displaced to other locations (which they themselves did not choose). In addition, that the forced displacement had no ground pursuant to the

international law either is clear when the actions of the forced displacement are brought into connection with the existence of the widespread or systematic attack against the non-Serb civilian population of the Doboj Municipality. Furthermore, the previously mentioned exemptions due to which the evacuation of population was allowed are not applicable to this specific situation.

293. With regard to the role of the Accused in the described actions, it is primarily important to take into account that he had a commanding role and was therefore very well aware of the policy that was carried out against the non-Serb population, particularly the Bosniak population in the territory of Municipality Doboj. On 10 May, he personally participated in the separation of men from women and children, and monitored the surrender of weapons by the villagers of Grapska, whom he personally drove to the SUP in Doboj, The elderly, women and children were transported to Kostajnica, while the military fit men were detained in the detention facility in Bare.

294. Pursuant to customary international law, it is necessary to prove the existence of intent to displace the population permanently[112]. It ensues from the previously mentioned Article of the Fourth Geneva Convention that evacuated persons must be returned to the place from which they were evacuated, immediately upon the cessation of the circumstances for which they were originally evacuated. When we bear in mind all the foregoing, it follows that *mens rea* of this criminal offense, according to customary international law, is the intention to remove the victims and that they do not return to the place from which they were removed. In this specific case, it is indisputable that the Accused took no action whatsoever directed toward the return of the displaced Bosniak population. His behavior is in accordance with the behavior and the activities of the Serb army and the police, whose goal was that only Serb population remain in the Grapska territory (and in the wider area, in the territory of the Doboj Municipality). These civilians were expelled only because they were Bosniaks and such reason and ground are discriminatory and therefore prohibited, which the Accused knew.

295. The forced displacement of the Bosniak population from Grapska was part of a campaign that was carried out with the intention to permanently remove all the non-Serb population from the Doboj territory. Accordingly, when we bear in mind the actions of the Accused in this specific situation, it is obvious that his actions qualify as the criminal offense of Crimes against Humanity in violation of Article 172(1)(d) of the CC BiH. In addition, the Accused was aware of the offense and he wanted its commission. This ensues from the fact that the Accused himself participated with his unit in the infantry attack on Grapska, and thereafter was present during the organization of the Grapska villagers' transportation toward Kostajnica and Bare. Pursuant to the foregoing, based on the witnesses' testimony, the Panel concluded that the Accused gave a decisive contribution to the forced displacement of the villagers of Grapska to Kostajnica, and that he is individually responsible for the committed offense pursuant to Article 29, in conjunction with Article 180(1) of the CC BiH.

[112] Article 35 of the CC BiH; See *Blagojević and Jokić* case, the Judgment of the ICTY Trial Chamber, par. 601: Also see *Naletilić and Martinović* case, the Judgment of the ICTY Trial Chamber, par. 520.

296. Under the Indictment, Predrag Kujundžić is charged that in the commission of this offense he participated both as an accomplice and as an accessory. However, bearing in mind that by a single action the Accused cannot be liable for two forms of complicity, and pursuant to the drawn conclusion that the Accused contributed in a decisive manner to the forced displacement of the villagers of Grapska, the Panel found him responsible as a co-pepretrator.

6.1.1. The Killing of Minor D.D. and Inflicting Injuries on the Witness "2"

297. The Panel finds it proved from the evidence adduced that minor D.D. was killed, and the witness "2" wounded during the infantry attack of the units of the Army of the so called Srpska Republika BiH against the village of Grapska. However, the Panel finds that the Prosecutor's Office failed to prove beyond a reasonable doubt that it was the Accused who committed the referenced actions.

298. In the Report on Forensic Expert Analysis of 7 November 2000, expert witness Cihlarž noted, *inter alia*, that during the exhumation in the village of Grapska a whole skeleton was found of a person that was around age 10-15, male, around 150 cm height, brown hair, in the stadium of saponification. It was established after the identification procedure that it was the skeleton of the killed D.D. From the finding of Dr. Cihlarž it can be seen that the death was violent, caused by a gunshot wound into the left half of the thorax. The expert witness clarified that a gunshot wound is any wound that resulted from the activity of a projectile fired from a hand-held fire weapons, and that in this specific case it was most probably the projectile caliber 7,62 mm. This is so because from the mentioned distance only this caliber can inflict such destructive injuries (smashed the VII rib). The character of death is defined as murder. As the evidence for the injury, Dr. Cihlarž indicated: „A hole-like defect in the skin of the upper part of the left half of the back with a channel stretching ahead including the inner edge of the sub-crest fossa, left shoulder bone by multiple breaking the posterior part of the VII left rib". The expert witness stated that the finding undoubtedly showed that the death was caused by a murder, a gunshot wound of the left half of the thorax, most likely with a fire weapon from the 10-15m distance which was also indicated by the damage found on the cloths. The expert witness confirmed that the damage was found on the clothes that would match a whole-like defect on the left side of the back. In his presentation at the main trial, the expert witness additionally emphasized that this was strictly a killing character of the injury because the wound that caused the death is located on the back.

299. Witness "4" testified that she did not see blood on the shirt worn by D.D., but that below the shirt "there was (…) a quite small hole on the left shoulder-blade, but it did not come ahead since everything was clean, nothing came out". During the cross-examination, the witness stated that in the area of the left shoulder-blade on the body of D.D., she saw "a smaller hole with clotted blood".

300. The Defense contested that D.D. was killed by a fire weapon. To this end, the Defense examined expert witness Dr. Ljubomir Curkić whose task was to comment based on the medical documentation on the cause of death of the slain person. At the main trial,

expert witness Curkić presented his opinion that, considering the changes on the corpse in the form of saponification (that were observed on the corpse of the slain person), it was not possible to establish with certainty the specific cause of death. The expert witness stated that on the basis of the injuries found it was only possible to conclude with a strong probability that the death was violent and resulted due to the "bleeding out from the torn blood vessels along the channel of the gunshot wound"[113]. According to him, the hole-like defect found on the back skin could result from a projectile shot fired from a hand-held fire weapon or shrapnel of the fragmentation explosive weapons (a shell or a mine).

301. Furthermore, the Defense also adduced the evidence by hearing the ballistic expert Željko Popović who had a task to establish whether the lethal injury of D.D. was inflicted by a wire weapon, which kind of weapon and ammunition it was, what form of injury and other traces of such ammunition were left on the body, whether such bullet can pass through the body, and could the bullet go through the body of D.D. from the distance from which the Accused allegedly fired. The expert witness made his finding based on the case history, that is, the testimony of witnesses "2" and "4", the finding of expert witness Zdenko Cihlarž and Dr. Ljubomir Curkić, the Report on Forensic Expert Analysis of the death of D.D. Based on the foregoing documentation, the expert witness gave his opinion that from the ballistic point of view it was not possible to clearly determine whether the specific injury to D.D. was inflicted by firing from a fire weapon or it was a result of injury by a shrapnel or an explosive device. As the reason for such opinion the expert witness stated the fact that the projectile was not found in the body, that the clothes were not available. According to him, the injury description also cannot clearly point to an answer as to whether the injury was caused by a fire weapon or a fragmentation bullet.

302. The Panel also evaluated the Finding and Opinion of the referenced expert witnesses in their mutual connection, and in connection with the other adduced evidence. The Panel concluded that it was indisputably proved that D.D. was killed from fire weapons.

303. Furthermore, the Panel concluded that Witness "2" was also wounded during the infantry attack on the village of Grapska, which ensued from the testimony of the injured party herself and Witness "4". In addition to them, expert witness Dr. Hasib Mujić, Vascular Surgeon, gave his Finding and Opinion regarding the injury of Witness "2". He stated that based on the available documentation (a certificate from the General Hospital "Sveti Apostol Luka" from Doboj) it can be only concluded that Witness "2" was examined in the Surgery Department of General Hospital "Sveti Apostol Luka" on 10 May 1992 under the protocol number 7802. On that occasion, a gunshot wound in the right lower arm was diagnosed. Expert witness Mujić stated that based on this insufficient documentation it was not possible to comment on the qualification of the injury considering that the accompanying diagnostic and other procedures (X-ray scans, color doppler, ultra-sound findings, etc.) were missing, while possible injuries to bones, blood vessels, nerves and other structures cannot be excluded. However, the expert witness concluded that it was indisputable that on 10 May 1992, Witness "2" sustained a gunshot

[113] Report on Forensic Expert Analysis of 14 January 2009 made by Dr. Ljubomir Curkić (Exhibit O 1)

wound in her right lower arm. He additionally explained that the difference between the explosive and gunshot wound lies in the manner of the injury infliction. When it comes to an explosive injury, this means that the injury was inflicted by an explosive device, while a gunshot wound is inflicted by firing from a fire weapon.

304. During the critical period, Dr. Predrag Lazić worked in the "Sveti Apostol Luka" Hospital in Doboj to which the witness "2" was admitted after being injured. He testified for the Defense in this case and confirmed that from the diagnosis indicated in the certificate[114] it ensues that it was a gunshot wound.

305. The Defense contested that Witness "2" was wounded from infantry weapons. The Defense underlined that it was an explosive-caused wound that was initially indicated on the referenced medical protocol, and that it was then crossed out and 'a gunshot wound in the right lower arm' written.

306. Contrary to the Defense assertions, pursuant to the finding of expert witness Hasib Mujić, and the testimony of Dr. Predrag Lazić, the Panel finds that they are both consistent in the opinion that in the case of Witness "2", a shotgun wound was in question, that is, the wound inflicted by fire weapons. When the foregoing is brought into connection with the testimony of witnesses "2" and "4" (to be addressed in detail below), it can be concluded beyond a reasonable doubt that the injury was inflicted during the infantry attack on Grapska.

307. In this specific case, **the identification becomes questionable of the person** who shot at minor D.D. and at the witness "2". With regard to this, the Panel analyzed in detail the testimony of the witnesses "2" and "4", bearing in mind that they were the only eye-witnesses to the incriminating incident.

308. The witnesses "2" and "4" described in the same manner the infantry shooting and the overall chaos in Grapska that occurred after the shelling on 10 May 1992. The villagers were coming out from basements trying to escape the bullets and the attack of Serb soldiers. However, these witnesses described differently the specific incident when D.D. was killed and the witness "2" wounded. Witness "2", *inter alia*, stated:

> "We were going down, there was shooting, all people wanted to come below that little bridge, everybody thought it was a kind of protection over their heads. Everybody was howling, screaming, crying, falling down…While our mother walked in front of us with the sister, my brother and I walked together. I saw a man standing and looking at us and firing from his riffle. He fired." Then she described the man who shot at her and D.D.. She stated that he had an "eye-popping look", with blue eyes, and that he wore a camouflage hat. Witness "2" did not state where and at whom this man shot, but she submitted that at the moment, both she and D.D. fell down on the ground. Then she heard her mother

[114] Certificate of the General Hospital „Sveti Apostol Luka" in Doboj, number 3368-1/07 of 14 September 2007 for the protected witness „2" and an Excerpt from the Patients Admission Register of the referenced Hospital, number 7801 (Exhibit T 104).

saying “help me, both my children got killed”. She wondered which two because she was aware that she was alive. It cannot be concluded from this testimony beyond a reasonable doubt that the witness saw that specifically the man that she had seen and subsequently identified as the Accused was the one who killed D.D. Witness “2” only stated that the man was ‘shooting’, but did not state where, or at whom.

309. On the other hand, Witness “4” stated that she suddenly heard that Witness “2” screamed “I am wounded”. Thereafter, she saw her lying on the ground. Witness “4” further submitted that at that moment she gave a bag to D.D. which she had carried up to this moment, from which it ensues that D.D. was still alive then (after Witness “2” was wounded). This witness submitted that the shooting at Witness “2” and D.D. happened one after another. The Panel observed that Witness “4” allegedly remembered tiny details. She asserted that she saw a bullet when a man wearing a fur cap with a cockade fired it (she subsequently concluded it was the Accused), that the bullet passed in front of her nose and hit D.D. in his left shoulder blade. It is unrealistic and hardly imaginable that in the described overall chaos, having carried a baby in her arms, Witness “4” saw that the Accused had fired a bullet, that the bullet passed by her nose and that this specific bullet hit D.D.. Soon thereafter, she saw the same man on the bridge who shot at her children, but this time he spoke via a loudspeaker “Surrender, Grapska is captured, surrender, Grapska is captured”.

310. The Panel accepts that the existence of smaller differences in the testimony of the witnesses is natural and that after 16 years the witnesses cannot remember precisely and specifically all the details. Also, the Panel has in mind the specific situation in which the witnesses “2” and “4” were (due to a close relationship with the victim). The Panel also took into account that specifically in the described circumstances it is not realistic to expect that the witnesses could memorize all the details that they indicated during their testimony. Specifically, the presentation of the tiniest details is characteristic for these two women witnesses, like the referenced bullet description and its trajectory. In the opinion of the Panel, it is necessary to bear in mind the overall chaos, mayhem and panic in which they found themselves, and to bring this in relation with their assertions that they remembered the appearance of the man who shot at D.D. and the witness “2”. The Panel opines that in the above described circumstances a person’s perception has its patterns in the manner that everybody only tries to find a way to save himself. During the incriminating period, both witnesses were in an extremely difficult, stressful and painful situation. Therefore, the assertions of the witness “4” that she saw that the Accused had fired a bullet which passed in front of her nose and hit D.D. are not sufficiently reliable to conclude beyond a reasonable doubt based on them that the Accused is the person who fired at D.D. and at the witness “2”. Through a natural process of unconscious reconstruction, even the most sincere witnesses can convince themselves that a certain matter could happen. The Panel accepts that these two witnesses sincerely believed that what they had described really happened in the manner as they described, but the Panel cannot exclude a very understandable and natural possibility that their reconstruction of the incident questionable.

311. Pursuant to all the foregoing, the Panel finds well-founded the testimony of the witnesses "2" and "4" in one part, that is, in the part in which they presented all the facts related to the attack on the village of Grapska on 10 May 1992. As to this part, other witnesses too confirmed their testimony, including Žarko Gavrić, Emsud Herceg, the witnesses "34", "10", "8", and partially the Defense witnesses Obren Lazić, Pero Tubić, Srđan Bogdanović and Vojislav Sarić. The Panel finds unreliable the part of their testimony concerning the identification of the person who shot at D.D. and the witness "2". As to this part, their testimony is contradictory (in the manner as explained above in detail). They differ in important facts, and they are not supported with any other evidence that would possibly lead the Panel to draw a different conclusion. The witnesses "2" and "4" did not present clear facts based on which the Panel could establish the responsibility of the Accused beyond a reasonable doubt.

312. In evaluating the testimony of these two witnesses, the Panel particularly took into account that this specific incrimination, especially the identification of the Accused, is based on their testimony specifically. It follows from this that in case that unclear facts and inconsistencies exist in the decisive facts, this means that reasonable doubt also still exists. Accordingly, the Panel concluded that the Prosecutor's Office failed to prove beyond a reasonable doubt that the Accused killed minor D.D. and wounded the protected witness "2". For the stated reasons, the Panel did not find the Accused responsible for this part of Count 1 of the Indictment as described in Section 1 of the acquitting part of the Verdict.

6.2. Count 2 of the Indictment

313. Under Count 2 of the Indictment, the Accused is charged with severe deprivation of physical freedom in contravention of the fundamental rules of international law and the torturing of Bosniak men on 12 June 1992 in front of the Culture Center (Dom) in Bukovačke Čivčije.

314. A large number of witnesses, some of them being direct victims, and some family members of the killed persons, testified about the events in Bukovačke Čivčije on 12 June 1992, namely: the witnesses "32", „16", „22", „8", „6", „20", witnesses Ibro Spahić, Emsud Herceg, Nezir Bečić, Edin Memić, Muharem Hamidović, Senada Ahmić, Vahida Šehić, Ferida Ahmić, Rukija Mujanović and Fatima Hamidović.

315. The witnesses „6", „16", „8", „22", „20" and „32" stated that already since May 1992 a part of Bukovačke Čivčije which was inhabited by the majority Bosniak population was under blockade, that checkpoints were set at the entrance and the exit from the village by the military and the police of the so called Srpska Republika BiH, and that soldiers in camouflage uniforms and the JNA uniforms used to come to the village and take away respectable villagers. In addition, Hazim Hamidović was killed during this period of time, which caused a specific fear and psychosis among the villagers.

316. After the attack on Grapska (on 10 May), negotiations were held in Čivčije between representatives of the Muslim authorities and the JNA representatives. On that

occasion, the Muslim population in Čivčije was given an ultimatum to surrender their weapons or otherwise the Serb army would „level the village down“[115]. Although all the weapons were surrendered (mostly hunters' rifles), on 12 June 1992, the Serb forces entered the village and committed the acts that will be explained in detail below. The witnesses „8“, „16“, „20“, „6“, „32“ and Edin Memić testified about the foregoing.

317. The above mentioned witnesses described in the same manner what happened on 12 June 1992 in Čivčije. Their testimony is consistent in the decisive parts and the following can be concluded beyond a reasonable doubt.

318. A number of different units of the army of the so called Srpska Republika BiH entered the village on that critical day. On that occasion, the village mosque was destroyed and a number of houses were set on fire.

319. The witnesses „32“, „6“, „20“, „16“, witnesses Nezir Bečić, Senada Ahmić, Vahida Šehić, Rukija Mujanović, Fatima Hamidović and Emsud Herceg testified that they saw the destruction of the mosque, that is, the minaret of the mosque falling down, which was followed by enormous dust. The witnesses did not see who crushed down the mosque, but they did see that prior to its destruction, the RS Army surrounded the mosque after which a detonation followed, and then its destruction. The Defense witness Momčilo Kovačević also confirmed that on the critical occasion a group of soldiers in camouflage uniforms destroyed the village mosque in Čivčije.

320. The International Court Martial[116], the ICTY jurisprudence[117] and the 1991 Report of the International Law Commission (IRC)[118], pointed out, *inter alia*, the destruction of religious objects as an unequivocal example of crimes against humanity. When committed with a necessary discriminatory intent, this offense represents an attack against the very religious identity of a people.

321. In this specific case, the Panel concluded that before the war, the majority Bosniak population lived in Čivčije and that a widespread and systematic attack was launched in the wider area of the village against the non-Serb population. From the testimony of the above referenced witnesses, the Panel concluded that the mosque in Bukovačke Čivčije was destroyed just because it was intended for the practice of Islamic religion, and thus its destruction represents an attack on the religious identity of the Bosniak population with a clearly expressed discriminatory intent which constitutes the basis of persecution.

322. The witnesses „6“, „8“, „20“, „16“, „22“ and Rukija Mujanović stated that on that day the houses of Besim Begović, Fikret Ahmić, Husein Šišić and the witness "6" were set on fire.

---

[115] Testimony of Witness „8“ at the main trial held on 16 June 2008.
[116] Nuremberg Judgment, pg. 248 and 302, See also Eichmann District Court Judgment, par. 57
[117] See the *Blaškić* case, the ICTY Trial Judgment, par. 227.
[118] 1991 International Law Commission's Report, p. 268 (persecution can also exist in the form of systematic destruction of monuments or buildings belonging to certain social, cultural or other groups).

323. From the evidence adduced, the Panel could not conclude beyond a reasonable doubt that houses were pillaged. Therefore, the operative part of the Verdict concerning Count 2 of the Indictment was adjusted to the established state of facts in this part.

324. An order that all men aged 17-65 must gather in front of the Culture Center in Čivčije followed after the described events. The witnesses are not determined as to who ordered them to gather in front of the Center, except for the witness „8" who stated that Nenad Kujundžić ordered Ekrem Ahmić (the then President of the Local Community) to gather all men from the village at the referenced place.

325. After Bosniak men were gathered at the mentioned location, they were lined up in two rows. This was followed by their several-hours long abuse by members of the armed forces of the so called Srpska Republika BiH, by members of the *Predini vukovi* unit, including the Accused and the Accused's brother, Nenad Kujundžić, which will be described below.

326. As stated earlier, in this Count of the Indictment, the Accused is*, inter alia*, charged with the **torture in violation of Article 172(1) of the CC BiH**. The Panel concluded from the evidence adduced that the actions of the Accused constituted other inhumane acts referred to in this Article, which imply:

- an act or omission of the degree of severity similar to the severity of the actions referred to in Article 172(1) of the CC BiH;
- that the action or omission caused a severe mental or physical harm or injury, namely that they constitute a severe attack on the human dignity;
- that the act or omission was perpetrated intentionally by the Accused or person or persons for whose acts or omissions the Accused bears the criminal responsibility.

327. The examples of inhumane acts referred to in Article 172 of the CC BiH in the ICTY jurisprudence are as follows: mutilation and other types of severe bodily harm[119]; beatings and other acts of violence[120]; infliction of injuries[121]; serious physical and mental injury[122]; a serious attack on human dignity[123]; forced labor which caused severe mental or bodily injury, or an act constituted a serious assault on the human dignity[124]; deportation and forcible transfer of groups of civilians[125]; enforced prostitution[126] and enforced disappearance of people[127].

[119] See the *Kvočka et al.* case*,* the Judgment of the ICTY Trial Chamber, par. 208.
[120] Ibid, par. 208.
[121] See the *Kordić and Čerkez* case, the Judgment of the ICTY Appeals Chamber, par. 117.
[122] See the *Blaškić* case, the Judgment of the ICTY Trial Chamber, par. 239. See the *Krstić* case*,* the Judgment of the ICTY Trial Chamber, par. 523.
[123] See the *Vasiljević* case*,* the Judgment of the ICTY Trial Chamber, par. 239-240.
[124] See the *Naletilić and Martinović* case*,* the Judgment of the ICTY Trial Chamber, par. 271, 289, 303.
[125] See the *Kupreškić i dr*. case, the Judgment of the ICTY Trial Chamber, par. 566.
[126] Ibid, par. 566.
[127] Ibid, par. 566.

328. To assess the seriousness of an act, consideration must be given to all the factual circumstances. These circumstances may include the nature of the act or omission, the context in which it occurred, the personal circumstances of the victim including age, sex and health, as well as the physical, mental and moral effects of the act upon the victim. The fact that an act has had long term effects may be relevant to the determination of the seriousness of the act[128].

329. *Mens rea* for inhumane acts referred to in this Article is satisfied when the perpetrator, at the moment of act or omission, had an intent to inflict a severe bodily or mental harm, or to commit a serious attack on the human dignity of a victim, or of he knew that his act or omission will probably cause severe bodily or mental suffering or serious attack on human dignity and he behaved ruthlessly with regard to this[129].

330. The witnesses "32", "20", "16", "8", Ibro Spahić, Edin Memić, Muharem Hamidović and Emsud Herceg testified convincingly about the experienced fear, sufferings and abuse they were subjected to on this critical day. They testified that after their arrival in front of the Culture Center, the present Serb soldiers lined them up in two lines and started shooting over their heads in order to frighten them. Then they singled out the persons who were in Grapska on 10 May and abused them. The foregoing witnesses described that the soldiers hit them with laths, kicked them, hit them with rifle buts, forced them to lay down in a ditch full of water facing the ground while soldiers walked on their backs. With regard to this, the witness "16" testified "I hardly stayed alive without being suffocated in the water while they walked over our backs". Thereafter, the present soldiers requested from the gathered men to provide them with the information concerning the whereabouts of the witness "6". One soldier ordered Nezir Bečić (at the relevant time he was an imam in Bukovačke Čivčije) to bring the mother of the witness "6", which he did. However, the mother of the witness "6" also did not know where her son was so the soldiers intimidated her by shooting over her head.

331. It ensues from the described circumstances in which the witnesses, and at the same time the injured parties, found themselves on 12 June 1992 in front of the Culture Center in Čivčije that these were the acts of the same gravity as the other acts referred to in Article 172 of the CC BiH. The witnesses were faced with the fear and uncertainty for their destiny, under the surveillance of armed soldiers who were abusing them, physically and mentally, which quite certainly caused a great fear and trauma with the gathered men.

332. With regard to the caused sufferings, the Panel points to the ICTY view that the suffering inflicted by the act upon the victim does not need to be lasting so long as it is real and serious[130]. A mental suffering is characteristic for the conditions with which the men in front of the Culture Center were faced. It was caused by the anxiety and fear from the arbitrary mistreatment by Serb soldiers, without knowing why at all they had been brought to this place. In addition, even during the days before this critical event these

[128] See the *Vasiljević* case, the Judgment of the ICTY Trial Chamber, par. 235. See the *Blaškić* case, the Judgment of the ICTY Trial Chamber, par. 243.
[129] Ibid, par. 132.
[130] See the *Krnojelac* case, the Judgment of the ICTY Trial Chamber, par. 131.

men had lived in the circumstances which created in them the feeling of uneasiness, anxiety, fear and agitation which culminated on 12 June.

333. It was earlier stated that, *inter alia*, *Predini vukovi* also participated in the described abuse of men. This ensues from the testimony of the witnesses Edin Memić, Emsud Herceg and the witnesses "20" and "16".

334. The testimony of the witnesses is not entirely consistent in the description of the soldiers who entered the village on 12 June. The witness „22" testified that the village was occupied by soldiers who had a different accent and wore black uniforms, red caps and hats. Contrary to this testimony, the witnesses Vahida Šehić, Ferida Ahmić and Rukija Mujanović (as other witnesses too) testified that some soldiers were in olive-grey (SMB) uniforms while some were in camouflage uniforms. The Defense for the Accused pointed to these inconsistencies regarding the soldiers' appearance. However, the Panel did not find these inconsistencies decisive for a final conclusion. The Panel took into account that the circumstances under which the incident occurred were specific. The witnesses feared for their own lives, they were in panic and anxiety, thinking of what would happen to their sons, husbands and fathers. In addition, these were mostly the persons who knew nothing about military uniforms and weapons. It should be also taken into account that each individual has a different perception of a certain event, and that everyone will individually focus on certain detail(s), as was the case here too. Taking into account these reasons, the Panel did not find justified the referenced objection of the Defense.

335. The Accused himself participated in the abuse of Bosniak men, having physically abused two officers of the former JNA in the manner as explained below.

336. Different testimony exists regarding his arrival at the critical place. The witnesses „16", „20" and Ibro Spahić testified that the Accused came subsequently (by a white Golf vehicle or by buses with other soldiers), and that his brother Nenad Kujundžić was at the crime scene from the beginning. Conversely, the witnesses „8", „32", Edin Memić and Nezir Bečić testified that both Nenad and Predrag Kujundžić were present at the crime scene during the entire period. The Panel does not find decisive these inconsistencies (as to the means of transportation by which the Accused came to the crime scene and the moment when he came) regarding the establishment of his responsibility for the incidents in front of the Culture Center. The Accused is not charged with the issuance of the order that the Bosniak men be gathered in front of the culture Center. On the other hand, it ensues from the evidence to be analyzed below that the Accused was present and that he inhumanely treated two officers of the former JNA.

337. Of all the persons who were present at the crime scene and testified in this case, the witness „16" was the only one who knew the Accused from before the war. Truly, there was no close acquaintanceship between these two, but the witness „16" knew him by sight through their common friend with whom the Accused went to school. In addition, the witness „16" saw the Accused in an incident that occurred in February or March 1992. The witness „16" drove with his family in the Tuzla direction when he was

stopped on the road by two masked soldiers. Two soldiers without masks were with them. One of them was Predrag Kujundžić who wore a camouflage uniform. He requested from the witness to hand over to him a pistol that he possessed. When the facts that the witness „16“ had earlier known the Accused by sight and the described incident in which he undoubtedly recognized the Accused are taken into account, then it can be concluded with certainty that the witness „16“ could easily and without any dilemma recognize the Accused on 12 June 1992 in Čivčije.

338. The Panel particularly took into account the following words of this witness: "… I also note to the Court that what I am talking about here was not done all by Predo's unit. What I say that it was him who did something, it was so." It can be concluded from this with no doubt that the witness "16" had no motive, reason or intent whatsoever to incriminate the Accused. On the contrary, when testified, this witness was above all convincing and consistent. With regard to the incident in Čivčije, he stated that the Accused was not present from the beginning, but that he came subsequently by a Golf vehicle in which "he drove one of our women". The witness further testified that the Accused asked where the witness "6" was and requested that the Bosniak officers of the former JNA who had been returned from Serbia bring their pistols and uniforms. After they did so, he started beating them because they did not fight on the side of the RS Army. The witness "16" asserted that one of these two officers asked the Accused "Why are you beating me when I was wounded when fighting for Yugoslavia in Dubrovnik?"

339. The witness "32" and witness Muharem Hamidović also confirmed that the Accused demanded that the JNA officers hand in their pistols and that he personally abused them (to be described below).

340. The witness „32“ is not certain as to which one of the Kujundžić brothers (Predrag or Nenad) demanded that the gathered men surrender their weapons, having threatened them that „if a uniform or weapons were found in any house, the house would be set on fire". The witness further testified that he and his colleague (both the JNA officers) surrendered their uniforms and pistols after which the Accused ordered him to lay down on the concrete, to lift up his hands behind his back side of the head and started kicking and cursing him, and calling him an "infiltrator". The witness "32" additionally stated that at one moment he put his hands down his body and that at that moment the Accused kicked his leg and cursed him.

341. The Defense presented to the witness "32" his statement given to the Agency for Investigation and Documentation (AID) in Sarajevo on 6 July 1997 in which he mentioned Nenad Kujundžić, one "unidentified soldier" and "a lieutenant with slanted eyes" who issued orders together with Nenad Kujundžić. Having reviewed this statement, the Panel established that the statement was taken without prior giving any instructions and cautions to the witness regarding his rights and obligations, without indicating the capacity of persons who took the statements, without indicating the specific case in which the proceedings were conducted. It can be concluded from this that the statement was not taken within the action of proving in these specific criminal proceedings and therefore its content could not be presented to the witness pursuant to Article 273(1) of the CPC BiH.

However, the Panel accepted this statement as documentary evidence having considered that its content was relevant to this case.

342. The witness "32" explained that the disputable information from the statement given in 1997 can only be his mistake or a mistake of the person who typed his statement. He confirmed that he was certain that both Predrag and Nenad were present on the crime scene, that Nenad was beating the persons from Grapska, while Predrag was beating him. The witness further explained that the lieutenant ("with slanted eyes") commanded over young soldiers who wore small hats and "who were only safe-guarding while the Kujundžić brothers did the job they started…". Although the witness „32" did not know the Kujundžić brothers before the war, the people who knew the Accused told him subsequently that on the critical occasion he was physically abused by Predrag Kujundžić.

343. Witness Muharem Hamidović also testified that the Accused requested from the present men to hand in their pistols. He did not know the Accused before 12 June, but he had a chance to see him while he worked during his detention time in the *Perčin disco*. The witness described the situation when Predrag Kujundžić, whom he had earlier seen on 12 June in Čivčije, prohibited the detainees (who worked in a garden of one police officer) to have a coffee with him, cursed "the men who drove a blue personnel carrier" and told him "Your place is not here, your place is on the front line". In addition, the witness testified that he used to see the Accused after *Perčin disco* too when the Accused came to Čivčije to his woman-neighbor, in a blue Golf vehicle which he had seized from Zihnija Ahmić on 12 June. He learned the Accused's name in a conversation with other men who had known the Accused from before. He is certain that it is the same person whom he saw on 12 June in front of the Culture Center in Čivčije. Witness Hamidović testified that Predrag Kujundžić weighed about 100 kg, that he was a corpulent man and had black hair. Accordingly, when the presented circumstances are taken into account, the Panel finds that the identification of the Accused by this witness is credible and convincing. In addition, the witness recognized the Accused in the courtroom in a certain and undoubted manner and confirmed that it was the same person whom he saw on 12 June and subsequently when he worked on the property of a police officer (while he was detained in *Perčin disco*). The witness said that at the time the Accused "ordered that I cannot have a coffee with him because he was a Serb, and I was a Muslim".

344. Other witnesses for the Prosecution, who are direct eye-witnesses to the incriminating incident, did not know the Accused, but they learned his name from „the men who knew him". They did not state the names of the persons from whom they had heard this. They rather asserted that „people rumored about this". Bearing in mind that no importance can be given to such statements of the witnesses, the Panel considered them as the supporting evidence regarding the identification of the Accused by the witness „16" and Muharem Hamidović. The Panel shall point below to the important parts of the testimony of these witnesses.

345. The witness „8" testified that Predrag Kujundžić was also present at the crime scene in Čivčije and that he was „tall, corpulent, strongly-built, with moustache" and also

Nenad Kujundžić who was „more brownish". Although the witness did not know the Accused by his name from before, the villagers told him that these were the Kujundžić brothers. In addition, he subsequently saw the Accused in Doboj and was 100% certain that it was the same person who had been in Čivčije on the critical day. The witness was convincing when he noticed during the identification of the Accused in the courtroom that he got „slightly bald". The stated details suggest a certain conclusion on the identification of the Accused who was present together with Nenad Kujundžić in front of the Culture Center in Čivčije.

346. During the cross-examination of the witness „8", the Defense for the Accused presented to him his earlier statements, that is, the statement that he gave on 15 October 1995 in the State Security Service (SDB) Doboj and the statement he gave on 13 March 1998 before the Investigative Judge in the Cantonal Court in Zenica. Having reviewed these statements, the Panel established that the statement given in the SDB Doboj on 15 October 1995 did not contain the necessary instructions (set forth in Article 86 of the CPC BiH) and therefore its content could not be presented to the witness pursuant to Article 273(1) of the CPC BiH. However, the Panel accepted this statement as documentary evidence, having considered that its content was relevant to this case. The Defense submits that in the referenced statements, the witness „8" stated that the Accused came to the crime scene only subsequently, after Nenad Kujundžić. According to the Defense, this is inconsistent with his testimony given at the main trial. The witness nevertheless confirmed his testimony given at the main trial.

347. The Panel reviewed both pieces of documentary evidence (the statement given to the Investigative Judge of the Cantonal Court in Zenica and the statement given in the SJB Doboj). The Panel established that in his earlier statements, the witness „8" stated that the Accused came to the crime scene with his unit immediately after the men had been gathered in front of the Culture Center. Accordingly, in addition to accepting the witness's explanation given at the main trial, the Panel found no inconsistencies in the statements of this witness. On the contrary, the witness was consistent in all his statements that the Accused was present with his unit at the crime scene since the moment when the men were gathered in front of the Culture Center.

348. Witness Ibro Spahić stated that after the men had been gathered in front of the Culture Center, "Kujundžić who had moustache" arrived and told the bus driver (in the meantime buses arrived by which the men were taken to the camp) to drive toward the hangars. As witness Spahić stated, the driver addressed him with the words "Please, Kujundžić, which hangar?" This witness testified that he used to see this person also in front of the "Perčin's shop, in a chair". When he returned home, he learned that the person concerned was Predrag Kujundžić. At the time, he also met "his /*Kujundžić's*/ friend Golub". Witness Spahić asserted that the person whom he saw in front of the *Perčin disco* was the same person who had been present in Čivčije on 12 June and whom he subsequently met as Predrag Kujundžić.

349. Witness „20" stated: „When we were all lined up, then the buses came. Predrag Kujundžić came and hid soldiers with him too". With regard to the Accused, he stated

that he was in a camouflage uniform, corpulent and strongly-built, had moustache and wore a hat on his head. He heard from other villagers that Nenad and Predrag Kujundžić were brothers.

350. The witness „6" and his mother knew the Accused well from before the war. This witness, however, has only indirect information about the incriminating acts. During his detention in the *Perčin disco* he learned from the other villagers of Čivčije, and subsequently from his mother, that the brothers Predrag and Nenad Kujundžić, „one Trifković" and „some other men" were in Čivčije on 12 June. The witness further testified that his mother had told him that „Dujo's sons", that is „a police officer and the older one, more corpulent Predo" came to set their house on fire. When we take into account that the mother of the witness „6" knew the Kujundžić family very well, that Nenad Kujundžić was an active police officer, and the appearance of the Accused at the critical time, it is clear that this description of the Kujundžić brothers is entirely credible and convincing.

351. The testimony of the direct victims were confirmed by the testimony of the witnesses „6", „4", „22", Senada Ahmić, Vahida Šehić, Fatima Hamidović and Rukija Mujanović who heard about the abuse in front of the Culture Center from the persons who were present at the crime scene.

352. In addition to the witnesses' testimony, the Panel also took into account the information noted in the Official Note of the PSS Sector Banja Luka of 28 September 1992[131] indicating that the Accused participated with his group in the „mopping up" of the village of Bukovačke Čivčije.

353. It should be taken into account that all the foregoing witnesses described the same circumstances and that their testimony is all the more convincing because of the existence of certain minor inconsistencies. Nevertheless, all of them are consistent in the decisive part which concerns the specific actions of the present persons, the abuse of the gathered men, and their taking to the *Perčin disco* camp. They are also consistent with regard to the identification of the Accused. It is necessary to bear in mind that these witnesses have survived very stressful and traumatic events and therefore it is quite understandable that they could not memorize all the details in the same manner.

354. The Defense witnesses, Živko Kuzmanović, Đorđo Kujundžić, Ratko Trifunović and Slobodan Jaćimović testified that the described criminal actions in front of the Culture Center in Čivčije on 12 June 1992 were committed by Nenad Kujundžić and his unit and a special unit from Banja Luka (who wore camouflage uniforms and hats). However, having analyzed in detail the testimony of these witnesses, the Panel concluded that they contained a series of illogical issues and contradictions and that therefore they did not bring into question the testimony of the Prosecution witnesses.

355. Witness Ratko Trifunović testified that on the critical occasion in the village center in Čivčije he saw the men who were lined up in two lines, while soldiers in green

[131] Official Note of the Public Security Service Sector Banja Luka of 28 September 1992 (Exhibit T 41)

camouflage uniforms were standing around them. He also saw that Nenad Kujundžić standing in front of them. Witness Trifunović stated that he stayed on that place for five minutes only and that he only managed to see that the men started boarding the buses, but did not see the Accused and members of his unit. He also stated that he did not see "that anybody did anything to somebody there", that the men stood with their heads bowed down and that he did not notice the traces of their being beaten up. The Panel noticed that it was at least strange and illogical that Ratko Trifunović was summoned as a witness in this case bearing in mind his assertion that he stayed in Čivčije for five minutes only. In addition, the assertions of this witness that "nobody did anything to anybody there" at the critical place are inadmissible taking into account the large body of evidence given by the direct victims who convincingly and consistently described the manner in which the soldiers present there abused them on that critical day.

356. On the critical occasion, witness Živko Kuzmanović drove a bus for the transportation of men to the camp. He testified that he did not see the Accused at the crime scene, but he saw Nenad Kujundžić and Ratko Trifunović. However, according to the witness himself, he stayed at that place for "20 minutes at the longest". He did not leave the bus while the bus windows were blurred because of the rain. Accordingly, the presence of the Accused at the crime scene was not brought into question by this testimony, bearing in mind that in the described circumstances the witness could not see what exactly was happening in front of the Culture Center and who was present at the crime scene.

357. The Defense tendered into the case records the statement of Nermin Ahmić given during the investigation[132]. The Defense emphasized that Nermin Ahmić was a direct victim of the criminal actions taken in front of the Culture Center on 12 June, but that he did not mention the Accused as their perpetrator. However, after reviewing this statement of witness Ahmić, it can be observed that it does not show whether Nermin Ahmić knew the Accused at all and, accordingly, it cannot provide any reliable information as to the presence of the Accused in Čivčije during the relevant period of time.

358. In addition to the foregoing, the Defense witnesses Dragoljub Milutinović and Ratko Trifunović testified that the Accused was on a sick leave during the critical period. To this end, the Defense heard expert witness Ljubomir Curkić. The expert witness gave the opinion that after he had left the hospital on 25 May 1992, the Accused was incapable of enduring any major physical efforts for the following 10-15 days. If the medical documentation from the "Sv. Apostol Luka" Hospital from Doboj and the opinion presented by expert witness Curkić are analyzed, it can be concluded that, in the worst case, the Accused was not able to take any major physical effort until 10 June. Consequently, and bearing in mind the information noted in the earlier referenced Official Note of the Sector of the Public Security Service in Banja Luka of 28 September 1992[133], the Panel finds that the Accused had the opportunity and was able to be present when the incriminating actions were committed in Bukovačke Čivčije on 12 June 1992.

[132] The reasons to accept this evidence are stated in detail in the part of the Verdict 3.3.2. (Procedural Decisions)
[133] Official Note of the Public Security Service Sector Banja Luka of 28 September 1992 (Exhibit T 41)

359. The Panel concluded that the above described conditions and the physical abuse of Bosniak men caused great suffering and serious physical and mental harm to those persons. When considered in their entirety and within the context, the Panel finds that these conditions are of the similar gravity as the offenses listed in Article 172(1) of the CC BiH. The Panel finds that the described conditions were intentionally created and directed at inflicting great suffering and serious mental or physical injuries to Bosniak men, which is what eventually did happen.

360. In addition to the foregoing, in this Count of the Indictment the Accused is charged with another act of **severe deprivation of liberty contrary to the fundamental rules of international law.**

361. Article 172(1)(e) of the CC BiH prescribes the elements of this criminal offense, namely:

- Imprisonment or other severe deprivation of physical liberty
- in violation of fundamental rules of international law
- with a direct or possible intent.

362. In the ICTY jurisprudence, in the *Krnojelac* case, the Trial Chamber concluded that "a deprivation of an individual's liberty will be arbitrary and, therefore, unlawful if no legal basis can be called upon to justify the initial deprivation of liberty."[134] The evidence that the persons deprived of liberty were not informed about the reasons for deprivation of liberty or that the justification of such deprivation was not the subject of consideration in a judicial or an administrative procedure can mean that no lawful ground existed for the deprivation of their liberty.

363. From the evidence adduced, the Panel established beyond a reasonable doubt that the men from Bukovačke Čivčije were deprived of liberty on no legal ground. They were deprived of liberty when the men gathered in front of the Culture Center in Čivčije. This is so because after this moment, through their transport to the *Perčin disco* and their detention in this facility, they had no freedom of movement, they were under the surveillance of armed soldiers and had no possibility to move freely. In addition, they could not choose whether or not to appear in front of the Center and they had no way or possibility to leave the critical place. Accordingly, the Panel took into account that no formal order concerning those men existed. To this end, the Panel analyzed the overall circumstances and the situation in Čivčije on that critical day. The villagers had already been disarmed earlier. They were afraid and in fear for and uncertain about their lives. Furthermore, they all knew about the attack and killings of the non-Serb population in the surrounding villages. In such circumstances, Serb soldiers entered the village, destroyed the village mosque and set on fire a number of houses in the village. Thereafter, Nenad Kujundžić ordered Ekrem Ahmić, the Local Community President (LC), to gather all men at the referenced location. It is indisputable that these men had no choice or way to

[134] See the *Krnojelac* case, the Judgment of the ICTY Trial Chamber, par. 114.

offer resistance to the order communicated to them by Ekrem Ahmić. In all this, the soldiers under whose surveillance they were behaved in such a manner that quite certainly caused fear and anxiety in the present Bosniak civilians.

364. The witnesses stated the following about their taking to the *Perčin disco* camp and the role of the Accused.

365. The witness "20" testified that the abuse in front of the Culture Center lasted for two-three hours. Thereafter, the buses arrived and Bosniak men were ordered to board the buses with their hands lifted up on their heads. The witness "16" testified that he did not see the arrival of buses (because at the time he was in a shop where the Serb soldiers had detained him). After he had come out from the shop he saw three or four buses which were boarded by the gathered men. The witness "8" stated that he could not remember whether the Accused personally ordered the men to board the buses, but he remembered that they were ordered to board the buses. In addition, this witness stated that it was obvious right away that Nenad and Predrag Kujundžić "led this group of around 15 soldiers". Witness Ibro Spahić testified that after the men had been gathered in front of the Culture Center, "Kujundžić who had moustache" came and told the bus driver to drive toward the hangars, and, according to Spahić, the driver asked him "Please, Kujundžić, which hangar?" This witness testified that the gathered men were ordered to board the buses. According to this witness, the Accused himself had said that "from the right side from Johovci around 40-50 men can board" the buses. Witness Edin Memić, who was also present in front of the Culture Center, stated that "Serb soldiers" forced them into the buses and that he did not dare look at the soldiers. Witness Emsud Herceg testified that after a several hours long abuse in front of the Culture Center, three buses arrived, into which the Bosniak men were forced "in a somewhat rougher manner" ("…with bowed heads, no looking aside…"[135]). According to witness Herceg, one or two soldiers were present in each bus.

366. In the opinion of the Panel, it can be undoubtedly concluded from the overall described circumstances that this constituted a severe deprivation of liberty.

367. The opposition of this act to the fundamental rules of international law ensues from the fact *per se* that these persons were civilians. In addition, they were never given any explanation as to the reasons for their lining up in front of the Culture Center, nor were they provided with any evidence on the necessity of deprivation of their liberty. The witnesses are consistent in their testimony when stating that they were never informed about the reasons as to why they were deprived of liberty in front of the Culture Center at the critical place and taken to the *Perčin disco*, and that they never received any written document as the grounds for such behavior of the soldiers (a procedural decision or a similar document). Accordingly, their abduction from the village and further detention in the *Perčin disco* were arbitrary and in contravention of the fundamental rules of international law.

[135] Testimony of Emsud Herceg at the trial held on 27 June 2008.

368. The Defense witness Veljko Šolaja also stated during his testimony that the case of the detainees in the *Perčin disco* could be called the unlawful deprivation of liberty. Also, the Defense witness Ratko Trifunović stated that the men in front of the Culture Center in Čivčije were civilians. He stated: „They were taken to Doboj, it is normal that it is the deprivation of liberty".

369. In addition, the Panel established earlier that the Accused was the Commander of the unit which participated in the severe deprivation of liberty of the men in Čivčije, and that he certainly knew that if he deprived a person of his liberty, such deprivation must be based on the law, carried out in a regular manner, and that it did not include arbitrariness in actions in any way, particularly the ruthlessness and mistreatment.

370. The Defense submitted to the case records a number of criminal reports that were filed against certain detainees in the *Perčin disco*. However, it ensues from these reports that they were filed one month after their detention. In addition, the Defense attached into the case file Exhibit O 41[136] where it was indicated that witness Edin Memić was detained in the Central Prison in Doboj during the period from 30 June 1992 to 21 October 1992. When the testimony of this witness and of the other witnesses who supported his testimony are taken into account, it follows that Edin Memić was transferred from the *Perčin disco* to the Central Prison in Doboj only after 12 July (after he was taken to human shields). Furthermore, the information from the referenced Exhibit of the Defense was inconsistent with the information in the Defense Exhibit O 77[137] in which it is stated that witness Edin Memić was examined on 19 July 1992 "on the premises in Usora". Accordingly, it is clear that he could not be at the same time both "on the premises at Usora" and in the Central Prison in Doboj.

371. The Accused is charged with the torture of detainees in the *Perčin disco* itself.

372. The Panel found that after a several hours long abuse (as described earlier), the present civilians were ordered to board the buses by which they were transported to and detained in the *Perčin disco* escorted by armed soldiers. After being driven to the *Perčin disco,* the men were subjected to physical abuse while leaving the bus (the witnesses described that the soldiers who drove them made a "gauntlet" through which everybody had to pass, while the soldiers were beating them). It further ensues from the adduced evidence that the conditions in the *Perčin disco* were very poor. The detained persons laid down on the ground, without beds or any blankets, without basic hygienic conditions, with insufficient food. The Prosecutor's Office tendered into the case file Exhibits T 129[138] and T 124[139] which speak about the existence of the *Perčin disco* camp, and the conditions in this camp. In addition, the detained civilians were abused in the camp, which made the stay of the detained persons even more unbearable. The Defense for the Accused also did not contest these facts. The Panel finds that the conditions in the *Perčin*

[136] Information from the District Prison in Doboj, number 02-713-1487/08 of 12 August 2008
[137] Criminal Report, CSB Doboj, number 13-5/02-230-130/92 of 21 July 1992
[138] Information on the problems and food supply to detained persons and hygienic needs, number 02-404-34/92 of 12 July 1992.
[139] Letter to the PSS Doboj, str. conf. 14-1 of 18 July 1992.

disco were just as described by the Prosecution witnesses who were in the camp during this critical period.

373. However, the Prosecutor's Office failed to prove that the Accused knew about the conditions to which the detainees would be subjected in this camp or that the Accused had any responsibility for the conditions and the organization in the *Perčin disco* camp. Therefore, the Panel could not conclude beyond a reasonable doubt what was the extent, if it existed at all, of the Accused's contribution to the conditions in which the detainees were held in the *Perčin disco* camp. Bearing in mind the foregoing, in the opinion of the Panel, the responsibility of the Accused is limited to the actions of severe deprivation of liberty and inhumane treatment of the Bosniak men in front of the Culture Center in Čivčije, which ended at the moment when the men were taken to the *Perčin disco* camp. Therefore, the Panel omitted this part of the factual description of Count 2 of the Indictment from the operative part of the Verdict.

374. Pursuant to the foregoing, the Panel concluded that in the group of a larger number of Serb soldiers, having acted in a decisive manner, the Accused contributed to the commission of the described actions by taking part in the physical abuse of the gathered Bosniaks and severe deprivation of their physical liberty which is in contravention of the fundamental rules of international law. The Panel concluded that the incriminating actions included the direct intent of the Accused. The Panel based this conclusion on the fact that the Accused knew that this specific case involved Bosniak civilians, that they were disarmed, that they gathered at the critical place upon the order of Serb soldiers and were exposed to physical and mental abuse by the soldiers present there and the Accused personally. Although the Prosecutor's Office qualified the actions of the Accused in this Count of the Indictment as torture, the Panel concluded from the evidence adduced that the Accused acted as an accomplice in the commission of the criminal offense in violation of Article 172(1)(e) and k) of the CC BiH, while the elements of torture were not satisfied.

6.3. Count 3 of the Indictment

375. Under this Count of the Indictment, the Accused is charged with the command responsibility for murder and other inhumane acts against 50 Bosniak and Croat detainees who were taken from the *Perčin disco* camp on 12 July 1992 to be used as human shields.

376. The Panel finds that the Prosecutor's Office entirely proved the facts indicated in this Count of the Indictment and thereby the command responsibility of the Accused for the killing at least 17 civilians and the inhumane treatment of the remaining survived detainees who were taken in a group of 50 civilians to be used as human shields.

377. The Panel primarily finds proved beyond any reasonable doubt that 17 civilians referred to in Count 3 of the Indictment were killed on 12 July 1992. The Defense for the Accused did not contest this fact either, and it was confirmed by the testimony of a

number witnesses and the testimony of expert witness Dr. Zdenko Cihlarž and the attached objective documentation[140].

378. Elements of the act of murder are:

- deprivation of life
- direct intent to deprive the life of someone; that the perpetrator was aware of his act and that he wanted the commission of the act.

379. At the main trial, expert witness Dr. Zdenko Cihlarž presented the circumstances related to the exhumation carried out at the location of Makljenovac during the period from 3 November 1998 to 14 November 1998 and to the drafting of a report on forensic expert analysis for the bodies found. The expert witness stated that all mortal remains found were examined in a typically forensic or anthropological–odontological manner. Regarding the establishment of the cause of death, expert witness Cihlarž stated that in the case of Ešref Ahmić, Hasan Ahmić, Zijad Ahmić, Hasib Kadić, Anto Kalem, Halid Mujanović, Arif Omerčić, Bećir Šehić and Muhamed Zečević it was established that they died as a consequence of gunshot or explosive caused injuries.

380. When it comes to the processing of the mortal remains of Ramiz Hamidović, Meho Mujanović, Mehmed Omerčić, Hasib Omerčić and Muhamed Husanović, the expert witness stated that the cause of death could not be established with certainty. When asked by the Prosecutor whether it was possible for him to indicate the primary cause of death based on the mortal remains as found, the expert witness explained that it was not possible because such expert analyses are not carried out on the entire body. The expert witness explained that these analyses are carried out only based on bone remains while all soft tissues are missing. He explained that doctors give their findings about the cause of death if certain injuries exist on the skeleton material. However, if these injuries (on the skeleton) are missing, it does not mean that in such cases the vital organs or other parts of the body were not injured to such an extent which could cause death. The expert witness also stated that based on what was found during the examination of mortal remains in this specific case it could be seen that the upper parts of clothes of these persons were missing and that they were buried as such.

381. The Panel entirely accepted this testimony of the expert witness, Dr. Zdenko Cihlarž, which is supported by the material documentation (Exhibits T 48 through T 99), and notes that the Defense did not contest it.

382. The mortal remains of Senad Ahmić, Safet Hamidović and Mehmedalija Kadić are still unaccounted for[141].

[140] Reports on Forensic Expert Analysis, Official Notes on Exhumation, Identification Records (Prosecution Exhibits T 48 to T 99)

[141] Excerpt from the ICRC Missing Persons Register for Senad Ahmić (Exhibit T 84), Excerpt from the ICRC Missing Persons Register for Safet Hamidović (Exhibit T 86)

383. The Panel points here to the ICTY jurisprudence according to which it is not necessary to find a body in order to prove the death of a victim. It was concluded in the ICTY *Tadić* case: "Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof to death."[142] In the Judgment of the ICTY Trial Chamber in the *Krnojelac* case it was concluded: "The fact of a victim's death can be inferred circumstantially from all of the evidence presented to the (...) Chamber. It is sufficient to establish that the only reasonable conclusion which can be inferred from the available evidence is that the death of the victim was a result of an act or omission of the perpetrator, or one or more persons for whom the Accused is criminally responsible."[143] The factors corroborating such conclusion include: proof of incidents of mistreatment directed against the individual; patterns of mistreatment and disappearances of other individuals under the similar circumstances; the general climate of lawlessness at the place where the acts were committed; the length of time which has elapsed since the person disappeared; and the fact that there has been no contact by that person with others whom he would have been expected to contact, such as his family. [144].

384. From the adduced evidence, particularly from the testimony of the witnesses who were the direct victims in human shields, the Panel concluded that Senad Ahmić, Safet Hamidović and Mehmedalija Kadić were also killed in the same manner as the other 14 persons, on 12 July 1992 at Makljenovac. Their bodies were not found, but beyond any doubt they were in the group of 50 men who were, escorted by armed soldiers, taken to be used as human shields on the frontlines at Makljenovac and have never been seen since.

385. In this regard, witness Edin Memić testified that he saw when Senad Ahmić was hit in his chest while walking as part of the human shields. Witness Muharem Hamidović stated that around 17 July 1992, together with another detainee from Dragalovci, he was taken out to identify the persons who were killed as human shields. Among other things, he stated that most of the killed persons were placed near a large supporting wall, that a number of bodies were on the asphalt, that the body of Senad Ahmić was on the stairs (the body was not found during the exhumation), and that the body of Safet Hamidović was never found. The witness "16" testified about the killing of Safet Hamidović, and he saw when one Serb soldier killed Safet Hamidović on their way back to the *Perčin disco*.

386. Pursuant to the fact that the mentioned persons were last seen on 12 July 1992 in the human shields and have been still considered unaccounted for, and bearing in mind the foregoing testimony, the Panel concluded that they were killed on 12 July 1992. Bearing in mind the given circumstances (as stated earlier), and particularly bearing in mind that all 17 men were used as human shields, exposed to combat activities at the frontline between the RS Army and the BiH Army, that they were all together taken toward Makljenovac, while escorted by armed soldiers, and that 14 bodies were found on

[142] The ICTY *Tadić* case*,* Trial Chamber Judgment, par. 240.
[143] Also see the *Kvočka* case, Judgment of the ICTY Appeals Chamber, par. 260 and the *Mrkšić et al.* case, Judgment of the ICTY Trial Chamber, par. 486.
[144] Trial *Krnojelac* case, Trial Chamber Judgment, par. 327.

the referenced location, it can be indirectly concluded that all 17 men died on 12 July 1992 at the location of Makljenovac due to the injuries inflicted by fire weapons and explosions. The foregoing facts, including the documentary evidence, are sufficient to establish beyond a reasonable doubt that the death of all 17 persons is the result of using them as human shields by members of the *Predini vukovi* and *Crvene beretke* units.

387. The Panel established that the incident of 12 July 1992 occurred just in the manner as described by the witnesses in their testimony. Some of these witnesses are direct victims, while some of them watched the 50 detainees being taken away from the *Perčin disco* to be used as human shields.

388. All the interviewed persons testified that on 12 July Serb soldiers took 50 Bosniak and Croat detainees out from the *Perčin disco* camp, ordered them to strip to their waist, to put hands behind their heads and took them directly to the frontline between the RS Army and the BiH Army. As an example for the others, Ante Kalem was killed, and while walking as human shields the following persons were killed: Ramiz Hamidović, Safet Hamidović, Arif Omerčić, Mehmed Omerčić, Hasib Omerčić, Zijad Ahmić, Hasan Ahmić, Bećir Šehić, Ešef Ahmić, Senad Ahmić, Mehmedalija Kadić, Hasib Kadić, Muhamed Zečević, Meho Mujanović, Halid Mujanović and Muhamed Husanović. The bodies of Senad Ahmić, Safet Hamidović and Mehmedalija Kadić have not been found, while the bodies of the other mentioned persons were exhumed in the place of Makljenovac in 1998.

389. The Panel will below address the participation of members of the *Predini vukovi* unit in the singling out and the taking away of 50 detainees from the *Perčin disco* camp.

390. It can be concluded with certainty from the testimony of the witnesses "16", "32", Edin Memić and Emsud Herceg that members of the *Predini vukovi* and *Crvene beretke* unit participated in taking away the civilians from the *Perčin disco* and using them as human shields.

391. Witness Edin Memić testified that soldiers entered the *Perčin disco* camp on 12 July and took out the detainees to use them as human shields, having told them that Golub had ordered so. At that moment, the witness did not see the soldiers' appearance (because he was trying to hide), but while he walked in the human shields, he noticed that these were the same soldiers who had been in Čivčije when the men were abducted from the village (the incident referred to in Cunt 2 of the Indictment). The witness testified that he recognized some soldiers by their appearance but that he did not know their names, and that he particularly memorized them by camouflage hats and scarves around necks. The Panel recalls that the witness "4" stated that the soldiers who raped her and the witness "2" wore hats and black scarves on their shoulders.

392. The witness "16" testified that on the critical day two-three soldiers dressed in camouflage uniforms entered the *Perčin disco* camp and ordered that 50 detainees come out. The witness remembered that two soldiers were from the *Predini vukovi* unit, and that soldiers with red berets were among the soldiers who took the detainees in the human

shield. The witness further stated that "all sorts of soldiers" were on the frontline and that at one moment soldiers got mixed so the units of the RS Army "wore colored ribbons in order to be able to recognize each other". The witness stated that he did not see the Accused during these events, but he did see his soldiers. He stated that one of the soldiers told the detainees that Golub had ordered that the detainees be returned to the place from which they were taken. This witness also stated that the detainees rumored thereafter that Golub was "Predo's deputy".

393. The witness "8" testified that during the detainees' withdrawal from the human shield one of the soldiers wanted to kill the detainees who had survived, but he was prevented from doing so by a soldier who told him "Do not kill them, Golub ordered that they should be brought back down there". This witness also testified that the soldiers who took the detainees out of the building were clad in camouflage grey-olive uniforms, that they were "locals" and that they spoke in the jekavian dialect.

394. Witness Emsud Herceg testified that the detainees were taken out from the *Perčin disco* camp on 12 July by members of the *Predini vukovi* unit and „some men from Crvene beretke who were mixed with them", and that the same units were present while they were in the human shields. The witness distinguished these two units by their uniforms. According to him, *Predini vukovi* had somewhat darker camouflage uniforms and hats, while members of *Crvene beretke* had somewhat brighter („paler") camouflage uniforms and red berets on their heads. The witness further testified that on that day he had heard rumors that Golub, "a deputy in the Vukovi unit" was in charge.

395. The witnesses "32" and Ibro Spahić were not used as human shields but they subsequently heard from the other detainees that the *Predini vukovi* unit also participated in taking away the detainees from the *Perčin disco*.

396. Witness Kazimir Barukčić was not in the human shields either. He is, however, definite in stating that it was members of *Crvene beretke* that took out the detainees from the *Perčin disco*. He concluded this, *inter alia*, based on their accent (the accent of people from the R Serbia), green camouflage uniforms and red berets. Witness Kazimir Barukčić knows the Accused. He stated that he used to see him while he was a member of the police. He also recognized him in the courtroom when he testified. He knows about him that he had a unit within the police whose informal name was *Predini vukovi*, that it was an intervention unit, that is, a special unit within the police force. Witness Kazimir Barukčić confirmed that Golub Maksimović was a member of the *Predini vukovi* unit.

397. As it can be seen, the witnesses were mentioning the presence of both *Predini vukovi* and *Crvene beretke*. They also mentioned Golub's presence at the critical place which, taking into account the documentary evidence (Exhibits T 40, T 132 and T 133), the testimony of the Defense witnesses in which Golub Maksimović was mentioned as a member of this unit and the testimony of the witnesses "2", "4" and Žarko Gavrić, also confirms the participation of *Predini vukovi* in the described event. In addition, it ensues from the testimony of Zoran Dević, and partially from the testimony of the witnesses "2" and "4", that Golub was highly positioned within the *Predini vukovi* unit.

398. The Panel further took into account the Prosecution Exhibit T 137[145] in which Milan Stanković stated that on 12 July he had sent the *Predini vukovi* unit into combats as the last reserve, and that it was thanks to this particular unit that the BiH Army offensive was stopped on that day.

399. Witness Žarko Gavrić also confirmed that a part of his unit was on the frontline on 12 July, that all units were mixed, and that some detainees were killed.

400. It ensues from the listed evidence that specifically the members of the unit which was under the Accused's command participated in taking away 50 detainees from the *Perčin disco* camp on 12 July 1992.

401. The facts that they were present at the crime scene, that they participated in taking the persons out from the *Perčin disco* camp, that they participated in taking the detainees directly to the frontline where they were exposed to the fire between the opposite sides speak about the existence of the intent with the members of the *Predini vukovi* unit. The Panel recalls that the detainees were unarmed, stripped to the waist, and were ordered to look down to the ground and keep their hands behind their heads, without any possibility to offer any resistance to the armed soldiers who walked by their side.

402. In addition to the killing of 17 civilians, in this Count of the Indictment the Accused is also charged with **other inhumane acts referred to in Article 172(1)(k) of the CC BiH** whose elements were already mentioned under Section 6.2 of the Verdict (with regard to Count 2 of the Indictment).

403. From the concrete circumstances in which the incriminating incident occurred, to be described below, the Panel concluded that this action bears the same gravity as the other actions referred to in Article 172 of the CC BiH.

404. Witnesses Hasan Mustafić, Edin Hadžović, Edin Memić, Emsud Herceg, and the witnesses "12" "16" and "8" were among the 50 detainees who were used as human shields.

405. The circumstances that they described, the fact that they were taken to the frontline directly from the camp in the manner as they described (naked chests, hands behind heads, looking down to the ground), that they were exposed to cross-fire of the confronted sides without any possibility to save themselves, quite clearly speak about the gravity of mental and physical suffering that these persons experienced. In addition, while the detainees walked as human shields, they saw other detainees being killed around them while they could not escape as they were surrounded by armed soldiers. They all also testified about the murder of Ante Kalem who was killed "as an example" for other detainees in order to prevent them from escaping.

[145] „Alternativa" Newspapers, Year I, Doboj of 8 May 1996;

406. The witness "16" described in detail that the detainees were ordered to walk in front of tanks and personnel carriers of the RS Army units during combat activities. The witness "8" testified that he was forced into human shields although he had a temperature and "could not make any move". He described that while he was in the human shields fire was coming from all sides while "bullets, detonations, shells were hitting around". Witness Edin Hadžović testified that "enormous shooting" was heard and described "…and when we came, we saw that everybody was laying down dead … And then the fire from Praga /self-propelled anti-aircraft gun/ started, all sorts of weapons fired, and the dead persons fell all over the two of us..."

407. Pursuant to all the foregoing, the Panel finds that the described conditions in which the detainees found themselves as human shields in their entirety bear the gravity of individual offenses referred to in Article 172(1) of the CC BiH. According to the Panel, these conditions were created intentionally and were directed at inflicting great suffering and serious mental and physical harm to non-Serbs, which was the final result thereof. The described incident occurred during the period when a widespread and systematic attack was launched and constituted a part thereof. Not only that this incident occurred during and within the context of the already described widespread and systematic attack, but it was made possible already by the existence of this attack, and therefore it constituted one action in the chain of actions by which this attack was launched.

408. The Defense did not contest that the incident indeed occurred on 12 July 1992. However, the Defense submitted that none of the heard Prosecution witnesses confirmed that the Accused was with his unit in the place of "Vila" when the detainees were taken away to be used as human shields.

409. However, when the previously analyzed Prosecution evidence is taken into account, and also the testimony of the Defense witnesses Dragoljub Milutinović, Ratko Trifunović, Slobodan Jaćimović and Željko Ristić who confirmed the participation (and thereby the presence) of the *Predini vukovi* unit on the critical day in combats at Makljenovac, the Panel finds that the Defense arguments are entirely groundless.

6.3.1. Command Responsibility

410. As was previously stated, the Accused is charged under the principle of command responsibility which in the BiH CC is stipulated in Article 180(2). Article 180 of the BiH CC is derived from the ICTY Statute (the Panel indicates that ICTY Statute is an international regulation drawn up on the basis of the authority of United Nations[146]) and is identical to it. By incorporating Article 7 of the Statute in the BiH CC, its international sources and the international judicial interpretation and definitions were also enshrined therein.

[146] Report by UN Secretary General pursuant to Paragraph 2 of the Resolution 808 of the Security Council submitted to the Security Council on 3 May 1993 (S/25704)

411. The principle of command responsibility provides that, under specific circumstances, a commander (or rather, superior) is responsible if he failed to prevent or punish criminal actions perpetrated by his subordinates. In order to be held responsible, the superior had to know about those actions or had reason to know about such actions.

412. The development of doctrine which attributes criminal responsibility to military and civilian leaders, not only when they personally participated in the perpetration of the offence, but also when they failed to prevent or punish the criminal offences perpetrated by their subordinates, constitutes one of the greatest achievements of the period after the Second World War[147]. Article 87, Paragraph 3 of the Protocol Additional I specifies the principle of command responsibility as was hitherto understood in customary international law[148].

413. Command responsibility has developed from the concept of "responsible command" which was included in conventions on humanitarian law which date from the 1899 Hague Convention on Laws and Customs of War on Land and Article 1 of the Regulations Respecting the Laws and Customs of War on Land which is, at the same time, the Annex to the 1907 Hague Convention on Respecting the Laws and Customs of War on Land. "Responsible Command" assigned duty to the superior to create conditions in which his subordinates could act in conformance with international humanitarian standards. Over the time, command responsibility became a standard under which the superior can be personally responsible for failing to perform his duty of responsible command in connection with some specific duties. This responsibility differs from other forms of responsibility in that it considers the superior as criminally responsible for criminal offences of the subordinates, even when the superior did not order the criminal offence or participate in its perpetration. Irrespective of the aforementioned, the failure of the superior to carry out responsible command, that is to say, his failing to prevent the criminal offence and/or to punish perpetrators, makes him responsible for the perpetration of the referenced criminal offence[149].

414. Although the Protocol Additional I refers to international conflicts, the above described principle of command responsibility is not limited to such kind of conflict. On the contrary, as the International Committee of Red Cross stated: "State practice establishes this rule as a norm of customary international law applicable in both international and non-international armed conflicts law"[150]. The former SFRY was a signatory to that Protocol[151] so that it constituted applicable national legislation in the former SFRY. Besides, customary international law is a part of the applicable law in BiH, while the general principles of international law are constituent parts of the legal system of BiH and the Entities[152].

---

[147] Guenael Mettraux, "Command responsibility in international law - the boundaries of criminal liability for military commanders and civilian leaders", Oxford University Press, 2008.
[148] Verdict by the Court of BiH in the *Rašević and Todović (X-KR-06/275)* Case of 28 February 2008
[149] Ibid, p. 127.
[150] International Committee of Red Cross, "Customary International Law", Volume I, Rule 153.
[151] Promulgated in Official Gazette in 1978
[152] Constitution of BiH, Article III Paragraph 3 Sub-paragraph b)

415. In the Decision on Jurisdiction in the *Hadžihasanović et al*. [153] case, the ICTY Appeals Chamber upheld the conclusion of the Trial Chamber in this case that command responsibility represents a part of international customary law both in relation to international conflicts and national conflicts.

416. Also, numerous are examples of cases after the Second World War in which superiors were sentenced for failing to prevent their subordinates to perpetrate a war crime, as well as for failing to punish the perpetrators.[154] Command responsibility, as a principle of customary international law, can be applied to any organization which has a hierarchy, in which the following exists: 1) superior-subordinate relationship, and 2) risk that subordinates will violate customary international law[155].

417. Bearing in mind that responsibility under the command responsibility principle was a part of customary international law at the time when the criminal offence was committed, the Accused is subject to that responsibility.

418. Under Article 180(2) of the BiH CC, the elements of command responsibility are as follows:

- Commission of some criminal offence referred to Articles which are applied (which, among others, includes genocide, crimes against humanity and war crimes)
- the existence of the superior-subordinate relationship between the accused and the perpetrators who committed the criminal offence
- superior knew or had reason to know:
  a) that a subordinate prepares to commit such criminal offence; or
  b) that he committed such criminal offence
- superior failed to take the necessary and reasonable measures:
  a) to prevent the perpetration of such act; or,
  b) to punish the perpetrator of that act.

419. ICTY Trial and Appeals Chambers applied the concept of command responsibility in a number of cases, in cases against military and non-military superiors, and in those cases they closely defined the understanding of command responsibility which had hitherto existed in customary international law. Besides, as was already stated, Article 180(2) is identical to Article 7, Paragraph 3 of the ICTY Statute which constitutes

---

[153] See the Appelalte Decision on Jurisdiction in the *Hadžihasanović et. al*. case of 16 July 2008, par. 31.

[154] *Government Commissioner of the General Tribunal of the Military Government of the French Zone of Occupation in Germany versus Hermann Roechling and Others* Case, Verdict upon the appeal filed with the Supreme Court of the Military Government of the French Zone of Occupation in Germany, Volume XIV, TWC, Supplement B, 1097, 1136. Friedrich Flick et al. Trial, Verdict of 22 December 1947, The Green Series, Volume VI

[155] Verdict by the Court of BiH in the *Rašević and Todović (X-KR-06/275)* Case of 28 February 2008, p. 128.

an international regulation. In that regard, the Panel indicates that national courts "must take into account the original norms of international law and their international judicial interpretations"[156].

420. Hereunder, the Panel will review whether all the aforementioned requirements are satisfied in the present case.

6.3.1.1. Perpetration of criminal offence

421. Pursuant to Article 180(2) of the BiH CC, it is necessary to establish whether the subordinate perpetrated some criminal offence referred to in Articles 171 through 175 of the BiH CC and Articles 177 through 179 of the BiH CC. In the *Naser Orić* ICTY Case, it was established that it is not even necessary that a subordinate be a "chief" perpetrator, in other words, that he committed *actus reus* acts, but it is sufficient that the subordinate was an accessory or inciter[157].

422. In this specific case the Panel previously reasoned how it came to the conclusion that members of the *Predini vukovi* /Predo's Wolves/ Unit committed the specific criminal acts of murder and other inhumane acts referred to in Article 172 of the BiH CC.

6.3.1.2. Existence of superior-subordinate relationship

423. The following requirement refers to the existence of the hierarchy relationship, direct or indirect, between the superior and the subordinates who are direct perpetrators of the criminal offence at issue.

424. While establishing the responsibility, it is necessary to pay attention to the exercise of effective control in terms that the fact that someone had *de jure* power need not *per se* be sufficient in order that command responsibility be attributed to him, unless it is reflected in effective control. It is necessary to establish the possibility of exercising effective control in order to establish command responsibility of the superior *de facto*. Effective control implies actual ability to prevent or punish the perpetration of criminal offences. The doctrine of command responsibility is based on the power of the superior to control the acts of his subordinates. The duty is imposed on the superior to use that power of his to prevent and punish the crimes committed by his subordinates, and if he fails to do so, he is sanctioned by imposing the criminal responsibility on him. As long as the superior has effective control over subordinates, to the extent that he can prevent them from committing criminal offences or punish them after they committed them, he will be held responsible for the commission of criminal offences if he failed to use his capacity of control[158].

---

[156] Gardiner "International Law", p. 156; Higgins "Problems and process: international law and how we use it", p. 206.
[157] *Naser Orić* Case, ICTY Judgement of 30 June 2006, paragraphs 300-302.
[158] See *Čelebići* Case, ICTY Appeals Judgement, paragraphs 196 – 198

425. In proving the actual control, the starting point is the official position of the Accused. The existence of the position of a superior, whether *de jure* or *de facto*, military or civilian, will have to be based on the assessment of actual authority of the Accused. In situations when the superior position is not explicitly stated in the appointment order, it can be derived from the analysis of actual tasks performed by the given accused[159]. In that regard, the factors which indicate the position of power of some accused and his effective control can encompass the official position of the accused, his capacity to issue orders, whether *de jure* or *de facto*, the appointment procedure, the position of the accused in the military or political structure and the tasks which he performed in reality[160]. In the *Blaškić* Case, the Appeals Chamber noted: "indicators of effective control are more a matter of evidence than of substantive law, and those indicators are limited to evidence and that Accused had power to prevent, punish or take measures to initiate proceedings against the perpetrators as appropriate[161].

a) Authority *de jure*

426. Authority *de jure* ensues from the official appointment to the position of a commanding officer within some hierarchical structure. Documentation on such official position is a good evidence that the position was assigned officially, but the lack of documentation is not of crucial importance for establishing the official position if there exists other evidence that the powers which ensues from the position of the superior are officially given[162].

427. The Panel has based the conclusion that the Accused in this Case at the critical time held *de jure* commanding position in the unit "*Predini vukovi*" on the adduced documentary pieces of evidence which are listed in the part of the Verdict under Section 5.3. (Role of the Accused). Specifically, this, *inter alia*, relates to Prosecution Exhibits T 40, T 132, T 133, and Defence Exhibit O 48. Besides, this conclusion is also based on the statement of the Witness Žarko Gavrić, and partially on the statements of the Defence Witnesses Zoran Dević, Zoran Đekić and Đorđo Kujundžić.

428. As noted in Section 5.3. of the Verdict, the Defence adduced specific documentary evidence[163] from which the Panel could conclude only that the Accused was a member of SJB Doboj, and that on 14 November 1992 he was appointed as wartime director of the AMD Doboj.

b) Authority *de facto*

429. Although the official assignment of authority is *de jure* an important indication of the superior-subordinate relationship, it is not, as was already mentioned, decisive, nor is

[159] *Kunarac* Case, ICTY Trial Judgement, paragraphs 397 – 398; Also see *Kordić and Čerkez* Case, Trial Judgement, paragraphs 419-424.
[160] See *Halilović* Case, ICTY Trial Judgement, paragraph 58.
[161] See *Blaškić* Case, ICTY Appeals Judgement, paragraph 69.
[162] *Kordić and Čerkez* Case, ICTY Trial Judgement, paragraph 424.
[163] Exhibits O 32, O 46, O 48, O 55

it crucial and indispensable[164]. Evidence about *de facto* control of authority that is sufficient for exercising actual control include the mode in which the authority of the superior was manifested and recognized, as for instance in the event of issuing orders with expectation that those orders will be executed[165].

430. The Panel has found that the Accused Predrag Kujundžić had effective control over his Unit on 12 July 1992 when prisoners from the *Perčin Disco* Camp were used as human shields.

431. As for effective control of the Accused, important are the statements of Defence witnesses who testified about the authority and respect which the Accused enjoyed among the members of his Unit, and who pointed out that his orders were always obeyed[166]. Thus the Witness Vojislav Sarić noted that the Accused had control over his Unit. The Witness Cvijetin Sarić testified that the "Predragova jedinica" /*Predrag's Unit*/ increased, and that it "followed" Predrag Kujundžić even in the police. Srđan Bogdanović (former member of *Predini vukovi*) testifies that the Accused was a figure of authority among the members of his unit. The Witness Slobodan Đukić noted that he knew the Accused and that he knows that he was a member of the police at the relevant time, that is, at the time of fighting on the St. Peter's Day. That witness noted that he did not know in which company the Accused was, and he explained that at that time companies were usually named by a company commander. Thus, the witness noted that the Accused was "something as a leader of the group, …, well, as Predo's group, it was that way at that time". Dragoljub Milutinović also testified about the authority of the Accused, noting "…because we were part of the Predo's Unit from the time of military police"; the Witness Želimir Borota, who noted that the Accused "held a position of some commander", testified about the same issue.

432. The Panel notes the statement by Žarko Gavrić which he gave during the investigation, and which was partially accepted by the Panel, in which that witness, among other things, noted the following:

> "When our unit *Predini vukovi* became part of police, Predrag Kujundžić was still our immediate superior and I am nor sure who was his superior, whether it was Andrija Bjelošević who was the CSB Chief.…".

433. Pursuant to the foregoing, the Panel concluded that the Accused had the *de jure* and *de facto* control over his unit at the relevant time.

---

[164] See *Čelebići* Case, ICTY Trial Judgement, paragraph 742; see also paragraph 197 in the same case, in the same Judgement

[165] See *Bagilishema* Case*,* ICTY-95-1A-A, Judgement of 3 July 2002, paragraph 59.

[166] See *Orić* Case, ICTY Trial Judgement, paragraph 702.

6.3.1.3. Superior Officer's Knowledge

434. This requirement implies that it is necessary to prove that the superior knew or, at least, had the reason to know that his subordinate had intention to commit a criminal offence, in other words, that he already committed the act. It must be proved that the Accused actually knew (which is established on the basis of direct or circumstantial evidence) that his subordinates were committing or that they were about to commit the crimes or that he had in his possession such information which would at least put him on notice of the risk of committing such criminal offences, because such information alerted him to the need for conducting additional investigation to determine whether his subordinates committed the crimes or were about to do so [167]. Information need not have some specific form; it can be in writing or the superior can perceive it through his own senses[168]. While establishing if the superior had the necessary knowledge, the following can *inter alia* be taken into account: number, kind and extent of unlawful acts, period in which they were perpetrated, number and type of soldiers who participated in them, logistic means that were potentially used, geographical location of the act, wide-spread nature of the acts, speed of the operations, *modus operandi* of similar unlawful acts, commanding officers and personnel who are involved and the place where a commander was at the time of the perpetration of the offence[169].

435. Further, it must be shown that the superior failed to take the necessary and reasonable measures to prevent or punish the crimes of his subordinates. The measures required of the superior are limited to those which are feasible in the given circumstances and are "within his power". Superior has a duty to exercise the powers he has within the confines of those limitations[170].

436. In the present case, the Panel found from the statements by the Witness Edin Hadžović and Witness 34, and also partially from the statement by the Defence Witness Dragiša Marković that the Accused was present on 12 July 1992 in the fighting on Makljenovac, that is, in the vicinity of the *Perčin Disco*, so that he could see that prisoners were moving in front of the Serb military units and combat vehicles.

437. The Witness Edin Hadžović saw the Accused at the frontline on the relevant day, standing next to a Praga and talking over the Motorola. After the conversation he had over the Motorola, the Accused gave the soldiers a permission to use the detainees as human shields. Explaining why in his statement, which he gave to a judge of the Cantonal Court in Zenica, the Witness did not mention the Accused in connection with 12 July, the Witness noted that no one asked him anything specifically about those circumstances, and he additionally noted that back then he gave his statement for Stanković. The Witness confirmed at the main trial that he saw the Accused next to the Praga at the relevant place, and he noted that the Accused wore a multi-coloured military uniform and a red beret. The Panel notes that in a photograph bearing the marking O 84

[167] See *Krnojelac* Case, ICTY Trial Judgement, paragraph 94.
[168] See *Galić* Case, ICTY Trial Judgement, paragraph 175.
[169] See *Blaškić* Case, ICTY Trial Judgement, paragraph 307.
[170] See *Krnojelac* Case, ICTY Trial Judgement, paragraph 95.

(presented to Defence witnesses) the Accused appears in a multi-coloured military uniform with a green beret. Therefore, when one has in mind that, at the relevant place, among others, there were members of the "Crvene beretke" and "*Predini vukovi*", and also the general chaos, artillery and infantry shooting from both opposing sides, fear and panic in which the Witness found himself, it is quite understandable that he did not even need to exactly perceive and memorize the colour of the beret the Accused wore.

438. The Witness Hadžović noted that he knew the Accused by his first and last name before the war, "as Doboj is a small town, people know one another".

439. The Witness 34 too saw the Accused in front of the *Perčin Disco* on the relevant day. As the Witness maintained, the Accused was in the presence of a girl and he was talking with "those upstairs"; he did not come to the camp.

440. The Witness 2 also testified about the Accused's presence during the fighting on 12 July 1992 when she said that on one occasion the Accused was boasting in front of Stanković of having managed to round up people for human shields during the fighting of 12 July.

441. Pursuant to the mentioned statements, the Panel considers that the Accused could see detainees who were moving in front of Serb soldiers and their combat vehicles..

442. The Defence called a series of witnesses who maintained that, after the injury, the Accused did not have *de facto* control over the Unit and that he was not present during the fighting on Makljenovac on 12 July. The Defence maintained that Zoran Dević had *de facto* control over the Unit on that day.

443. As was previously mentioned, in Section 5.3. of the Verdict the Panel analyzed the role of the Accused in detail and, in connection with that, the mentioned complaints and arguments of the Defence. Thus, bearing in mind medical documentation, expert evaluation of Dr. Ljubomir Curkić, as well as testimonies of Žarko Gavrić, Slobodan Đukić, Želimir Borota, Milorad Novaković and Željko Ristić, the Panel concluded that the Accused was able to be present at the relevant place on 12 July 1992.

444. Further, the Witness Zoran Dević noted before the Court that, on the relevant occasion, only a small group of men went with him towards the front line, whereas another group with Golub remained behind them, so that he was not even able to see what Golub was doing, nor was he able to see if the Accused was there at all. Further, the Panel notes that Dević was a Commander of a platoon (as the Witness Dević himself noted during his testimony), and that Golub was a Commander of another platoon within the company which, as the Panel established, was under the command of the Accused. Therefore, the presence of Dević at the relevant place by no means diminishes the responsibility of the Accused.

445. Besides, the Defence heard Vlado Petrović who maintained that on the relevant day he saw the Accused in front of the hospital in Doboj at around 16 hours, where

Nenad Kujundžić was brought after he had been injured, whereupon the Witness and the Accused allegedly went together to Banja Luka where Nenad underwent surgery. The Witness Petrović maintained that he and the Accused returned to Doboj after midnight on that day. This testimony is inconsistent and is contradictory to the Prosecution Exhibit T 136[171] which clearly shows that Nenad Kujundžić underwent surgery on 13 July, but not on 12 July as maintained by Witness Petrović.

446. Witness Đorđo Kujundžić maintained that on the relevant day he was with the Accused in Boljanić, 15km away from Doboj, and that, when panic broke out regarding the combat activities in Vila, he immediately started from Boljanić with the Accused, whom he left in Suho Polje at around 14.00 hours or 15.00 hours. The Panel notes that the Witness Dragiša Marković stated that he saw the Accused in Pridjel at around 14.00 hours and that he was with him for around two hours. It is clear that it can be concluded from those statements that they are inconsistent and that, in any event, they raise doubt about the credibility of testimonies of those persons.

447. The knowledge of the Accused in this event is based exactly on the fact that he was present on the crime scene with his Unit, so that he was able to see the movement of prisoners from the *Perčin Disco*, as well as on the statements given by the Defence witnesses who testified about the authority and respect which the Accused enjoyed among the members of his Unit and who stated that his orders were always obeyed.

6.3.1.4. Superior failed to take necessary and reasonable measures to prevent such actions or to punish perpetrator

448. The last requirement refers to the obligation of establishing that the superior failed to take "necessary and reasonable measures to prevent or to punish the criminal acts of his subordinates"[172]. The necessary and reasonable measures imply those measures which a commander can take within his authority, which is demonstrated by the degree of effective control which he had over the subordinates[173]. The duty to prevent should be understood as resting on a superior at any stage before the commission of a subordinate crime if he acquires knowledge that such a crime is being prepared or planned, or when he has reasonable grounds to suspect subordinate crimes[174]. The Special Chamber for Sierra Leone has interpreted the duty to prevent to extend to prevention of subordinates from obeying illegal orders that could lead to the commission of crimes[175].

449. Bearing in mind that the Accused is charged with non-prevention of perpetration of crimes by his subordinates, the Panel will to that effect analyse evidence that illustrates this.

---

[171] Medical documentation for Nenad Kujundžić, Clinical Centre Banja Luka, Number 01-641-1/09 of 3 February 2009

[172] See *Čelebići* Case, ICTY Appeals Judgement, paragraph 226, and *Krnojelac* Case, ICTY Trial Judgement, paragraph 95.

[173] See *Blaškić* Case, ICTY Appeals Judgement, paragraph 72.

[174] See *Kordić and Čerkez* Case, ICTY Trial Judgement, paragraph 445.

[175] See *Rašević and Todović* Case *(X-KR-06/275)*, Verdict by the Trial Panel of the Court of BiH, p. 183.

450. It ensues from the previously mentioned testimonies that the Accused was aware of the unlawful actions of his subordinates. As was described above, the Accused was on the scene and saw the detainees who were taken out by his subordinates so as to be used as human shields. Although he saw that, the Accused took no measures to halt the movement of detainees who under the described circumstances were exposed to mortal danger. In the described circumstances, the Accused prevented with no action of his the members of his Unit from perpetrating the actions described. On the contrary, it ensues from the testimony of Edin Hadžović that it was exactly the Accused who gave a signal when those civilians needed to be used as human shields.

451. In compliance with his commanding role in that Unit, he was obliged to take measures to prevent the unlawful acts of his subordinates. Despite that, he still did not issue an order to the members of his Unit to return the detainees to the *Perčin Disco*. The Panel especially indicates that the Panel established that the Accused had effective control over his Unit and that, besides his formal position, he enjoyed a large authority and respect among the members of his Unit, that he had control over his Unit and that his orders were always obeyed (as ensues from the statement of Defence witnesses Srđan Bogdanović, Dragoljub Milutinović and Vojislav Sarić).

452. Pursuant to all the foregoing, the Accused, in compliance with his commanding role, had a duty to take necessary and reasonable measures to prevent the use of prisoners of Bosniak and Croat ethnicity as human shields, but he failed to do so. Bearing in mind the aforementioned, the Panel finds that elements of the criminal offence referred to in Article 172(1)a) and k) as read with Article 180(2) of the BiH CC are satisfied in the behaviour of the Accused.

6.4 Count 4 of Indictment

453. Under Count 4 of the Indictment the Accused is charged with the command responsibility for the incident of 19 July 1992, when, according to averments in the Indictment, the members of his unit exposed the detainees of the *Perčin Disco* to a several hours long torture and inhuman treatment, but he took no step to prevent that and to punish the perpetrators.

454. The Panel concluded that the prisoners were indeed exposed to a several hours long physical and mental abuse by members of the *Predini vukovi* in the *Perčin Disco* on 19 July 1992. However, from the adduced evidence the Panel could not establish beyond a reasonable doubt that the Accused knew about the actions of his subordinates.

455. The witnesses 16, 8, 10, Edin Memić, Ibro Spahić and Emsud Herceg described in a precise and convincing manner the soldiers - members of the *Predini vukovi* who abused them, as well as all that they personally experienced on the relevant day.

456. Witness 16 noted that on 19 July 1992, at around 08.00 or 09.00 hours the *Predini vukovi* Unit came to the *Perčin Disco*, that they forced detainees to sing Serb nationalistic songs "*od Topole pa do Ravne Gore*", "*ko to kaže ko to laže*", and that they physically

abused them and beat them "with whatever they had at hand, …, men were hit with chains, axes, laths…". Soldiers were taking prisoners even outside, requiring that immediate family members beat one another. Thus, there were father and son and two brothers. That witness is sure that the described atrocities were committed by members of the *Predini vukovi* Unit, because he recognized some soldiers who were also in Čivčije (relating to Count 2 of the Indictment) and who kept on coming to the *Perčin Disco*, and in that regard he stated: "if someone beats you, then you must remember his face".

457. Witness 10 noted that on the relevant day there came interrogators, inspectors who examined them outside, in front of the *Perčin Disco*, as well as soldiers in camouflage uniforms who were beating and abusing them inside the *Perčin Disco*. The Witness stated that "other detainees did not live to come outside, but when we came in, there was none who was not battered…". Although he did not know anyone of soldiers by his name, on their uniforms he noticed emblems reading *Predini vukovi*. Besides, that witness stated that a day after the abuse came a man who said that his name was Predrag Kujundžić and that his *Predini vukovi* perpetrated the described atrocities by mistake yesterday. After the war, Witness 10 was introduced to the Accused and he maintained that he was not the same person who in the described circumstances introduced himself as Predrag Kujundžić. However, although the identification of the Accused on the relevant time is questionable, it is beyond doubt that the person who falsely introduced himself as Predrag Kujundžić confirmed the participation of the *Predini vukovi* in the incidents of 19 July. That testimony is consistent with the testimony of Edin Memić in the part which describes the presence of the interrogators outside the *Perčin Disco* and the *Predini vukovi* who abused the detainees inside the *Perčin Disco*. Additionally, Witness 10 noted that those soldiers were the same ones who took the detainees out on 12 July and used them as human shields.

458. Describing the abuse of 12 July, Witness Ibro Spahić stated "I can't say that it was Predo Kujundžić and I did not see him, but I saw his soldiers".

459. Witness Emsud Herceg testified that, several days after 12 July, "guys from Ozren" came to the *Perčin Disco* and spent the entire day beating the detainees. The witness maintains that those were *Predini vukovi*, the same ones who were in human shields and who were members of an intervention unit.

460. Witness 8 described his personal suffering he experienced on the relevant day. He noted, among other things, that detainees were taken out, that soldiers were beating them with chains, water pipes and chair legs. No one offered any medical aid to the detainees following the abuse that lasted for several hours. Witness 8 does not know to what unit the soldiers who abused them belonged, and stated that they wore multi-coloured camouflage uniforms and that, among them, he recognized "one who was from the settlement of Pridjel".

461. The Defence presented an alibi for the Accused and the whole of his Unit, regarding that incident. Specifically, the Defence witnesses Srđan Bogdanović, Dragoljub Milutinović and Željko Ristić testified that on 19 July the whole of the *Predini vukovi*

Unit was attending the Orthodox religious service "sedmina" /*seven days upon the death*/ for the killed Nenad Kujundžić.

462. Upon a detailed analysis of the statements of those Defence witnesses it can be clearly concluded that those statements are adjusted to the time and facts described in the Indictment in order to deny the criminal responsibility of the Accused. In the first place, the assertion of the Defence that members of the *Predini vukovi* Unit were attending the "sedmina" for Nenad Kujundžić does not mean that, on the same day, they could not come to the *Perčin Disco* afterwards, especially bearing in mind that members of the *Predini vukovi* had a great motive exactly on that day to perpetrate the described actions against the detainees in the *Perčin Disco*, as they lost some of their colleagues in the battles of 12 July 1992. To that effect, the Panel assessed the statement of Witness Muharem Hamidović who stated that after the human shields the soldiers were embittered by some of their men being killed so they came to *Perčin Disco*, took out the detainees and beat them "without any let up".

463. The Panel considers that the referenced Defence witnesses, especially the former members of the *Predini vukovi* Unit, have a strong motive not to incriminate both the Accused and themselves, in order to protect themselves. Besides, it is unquestionable that they all felt a great respect for the Accused, recognized them as their leader, obeyed his orders and that the Accused enjoyed an absolute authority among them.

464. Beside the aforementioned, the Defence also heard Veljko Šolaja and Branislav Petričević who stated that, at the relevant time, they made interviews with detainees in the *Perčin Disco* Camp, which is also consistent with the testimony of the Prosecution witnesses who mentioned the interrogators who came and questioned them after 12 July. At the same time, those witnesses maintained that they noticed no injuries on the detainees back then and, as they maintained, the detainees did not even complain that someone was beating them. Nevertheless, those witnesses mentioned that, during the questioning, they noticed soldiers in green camouflage uniforms in the vicinity of the *Perčin Disco*.

465. The Panel accepted the averments of those two witnesses that they were questioning the detainees on the relevant day, which was confirmed by some Prosecution witnesses. However, the Panel finds that parts of their statements that they did not see injuries on the detainees are completely illogical and at least "suspicious", bearing in mind the cruelty and barbarity of the abuse which the detainees experienced.

466. The Panel will further address the question of whether the Accused knew that his subordinates were about to commit the described actions, whereby his obligation to prevent them from so doing would exist.

467. In the *Orić* Case, the ICTY Appeals Chamber noted that it is a special question whether – due to the proximity or remoteness of control – the superior indeed possessed effective control[176]. Knowledge of criminal offences and knowledge of a person's

[176] See *Orić*, ICTY Appeals Judgement, paragraph 20.

criminal conduct are, in law and in fact, two different things[177]. In order that the Panel could establish the responsibility of the Accused for those acts, it is necessary to assess whether the Accused knew or if there was reason to know that members of his unit were about to commit the punishable acts or that they have already committed them.

468. In the present case, with regard to the incident of 19 July, Witness 16 stated that, a couple of hours after the abuse, the Accused came to the *Perčin Disco* together with a blond girl who carried a whip and who abused the detainees. However, the Prosecutor's Office did not adduce evidence which would point to the identity of the girl, nor was any evidence adduced that would confirm that the mentioned girl was a member of the *Predini vukovi* Unit at all. Also, the Prosecutor's Office did not prove that, at that time, the Accused could have known in any way about the unlawful actions of his subordinates. Specifically, as it ensues from evidence, the Accused was not present on the scene at the time of the commission of the criminal offences against the detainees, so that he could not have seen the abuse of the detainees. Further, it cannot be concluded beyond a reasonable doubt from the adduced evidence that he saw members of his Unit in the *Perčin Disco*. Besides, no evidence was adduced to indicate that possibly the Accused was subsequently informed about the actions which his subordinates perpetrated on 19 July 1992. Besides, as stated by Witness 16, when the Accused arrived in the camp with the blond girl, he "…did not touch anybody, he did not do anything to anybody, he did not utter a single word". Other witnesses (Ibro Spahić, Edin Memić, Emsud Herceg and Witness 10), who testified about the attendance of members of the *Predini vukovi* on the relevant day, did not even see the Accused.

469. Pursuant to the aforementioned, the Panel could not establish from the adduced evidence that the Accused knew that members of his Unit used to come to the mentioned facility and abuse detainees. Besides, the Panel had in mind that the Accused did not have any responsibility for the *Perčin Disco* Camp, so that he was not obliged to know who was visiting that camp, and to possibly prevent one's entry and abuse of detainees. Further, the Panel had in mind that the adduced evidence indicates that except for members of the *Predini vukovi*, members of the Red Berets and other units also visited the *Perčin Disco*, so that the Accused, even if he had noticed injuries on the detainees, could not have known for sure that those injuries were the result of sadistic abuse by members of his unit.

470. Although the Panel finds that members of the *Predini vukovi* were present on the scene at the relevant time and that they committed the described abuse of the detainees, the Prosecutor's Office did not prove that the Accused knew about those actions, so that the obligatory element (knowledge of the Accused) was not satisfied in order for the command responsibility of the Accused to exist. Pursuant to all the aforementioned, the Panel acquitted the Accused of the responsibility for prevention, that is, punishment of members of his Unit for the torture of detainees of the *Perčin Disco* Camp.

471. The Panel further notes that the factual description under Count 4 of the Indictment does not include the facts and circumstances from which the "knowledge" of

[177] Ibid, paragraph 59.

the Accused ensues, and also notes that it is not enough to only paraphrase the legal description of the offences with which the Accused is charged[178]. Specifically, it is necessary to list the facts which concretize the action of the Accused which constitutes the criminal offence, the facts which will be clear, specific and complete, and which will encompass all elements of the criminal offence. The Panel notes that the factual description in Count 4 of the Indictment list the actions of the Accused as a commander in terms of his omission to prevent or punish the perpetrators, but in so doing the omission was made to list factual details based on which a conclusion can be drawn about his knowledge of the action perpetrated by his subordinates, as well as the facts about the effective degree of control on the part of the Accused, on the basis of which the Panel would find that he failed to take necessary measures in order to prevent or punish the perpetrators.

472. For the above mentioned reasons, the Accused is acquitted of responsibility under the mentioned Count of the Indictment, as was described in Section 2 of the acquitting part of the Verdict.

6.5. Count 5 of Indictment

473. Count 5 of the Indictment charges Predrag Kujundžić that, by the use of force, he coerced Person 2 into sexual intercourse or an equivalent sexual act, and that he incited the member of his Unit, Golub, to commit the same act against Witness 4.

474. In reference to this Count, the Prosecution heard the protected witnesses - aggrieved parties 2 and 4, as well as a team of expert witnesses - neuropsychiatrists and psychologists. In their testimony the aggrieved parties recounted details of what happened to them. In essential parts, their statements are entirely convincing and consistent, whereas minor discrepancies (such as the number of soldiers and the like) are assessed by the Panel as quite comprehensible upon the lapse of a long period of time, and they are anyway not of decisive importance.

475. The witnesses 2 and 4 gave exhaustive, detailed and convincing statements about the experience they underwent.

476. Under the definition given in Article 172(1)g) of the BiH CC, the criminal act of rape exists if the following elements are satisfied:

- coercing another by force or by threat of immediate attack upon his life or limb (...)
- to sexual intercourse or an equivalent sexual act.

477. In the *Furundžija* Case, the ICTY Trial Chamber presented opinion that sexual penetration will constitute rape if it did not occur with true will and consent of the victim. The relevance not only of force, threat of force, and coercion but also of absence of consent or voluntary participation is suggested in the *Furundžija* judgement itself where

[178] Verdict by the Appellate Panel of the Court of BiH, Number X-KRŽ-05/24 of 9 September 2009

it is observed that: ”all jurisdictions surveyed by the Trial Chamber require an element of force, coercion, threat, *or acting without the consent of the victim*: force is given a broad interpretation and includes rendering the victim helpless “[179].

478. The following factors which must (alternatively, not cumulatively) be satisfied in order that the criminal offence of rape exist were established in the same case:

- the sexual activity is accompanied by force or threat of force to the victim or a third party;
- the sexual activity is accompanied by force *or* a variety of other specified circumstances which made the victim particularly vulnerable or negated her ability to make an informed refusal; or
- the sexual activity occurs without the consent of the victim.

479. Witness 2 described in detail what was happening during the days that preceded the relevant event referred to in Count 5 of the Indictment, as well as what happened to her and her mother on an unidentified date in June 1992. She stated that soldiers were searching for her and her mother in the village, that the two of them were hiding until the time when no one in the village dared to help them any more, so that they returned to their house. One day, upon their return, a vehicle stopped in front of their house, whereupon footsteps were heard and a voice saying, “You bitches! Thought you could hide”. Four-five soldiers came into the house, including a soldier whom she previously saw in Grapska on 10 May (when the underage D.D. was killed). The soldiers were armed; they wore multi-coloured camouflage uniforms and hats thrown back behind their heads. She recognized the soldier whom she remembered from Grapska, when he allegedly was shooting at D.D., by a rifle that had a shortened barrel. She saw that rifle on him also on 10 May in Grapska. That soldier struck her on her head, which caused the witness to fall down, and then he started beating her on her head, punching her and stripping the clothes from her. The witness stated that he beat her and raped her (putting his sexual organ into his sexual organ), while cursing her “Balija’s mother”. A dark, remarkably tall and corpulent man took her mother to another room. She learnt later on that his name was Golub. The witness stated that she could not see what was happening to her mother, but she heard her crying and “loud weeping”.

480. Witness 2 further explained that the described soldier from Grapska, after he had raped her, was kicking her, forcing her to put the clothes on. Afterwards, she came into the room where her mother was taken. At that time, her mother was lying naked, covered with blood, unconscious, “it was terrible”, so that they poured some water on her to recover.

481. Witness 2 also stated that after she had been raped, she underwent difficult mental states and crises, and that she tried twice to commit suicide, because of which she started receiving psychiatrist’s treatment. She stated that she permanently feels the fear and that during her sleep she relives all that happened to her.

[179] See *Kunarac et al.* Case, ICTY Trial Judgement, paragraph 440.

482. In the same manner as Witness 2, Witness 4 described the situation in which she found herself together with her daughters before the rape by Golub. She stated that Serb soldiers were searching for her and her children in the village, because of which they were hiding at their neighbours' places for days. After they had had no place to hide any more, they returned to their house. Afterwards, some five days later, three armed men came there. They came into the house saying, "you see that you can't hide". By his appearance and voice, the witness recognized the person (soldier) whom she saw in Grapska on 10 May (who she stated was shooting at D.D.), but that time "...his hair was short, and his beard looked like it has just grown a bit". All of the three soldiers wore green camouflage hats and fingerless gloves and some wore black scarves over their shoulders. The soldier whom she recognized from Grapska turned to her saying, "now you'll see what will happen to your daughter". He laid down the weapons, while the other two soldiers were pointing rifles at her, forcing her to watch what was going on. Her older daughter was on the floor, whereas she held her younger daughter (which was still a baby) beside her. Suddenly, the soldier whom she recognized from Grapska yelled, "Golub!", and then one of the soldiers who were present there took the child from her hands, and the soldier, about whom she stated that she remembered him well, that he was tall, "slim" and dark-haired, took her into the room. That soldier forced her to get undressed. While she was standing stiff, looking at him, he struck her so hard that she "saw sparks in front of her eyes". The witness stated that she did not know his real name, but she knew that he was called Golub and that she could recognize him even today. She could not see what was happening to her older daughter, but she heard her screams from the adjacent room, "leave me alone, let me go, don't touch me". Afterwards, Golub struck her once again and she remained unconscious. When she recovered, she was cold. The dress she had on was unbuttoned, and her underwear was stripped. She felt "some pains", she felt "that her body was no more hers, ..., as if it were numb". Then she saw the soldier from Grapska alone in the house with her daughters. There were no other soldiers. When she went to the bathroom, she saw the blood on her body and she felt a pain in the large intestine which, she maintains, she still feels from time to time and it is an "awful pain". The witness considers that she was raped because nothing else happened to her that would cause to her the described pain and bleeding.

483. The Witness 4 further stated that the soldier from Grapska threatened to her then, "If anyone gets to know about this, it will not be this way. I'll bring over 20 of them". He also said, "What do you think? Serb women are raped in apartments. Why shouldn't you be raped, too". In response to the Prosecutor's question who the "you" referred to, the witness maintained that it referred to her and her daughter, that is, to Bosniak women.

484. Although the witnesses 2 and 4 were not in the same room on the relevant occasion, their statements are consistent in the decisive part. To tell the truth, their statements contain some minor discrepancies, as, for instance, when the mother stated that, after the rape, she had her dress on unbuttoned, whereas the witness 2 maintained that her mother was naked when she saw her. There is also discrepancy in the number of soldiers who came into their house on that day. However, the Panel finds that, taking into account the lapse of time of about 16 years, the different manner of memorizing the

particulars by each individual person, as well as the circumstances of the trauma described and experienced, those particulars are not of decisive relevance in assessing the credibility of those statements.

485. As for the identification of the Accused as a perpetrator of the described actions, the witnesses 2 and 4 had the opportunity to get to know him well during the period to come upon the commission of rape (as shall be detailed in the next chapter, relating to sexual slavery referred to in Count 6 of the Indictment), so that the identification of the Accused is unquestionable. Not even the Defence for the Accused brought into question the identification of the Accused by the aggrieved parties 2 and 4 under this Count of the Indictment.

486. As for the person who committed the rape of Witness 4, this witness credibly described the man whom the Accused addressed as ”Golub!“, and the same description of Golub was given by the witnesses Žarko Gavrić and Witness 22.

487. The team of expert witnesses from the Clinical Center of the University of Sarajevo (Prof. Dr. Abdulah Kučukalić, Prim. Dr. Senadin Ljubović and Doc. Dr. Alma Bravo – Mehmedbašić) carried out psychiatric examination and psychological examination of the aggrieved Witness 2, with the aim of conducting a forensic analysis of her mental health.

488. The Panel notes that the referenced expert analysis is of relevance for two counts of the Indictment, that is, for Count 5 and Count 6 of the Indictment. Therefore, the conclusions and opinion of the medical team refer at the same time to both those Counts of the Indictment.

489. The expert witnesses had the task to establish, if they found that the mental state of Witness 2 was disturbed, the nature of that disorder, the type, degree and duration of disorder, and to give their opinion whether her mental state was the consequence of the experienced war trauma, as well as to establish whether the aggrieved party, given that she was at the age of 15, was able to understand the relevance of the criminal actions committed against her. In addition, the expert witnesses had the task to comment on whether the aggrieved party, given her emotional and mental state, was able to testify in the proceedings conducted against the Accused Predrag Kujundžić, and especially whether her hearing in the presence of the Accused would have a negative impact on her mental health and emotional stability.

490. After the examination had been carried out, the team of expert witnesses presented the opinion that Witness 2 showed an entirely credible, hard and complicated form of Post-Traumatic Stress Disorder (PTSD). It was stated in the finding that basic clinical manifestations of that disorder are a remarkably increased mental agitation, going permanently through difficult traumatic events, numbness of emotional reactions, cognitive disabilities, the feeling of humiliation and inferiority, distrust in people, and destroyed sexual identity. The expert witnesses concluded that the aggrieved party, irrespective of the fact that at the time of the perpetration of the offence against her she

was under 16 years old, was able to completely understand the relevance of the criminal offences committed against her. Eventually, the expert witnesses concluded that the aggrieved party - Witness 2 is remarkably motivated to testify about the atrocities committed against her by the Accused, because she will thereby have the feeling of moral satisfaction. Bearing in mind the degree of motivation of the aggrieved party, the expert witnesses presented the opinion that the current psychopathology of the aggrieved party should not significantly worsen during her testimony.

491. Docent Dr. Alma Bravo – Mehmedbašić presented the psychiatrist Finding and Opinion at the main trial on 12 September 2008. She noted that there exists causal relationship between what was happening to Witness 2 and her state of health, as no psychic disorders caused by stress can exist if traumatic experience did not occur. The expert witness Bravo – Mehmedbašić further noted that at the relevant time the aggrieved party was in the period of adolescence when a person is generally more vulnerable to trauma than a mature person. She also stated that the aggrieved party is trying hard to beautify herself and with fine appearance conceal her destructed inner personality, which is the feature especially of the victims of sexual abuse and torture in whom the PTSD is specifically emphasized by the experience of the victim, that her self-respect, self-reliance and trust in other people are diminished, that her sexual identity is destructed, that her perception of her own body has been disturbed, that she has a distorted perception of her own personality, distorted perception of other people, and also a distorted perception of the abuser. As the expert witness Bravo – Mehmedbašić states, in such actions there exists the abuser who is absolutely a dominant figure, so that it is on his will that the biological and psychological survival of the victim who is completely helpless entirely depends. The expert witness further notes that, in such damage of identity and perception of one's own personality, victims apply specific strategies, which are the so-called "coping" strategies or strategies of facing what is happening to the victim. The victim uses one kind of such strategies during detention, while applying other strategies subsequently in post-traumatic circumstances. Besides the above mentioned, there are also unconscious strategies, at an unconscious level, which are triggered psychologically. One of the conscious "coping" strategies can be that, with her look which is neat and appealing, with her make up and with her attractive clothes, the victim is consciously trying to deny her feeling that she is disgraced, less worth, helpless and without self-confidence. Besides, the victim can also have an unconscious strategy where, according to the defence mechanism, there occurs reactive formation behaviour and self perception in the manner that a victim is telling herself 'I am not injured, I am not bad, disgraced, I am an attractive person, I look nice." The expert witness Bravo – Mehmedbašić explains that we see victims who, at a first glance, do not show the awful consequences until they start to peel off layer by layer from themselves. In the present case, the doctor noted that the aggrieved party - Witness 2 has solid "coping" strategies since she works, that is, sings, which would mean that she functions.

492. In her further statement, the expert witness Bravo – Mehmedbašić noted that the victim suffered traumas in 1992 and 1993, and that she did not start receiving medical treatment until after the war, because at the relevant time she was so much helpless that she was not able to recognize all that was happening to her, and additionally she was not

completely free to see a doctor. Besides, as the expert witness Bravo – Mehmedbašić stated, the aggrieved party was victimized to the extent that she needed some time to recognize that those were symptoms of some disorder. It is for the above mentioned reasons that the aggrieved party did not seek medical aid until she went abroad where she had a kind security.

493. Referring to the ability to testify, the expert witness Bravo – Mehmedbašić stated that the team of the expert witnesses, after it had examined the aggrieved party - Witness 2, concluded that she was in such a state that confrontation with the Accused would not significantly worsen her state.

494. During the cross-examination, the expert witness Bravo–Mehmedbašić stated that the expert witnesses did not examine if some mental disease of the aggrieved party was at issue, but she noted at the same time that the expert witnesses who were examining the aggrieved party did not think at any time that it was a kind of schizophrenia or some mental disease of psychotic character. As for such multiplied traumas, she further stated that it is difficult to say which one of them was a trigger for the appearance of the symptoms or whether all of the traumas together were the trigger. Specifically, for the aggrieved party, the worst traumas are the rape and her brother's death, although the whole of the period of war was traumatic for her. When asked by the Defence Counsel for the Accused whether it was possible that the PTSD appeared in the aggrieved party because of the condemnation of the community, Dr. Bravo–Mehmedbašić noted that such condemnation caused a secondary trauma in the aggrieved party, since in the post-traumatic circumstances the community did not accept her adequately, but that the PTSD appeared because of the rape and detention. She also stated that a long-lasting PTSD can damage memory, but that the expert witnesses, in the present case regarding Witness 2, did not notice that she had significant memory gaps.

495. It was also established in the Finding and Opinion by the psychologist Senadin Fadilpašić that the aggrieved party - Witness 2 is manifesting the signs of chronified PTSD, and that the process of adaptation and return to a normal level of functioning will last for a long time.

496. The Prosecutor's Office admitted the Finding by Dr. Stefan Rudelich of 10 June 2005 into evidence. In that Finding, Person 2 was diagnosed with the PTSD and depressive disease. The certificate of the medical specialist Dr. Stefan Rudelich, which was submitted as attachment to the mentioned Finding, states that the aggrieved party has been receiving medical treatment since 13 February 2004 because, as an underage person, she was repeatedly raped during the war in Bosnia and Herzegovina, since when she has been suffering from massive states of fear, grief, flash-backs, devastating inside unrest, disturbances of sleep and from being intimidated.

497. Statements by the aggrieved witnesses 2 and 4 are partially substantiated by statements of Witness Fatima Hamidović and Witness 22. Witness Hamidović noted that the Accused was looking for Person 2 in her house after 12 June 1992. Witness 22 heard that Golub committed rapes with his unit in the village after 12 June 1992.

498. The Defence noted the alleged contradictions in the statements of the witnesses 2 and 4 which they gave during the investigation in respect of the testimonies given at the main trial. However, the Panel notes that those were but details such as the number of soldiers who came into the house of the aggrieved parties on the relevant day, their clothes (that is, uniform) and a car by which they arrived. According to the Panel, those discrepancies in no way bring into doubt the testimony of the aggrieved parties who convincingly and consistently described the traumatic situation in which they found themselves and presented the particulars of what happened to them. It is necessary to take into account the specific character of the situation in which those witnesses found themselves, the fear and panic they felt, as well as the fact that 16 years passed since the incident in question. Besides, it is beyond doubt that each individual has a different ability of perception and of perceiving details. Also, one should not forget that the witnesses, over years, on several occasions, gave statements to different law enforcement agencies and it is quite natural that those statements cannot fully coincide in details, especially when one has in mind the process of natural reconstruction of the experience in each individual person. Besides, when all statements of those witnesses are analysed, it can be concluded with certainty that those statements are consistent in their essential parts.

499. The Defence did not adduce a single evidence referring specifically to this Count of the Indictment, but it tried to "destroy" the credibility of Witness 2 through the testimony of Defence witnesses about the behaviour of Witness 2 following the relevant period.

500. Witness 2 described the incident of rape in detail and clearly, mentioning numerous particulars. The Panel considers that it is necessary to take into account the fact that at the relevant time she was an underage person (she was 15 years old), that she was in a specific personal situation and tragedy, which caused in her a specific mental state. In support of such conclusion is the Opinion of the expert witness Alma Bravo–Mehmedbašić who notes that at the time of the traumatic incident the aggrieved party was in the adolescence period when a person of that age is generally more vulnerable to trauma than some mature person.

501. The Panel finds that it is necessary to take into consideration the whole situation in which the witnesses 2 and 4 found themselves at the time of the incident at issue. Specifically, they suffered a personal tragedy, they found themselves alone, without protection by their husband and father, they knew that they were searched for in the village by Serb soldiers from whom they were hiding for a long period of time. Therefore, in the described circumstances they beyond doubt were completely helpless to oppose the Accused, Golub and the soldiers who were with them.

502. The Panel has found from the adduced evidence (previously described) that the Accused personally raped Person 2, making sexual penetration applying force, without her consent, despite her putting up resistance; she implored him to let her go and she screamed, so that the screams were heard in the adjacent room where Golub brought her

mother. In that connection, particularly relevant is the fact that at that time Person 2 was only 15 years old. Besides, the Panel found that, during the rape, the Accused insulted her on ethnic grounds, by cursing her "Balija's mother".

503. Further, the Panel concluded from the statements of the witnesses 4 and 2 that Golub, incited by the Accused, perpetrated the criminal offence of rape against Person 4.

504. Incitement is prescribed in Article 30 of the BiH CC, and it is also one of the forms of Individual Criminal Responsibility referred to in Article 180(1) of the BiH CC.

505. In the ICTY case law, incitement is defined as inciting another person to commit a criminal offence[180]. *Actus reus* required for "instigating" a crime is any conduct by the accused prompting another person to act in a particular way. This element is satisfied if it is shown that the conduct of the accused was a clear contributing factor to the conduct of the other person(s). It is not necessary to demonstrate that the crime would not have occurred without the accused's involvement. The required *mens rea* is that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts [181]. It could be concluded that both acts and omissions may constitute instigating and that this notion covers both express and implied conduct[182]. Except with direct intent, instigating can be done if a person who instigates another person to commit an act or omission was aware of the substantial likelihood that a crime will be committed in the execution of that instigation, therefore with potential intent, too. Instigating with such awareness has to be regarded as accepting that crime.[183].

506. In the present case, the Accused committed the act of instigating in such a way that he, upon coming into the house in which the witnesses lived, having thrown Witness 2 down on the floor and started putting his clothes off, making it perfectly clear that he intended to rape her, he called "Golub!", whereupon Golub took Witness 4 to another room where he forced her to get undressed, and when she did not do so, he struck her so hard that she "saw the sparks in front of her eyes", and then he struck her one more time so hard that she lost her consciousness. Witness 4 described that, when she woke up, she saw that she did not have underwear on and that her dress was unbuttoned; she was cold and she was covered with blood; she felt "some pains" and a pain in the large intestine, and her body was "as if it were numb". Witness 2 corroborated the statement by Witness 4 stating that, although she was not able to see what was going on in the other room, she heard loud weeping and crying and later on she saw Witness 4 lying on the floor, naked and covered with blood. Besides, the Panel had in mind the averments by Witness 4 that, due to the rape experienced, she attempted to commit suicide, and that she subsequently visited the Medica citizens' association for treatment.

[180] See *Krstić* Case, Trial Judgement, paragraph 280
[181] See *Kvočka et al.* Case, Trial Judgement, paragraph 252.
[182] See *Blaškić* Case, Trial Judgement, paragraph 280.
[183] See *Kordić and Čerkez* Case, Appeals Judgement, paragraph 32.

507. Assessing the Accused's act of instigating Golub to the rape, the Panel took into account that the Accused was Golub's superior formally, and, besides, he enjoyed a high degree of respect, authority and in a way he was a role-model to his subordinated soldiers.

508. The above mentioned is evident from the situation when the Accused instigated Golub to rape Witness 4. Specifically, the Accused attacked Witness 2 with a clear intention to rape her. At that time, Golub and Witness 4 were, among others, present in the room. Golub saw that the Accused fell on Witness 2, and, in so doing, the Accused turned to him saying authoritatively, "Golub!" It is clear that the described action of the Accused, as a superior, appeared as encouragement to Golub and it incited him to coerce Witness 4 into sexual intercourse by using force.

509. The Accused was aware of all prohibited goals because of which the witnesses would be raped and he wanted such outcome, and he acted with direct intent within a widespread attack of the Serb military, police and paramilitary formations on the non-Serb civilian population in that area.

510. Pursuant to all foregoing, the Panel found the Accused in this Count of the Indictment guilty of the commission of rape, as well as of instigating to the act of rape referred to in Article 172(1)g) of the BiH CC, as the Amended Indictment charged him. The Accused is responsible of rape under Article 180(1) of the BiH CC, whereas for instigating he is responsible under Article 30 as read with Article 180(1) of the BiH CC.

6.6. Count 6 of Indictment

511. Under Count 6 of the Indictment the Accused is charged that he kept Witness 2 (the aggrieved party) in sexual slavery from June until December 1992.

512. Sexual slavery is prescribed under Article 7 of the Rome Statute of the International Criminal Tribunal. The elements that qualify this action were established as follows:

- the perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a persons, or by imposing on them a similar deprivation of liberty;
- the perpetrator caused such person or persons to engage in one or more acts of a sexual nature;
- the conduct was committed as part of a widespread or systematic attack directed against a civilian population;

- the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

513. Furthermore, sexual slavery is also punishable under Article 2 of the Statute of the Special Court of Sierra Leone.

514. The Appellate Panel of this Court also established in the *Gojko Janković* Case[184] that the elements that constitute the crime of sexual slavery are as follows:

- intentional exercise of any or all of the powers attaching to the right of ownership over a person
- perpetrator subjected a victim to sexual intercourse on one or more occasions.

515. The aggrieved party - Witness 2 presents clearly and in detail all circumstances of the referenced acts. She describes all manners of the Accused's relationship to her, how he treated, abused and humiliated her, making it clear to her in all ways possible that he could do to her whatever he wanted. This witness describes the pains she was exposed to and which caused her to suffer severe trauma, which she has been treating medically for years.

516. "The commencement" of the actions that marked the entire period of time during which the Accused kept Witness 2 in sexual slavery is rape as previously described (relating to Count 5 of the Indictment). As was stated above, the Accused already then threatened Witness 2 that she had to do all that he was going to ask her to do, or otherwise he would bring some more soldiers to rape both her and her mother and younger sister, or that he would kill them all. Next day, Golub came by and took her to the Automobile Association (AMD) Doboj where the Accused received her and gave her a paper reading that she was a minor and that, with the consent of her parents, she was going to take a Serb name A.K. instead of her Bosniak name. On that occasion, the Accused told her that the referenced name was a real Serb name and that she had to use it from that day. In so doing, he threatened her by saying that she knew what would happen to her if she disobeyed him. Witness 2 further noted that, on that day, on their way home, the Accused gave her a chainlet with a cross and told her that she had to wear it around her neck and that she must not take it off, "not even at the price of her eye-sight", so that the Witness wore it permanently.

517. Those averments were also confirmed by Witness 4 who noted that the Accused, on one occasion, came to her house together with Witness 2 who wore the chainlet with a large cross on her neck and gave her a decision on the change of the name of her daughter to the name A.K. to read. Witness 4 noted that her daughter was 15 years old at that time, and that she (as mother) was never asked by anybody to give consent for that change of name.

[184] See Case of this Court, *Gojko Janković (X-KRŽ-05/161)*, Verdict by the Appellate Panel

518. Witness 2 also testified about her going to the *Radio Doboj* where she was brought by the Accused and Karaga and where she was given a paper with a text that she had to read. It was written in the text that she called all residents of her village to change their names, to cross themselves, that she would do the same, that Muslims were to blame for the war and that Muslims killed her brother. The Witness stated that she was stammering then, that she had blackouts, and that later on she learnt from a doctor that the referenced stammering and blackouts were the result of fear, traumas and all that was happening to her. Because of that stammering, she had read the text several times before she read it publicly on air. As for the referenced event in the *Radio Doboj*, Witness 4 stated that she asked her daughter (the aggrieved party) "where did you find such words", whereupon her daughter replied, "Mom, I had to, they wrote them for me".

519. The defence heard Witness Milenko Gligorić who at the relevant time was a director of the *Radio Doboj*. That Witness maintained that the Accused and Witness 2 never came together to the *Radio* premises. However, when the assertion by that Witness that he never met Witness 2 is taken into account, and that he "indeed does not know who she is", quite a logical question is asked as to how he could be sure that Witness 2 never came to the *Radio Doboj*. Besides, the Witness stated, among other things, that he was not present on the *Radio* premises every day, so that in any event he need not have been acquainted with the arrival of Witness 2 (even if he had known her). For the referenced reasons the Panel finds that the statement of Witness Gligorić by no means refutes the testimony of the aggrieved party and her mother.

520. Witness 2 recalled that, after her visit to the *Radio*, the Accused and Karaga took her to a house crammed with soldiers in the settlement of Bare near Doboj, where the two of them stripped her, beat her, cursed her "Balija's mother" and "brutally" raped her in such a way that, during the rape, they also used other objects such as a bottle and a pistol. She stated that afterwards she was turned back - home, completely weary, exhausted, torn up and dirty.

521. Witness 2 further testified that the Accused took her to the Doboj SUP, that they took her photograph there, that they took her fingerprints and that she received an identity card bearing the name A. K. Further, she stated that the Accused took her once in front of a department store in Doboj and told her to put on a camouflage uniform and a red beret which she had to wear every day.

522. Residents of the village in which she lived used to see her going out with the Accused who turned her back home; they used to see her wearing a uniform and a cross, and they heard her voice over the *Radio Doboj*. The Witness stated that she felt as if lost because in the eyes of the ethnic group to which she belonged she was "a traitor and a Chetnik woman" due to all of those things, whereas, on the other hand, she was a "balinkura" /*translator's note: pejorative expression for a Muslim woman*/; she stated that the worst thing for her was when she was going through the village wearing the cross she was ashamed looking at Muslim graves while women were standing by, spitting at her and calling her "Chetnik's whore". The Witness stated that she feels that she is still

the worst person, that there is no place for her anywhere, that she hates herself, that she still feels that the cross she wore still "burns".

523. The aggrieved party further stated that the Accused took her once to the front line where he "gave" her to soldiers of the Serb Army and told them, "take her now, you can have some fun". Thereafter, Golub and one more soldier nicknamed Brzi took her to a trench where they both raped her, vaginally and orally, and beat her in so doing. After them, some other soldiers also came into the trench, and they beat her again and raped her. Those averments were also confirmed by Witness 4 who stated that, on one occasion after she had not come home for two days the aggrieved party told her that she and the Accused had been to Trebava, that is, Ozren. Afterwards, the aggrieved party jumped up all of a sudden and told Witness 4 not to ask her anything, that she was not allowed to say anything because otherwise she would get a bullet in her forehead.

524. Further, Witness 2 stated that she did not have anyone, that she was not allowed to get out of the house, that she could not tell her mother what was happening to her, so that she started writing a diary about that. She further stated that the Accused found the diary, beat her up because of the things she wrote therein and took the diary away. Those averments were confirmed also by Witness 4 who further stated that, when the Accused found the aggrieved party with the diary, he slapped her on the face and beat her saying to her, "do you actually find the Serb soldiers to be bandits".

525. Apart from Witness 4, witnesses Muharem Hamidović, Fatima Hamidović and Witness 22 testified that the Accused visited Witness 2, and that rapes took place in the place where they lived.

526. The Defence presented a number of objections to the testimony of the witnesses 2 and 4.

527. In the first place, the Defence Counsels for the Accused pointed to the discrepancies in numerous statements of Witness 2, as well as in mutual statements of the witnesses 2 and 4.

528. In respect of the discrepancies in the statements of Witness 2, the Panel is of the opinion that those differences appeared as a result of a considerable lapse of time during which she gave statements a number of times to different authorities, so that it would be unreasonable to expect all those statements to be identical. In that regard, the Panel notes her testimony at the main trial during which she described the manner in which "two men" took her to AID in 1999 to give a statement. Specifically, she stated that those persons were yelling at her, required that she "confess" and talked about "some tactical groups", because of which the witness was afraid and "smiled in desperation".

529. Regarding the alleged inconsistencies in mutual statements of the witnesses 2 and 4, the Panel finds that both of the witnesses described the same circumstances, and their testimonies are even more convincing taking into account the existence of some minor discrepancies among them. Their statements agree and are mutually consistent in the

decisive part referring to specific actions of the Accused. One should bear in mind that those witnesses underwent rather stressful and traumatic events which lasted for a long period of time (around six months), when they feared for their lives every day, so that it is quite understandable that they could not chronologically memorize all details and remember them in the same way.

530. In addition to the aforementioned, the Defence adduced Exhibits O 43[185] and O 44[186] from which it ensues that the identity card bearing the name A. K. was issued in December 1992, not during the summer of the same year (as the witness claimed). The Panel notes that the aggrieved party stated during the testimony that she could not say exactly in which order the described things happened because a lot of time had passed, but she could say exactly what events took place back then and that they took place during the period from June until December 1992. Besides, the Witness stated that the Accused took her to a police station several times, but that she could not remember when exactly he took her there to change her identity card. The Witness could not remember all reasons and situations when and why the Accused was taking her to the police station.

531. Also, the Defence maintained that the aggrieved party voluntarily signed the request for the change of her first and last name, which is contrary to her testimony. Specifically, the witness maintained that she never signed any papers for the change of her first and last name. As for this assertion of the Defence, the Panel notes that Witness 2 described clearly and in detail under what circumstances the change of her name occurred. Besides, a question is raised as to what extent the voluntary action of Witness 2 was possible at all, taking into account the circumstances in which she found herself and the fact that back then she was only 15.

532. With the aim of challenging the credibility of Witness 2, the Defence adduced the evidence about her baptism in Derventa in 1996[187]. On the other hand, the aggrieved party testified that she was baptized in Bijeljina in 1992. However, as the baptism of the aggrieved party is not the subject of the Indictment, the Panel did not go into a more detailed analysis of the mentioned evidence. As assessed by the Panel, the filing of that evidence of the Defence did not affect the complete image of the testimony by the aggrieved party and her credibility. Besides, the Panel notes the averments by Witness 2 that there exists the possibility that she was baptized in Derventa and that she was not aware of that, given her mental state in which she was then.

---

[185] Photocopy of certified documents, CJB Doboj-Police Station Derventa, Number 11-5/05-207-101/07 of 1 August 2007

[186] Supplement to the documentation, CJB Doboj, Number 11-05/2-206-272-2/07 of 2 August 2007, attachment (Photocopy of file of ID reg. number 4555/92 issued to the name of Aleksandra Kujundžić, Photocopy of Birth Certificate of 15 December 1992 bearing the name of Aleksandra Kujundžić, Photocopy of excerpt from the Registry of the change to personal name)

[187] Excerpt from the Book of baptized and anointed persons of the Zvornik-Tuzla Serb Orthodox Church for the year 1996, Number 115 of 23 September 1998, Attachment (Excerpt from the record of the born and baptized persons of the Serb Orthodox Church of 1996, Assumption of the Blessed Virgin Mary in Derventa of 21 March 1996, Request addressed to the Administration of the Serb Orthodox Parish (Exhibit O 38)

533. Further, the Defence witnesses testified that the intercourse between the Accused and the aggrieved party was voluntary, and that the aggrieved party acquired particular gains from the relationship with the Accused.

534. Specifically, the position of the Defence is that the witnesses Dragoljub Milutinović, Đorđo Kujundžić, Branko Jošić and Milenko Bilić stated the truth in respect of Witness 2, and that the referenced truth is that Accused got to know Witness 2 in December 1992 and that the referenced acquaintance lasted for about one month, that the Accused helped her to get the identity card and change her family name in order to go abroad, that the aggrieved party "hedged her bets" (referring thereby to the Accused and Vinko Topalović), that the witnesses 2 and 4 received help and protection from the Accused and Topalović and that, for that reason, no one in the village liked them. Finally, the Defence's argument is that all actions described in the factual substratum of this Count of the Indictment refer to Vinko Topalović, not to the Accused.

535. The witnesses Dragoljub Milutinović and Branko Jošić maintained that they saw Witness 2 with the Accused in December when the Accused brought her to the police so that she could report "some" persons who raped her. However, the statements of those two witnesses are mutually contradictory, so that Witness Milutinović stated that Branko Jošić told him about Witness 2 that she was "a crazy woman and that she married three times", which was refuted by Witness Jošić during his testimony. Further, Witness Đorđo Kujundžić also stated that he got to know Witness 2 in December, but he by no means refutes that the Accused and Witness 2 knew each other from before.

536. The Panel does not find well-founded the assertion of the Defence that the relationship between Witness 2 and the Accused was voluntary. On the contrary, the Panel notes that the aggrieved party at the relevant time was an underage person who accordingly was not psychologically and emotionally a mature person in full. Besides, the Panel had in mind the overall circumstances in which she found herself, which include the attack of the Serb Army on the Bosniak population in the place where she lived, and also the fact that the Accused was a member of that Serb Army, that he had authority and power, and that he had psychological control over her as well as control over her movements and sexuality. One should not forget the fact that the aggrieved party, together with her mother and younger sister, was completely unprotected in the place in which they lived. It is clear that in the circumstances described the aggrieved party was not able to offer any resistance to the Accused.

537. The Defence heard Witness Milenko Bilić, too, in order to challenge the credibility of the aggrieved party. Witness Bilić maintained that in October 1992 he was introduced to Witness 2 by his friend Dragan Ostojić with whom she allegedly had relationship then. The referenced witness maintained that the next time he met the aggrieved party he asked her to live together with him, that she agreed to that, and that they lived together in a common-law marriage at his parents' place for about a month and a half. Witness Bilić maintained that he did not know the Accused at that time.

538. The Panel finds such statement by Witness Bilić at least unrealistic and unacceptable, especially bearing in mind his assertions that he, immediately after he had met Witness 2, asked her to live together with him, although she allegedly had relationship with his friend Dragan Ostojić then. Besides, one should bear in mind that Witness 2 was a minor at that time. Witness 2 mentioned the name of Milenko Bilić in her statement, but as a person whom the Accused "was giving" her, with which the statement of Witness 4 is consistent. Therefore, upon analysing those statements, it can be concluded that the statement of Witness Bilić is fabricated with the aim of helping the Accused avoid his criminal responsibility, and is additionally motivated by personal interests of the witness personally.

539. The witnesses Savo Pijetlović, Radomir Džigerović, Ljilja Karanović and Svetozar Milojević testified about the lifestyle and conduct of Witness 2 after the war (during her stay in Derventa), and their statements were mainly directed at undermining the credibility of the aggrieved party. Specifically, they testified that Witness 2 shortly after the war went in for music, and that during her stay in Derventa she did not show any signs of depression or trauma. However, as all of those persons testified about the events that go beyond the time framework of the Indictment, such statements (which do not refer to the relevant time), according to the Panel, cannot be decisive in terms of repudiating the veracity of Witness 2's testimony about what happened to her.

540. The Defence adduced the evidence by hearing the expert witness Milan Stojaković who challenged the Finding and Opinion of the Prosecution expert witnesses. His expert evaluation included: the analysis of documentation submitted from the case file, the analysis of the psychiatric expert evaluation previously conducted, analysis of psychological Finding and Opinion and analyses of the other documents relating to the Witness 2 (audio and video recordings, newspaper's articles, photographs and the like).

541. The expert witness Stojaković has challenged the PTSD diagnosis given by the Prosecution expert witnesses. He stated that that there is no causal relationship between potential rapes and the PTSD, and maintained that, if the examinee had the PTSD and if those changes have lasted for more than two years, then it is not the PTSD any longer but a lasting change of personality, which would be incompatible with her fitness for work and ability of socializing. According to the expert witness Stojaković, if someone is in the business of providing public entertainment and sings and has a chronical PTSD, it sounds like "science fiction", so that, according to him, it is possible only that the examinee suffers from some other psychiatriatic illness. The expert witness Stojaković has also challenged the psychological Finding and Opinion by Dr. Senadin Fadilpašić, and maintained that Dr. Fadilpašić presented a series of contradictory assertions.

542. At the same time, the expert witness Stojaković stated that for the examinee "there exists medical documentation which allegedly could point to the PTSD", but he has not established his diagnosis, but has provided a series of "instructions" on the way of establishing the diagnosis of the PTSD.

543. After the Panel had analysed the Finding and Opinion by the expert witness Milan Stojaković, bearing in mind his replies given during the cross-examination carried out by the Prosecutor's Office, it has found that the expert witness Stojaković, in his expert evaluation, mainly commented on the conclusions and opinions of the Prosecution expert witnesses, without bringing forward any conclusions of his own. Besides, his Finding and Opinion contains a series of assumptions and questions with no replies. The Panel further notes that a part of the Finding of that expert witness is based on the analysis of musical video spots, photographs and newspaper articles. Although the expert witness Stojaković states in his Finding that, besides the fact that Witness 2 sings, "she also dances to the rhythm of the music, which not in the least seems to comply with a serious depression", the Panel refers to the conclusions by the Prosecution expert witness team who clarified that the external appearance of Witness 2, her presentable appearance and engagement in music constitute a way of denying her inner feeling that she is dirty and less worthy. The expert witness Bravo–Mehmedbašić explained that in the present case the victim's "coping strategy" means that she is trying consciously, with her external appearance that is neat, appealing, with make-up applied and with attractive clothes, to deny her feeling that she is disgraced, less worth, helpless, that she has no self-confidence and that she is practically completely damaged. She also stated that it can happen that subconsciously, under the type of self-defence mechanisms, there may be some response formation behaviour and self perception which partially comes from the subconscious, such as: "I am not at a subconscious level, I am not damaged, I am not bad, dirty, I am attractive, I look good", so that, at first sight, we see their façade; the surface layer does not indicate those terrible consequences until the layer by layer begins to be removed. According to the expert witness, this is a sound coping strategy used by the aggrieved party who works, that is to say, sings, which would mean that she functions.

544. Having in mind all the adduced evidence in respect of this Count of the Indictment, the Panel entirely gave credence to the statements of the witnesses 2 and 4, given that their statements are consistent in the manner that they do not leave the Panel with any doubt about their veracity and credibility. The Panel finds that the aggrieved party gave completely precise, extensive and clear replies which the Witness 4 confirmed. Further, the statement by Witness 2 must in the first place be brought in the context of the period during which all the described incidents took place, the fact that she first underwent a traumatic experience during the first rape and was then exposed to severe physical and mental abuse by a number of persons, including the Accused who abused her on a number of occasions and who, in so doing, restricted her freedom of movement, so that she could not go anywhere without his knowledge, nor did she have any possibility to go where she wished. The aggrieved party stated that at that time she could not endure all that was happening to her any more, that she did not want to live, that she did not see any way out, that she hated herself and her fate, that she was disgusted with herself, and that she tried to commit suicide because of that. Witness 4 confirmed that he daughter had tried to commit suicide. She stated: "She wanted to commit suicide as she could not bear it any more". In addition, it was also noted in the experts' team that Witness 2 tried to commit suicide because of what was happening to her at the critical time. Witness 2 furhter maintained that in the place where she lived it was not a "normal" thing for her to go see a psychiatrist unless she was insane, and that

she did not tell anything to her mother, because she felt sorry for her mother who already lost her son and brother in the war and experienced a rape herself. The aggrieved party stated that, even when she wanted to tell her mother something, she could not find an appropriate word, and she was ashamed because of the standards of morality and the style in which she was brought up, as her family never talked about "those things".

545. Further, the conditions in which the victim found herself (force, threat and continuous physical and mental abuse) did not provide her with any possibility of offering resistance, which was confirmed in the statement of Witness 4 who described how her daughter looked during the whole of the material time in which the Accused abused her. She stated that her daughter did not want to tell her anything ("she does not dare, the child is afraid, they hammered it into her"), that she was pale and used to lose her consciousness, that she was always in the room with a door closed, that she came out nowhere without the Accused. She also stated: "When you look at your child, you can see if something good or bad is happening to her. This is particularly so if you see her covered in blood and with bumps and bruises."

546. The Panel certainly had in mind the relevant circumstance that the aggrieved party was only 15 years old at the time of the relevant events, whereas the Accused was twice her age, he was husband and father of two children. The Panel is convinced beyond any doubt that, in the circumstances described above, the intercourse between the Accused and the minor 2 could not have been a voluntary and normal sexual intercourse, especially taking into account the extreme conditions in which Witness 2 found herself, in which she was in no position to give her truly consent. She was *de facto* deprived of her sexual independence over which the Accused had a complete control.

547. Besides, it ensues from the testimony of Witnesses 2 and 4 that the village in which they lived was under the Serb control, that men aged from 16 to 75 were previously taken to camps, so that only women, children and old people remained in the village, unable to resist any acts of Serb soldiers, including the Accused who inspired awe in his soldiers. Sexual intercourse between her and the Accused, as well as the intercourse between her and the soldiers to whom the Accused "gave" her were not voluntary, as they were based on coercion, as described above. Besides, the witness was not allowed to use her own name, but was forced to use the Orthodox name given to her by the Accused.

548. The Panel also had in mind the behaviour of Witness 2 while she was giving the statement before the Court. Several times the witness was so much shaken up that the story about the experiences she went through made her cry. It was evident during her testimony that she was going through hard times while she was describing to the Court the particulars of her position in which she was while the Accused was abusing her for several months. Besides, the witness stated that she is still undergoing regular therapies, that she feels fear, that during the sleep she goes through everything that happened to her, that there are times when she cannot bear the people and crowd, and that she is afraid of clamor and noise.

549. In the previous section, the Panel analyzed in detail the Finding by the team of expert witnesses, which the expert witness Dr. Alma Bravo Mehmedbašić presented before the Court, so that it will not repeat all conclusions they reached. The Panel notes that the expert witnesses found that the aggrieved party is manifesting a completely credible, severe and complicated form of the PTSD, and that there is a causal relation between what the aggrieved party stated about the experienced multiple rapes and her state of health at the time of conducting the expert evaluation. Besides, the Panel notes the Opinion by Dr. Bravo–Mehmedbašić that the aggrieved party was helpless and that she was not able to recognize what was happening to her, that she was so much "victimized" that she needed time to recognize that those were symptoms of some disorder. Regarding the complaint by the Defence that Dr. Rudelich found in the Federal Republic of Germany that the aggrieved party was not able to testify, the expert witness Bravo–Mehmedbašić stated that at that time the aggrieved party was in the acutization of the PTSD symptoms. The expert witness explained that they did not suspect at any time that it was schizophrenia or some mental disease. According to the expert witnesses, the aggrieved party has, together with the PTSD, a depression of varying intensities regarding the severity of depression. One should not disregard the fact that even today Witness 2 receives regular psychiatric therapies in the Federal Republic of Germany, about which Witness 2 testified herself, while the foregoing was also noted in the finding of a team of experts witnesses, specialists in neuropsychiatry of the Clinical Center in Sarajevo .

550. In addition to the fact that Witness 2 was an underage person at the time of the commission of the criminal offence, special relevance to the actions of the Accused against Witness 2 is given to his discriminatory attitude which is shown in his treating the witness and in the names he called her (for example, "balinkura"). All the actions of the Accused were aimed at degrading Witness 2 as a person, for no other reason except that she was a Bosniak.

551. The Accused is also guilty as an accomplice (under Article 29 of the BiH CC) and as an inciter (under Article 30 of the BiH CC) in keeping Person 2 in sexual slavery.

552. In the above described situation when the Accused, together with Karaga, raped Witness 2, the Accused, as an accomplice, acted in such a way that he brought the aggrieved party to the given location, having a complete right of disposal of her at that time, and together with Karaga committed the act of rape against her, in such a way that both of them raped her vaginally, and abused her by putting some other objects into her sexual organ.

553. The elements of the act of incitement are analyzed in more detail in Section 6.5. of the Verdict (relating to Count 5 of the Indictment), so that they will not be repeated here.

554. In the present case, the Accused was taking the aggrieved party to military positions where, on one occasion, he "gave" her to other soldiers, inciting them to rape her, saying that they could "have some fun" with her, because they deserved that. After

the Accused said so, Golub and the soldier nicknamed Brzi pulled her into a trench where both of them raped her and beat her. After them, soldiers were coming in and out of that trench, while the Accused was sitting, drinking and singing with other soldiers.

555. Bearing in mind the elements of this form of responsibility, it is clear that the Accused, acting in the described manner, is responsible as an inciter for the rapes committed, pursuant to Article 30 of the BiH CC.

556. The Panel concluded beyond any reasonable doubt from the adduced evidence that the aggrieved party did the described actions against her own will, bearing in mind that she was not in a situation to give any true consent, and that she was subjected to conditions constituting sexual slavery. The above described conditions clearly constitute the intentional exercise of one authority or of all authorities of the Accused in connection with the right to ownership over the person 2. That things were not normal and bearable for Witness 2, even after the end of war, ensues from the fact that she tried to commit a suicide, as well as from the fact that the events she described caused "a severe and complicated" form of the PTSD, with occasional phases of depression (as concluded by the expert witnesses - neuropsychiatrists).

557. Further, the Panel finds established that the Accused treated Witness 2 as described in the Reasoning of the Verdict, in such a way that, during a widespread and systematic attack on non-Serb civilians in the Municipality of Doboj, knowing of such attack, he kept her in sexual slavery, thereby breaching the fundamental rules of international law, whereby he committed the criminal offence of *Crimes against Humanity* in violation of Article 172(1)g) of the BiH CC as read with Articles 29 and 30 in conjunction with Article 180(1) of the BiH CC.

6.7. Count 7 of Indictment

558. Count 7 of the Indictment includes two incidents: physical abuse of Witness 6 who was in the Central Prison in Doboj and physical abuse of Witness 14.

559. The Panel found from the statements of the aggrieved parties - witnesses 6 and 14 that the incidents described in Count 7 took place exactly in the manner as they stated during the testimony.

560. Witness 6 described in detail and consistently the physical abuses which he underwent in the Central Prison in Doboj where he was taken shortly after the men had been taken away from Čivčije on 12 June 1992. He stated that, on one occasion during the detention in the SUP Doboj (where he was initially detained), they took him into a room in the Central Prison building where a man told him to strip himself naked, whereupon he was beating him with a cable until the witness fainted. After one of many beatings that he had experienced in the Central Prison, the Accused, whom Witness 6 knew well, came in and approached him, saying, "where are you, my one-time friend, should we play some Russian roulette?", he produced a pistol of the Colt make, pressed it against the head of Witness 6 and pulled a trigger without bullets loaded. The Witness

stated that, at that time, he bowed his head and glanced at the Accused who slapped him on his face, saying "Pity!". The Witness stated that, at that moment, he felt fear after all the tortures he experienced, and, as for the described behaviour of the Accused, he stated: "regarding the previous abuses, ... most likely, one slap for a man who went through all those acts of abuse and all of that seems nothing".

561. Witness 6 further stated that in the Central Prison building prisoners were abused on a regular basis, that there was neither food nor water. The Witness stated that it was only after the officers of the International Red Cross announced their visit (months after the persons were detained) that they were told that "papers for all" had to be made. Consequently, detainees were handed "some papers, indictments, some decisions". Witness 6 remained detained in the Central Prison until March 1993.

562. The Panel found that the statement of this witness is a completely convincing, consistent and sincere testimony about the personal sufferings and all that the witness went through. The Panel also had in mind that the referenced witness knows the Accused well, that before the war he had friendly relations with him, and that he also identified him in the courtroom.

563. Witness Emsud Herceg confirmed that Witness 6 was detained in the Central Prison in Doboj during the period from August until October 1992, and he stated, among other things, "Witness number 6, as far as I know, was beaten with a wire cable, chain and the like... umpteenth times. He was a sought-after person for beating."

564. Further, it ensues from Exhibit O 41 that Witness „6" was imprisoned in the Doboj Central Prison from 14 June 1992 to 9 March 1993. Also, it follows from the Decision of the Basic Court in Doboj dated 31 August 1992[188] that Witness „6" was ordered into custody as of 17 August 1992.

565. The Defence tried to prove through documentary evidence (Exhibits O 41 and O 62) that the detention of Witness 6 was lawful. Also, the Defence maintained that Witness 6, trying to recount "something between the truth and the request of the Prosecutor's Office hesitates to tell the truth", and stated that the Accused did not have any reason to treat that witness in an inhumane manner.

566. The Defence also presented the complaint that it is unknown in the Amended Indictment if that incident occurred within a widespread and systematic attack, and that it is unclear in what capacity the Accused acted (whether as a soldier, police officer or a civilian).

567. After the Panel had analysed the Defence evidence in detail, it concluded that those pieces of evidence by no means bring into question the credibility and consistency of testimony by the Witness 6.

[188] Defense Exhibit O 62

568. Regarding the assertions by the Defence that Witness 6 was lawfully detained, the Panel points out that under this Count of the Indictment the Accused is not charged with the unlawful detention of Witness 6, but with the inhumane treatment of that witness during his stay in the Central Prison in Doboj. Therefore, the issue of his (un)lawful detention is not of decisive relevance.

569. Regarding the particular crime, the Panel notes that Witness 6 felt great fear of the Accused, especially on the described occasion, bearing in mind the circumstances when the Accused was threatening him while pressing the pistol against his head. Witness 6 further noted that the act by the Accused insulted him because he had a high opinion about him and his family and "thought about them as of friends". One should not forget that Witness 6, in that connection, was in prison where he was subjected to abuse and battery every day. When one has in mind the mental state of Witness 6, the fact that he was in permanent fear of new acts of abuse, the conduct of the Accused whom the witness knew and considered as his friend certainly has all the characteristics of inhumane treatment aimed at inflicting on the aggrieved party a great pain and harm to his human dignity.

570. Pursuant to the foregoing, the Panel concludes that the behaviour of the Accused in the Central Prison in Doboj, that is, physical abuse of Witness 6, caused a great pain and serious physical or mental injuries to Person 6 which, when viewed holistically and in the context, has a similar gravity as the offences listed in Article 172(1) of the BiH CC, whereby the elements of the acts referred to in Article 172(1)k) of the BiH CC are satisfied in the actions of the Accused.

571. Regarding the complaints by the Defence about the (non)existence of a widespread and systematic attack and the capacity of the Accused at the relevant time, the Panel notes that it established the existence of that attack in the area of the Municipality of Doboj during the period from spring 1992 until autumn 1993, and the incident with Witness 6 occurred certainly before the spring of 1993 (bearing in mind that Witness 6 came out of the Central Prison Doboj in March 1993), that is, to be more precise, the incident took place after the men had been taken away from Čivčije, which, as stated above, occurred in June 1992. Further, bearing in mind that, on the relevant occasion, the Accused was a member of the CJB Doboj[189], the Panel finds that he is individually responsible for the described actions.

572. The second part of this Count of the Indictment refers to the acts of the Accused, together with five other unidentified persons, with regard to Witness 14.

573. Witness 14 noted that in September 1993, a group of five-six soldiers stormed into his apartment in Doboj requiring the Motorola of him. Among them, the witness recognized Predrag Kujundžić whom he knew by sight before the war and he knew that he worked for the *Autoprevoz* Company. After the Witness had said that he did not possess any Motorola, one of the soldiers who were present there started kicking him on

[189] Exhibits O 59 and T 38 show that the Accused was a member of the MUP during the period from 1 July 1992 until 2 February 1993

his bare feet with his military boots that he wore, whereas the other soldier, who was sitting next to him, was beating him on his head. Then, the Accused asked him who was visiting him and he hit him on his nose with his weapon so that "blood covered him all over" and he "fainted" as a result of the strength of the blow. The Witness noted that he felt fear of the presence of soldiers who on their departure threatened him that they would come back in the evening.

574. Witness 14 described the soldiers who, on the relevant day, "stormed into" his apartment, and he stated, "It is difficult now to describe what uniforms they wore, after the lapse of so much time, because men changed uniforms. They seem to have been in the old police uniforms. They all wore the same uniforms, I guess. On their heads they usually wore some things which served as a mask."

575. The Defence challenged the statement of Witness 14 by hearing the Witness Brane Jekić who gave evidence that he did not know Person 14 and that he never searched apartments with the Accused. However, the Panel noted that, during his testimony, at no time did Witness 14 mention Brane Jekić. Therefore, by no argument did the testimony of Witness Jekić bring into question the consistent and convincing testimony of the aggrieved party.

576. The Defence further maintained that the statement of Witness 14 is full of illogical and inconsistent points in respect of the statement given during the investigation, and that he gave such statement in order to justify his participation in the RS Army.

577. In respect of the alleged illogical points in the statements of Witness 14, the Panel notes that the referenced witness explained all minor differences between his statement from the investigation and the statement which he gave at the main trial. The differences mainly refer to how the soldiers were dressed and what the Accused hit him with (whether with a rifle butt or *Scorpio*). The Panel finds that the referenced differences do not affect the credibility and the convincing quality of the testimony by Witness 14. Further, the Panel notes that the referenced witness also stated in the statement which he gave to the CSB Doboj in 1995 that, on the relevant occasion, the Accused hit him on his head several times.

578. The Panel especially had in mind that Witness 14 stated that he does not blame the Accused for the described incident, from which it can be concluded beyond doubt that the referenced witness has no motive, reason or intention to falsely accuse the Accused. On the contrary, in a convincing and consistent manner, the referenced witness explained clearly and in detail all the circumstances under which the above incident occurred.

579. The Panel also had in mind the testimony by Witness Žarko Gavrić who noted that he heard that members of his Unit ("*Predini vukovi*") were taking away money and other valuables from people in Doboj. Also, the Panel had in mind the particulars recorded in Exhibits of the Prosecutor's Office T 35[190], T 41[191] and T 42[192] from which it

[190] Report by the organization "HUMAN RIGHTS HELSINKI" entitled "Bosnia and Herzegovina, influence of masters of war in Bosnia to be continued", of December 1996

ensues that the Accused is "a short-tempered and dangerous person" who, through his engagement in some war operations, acquired the reputation of "a fighter" who no one could stand against. The Panel further indicates that the Letter by the MoI CSB Banja Luka of 12 November 1993 states, *inter alia*, that military formations or groups that were not under the control of the RS Army, which indeed were strong and presumptuous, were present in the area of Doboj, so that no one of the legal authorities opposed them, among them being the formation of Predrag Kujundžić.

580. The Panel concludes from the aforementioned that the Accused used, even in the described situation, his power which he acquired when he was in command of the *Predini vukovi* Unit and that, thus uniformed and armed, together with several soldiers also uniformed and armed, he committed the described actions against Witness 14.

581. In respect of the severity of the mental and physical suffering, the Panel considers that such suffering entirely characterized the overall situation in which Witness 14 found himself in his apartment in Doboj on an unidentified date in September 1993. It can be concluded from the circumstances as described by Witness 14 that he was subjected to serious physical abuse by Serb soldiers, and that he was additionally frightened when those soldiers threatened him that they would return to his apartment. The Witness noted that he did not know why someone required that he give them the Motorola which he did not possess, and that he was "really afraid". Besides, it is necessary to place the whole of that event in a broader context of the existence of a widespread and systematic attack in the area of the Municipality of Doboj, of which the Accused was aware and used its existence for the perpetration of unlawful actions.

582. Pursuant to the aforementioned, the Panel concluded that the acts and actions of the soldiers present there, as well as the acts and actions of the Accused personally, caused great suffering and serious physical or mental injuries to Witness 14. The described conditions bear gravity in their entirety as do the individual acts referred to in Article 172(1) of the BiH CC and they are, according to the Panel, intentionally created and directed to inflicting the great suffering and serious mental and physical injuries on Witness 14, which was the final result.

583. The Panel concluded beyond a reasonable doubt that the Accused, in a group with at least five Serb soldiers, all of them being uniformed and armed, acting jointly in a decisive manner contributed to the perpetration of the offences, in such a manner that he participated in the questioning and physical abuse of Witness 14.

584. Pursuant to the mentioned facts, the Panel established that the Accused committed the criminal offence in violation of Article 172(1)k) of the BiH CC. He is individually responsible for the referenced act pursuant to Article 180(1) of the BiH CC, taking into account that he alone took the described actions in respect of the Witness 6, whereas in the actions in respect of the Witness 14 he acted jointly with other persons, so that, in that part, he is responsible as an accomplice pursuant to Article 29 of the BiH CC.

---

[191] Official Note by CSB Sector Banja Luka of 28 September 1992
[192] Information by MoI CSB Sector SNB Banja Luka, of 12 November 1993

7. Persecution relating to all offences perpetrated by the Accused

585. Bearing in mind that the Accused is charged that, by the previously described actions, he committed the criminal offence of *Persecution* in violation of Article 172(1)h) of the BiH CC, the Panel examined if each of the referenced acts was committed with discriminatory intent.

586. Persecution as a crime against humanity is defined as "*persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognised as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina*". In Article 172(1)g) of the BiH CC, it is further explained that "*persecution means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity*". In compliance with the aforementioned, the elements of this criminal offence include:

- the intentional and severe deprivation of fundamental rights
- contrary to international law
- by reason of the identity of a group or collectivity
- against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognised as impermissible under international law
- in connection with any offence referred to in Article 172(1) of the BiH CC, any offence prescribed in the BiH CC regulations or any offence falling under the jurisdiction of the Court of BiH.

587. According to the ICTY case law, persecution may take diverse forms, and does not necessarily require a physical element. Additionally, under customary international law, in the case of persecution, the victims of crimes against humanity need not necessarily be civilians only and solely; they may also include military personnel about which an explicit finding was made by the French courts in the *Barbie* and *Touvier* cases[193]). A key constituent of persecution should be the carrying out of any prohibited conduct, directed against a civilian population, and motivated by a discriminatory *animus* (political, racial or religious grounds). The Panel refers to the conclusions of the ICTY Trial Chamber in the Judgement of the *Kupreškić et al*. Case which, *inter alia*, reads that, according the International Military Tribunal, the notion of persecution includes a variety of acts (...) such as: the passing of discriminatory laws, the exclusion of members of an ethnic or religious group from aspects of social, political, and economic life, the restriction of their freedom and movement. Therefore, persecution can also involve a variety of other discriminatory acts, involving attacks on political, social, and economic

[193] See: *Kupreškić et al.* Case, ICTY Trial Judgement, 568.

rights[194]. In that connection, there must be clearly defined limits on the types of acts which qualify as persecution, for the reason that not every denial of a human right may constitute a crime against humanity. Accordingly, it can be said that at a minimum, acts of persecution must be of an equal gravity or severity to the other acts enumerated under Article172 of the BiH CC. In *Kupreškić et al.*, the Trial Chamber does not exclude the possibility that a single act may constitute persecution. In such a case, there must be clear evidence of the discriminatory intent. Further, the Trial Chamber finds in the same case that it is not necessary to demonstrate that an accused has taken part in the formulation of a discriminatory policy or practice by a governmental authority.

588. The Panel considers that multiple perpetration of the act of persecution may be regarded as a single criminal offence under the name of persecution as crime against humanity, even if those acts individually constitute other crimes against humanity, as established in other cases of this court[195].

589. While reviewing the criminal responsibility of the Accused, the Panel assessed if each of the acts previously stated and established was committed with a discriminatory intent.

590. Starting from the elements of the criminal offence of persecution, the Panel in the first place concluded that the crimes previously described and established were committed intentionally and that they all constitute severe deprivation of basic human rights contrary to international law. In that way, the first and the second elements of persecution are satisfied. Further, the Panel concluded that the victims of the perpetrated criminal acts under all Counts of the Indictment at issue were non-Serbs (Bosniaks and Croats). In addition, given that the aforementioned and established crimes constitute the criminal offences in violation of Article 172(1) of the BiH CC, the Panel concludes that the element ”in conjunction with...“ is also satisfied.

591. Each act committed by the Accused Predrag Kujundžić was perpetrated with a discriminatory intent, exactly for the reason of a different ethnic, religious, national and cultural identity of the victim. The Panel concludes that all of those acts had, as the intention, exactly the discrimination of the victims on the grounds of that identity, as well as on the sexual ground (in the event of rape of the witnesses 2 and 4 and keeping Witness 2 in sexual slavery), which beyond doubt is contrary to the rules of international law. Such conclusion is based on the words and acts by the Accused during the perpetration of the referenced crimes, which is explained in detail further in the Verdict.

592. Based on the adduced evidence, the Panel established for Count 1 of the Indictment, in respect of the sentencing part of the Verdict, that the Accused participated in the forcible transfer of the Grapska residents, and his behaviour was a part of campaign of the Serb authorities, military and police and was committed with a view of permanently removing all the non-Serb population from the Doboj area. Those civilians

[194] Ibid, paragraph 615.
[195] See: Verdict by the Court of BiH in the *Radovan Stanković* Case, page 34; Verdict in the *Nikola Kovačević* Case, pages 43-44.

were expelled exactly because of their Bosniak identity, and such reason and ground are discriminatory and are consequently prohibited, which the Accused knew.

593. Under Count 2 of the Indictment, the Accused participated in inhumane acts and in severe deprivation of liberty of Bosniak men from Bukovačke Čivčije. During the physical abuse of men in front of the Community Centre in Čivčije, the Accused, *inter alia*, started beating two JNA officers because they were not fighting for the RS Army, which certainly constitutes his discriminatory intent directed against persons of Muslim ethnicity. Besides, inhumane acts and deprivation of liberty of men from Čivčije were committed within the existence of a widespread and systematic attack directed against civilians of non-Serb ethnicity in the area of the Municipality of Doboj.

594. Under Count 3 of the Indictment, which refers to taking the detainees out of the *Perčin Disco* and using them as human shields, the Accused acted with intent, knowing that they were not Serbs, i.e., that they were persons of Bosniak and Croat ethnicity, and he consciously used them (as human shields) in the attack against the BiH Army units. The Accused was aware that all men who were used as human shields were of non-Serb ethnicity, for it was exactly because of their identity – political, ethnic, religious and cultural - that they were detained in the *Perčin Disco* and he was aware that all of them were taken out to be used as human shields exactly for the fact that they were of Bosniak and Croat ethnicity. Besides, the purpose for the use of human shields lied exactly in a specific protection of units of the Serb Army in their movement towards the BiH Army positions.

595. The discriminatory relationship of the Accused under Counts 5 and 6 of the Indictment ensues beyond doubt from the manner in which he addressed the aggrieved parties – the witnesses 2 and 4. He cursed, among other things, "Balija's mother" to Witness 2 and besides, after both of them had been raped, he addressed her and Witness 4, saying, "What do you think? Serb women are raped in apartments. Why shouldn't you be raped, too", referring thereby to Bosniak women. And the entire attitude of the Accused, while keeping Witness 2 in sexual slavery, quite evidently indicates that he committed the previously described actions exactly because of her national, ethnic, religious and cultural identity. Therefore, it can be concluded beyond a doubt from such attitude of the Accused that his actions were caused by the fact that the victims are of Bosniak ethnicity.

596. Special discriminatory intent of the Accused referred to in Count 7 of the Indictment is reflected in the fact that he inhumanely treated the two persons of Bosniak ethnicity only because of their national, that is, ethnic identity.

597. When all of those actions are viewed in their entirety and when they are brought in the context of the widespread and systematic attack on the civilian non-Serb population within which the actions of the Accused were perpetrated, it is clear that this criminal offence, in its entirety, constitutes a form of persecution of civilian non-Serb population in the area of the Municipality of Doboj. The Panel concludes that all described actions exactly had, as their intention, the discrimination of the victims on the

grounds of this identity, which undoubtedly is contrary to the rules of international law. Such conclusion is based on the described words and actions of the Accused during the perpetration of the referenced crimes referred to in particular sections of the Operative Part of the Verdict. The Panel also finds that the Accused committed all the actions constituting the elements of persecution with direct intent, having the knowledge about what he was doing and wishing the perpetration of those actions, so that a clear intent of the Accused to commit this action by committing all previously described acts of commission exists beyond a doubt.

598. For the actions described in Sections 1, 2 and 6 of the Operative Part of the sentencing part of the Verdict the Accused is responsible as an accomplice under Article 29 as read with Article 180(1) of the BiH CC; for the actions described in Section 3 of the Operative Part of the sentencing part of the Verdict the Accused is responsible under the command responsibility pursuant to Article 180(2) of the BiH CC; for the actions described in Section 4 of the Operative Part of the sentencing part of the Verdict the Accused is responsible as an inciter pursuant to Article 30 as read with Article 180(1) of the BiH CC; and for the actions described in Section 5 of Operative Part of the sentencing part of the Verdict the Accused is responsible both as an accomplice and inciter in conjunction with Articles 29 and 30 and Article 180(1) of the BiH CC, in the manner as established in this Verdict.

599. The Panel acquitted the Accused of the actions described in Sections 1 and 2 of the Operative Part of the acquitting part of the Verdict for the reasons described above in detail.

600. Based on the evidence adduced, the Panel decided as stated in the Operative Part of the Verdict. As for the other evidence adduced, regarding all the Counts of the Indictment, the Panel took them into consideration under Article 15 of the BiH CPC, but it finds that they did not decisively affect the establishment of the state of facts.

8. Meting out the sentence

601. In meting out the sentence for the commission of the criminal offence of Crimes against Humanity described in the previous part of the Reasoning of the Verdict, the Panel had in mind, *inter alia*, Article 2 of the BiH CC, under which types and the range of criminal sanctions is based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values, which specifies the purpose of criminal legislation that includes the protection of specific individual and general values, as well as the defining of the manner of achieving that protection. A sanction additionally must reflect the gravity of the offence, in order to ensure that such crimes are not forgotten due to potential non-punishment.

602. In that context it is necessary to take into account the elements referring to this purpose, that is, the pain of direct and indirect victims of the referenced criminal

offences, and members of their families and their community, as well as the participation of the Accused Predrag Kujundžić in the commission of the specific criminal acts.

603. Article 39 of the BiH CC provides for the general purpose of stipulating and imposing the criminal sanctions, which consists of the suppression of an unlawful behaviour by which the fundamental general or individual values are breached or violated. Under this Article, the purpose of punishment is to express the community's condemnation of a perpetrated criminal offence; to deter the perpetrator from perpetrating criminal offences in the future; to deter others from perpetrating criminal offences; and to increase the consciousness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators, whereby influence is preventively exerted on citizens' awareness of the necessity of observing the law. The meting of a sentence for the commission of a particular criminal offence, in respect of a perpetrator of that offence, is exactly connected with the achieving of the purpose of punishment.

604. Fairness as a legal requirement must also be taken into account while meting out the punishment, as well as specific circumstances not only of the criminal offence, but also its perpetrator (as already stated). The law prescribes two goals which are relevant to the person who is sentenced for a criminal offence: influence not to perpetrate a criminal offence in the future (Articles 6 and 39 of the BiH CC) and rehabilitation (Article 6 of the BiH CC). Rehabilitation is not the purpose which is prescribed only by BiH CC, but it is the purpose of punishment which is recognized also in Article 10, Paragraph 3 of the International Covenant on Civil and Political Rights, which reads as follows: "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation".

605. Guided by the goals of general and special prevention, the Panel had in mind in the present case all "the circumstances bearing on the magnitude of punishment" under Article 48(1) of the BiH CC.

606. It ensues from the previously stated Reasoning of the Verdict that the Panel found as established that the Accused Predrag Kujundžić committed the referenced criminal offence. The victims of his acts are civilians of non-Serb (Bosniak and Croat) ethnicity, a number of them, particularly under Count 3 of the Indictment where 50 civilians of Bosniak and Croat ethnicity were taken out and used as human shields, 17 of them were killed, and also around 160 civilians of Bosniak ethnicity who were deprived of physical liberty on 12 June 1992. Besides, the Accused is, as was previously found, personally responsible for the rape, incitement to the rape and keeping in sexual slavery of Person 2, incitement to rape of Person 4, and for the physical abuse of Persons 6 and 14. The Panel notes that the Accused committed most of these criminal offences as the Commander of the *Predini vukovi* Unit, which gives his offences even greater weight.

607. According to the Panel, aggravating circumstances in the present case are the degree of the criminal responsibility of the Accused, his status at the relevant time, that is, his role as the commander, motives for which he committed the acts, the large number of victims of his criminal offences, the fact that Person 2 was a minor (under Sections 4

and 5 of the Operative Part of the Verdict), circumstances under which those actions were perpetrated and a cruel treatment of the victims, using their state of helplessness and fear. In that connection, the intensity of physical and mental injuries, as well as the bodily and mental pain which the victims suffered as a result of the criminal actions perpetrated by the Accused (both alone and with the participation of other persons) clearly illustrate the gravity of the offence against the protected value in the present case. Besides, the victims of his acts were civilians, unprotected persons and persons who had no possibility to oppose the acts of the Accused and his subordinates. Further, it should be noted that the victims of his acts even today feel the consequences of the tortures and traumas they went through.

608. The Panel finds that the Accused committed the described actions with direct intent, demonstrating persistency and ruthlessness in perpetration of the acts. The Accused committed the criminal offences over a long period of time; some of them he committed directly, some as a co-perpetrator and some as the inciter, whereas for the others he is responsible as a superior. In the event of the rape of Persons 2 and 4 and keeping Person 2 in sexual slavery, the Accused showed particular ruthlessness and disrespect for human dignity. The described actions were perpetrated within a widespread and systematic attack against the non-Serb civilian population in the area of the Municipality of Doboj, and the Accused used that attack as a backdrop for the perpetration of the atrocities, taking advantage of the state of helplessness and fear in which his victims found themselves.

609. Besides the aforementioned, it should be certainly taken into account that the Accused was found guilty of the commission of the acts that fall within the gravest criminal offences, both under national and international laws. Although this circumstance cannot be internally assessed as an aggravating circumstance, one cannot disregard the fact that the acts of the Accused were directed against the life and limb of civilians, as well as against religious, cultural and sexual freedoms of non-Serb civilians.

610. The Panel also had in mind the extenuating circumstances, such as the fact that he did not have any criminal record before and the fact that the Accused is a family man and father of three children.

611. The behaviour of the Accused before the Court was appropriate and it met the expectations of the Panel, and hence it is not considered to be either an extenuating or an aggravating circumstance.

612. Also, the Panel does not find that there exist reasons referred to in Article 49 of the BiH CC which would be a basis for meting out the punishment below the limit prescribed by the law.

613. Bearing in mind the established state of facts and the ensuing consequence, as well as the causal relation between them, the Panel found the Accused guilty, and imposed on him a long-term imprisonment of 22 (twenty-two) years, considering that it is a proportional and appropriate punishment. Further, the Panel considers that the imposed

sentence will sufficiently influence the Accused not to perpetrate criminal offences in the future, and that the aim of general prevention will thus be achieved. Finally, the Panel finds that the imposed sentence will raise the citizens' awareness of the danger of committing criminal offences and of the fairness of punishing the perpetrators.

9. Decision on custody

614. Pursuant to Article 56 of the BiH CC, the time spent in custody under the Decision of the Court of BiH, starting on 10 October 2007, shall be credited towards the sentence imposed on the Accused Predrag Kujundžić.

10. Costs of Criminal Proceedings

615. Pursuant to Article 188(1) of the BiH CPC, the Panel imposed the obligation upon the Accused to cover the expenses of the criminal proceedings in the sentencing part of the Verdict. The amount of the costs shall be decided by a separate decision upon obtaining the necessary information.

616. The Defence submitted to the case records the Certificate of the Taxation Authority Doboj[196] which, *inter alia*, states that the Accused has a house of 56m^2 and a real property (real property is not specified) of 520m^2. Besides, the personal details of the Accused show that he is of average financial status. Pursuant to the aforementioned, the Panel finds that on the part of the Accused there are no circumstances referred to in Article 188(4) of the BiH CPC which would relieve the Accused of the duty to reimburse the costs of the criminal proceedings.

617. Pursuant to Article 189(1) of the BiH CPC, the Accused shall be relieved of the duty to reimburse the costs in the acquitting part of the Verdict, and those costs shall be paid from within the budget appropriations of the Court.

11. Claims under Property Law

618. The aggrieved parties: Fatima Hamidović, Nađa Šerić, Edin Hadžović, Vahida Šehić, Ferida Ahmić, Rukija Mujanović, Edin Memić, Muharem Hamidović, Kazimir Barukčić, Emsud Herceg, and the persons 32, 16, 22, 8, 34, 2 and 4 submitted their claims under property law during the main trial, requiring the compensation of damage which was caused to them as the result of the criminal offence committed by the Accused.

[196] Certificate by the Ministry of Finance, Taxation Authority, Area Unit Doboj, Number 06/1.04/0804-455.7-3093/08 of 16 September 2008

619. Given that deciding on such claims would considerably delay these proceedings, the Panel instructs the referenced aggrieved parties to take a civil action pursuant to Article 198(2) of the BiH CPC.

620. Other aggrieved parties who also submitted their potential claims under property law are also instructed to take a civil action pursuant to Article 198(2) of the BiH CPC.

12. Conclusion

621. Pursuant to all the aforementioned, the Panel rendered the decision as stated in the Operative Part.

Record-taker	**PRESIDENT OF THE PANEL JUDGE**
Lejla Konjić	**Šaban Maksumić**

LEGAL REMEDY: This Verdict may be appealed with the Appellate Division Panel of the Court within 15 (fifteen) days of receipt thereof.