



COURT OF BOSNIA AND HERZEGOVINA

**Number: X-KR-05/122**  
**Sarajevo, 4 February 2010**

**IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, the Panel composed of Judge Zoran Božić, as the President, and Judges Jasmina Kosović and Mitja Kozamernik as the Panel Members, with the participation of the Legal Adviser-Assistant Lejla Haračić, as the minutes-taker, in the criminal case against the accused Predrag Bastah and Goran Višković, regarding the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number: No. KT-RZ-137/05 of 18 April 2008, which was confirmed on 23 April 2008 and amended on 16 November 2009 charging the Accused with the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, in conjunction with subparagraphs a), d), e), f), g), i) and k), as read with Article 180(1) and Article 29 of the CC of BiH, after the public session which was partially closed, in the presence of the Accused Predrag Bastah and his Defence Counsel Milorad Potparić and Refik Serdarević, Lawyers from Sarajevo, and the Accused Goran Višković and his Defence Counsel Todor Todorović and Rade Golić, Lawyers from Vlasenica, and also in the presence of the Prosecutor of the Prosecutor's Office of BiH, Sanja Jukić, on 4 February 2010 rendered and, on 5 February 2010, publicly announced the following:

**VERDICT**

**Accused:**

**PREDRAG BASTAH, a.k.a. Dragan**, son of Radovan and Danica, nee Samardžić, born on 18 October 1953 in Podkozlovača, Municipality of Han Pijesak, residing in Vlasenica, 21 Vojvode Mišića Street, ID number 1810953171428, Serb by ethnicity, citizen of the Republic of Serbia and BiH, literate, secondary school education, married, father of one child of age, of low income, served the army in Belgrade in 1972/1973, no criminal record, **currently in custody upon the Decision of the Court of BiH, number: X-KRN-05/122 of 29 January 2008;**

**GORAN VIŠKOVIĆ, a.k.a. Vjetar**, son of Stojan and Milica, nee Drakulić, born on 25 November 1954, in Buljevići, Municipality of Vlasenica, residing in Šekovići, Jakovice bb, ID number 2511954183744, Serb by ethnicity, citizen of RS and BiH, literate, secondary school education, married, father of one minor and three children of age, of low income, served the army in Kraljevo and Niš in 1973/74, sentenced by the Judgement of the Basic Court in Vlasenica number: 092-0-K-07-000 001 of 2 July 2007 due to the

criminal offence in violation of Article 155(1) of the CC of RS, sentenced to a term of imprisonment of 3 (three) months, one year on probation, **currently in custody upon the Decision of the Court of BiH, number: X-KR-05/122 of 5 February 2010.**

## **ARE GUILTY**

### **Because:**

Between April and late September 1992, as part of a widespread and systematic attack of the parts of the JNA units, military, paramilitary and police forces of the Serb Republic of BiH directed against the Bosniak and other non-Serb civilian population of Vlasenica Municipality, as members of these forces, being aware of that attack and that their actions constituted part of the attack, Predrag Bastah, as member of the reserve formation of RS MUP, PSS Vlasenica, and Goran Višković, as member of the army of the Serb Republic of BiH, persecuted the civilian population of Bosniak and other non-Serb ethnicities on political, ethnic and religious grounds by depriving the lives of other persons (killings), unlawful imprisonment, psychological and sexual mistreatment, enforced disappearance, torture and Other Inhumane Acts committed with the aim of inflicting injuries to body or to mental health, in the manner that they:

### **I-ACCUSED PREDRAG BASTAH a.k.a. Dragan - alone**

- 1) In early June, most likely on 2 June 1992, he participated in severe deprivation of liberty of the underage Huso Kičić in the manner that he came to the house of Ismet Kičić at 20 Jove Ostojić St. in Vlasenica in a blue-and-white police *Golf* and took the underage Huso Kičić out of the house by pulling his hair; he drove Huso Kičić and another Bosniak civilian to the Vlasenica Police Station. After he kicked that unknown civilian in the back and after the latter rolled down the stairs at the PS, he started hitting the underage Huso Kičić vigorously in the chest with a rifle butt in the corridor next to the information desk in the police station and demanded that Huso Kičić lift his arms above his head while receiving the blows so that the blows would be more painful. He continued hitting the underage Huso Kičić until the latter started reeling because of the pains. Further physical mistreatment was stopped by one Serb police officer;
- 2) On an undetermined date in the second half of June 1992, together with a group of more than 5 Serb soldiers, he came to the house of Muhamed Ambešković, in which Ramiz Hurić was hiding out of fear for his safety, and he severely deprived them both of liberty and took them to the PS Vlasenica where they were exposed to torture by him and other members of the Serb army and police by being kicked, punched and hit with batons, and he forced a minor Witness 15 whom they brought to and detained in the PS to beat his father and his father to beat him, and when the underage Witness 15 refused to do so, he punched him with his fist in his head;

- 3) On or about 2 June 1992, he went by the police vehicle to the house of Mujo Klanco, son of Hasib, apprehended and drove him to the Vlasenica PS where he was detained for several hours, then he took him out of the PS and, together with an unidentified police officer, drove him by the *Golf* vehicle to Toplik, to a meadow in the vicinity of the *Alpro* factory where he killed him, and when Vukosava Klanco, Mujo Klanco's wife, looking for her husband, asked a police officer for help on the premises of the PS, she was punched and kicked, hit with the rifle butt all over her body and imprisoned in the cell of the Vlasenica PS;
- 4) During the night between 12 and 13 September 1992, he participated in the killing of several persons in the manner that, together with a group of five or more unidentified uniformed soldiers, wearing stockings over their heads, all armed with automatic rifles, he came at Maršala Tita St. in the centre of Vlasenica, having the knowledge and being aware of what would happen to the Bosniak civilians who happen to be found in their houses, since he took along two Bosniak camp prisoners driving a tractor with a trailer intended for the transportation of dead bodies, and when he, together with the group of soldiers, came to the house of Zejna Ambešković, daughter of Salko, born in 1922, in which there were Džemila Hasanbegović, daughter of Džemal, born in 1933, Nura Tutić, daughter of Avdo, born in 1910, and the house of Ahmo Hadžiomerović, son of Salih, born in 1907 and his wife Tifa Hadžiomerović, daughter of Ramo, born in 1925; he waited on the street while the soldiers with stockings over their heads entered the houses wherefrom intensive fire in rapid succession was heard and, when the soldiers got out of the houses, he ordered the camp prisoners to bring the dead bodies out and load them onto the trailer of the tractor, which they did and, after the prisoners drove away the tractor carrying the lifeless bodies, he left the site, while the bodies of Zejna Ambešković, Džemila Hasanbegović, Nura Tutić, Ahmo Hadžiomerović, Tifa Hadžiomerović have never been recovered;
- 5) On an undetermined date, in early June 1992, together with a number of unidentified soldiers dressed in uniforms, he took away Ragib Ferhatbegović, son of Šaćir, born in 1950, from the *Sušica* Camp, who has been unaccounted for ever since, and his body has never been recovered;
- 6) In the period between 17 and 18 July 1992, together with a group of unidentified soldiers dressed in uniforms, among whom there were also guards from the *Sušica* camp, he brought out 10-12 Bosniak civilians, who have never come back and who have been unaccounted for ever since, among whom there were Sulejman Pezić, son of Sulejman, born in 1939, Bego Handžić, son of Salko, born in 1942, Sakib Šabić, son of Salko, born in 1949, Muhamed Šabić, son of Salko, born in 1952, Šukrija Efendić, son of Ibro, born in 1951, whose bodies have never been recovered, including the body of Mehmed Hadžić, son of Mujo, born in 1962, whom he brought out of the

camp on Thursday, 16 July 1992, Ejub Hadžić, son of Rahman, born in 1954, Hasan Parić, son of Ibro, born in 1954;

- 7) On an undetermined date in late August 1992, he ordered Ajša Saračević and her husband Huso Saračević to leave the house in five minutes, otherwise he would kill them and demolish the house with a personnel carrier; after that, they were forced to go to the territory controlled by the Bosnian Moslems, and so was Umija Šabić whom he, on 21 August 1992, together with her underage children, forced out of the house and ordered them to leave Vlasenica, otherwise he would kill them, which they had to obey.

## **II ACCUSED GORAN VIŠKOVIĆ a.k.a. Vjetar - alone**

- 1) On 23 April 1992, he participated in severe deprivation of liberty of Mirsad Džebo who, together with several dozen of Bosniak civilians waited in front of the building of the Vlasenica municipality to obtain a pass to move around the so-called Serb Vlasenica municipality, by grasping firmly his arm, pinning it behind his back, hitting him with a rifle butt in the area of his back, and kicking him several times into his buttocks, and finally bringing him to the Vlasenica PS where he imprisoned him;
- 2) On an undetermined date in mid-May 1992, together with other unidentified Serb soldiers, in the prison behind the Court building in Vlasenica where Abdurahman Kurjak and Osman Kurjak were imprisoned, he tortured them by taking them into the hall, one by one, from where the sound of beating and cries of pain were coming, and then, after the beating he threw them into the cell since they could not walk; he beat Abdurahman Kurjak on a daily basis by punching and hitting him with a rifle and gun holster, putting the gun into his mouth and dry-firing; and Osman Kurjak whom he was beating in a similar manner;
- 3) On 11 July 1992 between 20:00 and 21:00 hours, at 5 Omladinska St. in Vlasenica, in the group of more than 5 Serb soldiers, he entered the house of Bego Handžić, son of Salko, born in 1942, punching, kicking and hitting him with the rifle butts in his face, mouth and nose, while his wife Ramiza Handžić was begging him to stop, he strongly slapped her in her face, cutting her lip, then he strongly kicked her with a military boot in her spinal area and she rolled down the steps and fell on her stomach on the asphalt as a consequence, while he continued beating her, putting his foot and rifle on her back threatening her that he would kill her unless she said where her son-in-law and her son were;
- 4) On an undetermined date, in the first half of June 1992, together with a group of about 10 Serb soldiers, he came to the *Panorama* settlement where the person under the code name "3" resided with her husband and children, and when an unidentified soldier ordered them to leave the house, they went out into the street where, together with Serb soldiers, he kicked, beat with a rifle butt and slapped in the face Rašid Dautović, son of Mehmed, born in 1947 and his wife Hajra

- Dautović, daughter of Alija, born in 1949 and two underage children, forcing Rašid to pray the Moslem way on the asphalt;
- 5) On 2 June 1992 or around that date, together with other Serb soldiers, guards of the “Sušica” camp, in the evening hours, he took out of the camp Salko Muminović, son of Mehmed, born in 1946, Ibro Muminović, son of Meho, born in 1952 and a young man from the place of Kula, Zvornik municipality, who disappeared without a trace until the body of one of them, Salko Muminović, was recovered and exhumed on 29 September 2000;
  - 6) On 27 June 1992, he came in front of the “Sušica” camp by a truck of the *RO Polet*, ordering 20 prisoners to get on the truck to go and perform forced labour, among whom were a certain person with the last name Alihodžić, Hajrudin Merić, Hašim Ferhatović and Džemo Ferhatović; when they came in the vicinity of the veterinary station in Vlasenica, he ordered Džemo Ferhatović to start digging a hole as big as a human body, giving him a gun to kill a certain postman Alihodžić, and when the said person refused to do so, he gave the gun to Hašim Ferhatović; when this one also refused to do so, laughing, he packed them into the truck, winding up the steering-wheel at high speed to the right and to the left, sadistically abusing the helpless prisoners;
  - 7) On an undetermined date in the second half of June 1992, he parked the *Zastava* lorry, the so-called refrigerator lorry, behind the veterinary station in Vlasenica in which he detained about 13 Bosniak civilians whom he had previously taken out of the “Sušica” camp to perform forced labour, among whom there was Salih Mehičić, whom he had previously kicked all over his body, loading his rifle, the so-called drum magazine gun pointed towards his body, abusing him sadistically, afterwards closing him in the refrigerator lorry together with the other civilians, keeping him there for one hour in the closed space where they started fainting because of the lack of air - oxygen, being in panic and fear, and a Serb soldier saved them from dying;
  - 8) On an undetermined date in the first half of June 1992 at around 23:00 hours, he took out of the “*Sušica*” camp a person under the code name “8” and brought her into the guard-house where there were several guards from the “*Sušica*” camp to whom he said ”shall we do it our way?”, then he put handcuffs on her wrists, previously kicking and punching her, and when one of the Serb soldiers pushed her onto the iron bed and held her hands, he violently tore her clothes off and raped her and then he pushed a police baton into her genitals;
  - 9) On 10 July 1992, at about 21:40 hours, at 4 Vuka Karadžića St, in the apartment of Tima Huremović, together with two unidentified Serb soldiers he raped Jasmina Huremović, daughter of Osman, born 1958, whom two Serb soldiers had previously forced to leave the apartment together with her mother, sister and Ibrahim Lelo, and ordered them to lie on the asphalt street in front of the building,

from where, together with two unidentified Serb soldiers, he brought her back into the apartment and raped her;

### **III PREDRAG BASTAH a.k.a. Dragan and GORAN VIŠKOVIĆ a.k.a. Vjetar - together**

- 1) On an undermined date in May, they captured Ahmo Ferhatović in the street in the centre of Vlasenica and took him to the Vlasenica PS, and when Ahmo Ferhatović was transferred to the *Sušica* camp together with his two sons, Fehim Ferhatović, son of Ahmo, born in 1950, and Fadil Ferhatović a.k.a. Bobak, son of Ahmo, born in 1958, in the second half of June, most probably on 21 June 1992, together with several other guards of the “Sušica” camp, they took Fehim Ferhatović and Fadil Ferhatović out of the camp having previously kicked and punched them, and they vigorously grabbed their shoulders and pushed them out of the camp since when they disappeared until their bodies were exhumed on 29 September 2000;
- 2) On an undermined date in June 1992, they came on foot to the Jarovlje village, Municipality of Vlasenica, in front of the house of Ibrahim Lelo, son of Šaban, born in 1953, whom they took away in the direction of Vlasenica to the “Sušica” camp from where, in the presence of several Serb soldiers, they brought him out, since then he disappeared without a trace and his body has never been recovered;

**By which they committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH in conjunction with the offences under the same paragraph of this Article, as follows:**

1. **the Accused Predrag Bastah, a.k.a. Dragan, committed the offences in violation of**
  - **subparagraph e) under section I.1. and section I.2. of the operative part of the Verdict, in conjunction with Article 29 of the CC of BiH**
  - **subparagraph a) under sections I.3. and I.4. of the operative part of the Verdict, in conjunction with Article 29 of the CC of BiH**
  - **subparagraph i) under sections I.5. and I.6.**
  - **subparagraph d) under sections I.7. of the operative part of the Verdict,**
2. **the Accused Goran Višković, a.k.a. Vjetar, committed the offences in violation of**
  - **subparagraph e) under section II.1. of the operative part of the Verdict**
  - **subparagraph f) under section II.2. of the operative part of the Verdict**
  - **subparagraph k) under section II.4., II.6. and II.7. and section II.3. being in conjunction with Article 29 of the CC of BiH**
  - **subparagraph i) under section II.5.**
  - **subparagraph g) under sections II.8. and II.9. of the operative part of the Verdict in conjunction with Article 29 of the CC of BiH,**

3. **the Accused Predrag Bastah, a.k.a. Dragan, and Goran Višković, a.k.a. Vjetar – together committed the criminal offences in violation of**
- **paragraph i) under sections III.1. and III.2. of the operative part of the Verdict in conjunction with Article 29 of the CC of BiH as read with Article 180(1) of the CC of BiH.**

Therefore, applying the provisions of Articles 39, 42(2) and Article 48(1) and (3) of the CC of BiH, the Court

**S E N T E N C E S**  
**THE ACCUSED PREDRAG BASTAH**  
**TO LONG TERM IMPRISONMENT OF 22 (TWENTY TWO) YEARS**

for the committed criminal offence.

Applying the provisions of Articles 39, 42(2) and Article 48(1) and (3) of the CC of BiH, the Court

**S E N T E N C E S**  
**THE ACCUSED GORAN VIŠKOVIĆ**  
**TO LONG TERM IMPRISONMENT OF 18 (EIGHTEEN) YEARS**

for the committed criminal offence.

Pursuant to Article 56(1) of the Criminal Code of Bosnia and Herzegovina, the time that the Accused spent in custody, that is, the Accused Predrag Bastah as of 28 January 2008 onwards, and the Accused Goran Višković from 28 January 2008 to 22 July 2008, and from 5 February 2010 onwards, shall be credited towards the pronounced sentence of imprisonment.

**II**

**Pursuant to Article 284(a) and (c) of the CPC of BiH**

**THEY ARE ACQUITTED OF THE CHARGES**

**That**

**1. The Accused Predrag Bastah - alone**

**1) (Ind.I.1.)** *On 23 April 1992, in the close vicinity of Lipa catering establishment in Vlasenica, armed with a 7.62 mm calibre automatic rifle with a folding butt, together with another Serb soldier, he participated in severe deprivation of liberty by ordering Latif Zulfahari to go by the vehicle that he drove to the Vlasenica PS, which the latter did. Predrag Bastah a.k.a. “Dragan” previously hit him with the rifle butt and unlawfully detained him in a 2x4 m cell where there were more than 20 other Bosniak civilians*

*detained and, after putting handcuffs on his hands, took him out into the corridor where he was punched and kicked by Predrag Bastah a.k.a. "Dragan" and three Serb soldiers all over his body until his body was covered in blood.*

**2) (Ind.I.2.)** *On an undetermined day in early May 1992, together with an unidentified police officer, wearing the blue uniform of the reserve police forces, armed with an automatic rifle, he came to Jezero, Vlasenica Municipality, in a Golf I vehicle to the property owned by the person who was assigned code name "17" whom he deprived of liberty and drove to the Vlasenica Police Station and detained him there threatening that he would kill him and his entire family if a rifle was found in his house;*

**3) (Ind.I.2a.)** *On 31 May 1992 at around 8 a.m., he participated in severe deprivation of liberty of Ibrahim (son of Avdo) Džodžaljević, born in 1935 whom he took out of his house at Omladinska Street bb to the Vlasenica PS, where he also brought Džemal (son of Kadro) Ambešković, born in 1943. They were subjected to inhumane treatment and torture at the Vlasenica PS whereupon Ibrahim Džodžaljević disappeared without a trace whereas the body of Džemal Ambešković was exhumed and identified on 9 March 2007;*

**4) (Ind.I.3.)** *On 22 May 1992 at around 3 p.m., together with three members of the reserve police forces, he participated in severe deprivation of liberty of Ibro Osmanović by taking him out of the house at 15 Omladinska St. and imprisoning him at the Vlasenica PS and, when Ibro Osmanović was transferred to a prison behind the Court building in Vlasenica, on 18 June 1992 he transported him and 10 other Bosniak civilians in his truck to the "Sušica" Camp.*

**5) (Ind.I.4.)** *On an undetermined date in May 1992, together with another Serb soldier, he drove in a Lada or Niva vehicle to the house of Zarifa Pezić at 2 Karađorđeva St. in Vlasenica and took Eniz (son of Sulejman) Pezić, her son born in 1962, out of that house, deprived him of liberty and he drove him to the prison behind the building of the Court in Vlasenica where he imprisoned him and from there he took him to perform forced labour on several occasions until 9 or 10 July 1992 whereupon he disappeared without trace. His body has never been recovered.*

**6) (Ind.I.6.)** *On an undetermined date in June 1992, together with several unidentified soldiers wearing uniforms, he participated in severe deprivation of liberty of Smail Duraković at Ive Andrića Street in Vlasenica and ordered him to board a truck transporting a number of other Bosniak civilians, which he did and was then transported by that vehicle to the "Sušica" Camp;*

**7) (Ind.I.8.)** *Together with another Serb soldier, on 11 May 1992, at around 20:30 hrs, he came to the house of Zahid Klempić, son of Osman, at Titova 74 St. in Vlasenica, brought him out of the house in his pajamas and slippers and took him away in an unknown direction, since then he disappeared without a trace; his body has never been recovered, **as well as the body of Abdulkadir Subašić** son of Mujo, born on 1962, whom he, on an undetermined day in early May 1992, took away from his house situated in the Jezero settlement in the Vlasenica municipality,;*

**8) (Ind.I.10.)** *On an undermined date in June 1992, he participated in severe deprivation of liberty of Hasija Žepčanin, daughter of Safet, by ordering her to get into the Lada vehicle by which he took her away to the Vlasenica PS, together with Mevludin Hatunić, son of Velija, where he imprisoned her;*

**9) (Ind.I.14.)** *On an undetermined date in May 1992, he came to the door of the house owned by Ahmo Čehodar, where a person under the code name "2" with her children was hiding in fear for her safety; he ordered her to leave for the territory controlled by the Bosnian Moslems, otherwise, he would kill her, which she was forced to do;*

**By which actions he would have committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraphs e), i) and d) of the CC of BiH and in conjunction with Article 29 of the CC of BiH, as read with Article 180(1) of the CC of BiH.**

**That**

**2. the Accused Goran Višković - alone**

**1) (Ind.II.2.)** *On an undetermined date in May 1992, on the premises of the PS Vlasenica, together with a number of unidentified soldiers dressed in uniforms, on several occasions, with the intention of inflicting physical and mental injuries on him, he beat Muhidin Dautović, son of Mehmed, born in 1948, who was imprisoned for 7 days in a cell, causing his back to be black and blue as a result of injuries, and when he was transferred to the "Sušica" camp, he disappeared without trace;*

**2) (Ind.II.3.)** *In the same period, at the same place, with the same intention, he kicked and punched Hasib Agić who was imprisoned in a 2 by 3 prison cell with more than 10 other Bosniak civilians, having found a rifle in his house, the so-called Russian drum magazine gun; he intended to kill Hasib Agić and a Serb soldier stopped him in his attempt;*

**3) (Ind.II.4.)** *On an undetermined date in May 1992, together with another unidentified soldier dressed in uniform, he came by Lada vehicle to the house of Hasreta Klempić, in which, in fear for her safety, Ajša Topčić was hiding together with her underage child Amir Topčić, on which occasion he strongly slapped her twice on her face in a fit of rage because she did not want to tell him about the whereabouts of her husband and her older son;*

**4) (Ind.II.7.)** *At the same time and in the same street, when he noticed that Muška Šestović had seen him beating Ramiza Handžić, he kicked her in her breast as a result of which she fell down on the asphalt, and then he put his foot on her back pointing his barrel at her back, ordered her to crawl on the asphalt as other Moslems were doing and who had to crawl around his feet, ordered her to get in the van which was going around collecting the remaining Moslems from the Titova bb St.; from there they were driven away to the "Sušica" camp;*

**5) (Ind.II.12.)** *In the period between 18 and 30 June 1992, in the “Sušica” camp, he beat with the rifle butt, kicked and punched Hajrudin Osmanović whom he took to perform forced labour together with a group of Bosniak civilians on several occasions, more specifically, to the field sowed with potatoes; they had to pick up potato bugs – and throw them into a glass bottle full of water, afterwards forcing Hajrudin Osmanović to drink the water from the bottle;*

**6) (Ind.II.15.)** *In the period between 2 June and 2 July 1992, together with the guards, members of the Serb army and police, he raped the person under the code name “6” on several occasions, whom he took out of the camp and brought into the house in the immediate vicinity of the camp, where he raped and sexually abused her, requiring from her to react back and to scream, while the unidentified persons from the other room were shouting “that’s the way, ‘Wind’, that’s the way, ‘Wind’!”*

**By which actions he would have committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraphs k) and g) of the CC of BiH and in conjunction with Article 29 of the CC of BiH, as read with Article 180(1) of the CC of BiH.**

**That**

**3. the Accused Predrag Bastah and Goran Višković - together**

**1) (Ind.III.1.)** *On an undetermined date, in late April, armed with automatic rifles, in the evening hours, they came by Lada vehicle to the house of Avdo Ambešković, son of Kadro, born in 1940, at 40 Vojvođanske brigade St. in Vlasenica, whom they severely deprived of liberty by taking him out of the house, previously beating him all over his body, threw him into the vehicle together with his brother-in-law Sadidin Hodžić, son of Ahmo, born in 1965, whom they also kicked and beat with the rifle butts and subsequently drove away to the Vlasenica PS where they imprisoned them;*

**2) (Ind.III.4.)** *In the period from 13 to 19 July 1992, in the place of Luke, Vlasenica municipality, where buses and trucks had stopped packed with civilians, women and children who were being transported from the Sušica camp to the territory controlled by Bosnian Moslems, together with several members of the Serb army and police, they participated in forcible displacement and separation of women and young girls who have been missing ever since; Goran Mišković escorted the above vehicles and watched the separation, saying “well, well, we are going to have plenty of them, “budas” /translator’s note: pejorative form for Moslem women/”, while Predrag Bastah, who drove one of the trucks with a canvas top, whistled and shouted “separate as many young women and young girls as possible and impregnate as many of them as you can with our semen” signalling unidentified Serb soldiers who were in the vicinity of the place where he had stopped the truck, that they had arrived; then the soldiers acted accordingly, separating women, young girls and children. Among the separated women there were also Mirsada Hadžić, daughter of Edhem, born in 1952, Đula Nuhanović, daughter of Alija, born in 1947 and her underage son Muamer Nuhanović, son of Munib, born in 1983, Vahda Ibišević, daughter of Ibro, born in 1972, Jasmina Huremović, daughter of Osman, born*

*in 1958, Hasija Žepčanin, daughter of Safet, born in 1952, Nihada Lelo, daughter of Husein, born in 1978, Munevera Kičić, daughter of Lutvo, born in 1975, whose bodies, including the bodies of another 13 non-identified persons who had been taken away, have never been recovered,*

**By which actions they would have committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraphs e) and d) of the CC of BiH and in conjunction with Article 29 of the CC of BiH, as read with Article 180(1) of the CC of BiH.**

### III

**Pursuant to Article 283(b) of the CPC of BiH**

#### **THE CHARGES ARE DISMISSED**

##### **1. against the Accused Goran Višković**

**Stating that:**

**1) (Ind.III.6.)** *On an undetermined date in mid-June 1992 in the PS Vlasenica, in which Mirsad Durić was imprisoned, he beat him on a daily basis together with a number of unidentified persons dressed in uniforms, forcing the injured party to clean the room soaked with blood, in which he was beaten with other prisoners, Bosniak civilians, upon every beating;*

**2) (Ind.II.9.)** *In the first half of June, most probably on 6 June 1992, he took out a number of Bosniak civilians from the “Sušica” camp, who have never come back again, among whom was Suljo Hajdarević, son of Mujo, born in 1952, whom he took away under the pretext of taking him for forced labour and whose body was recovered in the Ogradice mass grave in the territory of the Vlasenica municipality on 18 June 2003;*

**By which actions he would have committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph k) and i) of the CPC of BiH, and in conjunction with Article 29 of the CC of BiH, as read with Article 180(1) of the CC of BiH.**

##### **2. against the Accused Predrag Bastah and Goran Višković**

**Stating that:**

**1) (Ind.IV.5.)** *At night between 12 and 13 September 1992, together, in the group of 5 or 6 unidentified persons, dressed in uniforms, armed with automatic rifles, they came to Maršala Tita bb Street, to the house of Hasan Salaharević and his wife Zumreta Salaharević, daughter of Ibro, born in 1942; when the unidentified persons entered the house, they waited in front of it; shooting was heard from the house and when the aforementioned persons came out of the house, they left the site together with them;*

**2) (Ind.IV.6.)** *At the beginning of September 1992 at around 03:30 hrs., they came carrying arms together with another Serb soldier to 57 Titova Street in Vlasenica where brother and sister Hamdija Hadžić and Mujesira Hadžić lived; they knocked on the door of their apartment and having found the door locked, in a fit of rage, the Accused Višković strongly swung at Hamdija Hadžić who started spitting blood because he kicked him in his chest; Višković threatened that he would kill them if the door were locked gain, which they did several days later when they brought them out of their apartment and killed them; the body of Hamdija Hadžić, son of Edhem, born in 1922, was exhumed on 18 June 2003 and identified on 24 November 2005, while the body of Mujesira Hadžić has never been recovered;*

**By which actions he would have committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph a) and i) of the CC of BiH, and in conjunction with Article 29 of the CC of BiH, as read with Article 180(1) of the CC of BiH.**

Pursuant to Article 188(4) and Article 189(1) of the CPC of BiH, the Accused are relieved from the obligation to meet the costs of the criminal proceedings.

Pursuant to Article 198(2) and (3) of the CPC of BiH, the aggrieved parties and relatives of the victims may take civil action to pursue their claim under property law.

## **R e a s o n i n g**

### **I CHARGES**

By the Indictment number: KT-RZ-137/05 of 18 April 2008, which was confirmed on 23 April 2008, the Prosecutor's Office of Bosnia and Herzegovina charged the Accused Predrag Bastah and Goran Višković with the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) of the CC of BiH, in conjunction with subparagraphs a), d), e), f), g), i) and k), as read with Article 180(1) and Articles 29 and 30 of the CC of BiH, due to having committed the actions as thoroughly described in the Indictment. At the hearing held before the Preliminary Hearing Judge on 30 April 2008, the Accused Goran Višković pleaded not guilty of the referenced criminal offence, and so did the Accused Predrag Bastah at the hearing on 13 May 2008.

On 20 June 2008, prior to the commencement of the main trial, the Defence Counsel for the Accused Veljko Bašić, lawyer Slavko Aščerić, moved the Court to order an expert evaluation of the Accused's health condition in order to determine his ability to attend and participate in the further course of the referenced proceedings. Acting upon the referenced motion, on 23 June 2008, the Court ordered an expert evaluation to be performed by a team of experts comprising: Dr. Senad Pešto, specialist in internal medicine, Dr. Marija Kaučić-Komšić, specialist in neuropsychiatry, and Dr. Radojka Golijan, specialist in internal medicine. Findings and the opinion were filed with the Court on 26 June 2008, and the expert-witnesses Senad Pešto and Marija Kaučić-Komšić

were summoned on 3 July 2008 to orally explain the health condition of the Accused and his health condition in general, including his ability to participate in the further course of the proceedings.

At the trial held on 3 July 2008, the expert-witnesses provided a precise explanation of the results of the expert evaluation and concluded that the person in question is of an advanced old age who, apart from having cardiovascular problems, also suffered from disorder of old age – dementia, which, in their opinion, is a serious disease with no possibility of recovery or improvement. Based on the presented findings, the expert witnesses are of the view that the Accused Veljko Bašić is not physically or mentally capable of participating in the further course of the proceedings and the Prosecutor therefore moved the Court to separate the proceedings against this Accused.

On the same date, the Trial Panel publicly announced that, pursuant to Article 26 of the CPC of BiH, the proceedings against the Accused Veljko Bašić would be separated, while the proceedings upon the charges against the Accused Predrag Bastah and Goran Višković would continue. On 15 July 2008, pursuant to Article 388 of the CPC of BiH, the Court rendered a Decision to adjourn the proceedings against the Accused Veljko Bašić and refer the Accused to the Centre for Social Work in the territory of the Municipality of Vlasenica, until the conditions for the continuation of the criminal proceedings against the Accused are satisfied.

Upon the separation of the proceedings, the main trial commenced on 3 July 2008 by reading the charges, and was completed on 25 January 2010 by the defence closing arguments.

## **II EVIDENCE PRESENTED**

### **II.1. Evidence of the Prosecutor's Office**

During the main trial, the following witnesses were examined: Zulfahari Latif, Džamdžić Miralem, Habiba Hadžić, Hasib Agić, Olga Tatomirović, Arifa Golić, Zarifa Pezić, Đulsa Đodaljević, Huso Kičić, Fadila Muranović, Smail Duraković, Mirsad Džebo, Witness 1, Aida Hodžić, Salih Mehičić, Fikret Ferhatović, Witness 8, Witness 17, Hasma Efendić, Redžo Ferhatović, Tima Lelo, Bekir Lelo, Witness 7, Ismeta Efendić, Witness 14, Ramiza Handžić, Witness 16, Hajrudin Merić, Nedim Salaharević, Mirsad Smajlović, Avdurahman Kurjak, Ajša Saračević, Witness 2, Vukosava Klanco, Petar Todorović, Amir Topčić, Witness 15, Witness 13, Almasa Klempić, Ismet Alihodžić, Kadira Zubović, Tima Huremović, Sadija Hadžić, Jasminka Berbić, Damir Berbić, Witness 3, Witness 4, Izet Hurić, Luka Prodanović, Mirsada Zekić, Witness 5, Ferida Hadžić, Maida Klempić, Umija Šabić, Slobodan Gradinač, Ibro Osmanović and Amor Mašović in his capacity as expert, and expert-witnesses Hamza Žujo, specialist in forensic medicine, dr. Alma Bravo-Mehmedbašić, specialist in neuropsychiatry, dr. Vedo Tuco, specialist in forensic medicine, Esad Bilić, forensic document expert, and Maja Martinović, graduate biologist.

At the main trial, the Prosecutor's Office presented and tendered into the case-file the following documentary evidence: Record on examination of the witness Mirsad Džebo

by SIPA, number: 17-04/2-04-2-216/08 of 29 February 2008, Pass issued by the Crisis Staff of the Vlasenica Municipality in the name of Mirsad Džebo, Record on examination of the protected witness “1” by SIPA, number: 17-04/2-04-2-7/08 of 11 January 2008, Record on examination of the witness Aida Hodžić, number: KT-RZ-137/05 of 6 February 2008, Death Certificate in the name of Sadidin Hodžić number: 202-3-148/2008 issued in Vlasenica on 7 April 2008, Decision number: R2-22/2002 of 7 October 2002 on declaring Avdo Ambešković dead, Attestation of Death for Avdo Ambešković, Record on examination of the witness Salih Mehčić, number: Kt-5/06-RZ of 20 February 2008, Cantonal Prosecutor’s Office Tuzla, Record on examination of the witness Fikret Ferhatović number: KT-RZ-137/05 of 21 January 2008, Tuzla Municipality Death Certificate for Fadil Ferhatović, number: 10/13-2, Tuzla Municipality Death Certificate for Fehim Ferhatović number: 10/13-2, Death Certificate for Hašim Ferhatović, Record on examination of the witness Hašim Ferhatović number: Ki-1/98 of 18 February 1998, Record on examination of the protected witness “8”, number: 17-04/2-04-2-50/07, of 15 January 2008, by SIPA, Record on examination of the protected witness “17”, number: 17-04/2-04-2-134/08, of 8 February 2008, by SIPA, Record on examination of the witness Hasma Efendić, number: KT-RZ-137/05, of 16 January 2008, Record on examination of the witness Redžo Ferhatović, number: 17-15/3-1-04-2-269/06 of 11 October 2007, by SIPA, Record on examination of the witness Tima Lelo, number: KT-RZ-137/05, of 7 July 2008, Record on examination of the witness Bekir Lelo, number: KT-RZ-137/05, of 18 March 2008, Record on examination of the protected witness “7”, number: KT-RZ-137/05, of 15 August 2008, Record on examination of the witness Ismeta Efendić, number: KT-RZ-137/05, of 16 January 2007, Record on examination of the protected witness “14”, number: 17-04/2-04-2-242/08 of 12 March 2008, Death Certificate number: 45/03 of 22 October 2007, Vlasenica, Record on examination of the witness Ramiza Handžić, number: 17-15/3-1-04-2-269/06 of 22 October 2007, Certificate issued upon request of Ramiza Handžić, to certify that Bego Handžić was taken to the *Sušica* camp and that he has still been unaccounted for, number: 03-842-300/94 of 4 October 1994, Record on examination of the protected witness “16”, number: 17-04/2-04-2-220/08 of 4 March 2008, Record on examination of the witness Hajrudin Merić, number: KT-RZ-137/05 of 24 January 2008, Record on examination of the witness Nedim Salaharević, number: KT -247/95 I KT.RZ-5/06 of 7 June 2007, Record on examination of the witness Mirsad Smajlović, number: 17-15/3-1-04-2 /07 of 6 April 2007, Record on examination of the witness Avdurahman Kurjak, number: 17-04/2-04-2-193/08 of 22 February 2008, Record on examination of the witness Ajša Saračević number: KT-RZ-152/07 I KT-RZ-137/05 of 22 January 2008, Records on examination of the protected witness “2” number: KT-RZ-5/06, KT-RZ-247/95 and KT-RZ-802/94 of 5 September 2007, Record on examination of the witness Vukosava Klanco, number: Kt-Rz-5/06 of 31 August 2007, Record on examination of the witness Petar Todorović, number: Kt-Rz-207/07 of 11 September 2007, Photo documentation number: Kt-RZ-137/05 of 13 March 2008, Sketch of the scene number: KT-Rz-137/05 of 13 March 2008, Record on examination of the witness Amir Topčić, number: KT-247/95, KT-RZ-5/06 I KT-RZ-802/94 of 22 August 2007, Record on examination of the witness “15” number: 17-04/2-04-2-245/08 of 14 March 2008, Vlasenica Death Certificate, number: 202-4-149/2008, of 7 April 2008, Record on examination of the witness “13” number: 17-04/2-04-2-246/08 of 14 March 2008, Record on examination of the witness

Almasa Klempić number: KT-RZ-137/05 of 11 March 2008, Photograph of Almasa Klempić in front of the family house, Certificate issued by the State Commission for Search for Missing Persons number: 06/5-793-E/96 of 18 October 1996, Data on the missing person Zahid Klempić, Record on examination of the witness Ismet Alihodžić, number: 17-04/2-04-2-191/08 of 18 February 2008, Record on examination of the witness Kadira Zubović, number: 17-04/2-04-2-189/08 of 18 February 2008, Record on examination of the witness Tima Huremović, number KT-RZ-5/06 of 5 March 2007, statement made before the Tuzla Canton Prosecutor's Office, Record on examination of the witness Sadija Hadžić, number: KT-RZ-137/05 of 16 January 2008, Death Certificate for Hamdija Hadžić number: 202-4-24/2008 issued in Vlasenica on 21 January 2008, Record on examination of the witness Jasminka Berbić, number: KT-RZ-137/05 of 11 March 2008, Decision by the Basic Court in Vlasenica number: P2.30/2001 of 10 September 2001, Record on examination of the witness Damir Berbić number: KT-RZ-137/05 of 11 March 2008, Record on examination of the witness Izet Hurić number: KT-RZ—137/05 of 25 January 2007, Record on examination of the witness Luka Prodanović number: KT-RZ—137/05 of 24 March 2008, Record on examination of the witness Mirsada Zekić number: KT-RZ—137/05 of 21 January 2008, Findings and Opinion of dr. Alma Mehmedika Bravo – forensic psychiatric evaluation of the protected witness “6”, Decision of the Municipal Court in Zenica, number: R-249/2000 of 26 October 2000, on declaring the missing persons Muhamed Hadžić and Mehmed Hadžić dead, Record on examination of the witness Ferida Hadžić number: KT-RZ-137/05 of 14 January 2008, Decision of the Municipal Court in Sarajevo, number: R-643/99 of 2 December 1999, declaring the missing person Zahid Klempić dead, Record on examination of the witness Maida Klempić number: KT-RZ-137/05 of 7 February 2008, Findings and Opinion of the expert witness Maja Martinović, grad. biologist –forensic evaluation of the *Sušica* hangar, Photo-documents number: 09-14/1-04-5-2337 of 3 April 2008, Report of the expert witness Esad Bilić on acting upon the Order for forensic document evaluation, number: KT-RZ.137/05 of 2 April 2008, List of the non-Serbs who disappeared in the territory of the Vlasenica municipality in the period from 4 April 1992 through 31 December 1992, List of the non-Serbs who disappeared in the territory of the Vlasenica municipality in the period from 04.04.1992 through 31.12.1992 and who have been exhumed and identified, Graphic presentation of the missing non-Serbs who disappeared in the territory of the Vlasenica municipality in the period from 4 April 1992 through 3 December 1992 (Table 1 – per ethnicity, Table 2 – per sex, Table 3 – per age, Table 4 - , per number of disappeared and identified), *Official Gazette of R BiH* of 9 April 1992- Decision on proclamation of imminent threat of war, *Official Gazette of R BiH* of 20 June 1992 - Decision on proclamation of the state of war, *Official Gazette of the Serbian People in BiH of 12 May 1992* - Decision on formation of the Army of Srpska Republika BiH, Map ICTY reference number O1117774, ICTY document No. B 0024731 of 11 June 1992, Birač Brigade Command of Serb Army, Order on the establishment of a camp in Vlasenica of 31 May 1992, June 1992 Paper of the guard service on how to guard the facility – Command Order to evaluate the degree of risk at the *Sušica* camp - *Sušica* facility, with the names of persons to do the evaluation, Evaluation of risk at the *Sušica* facility, Order by the Commander Slobodan Pajić (re. exhibit T-93), Instructions for guards' operations, Guard's Logbook (re. T-95), Review of manpower for safeguarding the facilities for accommodation in *Sušica* - Šekovići Command, Review of manpower

for safeguarding the facilities for accommodation of prisoners of war in Sušica, Document issued by Bjelanović, Head of Milići PSS, No. 01-14/24-13 of 5 January 1993, plus a supporting document of 14 January 1993, Letter – List of active employees, unemployed employees, members of the reserve formation and members of the Vlasenica PSS Special Platoon, No. 09-120-177/92 of 18 July 1992, List of Vlasenica PSS reserve officers who received salaries in October 1992, Record on on-site investigation in the Sušica camp upon the order and authorisation of the Prosecutor's Office of BiH of 12 February 2008, Sketch of the *Sušica* camp of 12 February 2008, 13 photographs of the *Sušica* camp, Record on Search of Predrag Bastah's Apartment of 18 January 2008, Certificate of temporary seizure of objects from Zdravka Bastah of 18 January 2008, FR Yugoslavia passport issued to Predrag Bastah and 6 photographs, Decision by the General Administration Department of the Vlasenica Municipality of 8 March 2007 – military engagement of B. Predrag, Decision by the Municipality of Vlasenica of 28 September 2005 - recognition of B. Predrag's disabled veteran status of 7<sup>st</sup> category, Photocopy of the employment record booklet in the name of Predrag B., Predrag Bastah's request to the Service of Reserve Forces dated 25 March 1996, PSS Vlasenica Certificate of 9 November 1998, Photo-documentation related to search of Predrag Bastah's house of 18 January 2008, Record on opening and inspection of temporarily seized objects of 5 February 2008, Photocopy of the unit – personal file in the name of Predrag Bastah and a photocopy of the M4 form, Criminal Record Certificate of 15 February 1998 in the name of Predrag B., Record on search of Goran Višković's apartment on 28 January 2008, Certificate of temporary seizure of objects from Živojka Višković of 28 January 2008, Military Booklet in the name of Goran V., Decision by the General Administration Department Vlasenica of 6 February 2001 – on participation in the RS army, Certificate of the Ministry of Defence, Municipality of Vlasenica, of 18 March 2002, Decision of Šekovići MP of 18 August 2006, Photo-documentation of search of G. Višković's house of 28 January 2008, Report on the traces found, dated 29 January 2008, Report on opening and inspection of temporarily seized objects of 5 February 2008, Letter of the Šekovići General Administration Department of 22 January 2008 – military engagement of V. Goran, Photocopy of the unit – personal file in the name of V. Goran, Criminal Record Certificate for V. Goran of 28 February 2008, Findings and Opinion of dr. Vedo Tuko, Death Certificate for Zumreta Salaharević, Death Certificate for Suljo Hajdarević, Death Certificate for Rašid Dautović, Death Certificate for Avdo Ambešković, Death Certificate for Hamdija Hadžić, Death Certificate for Ramiz Hurić, Death Certificate for Mensur Jusić, Death Certificate for Hasan Salaharević, Death Certificate for Fehim Ferhatović, Death Certificate for Rašid Ferhatović, Death Certificate for Fadil Ferhatović, Death Certificate for Salko Muminović, Death Certificate for Muharem Kolarević, Death Certificate for Dževad Šarić, Death Certificate for Dževad Šarić, Attestation of Death for Ismet Zekić, Death Certificate for Ismet Zekić, Attestation of Death for Nusret Zekić, Attestation of Death for Rašid Ferhatbegović, Attestation of Death for Galib Muminović, Attestation of Death for Mevludin Jusić, Attestation of Death for Džemal Ambešković, Attestation of Death for Zahid Klempić and the Identity Record, forensic expertise and DNA Records, Attestation of Death for Asim Zildžić, Attestation of Death for Durmo Handžić, Attestation of Death for Mujo Klanco, Death Certificate for Tifa Hadžiomerović, Death Certificate for Nura Tutić, Decision of the Vlasenica proclaiming the missing Nura Tutić dead, Death Certificate for Džemila Hasanbegović, Death

Certificate for Ahmo Hadžiomerović, Death Certificate for Nedžib Bajramović, Death Certificate for Elzudin Bajramović, Death Certificate for Ismet Dedić, Death Certificate for Fahir Muminović, Death Certificate for Mujo Jusić, Death Certificate for Galib Musić, Charted review of mass graves exhumed in the period 1995-2004, for the Municipality of Vlasenica, Record on examination of the witness Umija Šabić of 24 April 2008, by the State Investigations and Protection Agency (SIPA), Record on examination of the witness Slobodan Gradinac of 17 March 2009, by the State Investigations and Protection Agency (SIPA), Findings and Opinion of 19 January 2009 related to the witness Muška Šestović, Findings and Opinion of 19 March 2009 related to the protected witness 6, Findings and Opinion of 8 September 2009 related to the protected witness 6, Record on examination of the witness Muška Šestović, number: 17-04/2-04-2-54/07 of 17 January 2008, Record on examination of the protected witness “6” number: KT-RZ-152/07 and 137/05 of 7 January 2008, Decree on proclamation of the Municipality of Milići, Official Gazette of SRBiH, No. 4 of 28 February 1992, Provision of the Vlasenica Municipality data, number: 2/1-014-348/08 of 22 December 2008, Provision of the Srebrenica Municipality data, number: 01-014-680/08 of 10 December 2008, List of prisoners in the old Court building, according to the testimonies of witnesses – exhibit with the ICTY reference number: 01256469, Letter of Vlasenica PSS number: 01-24-14 of 6 August 1992, Letter to the Drina Corps Intelligence and Security – exchange of prisoners, strictly confidential, No. 18/20-4-78 of 16 June 1994, Record on examination of the witness Ibro Osmanović, number: KT-RZ-137/05 of 16 April 2008, Property claims (25 claims).

## **II.2. Defence evidence**

During the main trial, the following witnesses for the defence of the first-accused Predrag Bastah were examined: Vojislav Nikolić, Denka Bogosavljević, Nevenka Bastah, Ognjen Ostojić, Ljubomir Pepić, Milivoje Kovačević, Luka Stupar, Rado Milić, Sabrija Gluhić, Milanko Šargić Mane, Đurić, Radenko Stanić, Milan Šarac, Radomir Bjelanović, Čedo Vržina, Mustafa Begić, Tufo Hadžić, Mujo Sprečo, Božo Milić, Ljuban Stanišić, Miroslav Mijić, Sreto Danilović, Vujadin Danilović, Boro Mijić, Milenko Stanić, Siniša Miljanić and expert-witness Senadin Ljubović.

At the main trial, the defence for the first-accused Predrag Bastah presented and tendered into the case-file the following documentary evidence: Record on examination of Ziba Pinjić of 4 May 2009, the examination conducted by Milorad Potparić – the Record is retyped, forensic findings by dr. Senadin Ljubović with the accompanying documents / expert evaluation of the Accused Predrag Bastah of 24 July 2009, Testimony of the witness Ibro Osmanović of 10 October 1994, given before ICTY, Photocopy of the Decision on deployment of Stanić, Šargić and Danilović dated 11 November 2009, List of members of the Vlasenica PSS and Certificate of birth of daughter of Predrag Bastah, Bastah Slađana, No.: 1091/2008, file number: 344/2003.

The defence for the second-accused Goran Višković presented the evidence by examining the following witnesses: Ognjen Ostojić, Witness B1, Witness B2, Mira Ninić, Desanka Tomić, Zoran Jovanović, Salko Džamdić, Radojka Radić, Zoran Durmić,

Radosav Matić, Nada Gavrić, Slavko Novaković, Radivoje Vasković, Cvijetin Vlačić, Edin Musić, the protected witness O-1, and the military expert witness Radovan Radinović.

During the main trial, the defence for the second-accused Goran Višković presented and tendered into the case file the following documentary evidence: Record on examination of the witness Ognjen Ostojić of 14 February 2009, Information of the RS MUP – Bijeljina - PS Vlasenica of 3 February 2009, Instructions for sending the candidates to the RC MUP Training Centre of 11 July 1991, Letter by the SDA political party forwarded to the SDA Executive Boards of 19 December 1991, SRBiH's Dispatch Note of 12 March 1992, Topographic map of the Municipality of Vlasenica, and cover letter of the Vlasenica Veteran Association of 10 December 2008, Statement of the effendi Munib Ahmetović of 23 April 1992, Statement of Mustafa Zilić of 24 April 1992, Certificate of temporary seizure of objects (10 Certificates) of the PS Vlasenica, PSS Criminal of 11 May 1992, Statement of Fadil Ramić of 23 April 1992, Statement of Fahrudin Hasanović made to the Vlasenica PSS, number: 02-230 of 5 May 1992, Statement of Rifet Muratović of 6 April 1993, 1993 Statement of Halil Bećirović made to the PSS Vlasenica, Statement of Mirsad Sulejmanović made to the PSS Milići of 31 May 1993, CD with specification, records on the displaced persons in the territory of Vlasenica and the cover letter of the Ministry for Refugees and Displaced Persons for the Municipality of Milići attached to the -B-supporting document, number: 18.03/3-7-B-23-1/09 of 27 January 2009, document of the TD Staff Tuzla number 01/419 of 30 June 1992, TD Staff Tuzla Order number 01/417 of 1 July 1992, document of the Municipal Staff Vlasenica – Order on appointment to RR, number: 01-..../92 of 9 August 1992, signed by Ferid Hodžić, Report of the Defence District Staff Tuzla, No. 03/92 of 29 August 1992, document of the Drina Division Command, Order of 30 September 1992, control and command – signed by Ferid Hodžić, map of the zone of responsibility (Map II of the Army of BiH Corps Tuzla), admission form to the Croatian Party of Rights in the name of Veiz Bijelić, data of the BiH Ministry of Defence, number 08-04-1-139-5/07 of 30 July 2007, Payroll Certificate of the armed forces of BiH, in the name of Veiz Bijelić, criminal report number 15-17/02-ku-6/93 of 21 June 1993, criminal report number 15-17/02-ku-7/93 of 23 June 1993, criminal report number 15-17/02-ku-4/93 of 8 July 1993, Site Visit Report by MUP, PSS Milići, number 15-17/02-222-57/93 of 25 May 1993, criminal report number 15-17/02-ku-1/93 of 17 June 1993, Report on the criminal offence, number 12-1-7/02-230- and 17/06 of 23 March 2006, criminal report number 15-17/02-ku-2/93 of 17 June 1993, Islamic Declaration, Muslim and Muslim Peoples Islamisation programme (BCS and English versions ), Death Certificates for the following persons: Vojislav Šarac, Mićo Lazarević, Milja Obradović, Slobodan Zečić, Nedeljko Kandić, Mladen Petković, Obrenija Ilić, Grozda Klještan, Vojin Klještan, Radovan Klještan, Bogdana Klještan, Gojko Vuković, Nedo Mišić, Peja Mišić, Tomislav Mišić, Milivoje Mišić, Milan Lazarević, Sreten Tomić, Milosav Kević, Vojin Jovanović, Svetozar Jovanović, Milan Šarac, Dušan Šarac, Mitar Šarac, Mirjana Šarac, Tomislav Perendić, Miladin Perendić, Spasenija Perendić, Stanka Perendić, Miloš Marinković, Radovan Marinković, Milovan Marinković, Rade Marinković, Dikosava Marinković, Ruža Mitrović, Mihajlo Mitrović, Drago Mitrović, Rado Lazarević, Mihajlo Tomić, Gojko Tomić, Rajko Pantić, Nebojša Pavlović, Mileva Petrović, Milivoje Sušić, Milijan

Vasić, Slavko Gordić, Zoran Lalović and Miodrag Gligorević, Data of the General Administration Unit – Record-keeping Service, Municipality of Vlasenica, document number: 03-10-562-9/09 of 16 February 2009, Data of the RS veteran organisation, Vlasenica Municipality Veteran Organisation, number: 01/122 of 7 October 2008, Vlasenica Municipality – General Administration Service data on persons who have acquired the status of the civilian victims of war, number: 03/10-534-37/08 of 25 November 2008, List of persons who got killed in the Municipality of Milići: 03-058-2-5-92/09 of 18 February 2009, Death Certificate for the following persons: Vidoje Šalipurović and Slavko Šalipurović, List of killed veterans, per date, month and year of death, issued by the veteran organisation of the Municipality of Šekovići, Data of the Common Farming Cooperative No. 12 March 2009, Chronology of Events in Vlasenica - Dragan Nikolić (no date or reference number), Report of the Military Prison Sušica – Vlasenica, of 22 June 1992, Analysis of general security circumstances in Vlasenica, from April to September 1992, produced by General Radinović, Belgrade 2009, Notification by RS MUP, Crime Investigation Police Administration, : 02/2-12472/08 of 25 November 2008, corroborating O-2-14, Cover letter of the Ministry for Refugees and Displaced Persons, Zvornik Department, number: 18.03/3-7-B-207-1/08 of 8 December 2008, Response to the request of the Republic Administration for Geodetic and Property-Legal Affairs, branch office Vlasenica, number: 21.16/052-135/09 of 11 September 2009, Response to the request of the Republic Administration for Geodetic and Property-Legal Affairs of 11 September 2009, Transcript and translation of the testimony of Tomislav Savić in *Krajišnik*, Submission of data from the records of the Federation Ministry for Issues of the Veterans and Disabled Persons of the Defence –Liberation War, number: 07-03-1907-1/08 of 15 October 2008, Findings and Opinion of the psychologist in the Sokolac hospital, and Discharge Sheet number: 210/7 of 26 April 2002, Transcript of the testimony of Ibro Osmanović in *Milošević*, Judgement of the District Military Court in Tuzla, number: K.560/93 of 17 September 1993, 1992. – 1995 Camp Inmates File and the cover letter.

The Panel discussed the Records on Witness Examination tendered into the case file pursuant to Article 273(1) of the CPC of BiH only if there were discrepancies with regard to the testimony the witness given at the main trial.

### **III CLOSING ARGUMENTS**

In her closing argument, the Prosecutor of the Prosecutor’s Office of BiH referred again to the testimonies of the examined witnesses and the adduced documentary evidence by which she corroborated every Count of the amended Indictment, and she found it proven that the Accused had committed the criminal offence with which they have been charged, thus proposing the pronouncement of a convicting verdict and a long-term imprisonment.

In its closing argument, the defence for the Accused Predrag Bastah also presented the individual arguments concerning every Count of the amended Indictment, which the Panel evaluated in deciding on the criminal responsibility of the Accused. The defence also emphasised the fact that, throughout the critical period of time, the Accused, as a reserve police officer, only acted upon the orders of his superior senior officers of the

PSS Vlasenica and, as the defence was not of the view that the Prosecutor's Office proved beyond a reasonable doubt the participation of the Accused and his criminal responsibility for the committed criminal offences, it proposed the acquitting verdict to be delivered.

The Accused Bastah shared the arguments of his Defence Counsels in making his closing address, and he again pointed out his status of a reserve police officer of the PSS Vlasenica and his obligation to act upon the orders of his superiors.

In its closing argument, the defence for the Accused Višković also pointed at the mandatory application of a more lenient law and presented the arguments by which, during the proceedings, it contested the existence of a widespread and systematic attack, and it also challenged the status of the protected civilian category of the population, which was a status that, according to the prosecution, was enjoyed by all of the aggrieved parties. In its closing argument, the defence denied the purpose of the *Sušica* building and the credibility of the prosecution witnesses. In rendering a decision, the Panel evaluated all of their arguments and individual objections thereto, and it responded to them in the part reasoning the criminal responsibility of the Accused per certain sections of the operative part of the Verdict.

The Accused Višković upheld the arguments of his Defence Counsel and tendered his written closing address into the case record.

#### **IV PROCEDURAL DECISIONS OF THE COURT**

##### **IV.1. A Decision refusing the motion of the Prosecutor's Office of BiH to admit the facts adjudicated in the ICTY proceedings**

On 10 October 2008, the Panel rendered a decision to refuse the motion of the Prosecutor's Office of 8 October 2008, which included 26 facts adopted from the Trial Chambers' judgements in *Prosecutor v. Krajišnik* (case number IT-00-39-T of 27 September 2006) and *Prosecutor v. Nikolić* (case number IT-94-2 of 18 December 2003).

In this particular case, the Panel acted in accordance with the provisions of Article 4 of the Law on Transfer of Cases, in relation to Rule 94(B) of the Rules of Procedure and Evidence which sets forth that *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.*

Specifically, the primary aim of judicial notice of adjudicated facts is to secure expedient proceedings. However, this Panel's discretion must be exercised based on a careful analysis of the Accused's rights to a fair and speedy trial, that is, in compliance with the principle of fair trial as stipulated by Article 6(1) of the European Convention on Human Rights and Article 6(2) and Article 13 of the CPC.

Also, consistent with the established jurisprudence of ICTY and the Court of BiH, a decision on whether an allegedly adjudicated fact may be judicially noticed by the Court implies a two-phase process, that is, the Court must primarily establish if such facts satisfy a certain number of the admissibility requirements, as established by the ICTY case-law, and, with regard to every particular fact that satisfies these requirements, the Panel must additionally find if, nevertheless, judicial notice of such a fact should be refused, because the admission does not serve the purpose of justice.<sup>1</sup> In deciding thereof, the Panel was guided by the following admissibility criteria: 1) a fact must be distinct, concrete and identifiable; 2) restricted to factual findings and does not include legal characterisations; 3) it must be significant to the present case; 4) it must not be subject to appeal or revision; 5) it must not attest to the criminal responsibility of the Accused; 6) it is not the subject of reasonable dispute between the Parties in the present case; 7) it must not be based on plea agreements in previous cases.

In evaluating the facts stated in the motion of the Prosecutor's Office, which were supposed to establish the existence of a widespread and systematic attack of the VRS and MUP on the civilian Bosniak population in the Municipality of Vlasenica, the Court was primarily guided by the scope of the Indictment. The Panel referred to the binding legal test for the fact admissibility and refused to take judicial notice of all of the facts, since they have not satisfied the foregoing criteria.

In the specific case, the proposed facts must ensue from a verdict which has not been subject to appeal or from the cases in which the appellate proceedings have already been completed. Only then can they be truly considered to be adjudicated. However, the Trial Chamber's judgement in *Krajišnik* has currently been subject to the appellate proceedings wherein the appellant Krajišnik contested in his appeal the trial fairness by claiming that the Trial Chamber made a substantial legal and procedural error when it restricted the "Accused in his examination of witnesses, sometimes even brutally, thus preventing him from examining them at all".<sup>2</sup>

The appellant – the Accused also submits that, due to inefficient assistance by the Defence Counsel, he was prevented from presenting documentary evidence. Although the legal arguments of the appellant do not specifically refer to the events in the Municipality of Vlasenica, an open possibility is left for the Appellate Panel to accept the arguments supporting the procedural error, which could disturb the integrity of the entire judgement in *Krajišnik*. Therefore, the Panel found this ground to constitute a direct denial of the factual findings in that judgement. Consequently, the proposed facts could not be considered to be finally adjudicated, that is, the Panel could not formally take judicial notice of them in the specific proceedings.

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<sup>1</sup> *Prosecutor versus Dragomir Milošević*, case number IT-98-29/1-T, Decision on Prosecution's motion for judicial notice of adjudicated facts and Prosecutions' catalogue of agreed facts with dissenting opinion of Judge Harhoff, of 10 April 2007, para. 23

<sup>2</sup> *Prosecutor versus Krajišnik*, Momčilo Krajišnik's appeal from the ICTY Judgement of 27 September 2006, case number IT-00-39-A, of 28 February 2008

With regard to the facts proposed in *Nikolić*, the Panel was guided by a criterion to be satisfied by the proposed facts, that is, in order for the facts to be truly adjudicated it is required that they are not the outcome of an agreement entered into by the parties. In this specific case, the Panel refused to accept the proposed facts due to their being based on the plea agreement which the ICTY Trial Chamber accepted at the guilty or not guilty plea trial on 4 September 2003, therefore, this requirement for taking judicial notice of the proposed facts was not satisfied.

#### **IV.2. Decision on witness protection and a session partially closed to the public**

During the conduct of the referenced proceedings, pursuant to Article 235 of the CPC of BiH, the public was excluded from trial hearings on several occasions in the interest of the protected witnesses. Specifically, the public was excluded from the main trial for a brief period during which the Panel Presiding Judge inspected the personal details of the protected witnesses, if illiterate, since in such cases there is no other way to confirm their identity, which is one of the procedural prerequisites for their examination at the main trial. At the trial held on 20 October 2008, the defence for the Accused Višković objected to granting the protective measures to the witnesses in this case, arguing that these measures have often been granted for no justifiable reasons. Namely, the defence did not contest the fact that, even during the investigation, the decisions were rendered to assign pseudonyms to the witnesses, however, it finds the measures granted to the witnesses at the main trial wherein their image is changed for the public unnecessary and too excessive.

The Panel hereby accentuates the fact that, prior to examination, every protected witness had the opportunity at the closed session to briefly notify the President of the Panel of the reasons for seeking identity protection measures, that is, the distortion of their image or voice which were to be transmitted outside the courtroom. Following the witnesses' comments, pursuant to Article 13 of the Law on Protection of Witnesses Under Threat and Vulnerable Witnesses (Witness Protection Law), the Panel ordered that additional measures be granted to secure non-disclosure of the witness's identity. Therefore, where reasonable, the Panel rendered a decision to grant additional protective measures to the witnesses, considering that the "Court may, after hearing the parties and the defense attorney, decide that the identity of the witness is not disclosed by allowing the witness to testify behind a screen or utilizing electronic distortion of the voice of the witness or the image of the witness, or both the image and the voice, by using technical means for transferring image and sound". This issue has always been approached to in a restrictive manner, taking into account the protection of the witness but the procedural rights of the Accused too, which is evident in the case of the witness Đulsa Đodaljević who gave up on her protective measures prior to the examination and she therefore testified with her identity being disclosed, regardless of the fact that, by the Decision of the Court, she was assigned pseudonym 10.

However, there emerged opposite situations in the course of the proceedings wherein some witnesses sought to be granted protective measures not earlier than at the time when

they appeared before the Court for the first time. Such was the case with the female witnesses the examination of whom was scheduled for 29 August 2008 when, at the session closed for the public, they presented the reasons for seeking protection. Having heard the parties and the Defence Counsels, the Panel decided that the witnesses would make their testimonies at the main trial open to the public, however, their personal details would not be disclosed in the mass media. Therefore, pursuant to Article 4 of the Law on Witness Protection, it was found that these most lenient measures were sufficient to secure the witness identity protection, while, at same time, the procedural rights of the Accused were not diminished.

During the examination of the protected witnesses, the public was also excluded at the time when they provided personal details of their close relatives, since that served the purpose of protection of their identity, to which the defence always agreed.

Therefore, in every individual case, the Panel thoroughly evaluated the need to assign protective measures to the witnesses and the justifiability of exclusion of the public at the main trial. Anyhow, the Defence Counsels and the Accused had the opportunity to cross examine these witnesses and they were therefore provided with sufficient data prior to examination in order to prepare for cross examination. With this regard, it should be noted that the ordered measures were solely aimed at protecting the interests of the witnesses and in no way whatsoever did they diminish or violate the Accused's right to defence.

Thus, on 22 August 2008, the Accused Predrag Bastah filed a motion to have the public excluded from a part of the trial, in order to present his findings on the threats received by his family, which threats allegedly resulted from his participation in the referenced proceedings. Having heard the parties and the Defence Counsels, the Panel refused the referenced motion and reasoned its decision by stating that the Accused could have communicated his arguments with that regard to the Prosecutor acting in the case and, based on the received information, the Prosecutor would have decided on filing a criminal report thereof. The Prosecutor stated at the same trial that, with that regard, adequate measures have already been taken before the Prosecutor's Office in Vlasenica. Taking into account the fact that, in the course of the referenced proceedings, the Accused did not appear in the witness capacity, the Panel found that he could not have presented any facts causing that his safety or safety of his family be threatened.

The Panel also refused the motion for exclusion of the public during the testimony of the protected witness 8 which the Prosecutor filed on 2 October 2008. Specifically, at the closed session, the President of the Panel informed the witness of the nature of the measures assigned to him under Article 13 of the Law on Protection of Witnesses, and it was decided that the witness should be heard at the public session, considering that the identity of this witness was sufficiently protected by the assigned measures, with which the witness also agreed.

In the course of the proceedings, the defence witness O-1 also sought protective measures and, at the main trial of 9 November 2009, he requested to testify under a pseudonym in order for his personal details not to be disclosed to the public, to which the Prosecutor's Office agreed. At the closed session, the witness explained to the Panel the reasons for

seeking the measures and, having found them to be reasonable, the Panel decided to assign him the pseudonym O-1 under Article 13 of the Law on Protection of Witnesses, thereafter, pursuant to Article 24 of the Law on Protection of Witnesses, those present at the hearing were warned that any unauthorised disclosure of any information that could result in the disclosure of the protected witness's identity is strictly forbidden and constitutes a criminal offence.

### **IV.3. Decision to change the order of evidence presentation at the main trial**

On 26 January 2009, at the main trial, the Prosecutor's Office adduced documentary evidence as stated in the Indictment. However, on that occasion, the Prosecutor's Office stated that it still adhered to the motion that the following persons should be summoned and heard as witnesses: Ibro Osmanović, Mirsad Durić, Muška Šestović and a protected female Witness 6, and, should this not be possible for objective reasons, that the testimony of these witnesses given during the investigative phase should be read at the main trial pursuant to Article 273(2) of the CPC of BiH.

This is so because, for objective reasons, the Prosecutor was prevented from presenting evidence by examining the referenced proposed witnesses in the first part of the evidentiary proceedings, considering that all efforts to contact the witnesses Ibro Osmanović and Mirsad Durić did not bear any fruit, nor was it possible to anyhow serve them with a summons, and also taking into account that the defence objected the proposal for these witnesses' statements to be read as they believed that not all of the possibilities had still been exhausted.

With regard to the witness Muška Šestović, the Prosecutor noted that she could not propose the statements of this witness to be read during the presentation of evidence for the Prosecution, considering that it was necessary to previously collect medical documents from the Swedish clinic in which this female witness is reportedly receiving treatment, which documents would subsequently be subjected to expert analysis of a specialist in neuropsychiatry in order to determine general capacity of this witness to attend and make her testimony at the main trial.

When it comes to the examination of the protected female Witness 6, it should be noted that she was subjected to expert analysis by a specialist, Dr. Alma Bravo-Mehmedbašić in order to establish her general health capacity to participate in the proceedings. Afterwards, the Findings and the Opinions of 24 December 2008 established that this person suffered from a chronified PTSD with an acute psychotic disorder, which currently makes her incapacitated. Considering that the defence found the proposal for reading the statement of the witness 6 to be premature, since there still was a possibility that she would recover, the Prosecutor reserved the right to subsequent presentation of evidence by examining this witness.

Considering the foregoing and the fact that, on 26 January 2009, the Prosecutor's Office completed the presentation of documentary evidence, the Trial Panel decided to alter the order of evidence presentation. Since making contacts with the proposed witnesses Ibro

Osmanović and Mirsad Durić took longer than expected, and so did the collection of the medical documents for the witness Muška Šestović and re-evaluation of the health capacity of Witness 6, the Panel found that the requirements under Article 261(2) of the CPC of BiH had been satisfied, since such deviation is in the interest of justice, while the unnecessary delay in evidence presentation by the defence will also be avoided, to which the Accused and the Defence Counsels also agreed. The defence was also granted extra time they deemed to be sufficient for the consultations concerning the manner in which to present the documentary evidence and examine the witnesses at the main trial.

#### **IV.4. Decision to have the witness statements made in the investigative phase read at the main trial**

Upon expert evaluation of the attendance-related capacity of the witness Muška Šestović and the protected Witness 6, the Prosecutor's Office moved the Court to have their statements and the statement of the witness Mirsad Durić whom the Prosecutor's Office could not contact, read at the main trial pursuant to Article 273(2) of the CPC of BiH which, having been objected to by the defence, the Panel refused as it found that the Prosecutor's Office did not exhaust all the possibilities to locate this witness whose possible summoning and examination was consequently postponed towards the final stages of the main trial. However, prior to the completion of the main trial the Prosecutor withdrew her motion for reading his testimony.

On the other hand, the motion to read the testimony of the witness Muška Šestović was filed due to the fact that, after she had made her statement to the Prosecutor's Office, she came down with mental illness. Dr. Alma Bravo-Mehmedbašić, specialist in neuropsychiatry, produced her Findings and Opinion on that circumstance and, based on the medical documents obtained from the Swedish clinic at which the witness has been receiving medical treatment, she diagnosed a chronified PTSD with panic and depression as secondary disorders which make the witness absolutely incapacitated of appearing before the Court and testifying. As a consequence, her statement made in the investigative phase was read at the main trial on 14 September 2009.

The defence for the Accused Višković contested the introduction of the witness Muška Šestović's testimony for violating the Accused's right to defence as guaranteed by Article 6(3)(d) of the ECHR, since he was deprived of the right to cross examination, that is, to contest the allegations of the statement. However, there are such cases which allow deviation from the rules of orality and directness, as are those foreseen by Article 273(2) of the CC of BiH. Therefore, the Panel finds that the introduction of this witness's testimony did not breach the procedural rights of the Accused Višković, because he has been acquitted of the count of the Indictment which was solely grounded on her testimony. On the other hand, it was not contested in terms of its content, therefore, the Panel used it as supporting evidence.

With regard to the protected witness 6, the expert-witness stated at the trial hearing of 12 January 2009 that the referenced person has been a mentally ill person suffering from a permanent chronified PTSD, which makes her absolutely incapable of participating in the

proceedings. However, upon expert evaluation, the defence raised doubt about the quality and authenticity of the reproduction of the events even at the time of making the statement in the investigation phase, therefore Dr. Bravo proposed re-examination and new expert evaluation to be conducted after six months. Upon expiry of that deadline, the expert witness re-examined the witness and stated at the trial hearing of 14 September 2009 that her condition deteriorated owing to PTSD with psychotic disorders, and stood by her finding that she has been incapable of appearing at the main trial to be heard as a witness and, as a consequence, this witness's testimony was read on the same date.

In this specific case, the Panel took into consideration the findings of the expert witness indicating that those were persons who became mentally ill and who were not capable of appearing at the main trial to make their testimonies as witnesses. Therefore, pursuant to Article 273(2) of the CPC of BiH, a decision was rendered for their testimonies to be read out. In so deciding, the Panel was mindful of the defence's objections contesting the female witnesses' competence even at the time of making the statements in question. Nevertheless, the Panel found that such a circumstance did not interfere with reading and tendering them into evidence and, as for their content, consistency and correspondence with other circumstances of the case, the Panel will evaluate them within the context of all presented evidence.

At the main trial of 26 September 2008, the Panel allowed that a testimony of deceased Hašim Ferhatović be read out, the one made in the proceedings against Dragan Nikolić a.k.a. *Jenki*, being the reason for the defence to object its introduction into the case record. However, the Panel is of the view that such circumstance does not make the testimony less important or credible, considering that it was made pursuant to the law, while the Panel evaluated its quality and relevance along with other evidence.

During the evidentiary proceedings, the defence for the Accused Bastah proposed that the testimony of the witness Ziba Pinjić also be read, considering that she was a very ill, bed-ridden old person, therefore, according to the medical documents tendered into the case record, her appearance before the Court would be quite complicated. Considering that the Prosecutor's Office did not object to the referenced proposal, the Court allowed that the testimony be read pursuant to Article 273(2) of the CPC of BiH.

## **V APPLICATION OF SUBSTANTIVE LAW**

At the very beginning, the Panel elaborated the issue of the application of substantive law to this specific case. Namely, it follows from the Indictment that the acts as charged were committed between April and late September 1992, during which period of time the Criminal Code of the Socialist Federal Republic of Yugoslavia (CC of SFRY) was the applicable law. Although the CC of SFRY also contains a Chapter *Crimes against Humanity and International Law*, it does not include the provisions which directly pertain to the crimes against humanity.

The legal qualification of the criminal offences as stated in the Indictment and, by analogy, in the Verdict as well, is provided pursuant to the 2003 CC of BiH, that is, the

Criminal Code that entered into force after the critical period of time and which, by Article 4, stipulates the applicability of the Criminal Code in a manner 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, unless the law has been amended on one or more occasions after the criminal offence was perpetrated, wherein the law that is more lenient to the perpetrator shall be applied.*

Article 3 of the CC of BiH foresees the principle of legality, that is, *no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law (nullum crimen sine lege, nulla poeana sine lege).*

However, Articles 3 and 4 of this Law does not *prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law* (Article 4a of the CC of BiH).

The principle of legality has been similarly laid down by the provisions of the European Convention on Human Rights (the ECHR). Article 7 of the ECHR reads:

1. *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 the criminal offence was committed.*
2. *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*

The ECHR is applicable to BiH, since it makes an integral part of its Constitution, therefore, according to the explicit provision of Article II(2) of the Constitution of BiH, the rights and freedoms as stipulated by the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols directly apply to Bosnia and Herzegovina and take precedence over all other laws.

During the critical period of time, crimes against humanity “*was criminal according the general principles of law recognized by civilized nations*”, that is, “*general principles under international law*”. Therefore, although the criminal law applicable at the time of the perpetration of the criminal offences as charged Crimes against Humanity were not explicitly stipulated as a criminal offence, their prosecution is nevertheless mandatory.

With that regard, the Panel was mindful of the Verdict of the Constitutional Court of BiH number: AP-1785-06 (A. Maktouf), which clearly found that war crimes are the “*crimes under international law*,” therefore, the sentence for such offences, pursuant to the law that subsequently stipulated and defined certain offences as criminal and foresaw a

special criminal sanction thereof, would not be in contravention of Article 7(1) of the ECHR and, by analogy, of the Constitution of BiH.

Furthermore, with regard to sentencing, the CC of SFRY did not stipulate long-term or imprisonment for life, and it rather foresaw capital punishment for the severest criminal offences and prison sentence of maximum 15 years for less severe criminal offences. Once the capital punishment was abolished, the entire sentencing system as foreseen by the CC of SFRY became inapplicable since, as noted by the foregoing decision of the Constitutional Court of BiH, “*a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law*”.

Based on the foregoing, the Panel finds that it is necessary and reasonable in this case to apply the Criminal Code of BiH.

## VI COURT FINDINGS

### VI.1. General evaluation of evidence

Having evaluated conscientiously and substantially every item of evidence in isolation and in connection with the rest of the evidence presented at the main trial, pursuant to Article 281 of the CPC of BiH, and also having previously analysed the arguments of the defence and the prosecution, the Panel established the factual findings as stated in the operative part of the Verdict on the following grounds:

Article 3(1) of the CPC of BiH foresees that the Accused shall be considered innocent of a crime until his guilt has been established.<sup>3</sup> Therefore, the burden of proof of the Accused’s guilt lies with the Prosecutor and, pursuant to Article 3(2) of the CPC of BiH, the Prosecutor must do so beyond a reasonable doubt.<sup>4</sup>

The fact that the defence did not contest certain factual findings of the Indictment does not mean that the Panel accepted these facts as proven. The burden of proof lies with the Prosecutor for every particular charge throughout the proceedings. Accordingly, in finding as to whether the Prosecutor proved the issue beyond a reasonable doubt, the Panel carefully considered the possibility of any other reasonable interpretation of the introduced evidence, other than that accepted when it decided that the elements of the criminal offence with which the Accused is charged have been satisfied, including any other form of responsibility of which they were found guilty. Any unclearness or doubt has been resolved in favour of the Accused, under the principle *in dubio pro reo*.<sup>5</sup>

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<sup>3</sup> Article 3(1) of the CPC of BiH reads that “*a person shall be considered innocent of a crime until his/her guilt has been established by a final verdict.*” This provision is consistent with the main concepts of human rights. See The European Convention on Human Rights, Article 6(2); International Covenant on Civil and Political Rights, Article 14(2).

<sup>4</sup> Article 3(2) of the CPC of BiH reads: A doubt with respect to the existence of facts constituting elements of a criminal offense or on which the application of certain provisions of criminal legislation depends shall be decided by the Court verdict in the manner more favorable for the accused”.

<sup>5</sup> Article 3(2) of the CPC of BiH.

Pursuant to Article 15 of the CPC of BiH, the Panel has the right to free evaluation of evidence.<sup>6</sup> Therefore, the charges against the Accused were carefully considered, and so were all of the adduced pieces of evidence. In evaluating evidence presented at the main trial, the Panel paid due consideration to, among other things, individual circumstances of the witnesses, including their possible participation in the events and the risk of self-incrimination and their relationship with the Accused. The Panel also elaborated on the internal consistency of testimony made by every individual witness during the direct and cross examination, and compared it with the statements made in the investigative phase.

At times, oral testimony of the witnesses differed from their statements made during the investigation. However, it should be taken into account that eighteen years have passed since the events as referred to in the Indictment, and it is reasonable to expect that the lapse of time affected the accuracy and credibility of the witnesses' memory. Furthermore, the fact is that, due to the nature of criminal proceedings, a witness may be asked different questions at the main trial compared to those asked during previous interviews. Therefore, after making certain questions specific, it is logical to expect that they should recall certain details. Naturally, the Panel carefully considered such situations in deciding on the weight to be attributed to such evidence.

No doubt that a number of witnesses who appeared before the Panel eye-witnessed the events that took place in the town of Vlasenica and its surrounding. As a consequence, the recollection and presentation of such traumatic events may trigger intensive emotional reactions and disturb the witnesses' ability to express themselves clearly and present entirely their experiences in the legal context. This is particularly so because a certain number of witnesses stayed for a long time in the poor conditions of the *Sušica* hangar camp wherein they were subjected to physical and mental ill-treatment.

Consideration of oral testimonies given before the Panel, certain inconsistencies and inaccuracies between the witnesses' previous statements and their oral testimonies, or those existing between the different witnesses, constitute a relevant factor in the evaluation of the gravity, and they do not necessarily discredit the overall testimony of the witnesses. If the witness detailed the essence of the events concerned, peripheral deviations do not necessarily challenge the truthfulness of such evidence.

The reasons supporting the acceptance of certain testimonies and the evaluation of their credibility and reasonableness are reasoned in detail with regard to every section of the operative part of the Verdict.

The Panel is also satisfied that in the specific case, the documentary evidence is ample and of particular importance. In the course of the proceeding, several documents were adduced into evidence being contested by the defence. The Panel reviewed every document contested by the defence in order to decide on its reliability and probative value.

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<sup>6</sup> Article 15 of the CPC of BiH reads: "...the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules".

Although, throughout the proceedings, the Prosecutor's Office generally contested the nature and the manner in which the expert evaluation was performed by the military expert witness Dr. Radovan Radinović, submitting that the expert evaluation was not performed pursuant to the rules foreseen by the CPC of BiH and that it did not correspond to other expert evaluations performed before this Court. However, the Panel allowed that the report of this witness be adduced into the evidence, since it may be deemed to be a factual analysis of the situation in Vlasenica before and during the critical period, in a manner as explained by the defence for the Accused Višković. The report was predominantly based on the books the authors of which were military officers, and the expert witness himself referred to them as the secondary source of information subject to strong criticism for being subjective point of view of the author. Therefore, in evaluating all pieces of evidence, the Panel analysed the objectivity and impartiality of the content of the expertise and accepted some of its arguments, however, the Panel was not strictly bound by the expert witness's findings on the military and police normative operations at that time, and on the nature and the purpose of the Sušica building, and this was particularly so where they were totally opposite to the facts established during the evidentiary procedure.

Finally, in this criminal case, both Accused exercised their right to remain silent, which they enjoy pursuant to the provisions of Article 6(3) of the CPC of BiH<sup>7</sup> and Article 6 of the European Convention on Human Rights<sup>8</sup> stipulating that no Accused is obligated to provide a self-incriminating testimony, therefore the Panel finds it noteworthy that no detrimental inferences have been rendered from this circumstance.

## **VI.2. General elements of the criminal offence of Crimes against Humanity under Article 172 of the CPC of BiH**

The Indictment charges the Accused with having committed the criminal offence of Crimes against Humanity in violation of Article 172(h) in conjunction with subparagraphs (a), (d), (e), (f), (g), (i) and (k) of the Criminal Code of BiH, which reads in part:

- (1)** 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:
- a)** Depriving another person of his life (murder);
  - d)** Deportation or forcible transfer of population;
  - e)** Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

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<sup>7</sup> Article 6(3) of the CPC of BiH reads: "the accused shall not be bound to present his defense or to answer questions posed to him".

<sup>8</sup> Although it is not specified in Article 6 of the European Convention on Human Rights, the European Court for Human Rights finds that the right to remain silent and the right against self incrimination are universally acknowledged international standards being the key principles of the fair trial under Article 6(1) of the Convention. These rights are closely connected with the basic principle of Article 6(2) stipulating that *everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law*. See Saunders versus United Kingdom (Appeal 19187/91), Judgement of 17 December 1996 (1997); R v Director of the Serious Fraud Office, ex parte Smith [1992] 3 WLR 66.

- f) Torture;
- g) 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 sterilisation or any other form of sexual violence of comparable gravity;
- h) 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;
- i) Enforced disappearance of persons;
- k) 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.

The Accused have been charged with individual criminal liability under Article 180(1) of the CC of BiH which foresees that *“a person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in..... Article 172..., shall be personally responsible for the criminal offence”*. This form of responsibility of the Accused has been established with regard to every section of the sentencing part of the Verdict.

With regard to certain sections of the Verdict, the responsibility of the Accused as co-perpetrators was established, pursuant to Article 29 of the CC of BiH which stipulates that, *“if several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence”*, therefore, in the reasoning, the Panel provided individual arguments concerning every section of the wording of the sentencing part of the Verdict relevant to the established criminal responsibility of the Accused as co-perpetrators.

Prior to reasoning the individual responsibility of the Accused, the Trial Panel elaborated on the existence of the general elements being conditional for the existence of the criminal offence of Crimes against Humanity under Article 172 of the CC of BiH.

The following general elements of this criminal offence follow from the legal definition of the criminal offence of Crimes against Humanity, Article 172(1) of the CC of BiH:

- the existence of a widespread or systematic attack directed against any civilian population,
- the offence was committed as a part of such an attack,
- the Accused had knowledge of such an attack and his acts constituted part of the attack.

## VI.2. a) Existence of a widespread or systematic attack

Based on the presented evidence, this Panel found beyond any reasonable doubt that, within the critical period of time, that is, from April to the end of September 1992 in the territory of the Municipality of Vlasenica, there existed a widespread and systematic attack which was directed only against the civilian Bosniak population of the Municipality of Vlasenica, as corroborated by the testimonies of all examined witnesses for the Prosecutor's Office.

Specifically, in the relevant case, the Prosecutor's Office took a view that, at the time when the Accused committed the offences as charged, there lasted a widespread and systematic attack of the military, paramilitary and police forces of the so-called Serb Republic of BiH, which was directed solely against the civilian Muslim and other non-Serb population of the Municipality of Vlasenica.

Almost all witnesses for the prosecution, and the defence as well, stated with one accord that the time of disturbances and insecurity began on 21 April 1992 when the Novi Sad Corps arrived in Vlasenica, which the witness Ognjen Ostojić described as a major tank formation, the largest part of which, while retreating from Tuzla, positioned itself in the place of Tišća, situated between Vlasenica and Šekovići, while its minor part comprising two to three personnel carriers stayed in the town of Vlasenica. The arrival of the referenced unit in the town was explained by the protected witness "1" who stated that, on 21 April 1992 around 2:00 hrs. in the evening, members of this formation blocked the whole town, that is, more precisely, all exits towards Šekovići, Milići and Kladanj, which was also confirmed by the witness Mirsad Džebo, who found out on the same day at 5:30 a.m. that the Corps "*had taken the town*" by positioning itself at the strategic roadblocks ranging from the petrol station at the entrance to the town and the "Finale" building, to the town centre and the public security station in Vlasenica (PSS Vlasenica).

The witness Huso Kičić stated at the main trial that, even before the referenced period of time, while keeping himself informed through mass media, he could hear that the members of the JNA had seized the towns such as Bijeljina and Zvornik, and he himself also witnessed the Novi Sad Corps entering the town of Vlasenica and he saw soldiers with JNA insignia in the town, while the witness Smail Duraković stated that, apart from the members of that Corps, other unknown uniformed persons could also be seen in the town, including the local Serb population. The witness Nedim Salaharević described the situation that followed, stating that "*that date was the beginning of suffering of the Bosniak people and the beginning of disintegration of my family. On that day, I saw evil entering Vlasenica*", "*....since then, there has been no room for one people, it did not matter whether they were children or old persons; age or sex was of no importance, it was only important to kill as many Muslims as possible*".

The expert witness for the defence, Radinović, contested the allegations of the witness according to which that was the Novi Sad Corps, as its operational group "North" was still supervising the situation in East Slavonia and Baranja, while Vlasenica fell within

the respective zones of responsibility of the Tuzla and Sarajevo-Romanija Corps. It is indisputable though that those were parts of the JNA, whereas the exact name of the unit and its belonging to any formation does not affect decisively the inferences of this Panel.

According to the witness for the defence, Zoran Jovanović, the citizens were informed that, as of that day, the Serbs took over power in Vlasenica, and the witness Miralem Džamdić stated that, at the same time, non-Serbs were called by a proclamation to surrender the weapons they illegally possessed, at the same time indicating the points for surrender. On that occasion, the people were addressed by the Vlasenica hodja Munib who allegedly possessed the lists of armed Muslims. However, the witnesses Miralem Džamdić and Mirsad Džebo believe that those were alleged and fabricated claims, while the witness Ajša Saračević claims that she knew hodja Munib in person and that he himself told her on one occasion that he had been forced to act in that way. The witness Redžo Ferhatović also heard that, actually, the hodja had been arrested immediately after the JNA Corps entered the town, and he personally had the opportunity to see him calling the Muslims through the megaphone to surrender their weapons, which he did from a police car, accompanied by one Lieutenant Valjevac. While being addressed, safety was guaranteed to all those who surrender their weapons.

This witness further explains that he personally knew about the check-point which was set up at the square near the Department Store *Panorama* where there were many soldiers and a large number of Serb citizens who were also uniformed and who, together with the members of the Corps, controlled the collection of the weapons surrendered. Among them, he recognised his neighbours Rajko and Nešo Drakulić, and the Accused Predrag Bastah and Goran Višković. This witness precisely states that hunting weapons made most of the surrendered weapons, and people held the relevant licences for them. Nevertheless, he also stated that there were individuals who possessed automatic weapons. Anyhow, the Panel notes that the obligation to surrender the weapons only pertained to non-Serbs.

In the course of the proceedings, the defence noted the fact that there were automatic weapons among those surrendered, including the unlicensed weapons. It is indisputable though that the population did respond to the proclamation and surrendered all of the weapons they held because, at that time, according to the protected witness "1", the President of the Serb party and the President of the Crisis Staff guaranteed safety to all those who would surrender their weapons.

The defence attempted to justify the apprehension of the Muslim men by numerous statements taken from them and by the criminal reports filed against them for possessing weapons, however, a large number of the documents that were adduced into the case record do not pertain to the critical period of time or contain no date of issuance. Furthermore, the fact that someone possessed weapons and the manner in which they obtained them are only relevant to filing a criminal report, and not to the existence of an attack in the specific case, because the weapons were surrendered on a massive scale at the Serb military roadblocks.

Afterwards, the Muslim population evidently became absolutely incapable of putting up any resistance, which had not been offered even before that, considering that, according to the witness Huso Kičić, “*Vlasenica was taken by the Novi Sad Corps without firing a single bullet*”, which was also corroborated by the witness Smail Duraković who stated that “*in Vlasenica, not a bullet was fired by the Muslims, and I know that because nobody had it, nor did they want to shoot*”.

The referenced statement has actually been corroborated by all examined witnesses, since they stated with one accord that there was no armed conflict in the town of Vlasenica.

For that matter, it is noteworthy that the witness Redžo Ferhatović mentioned in his statement a shooting at the petrol station at the town entrance point, only a day before the Novi Sad Corps arrived and that, on 21 April 1992, he could also hear shots near the Department Store, a hand grenade explosion near the hospital and a rifle grenade in Luke. However, apart from the referenced incidents, this witness definitely states that, as of that time, there was no shooting in Vlasenica, and the referenced incidents were not corroborated by any other witness for the Prosecutor’s Office. Therefore, the Panel submits that such situations, even if they had happened, can only be considered to be sporadic and isolated acts of some individuals, which cannot constitute the existence of any form of organised armed resistance of the Muslim population.

Anyhow, it indisputably follows from the testimonies of the examined witnesses that it was only the Muslim population that was asked to surrender the weapons, which additionally supports the argument that the attack was not directed against specific individuals, but against a particular ethnic group of people, with the ultimate aim to prevent any resistance to the attack which followed and which solely targeted the civilian non-Serb population.

The Novi Sad Corps withdrew from the town some time on 12/13 May 1992 and then, according to the witness Smail Duraković, there was shooting beyond words in the evening hours, with tracer bullets and Muslim houses on fire in the villages of Durići and Pijuci and the Vlasenica surrounding area, which the witness could see from the hill on which his house was situated. Other witnesses also referred to other neighbouring villages which were predominantly or entirely populated with the Muslim population and which were, in the period that followed, also subjected to the attack. Thus, the witness Fadila Muranović watched the burning Muslim houses in the villages of Piskavice, Drum, Kozja Ravan, Cvijetanj and Zaklopača, which was also corroborated by the witness Hasma Efendić who had left the village of Piskavice, on which occasion she saw that the village of Đamđići was “burnt down”, a village that was populated with a majority Muslim population, as also corroborated by the witness Miralem Džamđić.

After the massacre in the neighbouring village of Zaklopača wherein, according to the witness Smail Duraković, the entire village was “*butchered*” with no reason whatsoever, and, according to the witness Almasa Klempić, the number of those killed ranged from 70 to 80, the Muslim population that failed to leave the territory of the Municipality of Vlasenica was in panic over fear and felt insecurity. Hardship of the Muslim population

in this village was also corroborated by the protected witness “1” who was at work on one occasion when, a truck full of soldiers or, more precisely, “uniformed local Serbs” came in front of the gate of the company in which he was employed, and he could hear them talking among themselves that “*everybody was killed in Zaklopača, and that not one Muslim stayed alive there*”.

Due to the foregoing, it is evident that the attack that was directed against the civilian Muslim population was **widespread** in character, considering that, apart from the Vlasenica town core, it also covered the extended area of the municipality or, more precisely, the villages of Zaklopača, Đamđići, Piskavice, Durići, Pijuci, Šadići, Drum and other neighbouring villages with a majority Muslim population, as the witnesses described in their testimonies.

With regard to that fact, the defence for the Accused Višković contested during the proceedings the existence of a widespread and systematic attack against the non-Serb population of the Municipality of Vlasenica, claiming that the neighbouring villages with a majority Serb population were attacked at the same time, thus supporting the thesis of the existence of an armed conflict in the broader area of this municipality.

With regard to this fact, a large number of witnesses for the defence were examined, and a certain amount of video recordings were presented, some of which were produced by Zoran Jovanović in his capacity as information officer with the territorial detachment who visited the Serb villages in the surrounding area of Vlasenica during the critical period of time. According to this witness, the referenced video recordings testify of the existence of a Muslim armed forces organisation and their attacks against the Serb villages in the Municipality of Vlasenica.

However, the Panel did not accept this witness’s conclusions suggesting such form of organisation, because they were based on the video recording presented at the main trial which was, as stated even by the Defence Counsel for the Accused Bastah, incomprehensible and inappropriate for rendering such inferences. Specifically, it is impossible to discern the topic discussed by the participants, while this witness’s identification of the video-recorded persons was not corroborated with any other evidence.

Also, the Panel was presented the footages of the torched Serb villages of Rogosija and Neđeljišta, and a footage of the village of Klještani in which four elderly people were killed on 15 August 1992, while the village of Gornji Šadići was also attacked on the same day. According to this witness, the attacks against these Serb villages bordering the Vlasenica municipality were intensified in September 1992 and, on 24 September 1992, the bauxite-mine in the village of Podravanje was attacked, while the village of Rogosija was attacked again on 26 September 1992.

In support of its arguments, the defence tendered into the case record a certain number of criminal reports produced by the team of operative officers of the SSC Sarajevo which was established in 1933 with the aim of collecting information on the war crimes committed against the Serb population in the Vlasenica municipality during 1992. This group also included the witness for the defence, Zoran Durmić, who explained at the

main trial that the members of that group had subsequently gathered information on the committed crimes because they could not make the on-site investigation during 1992. Specifically, the subject of investigation were the crimes committed from April to September 1992, that is, the attacks of the Muslim forces against the villages of Metaljka, Lukovo Brdo, Donja Bukovica. Those operational findings resulted in the subsequent filing of the criminal reports tendered as evidence in this case.

In order to evaluate the referenced arguments of the defence for the Accused Višković and establish the possible existence of the armed conflict in the territory of the Vlasenica municipality, based on the presented footages made after the raids of the Muslim armed forces into the Serb villages and the criminal reports tendered as the defence evidence, the Panel primarily considered the nature, intensity, frequency and extent of such events.

With that regard, the events that took place in the village of Podravanje and Konjević Polje were not elaborated on because they do not belong to the Municipality of Vlasenica.

In this specific case, the Panel evaluated all of the circumstances by which the defence corroborated its arguments for the existence of the armed conflict, and inferred that the events in the Serb villages neighbouring the town of Vlasenica had resulted indeed from the activities of the Muslim armed forces, on which occasion a certain number of civilians were killed and a certain number of buildings were damaged. With that regard, it is indisputable that such events are characteristic of a high-level danger and are manifested through serious consequences. However, the Panel is of the view that the continuity and frequency of such attacks, to the extent to which the defence for the Accused Višković presented them, do not reach the level of the armed conflict which, as the defence claimed, took place in the Vlasenica municipality.

This is for the reason that “an “armed conflict” is said to exist “whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State”<sup>9</sup> while in the specific case, the evidence presented by the defence does not indicate the existence of such armed violence between the organised armed groups in the territory of the Municipality of Vlasenica, but it rather leads to the conclusion that the unfortunate events were the outcome of isolated attacks by the Muslim forces which received no continual resistance by the Serb armed forces.

According to the witness statements, the local population defending the villages in such situations did not offer any organised resistance, nor was their nature such of the military units that participated in the conflict in an operational manner.

Considering that the existence of the armed conflict in the territory of the Municipality of Vlasenica within the critical period of time has not been established, the Panel did not find it necessary to possibly evaluate the existence of a widespread and systematic attack of the Muslim forces that was directed against the Serb civilian population of the villages belonging to the Vlasenica municipality, since that would exceed the subject matter of the

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<sup>9</sup> *Prosecutor versus Kunarac, Kovač and Vuković*, cases number IT-96-23 and IT-96-23/1 (Appeals Chamber) of 12 July 2002, para. 56

charges. In other words, the Panel only evaluated the existence of an armed conflict within the framework of the arguments presented at the main trial by the defence for the Accused Višković.

Anyhow, with regard to the referenced matter, the Panel was also guided by the position taken in the ICTY Judgement stating that ....”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”.<sup>10</sup>

It should be noted at this point that, unlike the concept of armed conflict, the concept of an “*attack*” in the context of a criminal offence of *crime against humanity*, pursuant to the ICTY accepted jurisprudence, *is not limited to the use of armed force; it also encompasses any mistreatment of the civilian population*”.<sup>11</sup>

Such mistreatment actually took place in the town of Vlasenica since, during the critical period of time, persons of Muslim ethnicity were daily subjected to various forms of verbal, psychological and physical terror.

The foregoing primarily resulted from the illegal actions of the military and police members of the then Srpska Republika BiH, whereby they conducted unauthorised searches of Muslim houses, unlawfully took away and detained civilians in the MUP building prison, in the prison behind the Vlasenica Court building and in the Sušica camp, and unlawfully fired people from their work. In addition, no later than mid-May, following the departure of the JNA Corps, movement was restricted to all non-Serbs. Thus, the witnesses explained that they could only move bearing with them a freedom of movement permit issued by the municipal authorities upon oral request, but not before previously conducted “*verifications*“, and then it would be entered into such a permit that the bearer is to be considered a “*free citizen*“. The copies of such permits are introduced as evidence of the Prosecutor’s Office, and they pertain to the witnesses Latif Zulfari and Mirsad Džebo.

In this regard, no witness for the prosecution could state precisely as to what requirements had to be satisfied for a person to be issued a freedom of movement permit, however, all witnesses unanimously stated that such a regime was only binding on the non-Serb population.

Also, the referenced procedure could not be explained by the defence witness Radosav Matić who, as an officer with the Secretariat for General Affairs, worked for 20 days on

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<sup>10</sup> *Prosecutor versus Kunarac, Kovač and Vuković*, Judgement of 12 July 2002, para. 87-88

<sup>11</sup> *Vasiljević*, Trial Chamber, Judgement of 29 November 2002, para. 29, 30

the issuance of the referenced freedom of movement permits, commencing early May 1992. This witness stated precisely that the permits had a prescribed format with blank fields into which he entered the applicant's personal details. The procedure was such that he made a list of those who orally applied for leaving the town of Vlasenica, which list he would then submit to his superior Ćedo Bajić for certain "verifications" to be conducted, which was a prerequisite for approving the departure. The procedure was identically described by the protected witness "4" who added that only Muslims had needed the permits since, without them, they could not move around the town freely.

However, this witness insisted later on that the Serbs were also issued these permits and that they were subjected to even stricter verifications at the PSS Vlasenica. Nevertheless, based on the presented evidence, the Panel was satisfied that there still were substantial differences in the issued permits as, according to the testimony of the witness Olga Tatomitrović, the permit issued to her family for leaving for Tuzla stated that they renounced their entire movables and real estate in favour of the newly established Srpska Republika BiH, while the permit she was issued for leaving for Bijeljina did not include any such clause. Therefore, it is evident that, for that matter, only Muslims who intended to leave the Vlasenica area were deprived of their rights when leaving for the territory which was not controlled by the Bosnian Serbs.

Considering that, at that time, it was evident that the Muslim population intended to leave Vlasenica, the defence for the Accused made efforts in the course of the proceedings to set up a thesis indicating that the Muslim population actually departed voluntarily towards Kladanj and Tuzla, being the places with majority Muslim population. However, such a position was not corroborated by any witness for the prosecution. On the contrary, they all agreed upon being forced to leave Vlasenica and the neighbouring villages because of the general atmosphere of fear and uncertainty in which the Muslims actually were in fear for their own safety. Thus, the witness Ismet Alihodžić who swapped his house in Vlasenica for a house in Kladanj, explained that "*I did that to save my life, my and my son's lives*". The case of the witness Ajša Saračević and her husband should be stated here too as, in response to her insistence to stay in Vlasenica, the Accused Bastah threatened to demolish her house by a personal carrier if he did not see them at the bus station in half an hour.

At that time, even the offers for swapping the property only seemed to result from the agreements between the interested parties, considering that some persons, upon their arrival in the territory of Vlasenica, actually extorted the contract signature, as was the case of the protected witness "4" whose wife was offered by a certain person of Serb ethnicity to swap their property for the property of that person in the territory of Zavidovići, which person added: "*If you do not want to do that, it will be mine anyway*", which practically left them no room to refuse the offer. Afterwards, the contract on swapping the property was made nevertheless but, as the witness put it, "*it was done under duress in order to take me out of the camp*".

Therefore, it is clear that such transfer of the Muslim population was not voluntary at all. That was actually a "*necessary evil*", that is, the only possible choice in a situation

wherein any stay in Vlasenica would end up with being taken to prison or camp, and then the fate of these people, like the fate of many others before them, was very uncertain if not fatal.

Considering the general situation in Vlasenica during the relevant period of time and also taking into account the fact that the “*the element “systematic” requires an organised nature of the acts and the improbability of their random occurrence*”,<sup>12</sup> the Panel inferred beyond a reasonable doubt that the attack was **also systematic**, because the non-Serb civilian population in the Municipality of Vlasenica was subjected to the established pattern of violent behaviour, which was manifested in the seizure of private property, restricted freedom of movement, unlawful taking to camps, detention and keeping in inhumane conditions.

The conduct of such a public campaign of terror and fear directed solely against the non-Serb civilian population of the Vlasenica municipality, additionally indicates the existence of a higher level of organisation, that is, a systematic approach to carrying out the attack, which indicates that there was an evident attempt to create a hostile and unbearable environment, which was absolutely inadequate for the Muslim population to stay in the Municipality of Vlasenica.

Therefore, based on the foregoing, the Panel found beyond a reasonable doubt that there existed a widespread and systematic attack in the territory of the Municipality of Vlasenica, thus the first general element of the criminal offence of Crimes against Humanity in violation of Article 172 of the CC of BiH has been satisfied.

#### **VI.2. b) Attack was directed against civilian population**

As it is evident from the aforementioned, the attack was directed solely against the Muslim population of the Vlasenica Municipality, which was previously deprived of all weapons in their possession, so that they were not able to take an active part in offering resistance.

In order to gain a better picture of the status of victims against whom the attack was directed, the Panel was guided by Common Article 3 of the Geneva Conventions. Under Annex 6 of the Dayton Peace Agreement, this Article is applicable in the national legislation, while under the ICTY case law it is regarded as part of customary law. Specifically, the referenced Article defines requirements under which persons enjoy the protection ensured by the Conventions, specifying that “*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’*” must be regarded as civilians.

During the trial, the Panel established beyond doubt on the basis of testimonies by the witnesses heard that, at the time of the arrest and incarceration, all of the persons enjoyed the mentioned protection pursuant to Common Article 3 of the Conventions. Such

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<sup>12</sup> *Naletilić and Martinović*, Trial Chamber, 31 March 2003, para. 236

conclusion is based in the first place on the fact that those persons were deprived of liberty while they were moving through the town or were forcibly taken out of their homes. At that time, none of the arrested persons was uniformed or armed; none of them took an active part in hostilities.

During the proceedings, the Defence denied the status of victims as civilians, although a great number of the Prosecution witnesses was completely unaware if a crisis staff was formed in Vlasenica, at any time, whose members, according to the Defence, were Muslims. They in particular were unaware of details about the organizing of the Patriotic League as a resistance movement.

The fact is that some Prosecution witnesses had certain indirect information about that. However, at the same time, they emphatically maintained that they personally were not members of that organization, that they did not notice that it operated in public during the attack by Serb forces, and that they did not notice any other form of an armed confrontation by the Muslim population. According to the Panel, even if such form of the organization existed in Vlasenica, it apparently remained passive during the attack, most likely because, at the very beginning, SDA leaders in Vlasenica appealed to finding a peaceful solution to the newly-arisen situation, so that men of Muslim ethnicity, fit for military service, were not mobilized in any armed formation at the relevant time. This was also confirmed by the witness Latif Zulfari who, at the time of the attack by Serb forces, was formally a member of Reserve Forces of the then JNA, holding the rank of Corporal, but it is clear that he was never militarily engaged in the attack on the Vlasenica Municipality.

The Defence was trying to further base its arguments on assertions that, because of the worsening of overall security situation, even before 21 April 1992, there existed guards in the town of Vlasenica proper, which were stood by armed Muslim men fit for military service.

These averments were not challenged by the Prosecution witnesses who stated that those were joint guards which they stood, for a while, jointly with their neighbours of Serb ethnicity, but on that occasion they were neither uniformed nor armed. The Protected Witness 1 explained that it was a spontaneous gathering of neighbours, *“it was a sort of social gathering, we had coffee together“*, adding that on-duty schedule did not exist, nor did exist any form of order or organization in standing joint guards, and that in those circumstances no citizen of Muslim ethnicity had weapons. Thus, the witness whose identity is protected maintained that at that time her husband and son took part in such guards, but she was sure that during that period they did not have any weapons. This was also confirmed by the witness Salih Mehićić who stated that at the beginning they actually *“met in a street and had coffee at Anđelko Maksimović's place“*, whereas the witness Fadila Muranović had an opportunity to personally see such a road block near her house where a few men of Muslim ethnicity were standing, but is sure that they all wore civilian clothing on that occasion.

Therefore, according to statements by those witnesses, it is justified to conclude that a majority of the Muslim population did not find it necessary to arm themselves immediately before the war had started, because all the residents thought that no disorder would actual ever take place. Besides, a proclamation guaranteed security of the Muslims if they surrendered weapons, which they did, so that objectively they were not able to offer any armed resistance.

In any event, the fact that some person was a member of the Patriotic League or a member of the Crisis Staff does not automatically deprive that person of the right to the protection which he enjoys pursuant to Common Article 3 of the Geneva Conventions. In other words, formal membership of a person in some of the armed formations shall not automatically exclude the right to protection which that person enjoys all the time until he takes an active part in hostilities.

The referenced conclusion is justified also from the standpoint of the ICTY case law, where it is regarded 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*”<sup>13</sup> as was assessed in the present case.

In the part of the Verdict in which the criminal responsibility of the accused will be expounded on the basis of the context in which the crimes were committed and all other circumstances, the conclusion of the Court will be further corroborated that the attack was directed solely against the non-Serb civilian population, whereby the second chapeau element of the criminal offence of Crimes against Humanity referred to in Article 172 of the BiH CC has been satisfied.

#### **VI.2. c) The accused knew about the attack and their acts were part of the attack**

It was found beyond doubt during the proceedings that at the relevant time the accused were part of a dominating military and police formation which carried out the attack which was previously discussed. Also, on the basis of facts and circumstances which were presented during the proceedings at issue, the existence of a nexus was found between the acts of the accused and the attack, i.e., their acts and commissions were in direct connection with the attack.

Specifically, it ensues from testimonies of the Prosecution witnesses that, as early as 21 April 1992, that is, from the first day of the entry of the Corps into the town, the accused were seen uniformed and armed. In addition to them, there were uniformed Corps members who sported JNA insignia, as well as members of the so-called Special Police who wore black uniforms and “*balaclavas*” on their heads and, in terms of formation, they were a part of the Vlasenica PSS. According to averments by the Defence witness Petar Todorović, their commander was a certain Mićo Kraljević.

The Defence tried to take advantage of this fact during the proceedings, maintaining that witnesses were not able to clearly see the accused, if at that time they too wore a sort of

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<sup>13</sup> *Blaškić* Case, ICTY Trial Judgement of 3 March 2000, para 214.

camouflage. However, a certain number of witnesses such as Miralem Džamdić and the witness Ramiza Handžić were positive about their statements. Specifically, she stated that, at that time, the accused Bastah behaved like a “*thug*“, that is, he thought that he was a sort of hero, believing that there was no reason for him to hide, whereas she clearly recognized the accused Višković on one occasion, when he ordered her in a very brash manner not to address him by his name. In the same way he treated the witness Tima Huremović's husband who knew him from before and whom the accused Višković only ordered not to mention his name, insulting him verbally because of that.

Therefore, as early as during that period, the witnesses used to see the accused in uniforms and with weapons while they were going through the Vlasenica town proper. To be more precise, the witness Redžo Ferhatović confirmed that those two accused were present also during the first occurrence of collecting the weapons from Muslim population at a point established near the Panorama Hotel which, according to the witness Miralem Đamdić, was a “*meeting place*“ of Serb soldiers.

During the proceedings the Defence for the accused did not contest the status of a reserve police officer which the accused Bastah had at the Vlasenica PSS, but it diminished his role, noting that he was engaged there only as a driver and that he acted solely under orders by his superiors. This circumstance is partially correct, because according to statements by a large number of witnesses, the accused did use the vehicles which were issued by the police of the former SFRJ, as follows: blue-white *Golf 2* and *Lada Niva* police vehicles and a couple of civilian *Lada* vehicles, as stated by the Protected Witness 5, whereas two witnesses, whose identity is protected, stated that the accused Bastah used “*some red vehicle to drive people to their work*“. This was corroborated also by statements of a large number of Defence witnesses who, during the Indictment period, were engaged at the PSS Vlasenica, so that they were knowledgeable about the car pool of that station.

According to the Defence witness Luka Stupar, Rade Bjelanović was a chief of the station at that time. Prior to his formal appointment in August, as early as 4 May 1992 he was *de facto* succeeded by Mane Đurić. Radenko Stanić, who previously was a commander of the Milići branch police station, was a commander of the station. Milorad Govedarica was a deputy commander. Dragomir Šargić and Vojo Nikolić were assistants. Milanko Šargić was a chief of the crime investigation service. It was also confirmed by their testimony at the main trial when they were heard as Defence witnesses.

To that effect, the witnesses Milan Šarac, Rade Bjelanović and Miroslav Mijić stated that at the material time order-issuing authorities of the PSS were similar to those before the conflict, which means that supervisors ordered a schedule of duties and patrols which, as a rule, should have included members of active and reserve police forces, and in connection with that, a patrol leader was always an active police officer.

However, the Panel reviewed the aforementioned in the context of the state of anxiety and insecurity which prevailed at that time, and the level of the lack of organization of the Vlasenica PSS, especially during the stay of the JNA Corps in the town. In addition,

the Defence witness Miroslav Mijić maintained that the rule of composing the patrol of active and reserve police officers was not strictly implemented in practice, nor did, according to him, active police officers have at that time any broader authorities in respect of the reserve police officers. He even challenged the Defence assertions that an active police officer was always a leader of the patrol of mixed composition, maintaining that such rule was not strictly applied, because at that time *“in a way all followed the same line”*. Also, the Defence witness Milanko Šargić stated that, at that time, a patrol leader was the one who had a patrol order and whose name was put on the top of the list, including a reserve police officer.

The Panel in the present case notes that the Defence witnesses who were a part of the Vlasenica PSS in 1992 were apparently very knowledgeable about the rules of the schedule of duties and composition of patrols in peacetime. However, it does not necessarily mean the application of the same approach to the organization during the material time, especially bearing in mind that the Vlasenica PSS, at that time, did not have a sufficient number of active police officers. The mentioned assertion can be substantiated by the fact which the Defence witness Rade Bjelanović noted, explaining that, at that time, the PSS numbered 72 police officers in total, out of which, according to the Defence witness Boro Mijić, 15 of them in total were active. Therefore, objectively it was impossible to ensure one active police officer for each patrol formed.

Therefore, it is clear that there are particular diversities in testimonies of witnesses, primarily regarding the diversity of legal regulations governing the conduct and operation of police at peace and in extraordinary circumstances, as it is evident that during that period of unregulated relationships within the Vlasenica PSS, there existed specific departures from the Rules of Service, as explained by the Defence witness Rade Bjelanović who was explicit in stating that, during peacetime, each police officer who apprehended a citizen without a warrant was immediately removed from work, but *“during the war all sort of things happen”*.

During the proceedings the Defence for the accused Bastah also indicated some vague points in witnesses' testimonies regarding the uniform he wore at the material time, thus calling into doubt the presence of the accused at the place and at the time of individual crimes.

However, the Panel submits that all inconsistencies to that effect were explained by the Protected Witness 13 who stated that at that time the accused Predrag Bastah changed uniforms, so that she had an opportunity to often see him in a uniform of the reserve police officers, and later on, in a green military uniform or a camouflage uniform, which was confirmed also by the witness Hajrudin Merić, and which, in turn, is evident also from the photo-documentation created during the search of the family house of the accused Predrag Bastah.

The Receipt of seizure of items, Number: 17-04/2-04-2-3/08 of 28 January 2008, shows that two military camouflage fatigues, one police camouflage fatigue and one police blouse were found at the accused's house during its search. Although such description

seems too lengthy, it is substantiated by a testimony of the Defence witness Milanko Šargić, the then chief of the crime investigation service of the Vlasenica PSS, who explained that members of the reserve police officers in Vlasenica wore uni-coloured and camouflage uniforms, depending on situation, and he even had a chance to often see members of the army in blue police uniforms.

Finally, defence counsels for the accused contested the joint operation of the military and police, maintaining that the accused were not able to jointly operate or participate in the commission of the criminal offences with which they are charged, because they were a part of organizational structures which, at the material time, were strictly separated entities.

For that purpose, the functioning of the military police and the scope of their operation were explained by the Defence witnesses Radivoje Vasković and Cvijetin Vlačić who, on 21 April 1992, jointly with the accused Goran Višković, were mobilized for a platoon of the military police of the Vlasenica Brigade which numbered between 10-12 people. Their rooms were in a private house next to the *Boksit* building in which this Brigade Command had its base. The referenced witnesses were explicit regarding the authorities which military police officers had at the material time and which implied the securing of the brigade command, the apprehending of deserters or conscripts who failed to respond to mobilization, and the securing of military officers as their escort and occasional participation in combat operations. In this regard, the witnesses particularly stressed that the referenced authorities within which they operated were exclusive and they did not prescribe any form of co-operation with the civilian police.

Conversely, the Defence witness Mane Đurić stated that, after the division of duties was negotiated by the military and the police, joint patrols were nevertheless agreed on. It was confirmed by the Defence witness Slavko Ninković who was personally mobilized at a check-point jointly held by the military and the police at the entrance into the town. In that regard, the Panel had in mind the witness's statement that it was a practice used at his check-point and that he was not sure about the organization of other check-points which were set up at the entrances into the town, but the fact that such situations were not, however, an isolated occurrence was confirmed by testimonies of the Defence witnesses Radivoje Vasković and Cvijetin Vlačić who stated that they personally were at the check-point which was set up at the exit from the town in Han Pijesak direction, where the military police were also on patrol jointly with civilian police.

In assessing the non-/existence of co-operation between the civilian and military police, the Panel had in mind the fact that, besides the listed, almost all Defence witnesses were categorical regarding the authority held by the military police, and they emphatically rejected the possibility of co-operation with the civilian police, although it is evident that in their statements they mentioned the existence of joint patrols, considering them to be an exception to the rule. Conversely, the Panel viewed such situations in the context of the specific security situation in which a proper hierarchy and functioning of bodies had yet to be established, because of which it is reasonable to conclude that even occasional

cases of co-operation can open up the possibility of taking joint actions in individual situations in practice.

Therefore, bearing in mind the general state of insecurity during which the referenced criminal offences were perpetrated, unacceptable are the averments by the Defence about the completely isolated and severely restricted operation of the military police. On the other hand, the witnesses Vasković and Vlačić were not always on patrol with the accused Višković, so that they were not able to objectively know if, in particular situations, the referenced accused exceeded his authorities and acted jointly with members of the reserve or regular police forces, and in which manner he did so.

In connection with this argument of the Defence, the Panel had in mind the fact too that the accused personally knew each other and that they knew almost all the population of the town in which they lived, so it is clear that only strict formal rules for the separation of military and police, which at the material time were apparently not strictly hierarchically observed, would constitute an obstruction to their joint operation.

Besides, the chapeau element of the criminal offence with which the accused are charged provides only the knowledge of the accused about the attack, that is, *“the accused must know that there is an attack directed against the civilian population and he must know that his acts are part of that attack, or at least take the risk that they are part thereof.”*<sup>14</sup>

In that regard, the Panel found beyond a doubt that, from the onset of the attack, the accused were assigned to appropriate duties and tasks in military and police formations, so that they were issued uniforms and weapons which they regularly carried with them. If the aforementioned is viewed in the context of massive nature of the very attack and the massive scale of the operation of the Serb forces in the territory under their control, it is reasonable to conclude that the accused, as members of formations that carried out the attack, were entirely knowledgeable about everyday occurrences.

Therefore, in the area of the Vlasenica Municipality, those were not sporadic and isolated incidents or individual crimes which could be regarded as an exception, but it was rather a systematic method of behaviour towards civilians of Muslim ethnicity, their lives, freedom and property.

The method of participating in the perpetration of offences of which the accused are found guilty indicates beyond doubt that they knew about the existence of the widespread and systematic attack and that the actions they took constituted part of that attack. It is further indicated by the fact that the accused, at the material time, made it perfectly clear that Vlasenica was a *“Serb territory”* and that their task was to *“exterminate”* the remaining non-Serb population, addressing them even by abusive names *“Ustashas and Baliyas”*.

In other words, the accused were entirely aware of their acts and the consequences thereof. They intended their acts to be part of the attack, which was systematically carried

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<sup>14</sup> *Krnjelac* Case, Trial Judgement of 15 March 2002, para 59.

out in the area of the Vlasenica Municipality. Their acts indeed were a part of such attack. The last chapeau element of the criminal offence of Crimes against Humanity in violation of Article 172 of the BiH CC is thereby satisfied.

The convicting part of the Verdict will reason the legal standards which are applied to individual charges within this criminal offence and which are accepted in the case law of the Court of BiH and the ICTY.

## VII STATUS OF *SUŠICA* DETENTION FACILITY/CAMP

During the proceedings, also questionable was the purpose of the Sušica facility which stands some 1.5-2 km away from the Vlasenica town. According to witnesses, it is a facility which had been used before 1992 as a JNA weapons warehouse, but none of the witnesses was explicit about the exact date of converting that warehouse into a camp, that is, detention facility in which persons of the Muslim ethnicity from the area of the Vlasenica Municipality were unlawfully incarcerated and kept.

The Record on investigation, Number: 17-04/2-04-2-1148-38/06 of 12 February 2008, which was carried out by investigators and forensic technicians of the SIPA and FMUP, and Maja Martinović, the expert witness in traces of biomaterials, shows that it is a facility standing on the outskirts of the town of Vlasenica, from which a macadam road goes on towards the place of Luke. The referenced report describes in detail the hangar, measuring 13.30x35.5 meters, with a metal double door and a smaller one, on the right wing of the facility. Next to that hangar, 11.50 meters away, there was a ground floor brick-laid facility, measuring 4.00x4.00 meters, covered with asbestos boarding, with two more rooms, in addition to a corridor, inside of it. The mentioned description corresponds to the statements of the witnesses who were detained therein. However, the most relevant part of that investigation, in addition to the photo-documentation and video-recordings, is the analysis of chemical substances found in that place. Specifically, according to the report by the expert witness Maja Martinović, the presence of human blood micro-traces was found in some traces which were discovered on the site.

Given that, during the period after the closing of the Sušica camp, the referenced facility was not used, the bio-material was preserved and results of the analysis only further confirm the conclusion of this Panel that it did not have the function of a collection centre established for lodging the Muslim population, but was a camp in which civilians of Muslim ethnicity were unlawfully incarcerated and were kept there in extremely inhumane conditions, being subjected to almost everyday abuse and to mental and physical ill-treatment.

The expert witness Radinović found *inter alia* in his Finding and Opinion that it was the JNA that supervised the establishment of the Sušica collection centre and its operation, and that after the withdrawal of the JNA, the Territorial Defence of the Serb Vlasenica Municipality supervised the Sušica collection centre until it became a part of the Republika Srpska Army. According to materials which were available to the expert witness, the persons who had the status of prisoners of war were detained in Sušica, but

there also was a certain number of civilian population. Taking that fact into account, the security in Sušica was provided by military and civilian police officers who did it in such a manner that the apprehension of civilians, their escort to the Sušica complex, their provisional release or taking them out and transporting them towards Kladanj were within the sole competence of the civilian police, whereas the military police provided physical security to the facility as well as transportation and security to military prisoners of war from Vlasenica to a prison in Batković.

It is important to consider the status of the referenced facility, because almost all Defence witnesses during the proceedings treated Sušica as a collection centre in which the Muslims who sought protection by the Serb authorities of the Vlasenica Municipality were voluntarily deported. Specifically, according to their assertions, the reason for such seeking lied in the worsening of a general security situation in the town and in its environs as far back as the arrival of the Novi Sad Corps, so that the Muslim population felt insecure in their homes, primarily fearing that various paramilitary formations could storm in.

The referenced insecurity further increased by a great influx of refugees of Serb ethnicity from the area of Kladanj and Tuzla, because they required that the authorities in the Municipality should provide them with accommodation, which meant moving into houses and apartments of Muslim population from Vlasenica. In order to demonstrate all the complexity of refugee issues, the Defence included into the evidence the Information by the Ministry for Refugees and Displaced Persons of the Republika Srpska Number: 18.3/3-7-B-23-1/09 of 27 January 2009, presenting the figure of almost 3,000 refugees of Serb ethnicity in the area of the Vlasenica Municipality.

In the same manner, the expert witness Raidnović also explained in his Report the purpose of the facility. In that Report he regards it as a “*provisional asylum for Muslims*”, whose only purpose was the lodging of non-Serb population until their transportation to the territory under control of the Army of BiH, that is, towards Kladanj, Cerska and Olovo. The expert witness also noted that some cases of their moving out even constituted a personal and collective choice of an individual, albeit the Panel did not find any confirmation of such a conclusion in the testimonies of the witnesses heard.

The reason for this is that the Defence witnesses also stated that, following the conflicts in BiH, they had a chance to hear about the inhumane conditions and abuses in the Sušica camp, using exactly that term for the referenced facility, so that any averments about the “collection centre” where the population voluntarily went to seem to be rather weak and unfounded.

On the other hand, on the basis of almost all of the Prosecution witnesses heard, some of whom stayed in Sušica for quite a long period of time, the Panel concluded that it indeed was a detention facility in which extremely inhuman conditions prevailed.

According to the Protected Witness 8, even up to 500 people stayed in the hangar. The hangar, in fact, was a long building with an iron door which was unlocked only at times,

when detainees would ask for a little water. Men were separated from women therein. All were sitting on the concrete with their hands resting on their knees. The witness Habiba Hadžić, who stayed detained in the camp for about 30 months, clearly described the inhuman and unhygienic conditions in which the people were kept, because in the room in which all of them stayed they had two pails to relieve themselves, but they went to WC in the morning when guards opened the door. According to the witness Tima Lelo, they slept on a concrete floor and always received insufficient food. Sometimes, date of use of some food had expired long before.

On the basis of the aforementioned, it is clear that the Prosecution witnesses used the expression *camp* in order to explain the function of the facility in which they were unlawfully detained, and exposed to inhumane treatment and various forms of physical and mental abuse. Consequently, the meaning given by the expert witness Radinović cannot be accepted, because he asserted that the expression *camp*, which was used by the commander of the SV Birač Brigade in the Order of 31 May 1992, was employed in a military sense, meaning the space which was prepared and equipped by the military for their stay.

The expert witness also considered that it was not possible to precisely establish the period of forming the camp. He considered it to be the end of June. He concluded that on the basis of the order for drawing up a feasibility project for guard services near the 4PB Vlasenica facility, as he saw the referenced feasibility report as preparation of the ground for the establishment of the Sušica camp. This is unacceptable for the reason that it provided that all actions on that issue should have been accomplished until 17 June 1992 at the latest, so that it is evident that the order was issued at some point early in June. Besides, the commander stated in the order that materiel and technical equipment and prisoners of war were already in the facility, so that this Panel concluded beyond a reasonable doubt that people were brought to the Sušica facility as early as June 1992. The mentioned order by the commander of the SV Birač Brigade of 31 May 1992 for setting up the Sušica camp goes in favour of that conclusion. The aforementioned also contested the assertions by the expert witness Radinović that Sušica actually was a collection centre formed with the aim of protecting the Muslim population from potential reprisal by the Serb refugees, who were coming to the territory of the Vlasenica Municipality during the material time in large numbers. Reviewed in the context of specific events and consistent statements by numerous witnesses who, as participants in those events, found themselves in Sušica, this argumentation is unacceptable and it seems very unlikely that the then Serb authorities of the Vlasenica Municipality were motivated by existential crisis and human reasons so as to move the arriving Serb refugees into private houses and apartments of the Muslims who were moved out and lodged in Sušica, given that such problem exactly was resolved by the opening of a collection centre for providing for the arriving refugees, not native population which did not have that status in the first place.

On the basis of all the aforementioned, it is clear that the purpose of incarcerating the Muslims in the Sušica camp was not to provide security to them. Just the opposite, in that way they became available to members of the military and paramilitary who abused

them. The manners in which many detainees were treated show that the ultimate aim was not to transfer them to the territory under control of the Army of BiH, given that a large number of them never arrived there.

## VIII CONVICTING PART OF THE VERDICT

### VIII.1. The accused Predrag Bastah aka Dragan – alone

#### VIII.1. Count I.1. of the Operative Part of the Verdict

The belief of the Court that, early in June, most likely on 2 June 1992, the accused Predrag Bastah participated in the severe deprivation of physical liberty of the underage Huso Kičić in the manner, in the place and at the time mentioned in Section 1 of the convicting part of the Operative Part of the Verdict, was formed on the basis of testimony by Huso Kičić who testified about that event at the main trial held on 11 September 2008. Specifically, this witness stated that he knew the accused Predrag Bastah and his wife Zdravka, his daughter Slađana, his brother Nenad and his wife Milka. He explained that stating the fact that his uncle Hasanović resided across from their house. During the evidence, pointing in the court-room at the accused Bastah, whose appearance changed a bit in comparison with what he looked like during that period and whose hair turned grey, he clearly identified him as a person who brought him in the Vlasenica PSS rooms on 2 June 1992. Explaining how it happened, he stated that the accused Predrag Bastah, who wore a camouflage olive-drab uniform sporting a cockade, appeared at the door of his house on the referenced date, accompanied by a uniformed person who operated a blue and white coloured Golf vehicle which had been used by the police before the war. The accused required that he tell him where his father was. After he had said that he did not know, the accused cursed his Baliya's mother, grabbed his hair and “pushed” him into the vehicle. Cursing and insulting him constantly, they brought him in front of the Vlasenica PSS. The witness also stated that in the same vehicle there was another apprehended person whom the accused Bastah, together with him, took upstairs of the police station. The accused kicked that unknown person in his back, so that he “rolled down” the stairs. He then turned towards the witness and hit him with a rifle butt in his chest and ordered him to hold his arms above his head. The accused continued battering at his lumbar region for about ten minutes at least. He suffered severe pains from the blows in the region of his chest and ribs. The witness stated that the battering did not stop until Vojislav Nikolić, his former teacher of physical education, came up and cursed angrily, asking the accused why he was doing that. Then he took the witness into an office upstairs where he questioned him again about his father and the possession of weapons. In such circumstances he even had to write a statement in Cyrillic letters. Afterwards, Nikolić personally took him out of the station, explaining that he wanted to prevent him from being repeatedly battered. He advised him that, on his way home, he should take a safer street going by the *Panorama* hotel.

In an attempt to challenge the credibility of this witness, the Defence adduced the evidence by hearing the witness Vojislav Nikolić, the reserve police officer who on the

relevant day helped the underage Huso Kičić, and by hearing the witness Denka Bogosavljević who stated that the Kičić family had left Vlasenica before the arrival of the Corps, more specifically, at some point in March 1992, whereby the Defence wanted to prove that the witness Huso Kičić could not have been a participant in the event which took place at some point in June 1992.

However, the Panel gave full credence to the witness Huso Kičić who did not have any reason to give false testimony against the accused. He testified about the referenced event clearly, in detail, consistently and very convincingly. The fact that he was not able in the investigation to recall the name of the police officer who helped him, when he testified as equally as at the main trial, does not diminish the value of his evidence in respect of decisive facts the correctness and veracity of which were not challenged by testimonies of the Defence witnesses Vojislav Nikolić, Danka Bogosavljević or by any other evidence presented. To tell the truth, the Defence witness Vojislav Nikolić could not recall the event when he helped the witness Huso Kičić in the PS, but he accentuated that, in the described situation, he would certainly have prevented the battering. Given such assertion, the circumstances surrounding the case, the fact that this witness was personally a reserve police officer and, in that capacity, took a statement from the witness Kičić, the Panel concluded that the witness Nikolić knowingly avoided to give a true reply, apparently not wishing to bring himself in connection with the place and time of the perpetration of the criminal offence of which the accused was found guilty. It is the reason for the Panel not to accept in this part the testimony by the witness Nikolić and the witness Danka Bogosavljević who was married to a Muslim and who had a friendly relationship with the accused Bastah who helped her to leave Vlasenica with her children on 18 July 1992, even without a certificate which she could not obtain because of her family name. Hence, the Panel concluded that, during her testimony, she intended to alleviate the position of the accused in the criminal proceedings and, for that purpose, to provide him with an alibi, asserting that, on 2 June 1992, when his daughter had her birthday, the accused was with the witness in the frontyard. Besides, the witness Bogosavljević was not certain that the Kičić family, which she knew, left Vlasenica at some point early in May, since when she had not seen them. She only thought that it occurred then, but she did not exactly see when they were leaving. However, the witness Huso Kičić was very explicit stating that the described event took place exactly on 2 June 1992, and the Court gave full credence to his testimony.

After the state of facts had been thus established, the Panel examined whether all essential elements of the crime of imprisonment or severe deprivation of physical liberty referred to in Article 172(1)e) of the BiH CC are satisfied in the actions of the accused Predrag Bastah perpetrated in the manner as described above, and to that effect it analysed its individual elements :

- imprisonment or other severe deprivation of physical liberty;
- in violation of fundamental rules of international law;
- with direct or indirect intent.

The referenced analysis of the elements will always be done for the purpose of this Verdict when the accused is charged with the offence of imprisonment or severe deprivation of physical liberty in violation of Article 172(1)e) of the BiH CC.

Specifically, pursuant to Article 172(1)e) of the BiH CC, imprisonment or severe deprivation of physical liberty of some individual without proper legal proceedings, within a widespread or systematic attack directed against the civilian population, is contrary to the fundamental rules of international law and such behaviour is defined as the crime against humanity.

In the *Krnjelac* Case, the ICTY 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. If national law is relied upon as justification, the relevant provisions must not violate international law.<sup>346</sup> In addition, the legal basis for the initial deprivation of liberty."<sup>15</sup>

Further, in the same case, regarding the criminal offence of imprisonment, the ICTY Trial Chamber defined the obligation of the existence of the accused's "intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty".

That, in the present case, the accused Predrag Bastah's action was contrary to the fundamental rules of international law is clearly indicated, in the first place, by the fact that his act was directed against the underage Huso Kičić who had a status of a civilian that falls within the protected category of population under the provisions of international humanitarian law – Common Article 3 of the 1949 Geneva Conventions which was applicable at the material time.

Further, the fact that the underage Huso Kičić did not receive any explanation from the accused (oral or in writing) about the reasons for his deprivation of liberty when the accused "simply grabbed his hair and pushed him into the golf" and the fact that justification for such deprivation of liberty was not the subject of deliberation in any court or administrative proceedings, that the accused did not take into account that he was a civilian who, because of his age, degree of his mental development and personal security must always be accompanied by his parents while being apprehended, that he extorted information (about his father and weapons) from the underage boy by using physical force and inflicting pain on him - all of those indicate that, in the present case, there did not exist legal grounds for his deprivation of liberty, although the accused, as a reserve police officer, according to the Defence witness Mane Đurić, was trained in carrying out police duties, and as such he must have known and he knew that a deprivation of liberty must be based on regulations and law, and that it in no case includes arbitrariness in the actions and that it in no case implies ruthlessness and any form of abuse.

Therefore, in the situation when the accused Predrag Bastah, in his capacity of a reserve police officer, within a widespread and systematic attack against the civilian population,

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<sup>15</sup> See *Krnjelac* Case, ICTY Trial Judgement, para 114.

knowing about such an attack, as part of that attack, came on a blue and white police vehicle of the Golf make to the house of Ismet Kičić at 20 Jove Ostojić Street in Vlasenica, he took the underage Huso Kičić out of the house by pulling his hair and, together with another Bosniak civilian, he drove Huso Kičić to the Police Station in Vlasenica. After he had kicked that unknown civilian in the back and after the civilian had rolled down the stairs of the PS, he started hitting the underage Huso Kičić vigorously in the chest, with a rifle butt, in the corridor, next to the information desk of the police station, demanding that Huso Kičić lift his arms above his head while receiving the blows, which he did, so that the blows would be more painful. He was hitting the underage Huso Kičić until the latter started reeling because of the pains. Further physical mistreatment was stopped by one Serb police officer. All essential elements of the criminal offence of severe deprivation of physical liberty referred to in Article 172(1)e) of the BiH CC are satisfied in his actions which were perpetrated with direct intent, given that, as a trained reserve police officer, he was aware of the arbitrariness of deprivation of physical liberty of the underage Huso Kičić, that he so intended and by using force he carried it out in an unlawful manner.

### **VIII.1. Section I.2. of the Operative Part**

The conclusion of the Panel that the accused Predrag Bastah participated in the severe deprivation of physical liberty of Muhamed Ambešković and Ramiz Hurić, in the manner, in the place and at the time described in Section 2 of the convicting part of the Operative Part of the Verdict, is based on statements by the Protected Witness 15, Witness 13 and Huso Kičić who identically described the abduction of the aggrieved parties. They maintained that, at some point in June, the accused Bastah came by car in front of Avdo Ambešković's house in which there were the aggrieved parties. He was accompanied by other members of the police, including Goran Pajić, Elvis Đurić, Mišo Gojgolović and others, who yelled out when they arrived in front of the door: *"Police! Get out!"*. After the aggrieved parties had come out of the house, they were ordered to turn their faces towards the wall. After a police officer had cocked a rifle and asked: *"Shall we finish this?"*, another one replied: *"Don't! We need them alive"*. The event at issue was attended by mother and sister of the Witness 15, so that they clearly saw when his father was knocked down and beaten. Then, together with Avdo and Muhamed Ambešković and Fahrudin Aličević, they were transported by a police vehicle towards the Vlasenica PS.

According to the aggrieved party – the Witness 15, on arriving at the station they were ordered to surrender all items they had on them to a reception desk. The witness was taken to a room upstairs where he met Slavko Popović, Aco Đurić, Elvis, Goran Pajić, Dragan Bastah and two more soldiers. The accused Bastah began to examine him, whereas the others began to beat him. Shortly thereafter, his father was brought into the room. The accused ordered that the witness hit his father and that his father hit the witness. When the witness refused to do so, the accused gave him a punch on his head. The punch caused him to fall down. He continued punching and kicking his father, hitting him with a rubber baton, and all of that lasted for about 15 - 30 minutes. The witness was taken out into a corridor where he had to stand with his face turned towards the wall. Nevertheless, he could see that later on they brought into the room from which he was

taken out the others who had come there together with him and also some people from his street. Then he heard the blows and moaning. Some time later, after they had taken the aggrieved party Ramiz Hurić out of the room, according to the witness, Slavko Popović came up. He first kicked him in his back and brought him again into the room in which he saw the aggrieved parties Fahrudin, Avdo and Muhamed lying in a corner with their “faces disfigured”, whereas the accused Bastah, with his face flushed and with his shirt sleeves rolled up, was cursing and occasionally beating the aggrieved parties, until the two of the present soldiers started splashing water on them in order to help them.

The injuries inflicted on that occasion on the aggrieved party – the Witness 15 were confirmed by the Witness 13. She had a chance to see him immediately on his exit from the police station. She described him stating that he was not able even to walk due to the inflicted blows, and on his back he had a footprint made by the boot with which, according to him, Slavko Popović had hit him.

Challenging the credibility of this witness, the Defence contended that the aggrieved party, immediately following the incident, did not mention the accused, which is inaccurate, given that the Witness 13 stated that he, on his exit from the station, clearly identified the persons who battered him there, adding that the accused Bastah was present there all the time, so that it is clear that, during the examination, the witness was not beaten by the accused, but by the other police officers who were present in the room, but that the accused got involved in the battery after Ramiz Hurić and the other aggrieved parties were brought into the room.

Therefore, the Panel gave credence to the testimony by the protected witness, given that he clearly and thoroughly described all particulars of the relevant event, which were also substantiated by the testimony of other witness. In that connection, the accuracy and veracity of his testimony were, by no means, brought into question by the Defence. After thus established state of facts had been reviewed in the context of the previously presented elements of the criminal offence, the Panel arrived at the conclusion that the accused Predrag Bastah, acting as a reserve police officer, within a widespread and systematic attack against the civilian population, knowing about that attack and, as a part of that attack, together with other members of the police, on the relevant day came in front of Avdo Ambešković's house in which, besides him, there were also the other aggrieved parties – civilians, and without informing them about the statutory reasons for their apprehension, he deprived them of liberty by using physical force for no good reason. After they had been brought into the rooms of the Vlasenica PSS, he took part in their battery. The accused Bastah perpetrated the act with direct intent, because as a reserve police officer, he was aware of the arbitrariness and the exceeding of authority in treating the apprehended persons. He intended to do just that and, by using physical force for no good reason, he severely deprived them of physical liberty. The evidence presented during the proceedings did not indicate the existence of any agreement between the accused and the other persons, but by taking the described actions, together with the other persons, he took an active part in and contributed towards the perpetration of the criminal offence and thus showed, beyond doubt, the awareness of a concerted action, whereby, as a co-perpetrator, by the actions taken, he satisfied the essential elements of

the criminal offence of severe deprivation of liberty referred to in Article 172(1)e) of the BiH CC as read with Article 29 of the BiH CC.

### **VIII.1. Section I.3. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused Predrag Bastah for participating in the murder of the aggrieved party Mujo Klanco is primarily based on the testimony of the witness Vukosava Klanco, wife of the aggrieved party, the witness Petar Todorović, the Protected Witnesses 1 and 7, the Defence witness Ognjen Ostojić and the rebuttal witness Umija Šabić. Specifically, by virtue of the referenced testimonies it was found that on 2 June 1992, the accused Predrag Bastah aka Car, together with a police member – most likely – Rade Milić, on the way home, stopped the aggrieved party's wife, Vukosava Klanco, and asked about her and her husband's name. After she had replied, he ordered her to come into a police vehicle by which she was brought in front of her family house where she found her husband on the stairs. She explained to him that some people came to pick him up to ask him some questions. The accused and another police officer transported the aggrieved party Klanco in the direction of the Vlasenica PSS. This was also confirmed by the witness Umija Šabić who lived nearby and watched the referenced event which, as far as she remembers, took place on 2 June 1992. Given that both of the witnesses beyond doubt recognized the accused Bastah in the courtroom, there is no doubt about the person who took the aggrieved party in the direction of the Vlasenica PSS on the relevant day.

As the police station was in the immediate vicinity of the aggrieved party's house, the witness Klanco went there right after her husband was taken away in order to check the reasons for his apprehension. When she came in, she found a bunch of armed persons. Among them she recognized the accused Bastah who, after she asked for her husband, started to punch and kick her heavily and hit her with a rifle butt, making her hold her arms above her head. It was the last time she saw the aggrieved party on the station stairs. Then, the accused "pushed her into a cell" in which she was detained for the following three days. Given that the Indictment, in the factual description, has not charged the accused Bastah with battering the witness Klanco, the Panel did not analyse this issue in more detail.

As the witness Klanco was in the cell, the witness Petar Todorović was 3 metres away from the street along which the accused Bastah and a police officer riding shotgun passed by a police vehicle of the Golf make. He was not able to recognize him, but in the back seat of the vehicle he clearly saw the aggrieved party Mujo Klanco who, according to the witness, was a driving instructor in Vlasenica. Following the vehicle with his eyes, he observed it heading in the direction of Toplik where the *Alpro* factory used to be. Then the vehicle came out of sight, but half an hour later it returned from the said direction, but the aggrieved party Mujo Klanco was no more in the back seat. As it seemed suspicious to him, the witness instantly started moving in the direction in which the aggrieved party had been transported and he found him dead 20 metres below the road he took. He realised that it was Klanco, because he clearly saw him shortly before. The witness clarified that he recognized the clothes which the aggrieved party wore on that day, as

well as the body of the aggrieved party although its back was turned towards him, as no obstacles were on the road.

In order to explain the exact location at which he saw the body of the aggrieved party, at the main trial the witness was presented photo-documentation made by the State Investigation and Protection Agency of 13 March 2008, at the place where, according to the witness, there was the corpse of the aggrieved party Klanco. According to his averments from the investigation, the body of the aggrieved party was removed during the night, and was exhumed on the location of Ogradice, the Vlasenica Municipality, on 18 June 2003.

This witness gave a statement about the referenced event to the Agency for Investigation and Documentation in Sarajevo in 1996. The Defence challenged the authenticity and relevance of that statement during the proceedings, maintaining that the witness was inclined to alcohol and that he gave his statement under duress. Disagreement with the referenced statement was expressed personally by the witness Todorović when he was examined by the prosecutor, maintaining that, at the time of giving the contestable statement to the Agency for Investigation and Documentation, he was abused and forced to sign it. For the purpose of explaining the record at the Prosecutor's Office Number: KT-RZ-207/07 of 11 September 2007, to which he did not have objections, he provided particular clarifications to that effect. The witness explained at the main trial that he knew about a large number of the events alleged to have taken place in Vlasenica from hearsay of other people, but that he personally watched the taking away of the aggrieved party Mujo Klanco in the direction of the *Alpro*, and in the immediate vicinity of the road he went along he saw his corpse, but in that connection, at no time did he describe the accused as the person who directly deprived the aggrieved party Klanco of life.

During the proceedings, the Defence tried to make the statement by this witness confusing. Thus, the Defence witness Miroslav Mijić stated that, from the position in front of the apartment, the witness Todorović was not able to see the vehicle which was travelling from the direction of the aggrieved party's house, which is, according to the Panel, pointless to challenge, because the witness Todorović did not even say that the vehicle was travelling from the direction of the aggrieved party's house to the direction of the police station. Also, some other imprecisions in the statements given during the investigation and testimony by this witness at the main trial, which the Defence indicated, and which refer to the question whether the Accused Bastah, on the relevant occasion, was in the car alone or accompanied by another police officer, according to the Panel, do not jeopardize in a decisive manner the quality and reliability of the statements as a whole, nor do they diminish the quality of evidence regarding the decisive facts. In addition, the wife of the aggrieved party, the witness Klanco, herself added at the end of the evidence that her testimony was not a "*hate speech*", nor was it partial, which would be impossible, given that she described the event only until the time of her detention in a cell of the police station, since when she never again saw her husband.

After the state of facts had been thus established, the Panel examined whether all essential elements of the offence of Murder referred to in Article 172(1)a) of the BiH CC

were satisfied in the described actions of the accused Predrag Bastah, and for that purpose it analysed its individual elements:

- that the person was deprived of life,
- that the deprivation was conducted with direct intent, because the accused was aware of his act of commission and he wanted the commission thereof.

The referenced analysis of the elements will be taken into consideration always when the accused are charged with the offence of murder referred to in Article 172(1)a) of the BiH CC.

In that context, it is also useful to indicate the case law of the ICTY Trial Chamber in the *Krnjelac* case where it was concluded that *”the fact of a victim’s death can be inferred circumstantially from all of the evidence presented to the Trial Chamber. It is sufficient to establish that the only reasonable conclusion which can be drawn from the evidence available is that the victim’s death was caused by an act or omission of the accused, or of a person or persons for whose acts or omissions the accused bears criminal responsibility.”*<sup>16</sup>

The violent death of the aggrieved party Mujo Klanco was established in the Death Certificate, Number: 171/08 of 21 January 2009, which shows that the cause of death was a bullet wound on the left side of the pelvis, which was also confirmed by the Finding of the Expert Witness Dr. Vedo Tuco, forensic medicine specialist, dated 13 January 2009. Further, the fact is that the heard witnesses linked the accused Bastah, beyond doubt, with the place and time of the commission of the criminal offence. In that connection, it should be noted that their testimonies are consistent in decisive facts, sufficiently clear, precise and connected in the manner which does not generate any different conclusion, but that the accused, as a reserve police officer, within a widespread and systematic attack against the civilian population, knowing about such attack and as a part of that attack, took an active part in the commission of the criminal offence of murder of the aggrieved party, in the manner that he, together with another police officer, drove him at the place of execution where he attended the deprivation of the aggrieved party’s life. Evidence presented during the proceedings did not indicate the existence of any agreement between the accused and the other person with whom he was on the relevant day, but taking an active part in the commission of the offence at issue indicates, beyond doubt, the existence of awareness about the concerted action. The accused committed the offence with direct intent, because he was aware of the possibility of causing the death of the aggrieved party as a consequence thereof, and he intended it, so that it did happen, seeing that he did not bring the aggrieved party back home after he had taken him out of the station, but he drove him to a quite different part of the town, to a less accessible location where the aggrieved party was killed. Thereby, in a decisive manner, the accused contributed towards the commission of the criminal offence and, as a co-perpetrator, by the taken actions, he satisfied the essential elements of the criminal offence of Murder referred to in Article 172(1)a) of the BiH CC as read with Article 29 of the BiH CC.

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<sup>16</sup> Also see *Tadić* Case, ICTY Trial Judgement, para 240, *Kvočka* Case, ICTY Appeals Judgement, para 260 and *Mrkšić et al* Case, ICTY Trial Judgement, para 486.

### VIII.1. Section I.4. of the Operative Part of the Verdict

The Court is satisfied that the accused Predrag Bastah participated in the murder of the aggrieved parties Zejna Ambešković, Nura Tutić, Džemila Hasanbegović, Ahmo Hadžiomerović and his wife Tifa in the manner, in the place and at the time stated in Section 4 of the convicting part of the Operative Part of the Verdict. In that connection, the facts of Counts 11. and 11. a) of the Amended Indictment were joined, because they make a whole. The factual description left out the taking of Ezudin and Nedžib Bajramović towards the Vlasenica PSS, since when they remain unaccounted for. The factual substratum of the Indictment omitted, to that effect, to describe the participation of the accused Bastah in that particular event. The Protected Witness 7 thoroughly testified about the referenced event. She described the participation of the accused in that event, which she watched from the window of her room. According to her, the event took place in the evening on 12 September 1992, between 1:30 and 3:30 hours. An explosion near a mosque was first heard. Shortly after, she heard voices of uniformed persons. Among them, she recognized the voice of the accused Bastah. Later on, she saw him arriving in the street by a car. In front of the car there was a tractor with a trailer and a few prisoners from the Sušica camp. The uniformed persons came into Zejna Ambešković's house in which, besides her, there were Džemila Hasanbegović and Nura Tutić. Then, shots were heard, and immediately upon their exit, the accused ordered the prisoners to bring the dead bodies of the aggrieved parties out of the house. Thus, she saw them carrying out Džemila who was covered with blood, and Zejna Ambešković and the old woman Nura. All the time, the witness was watching the event from the window. She maintained that visibility was very good, so that in the crowd of persons she recognized a certain Alija aka Gico who had been brought from the Sušica camp. The voice of the accused was distinctly heard, because he was shouting, urging the prisoners to hurry up.

After the dead bodies of those aggrieved parties had been loaded on the tractor, with a group of soldiers and prisoners the accused proceeded moving towards Ahmo Hadžiomerović's house in which he was with his wife Tifa. Again, after the shooting had ceased and after the soldiers had come out, under the same pattern and order by the accused, the prisoners came into the house, brought out the dead bodies of the aggrieved parties, loaded them on the tractor and transported them in an unknown direction. Because of that, the bodies of the aggrieved parties have not been exhumed to date.

On the day following the event described, three armed soldiers came to pick up the Witness 7 and her brother's son. They took them in the direction of the Sušica camp. Passing by the house of the aggrieved party Zejna Ambešković, she clearly saw the traces of blood on stairs, whereas from the neighbouring street she heard again the voice of the accused Bastah who said: *"Get out of the houses, all of you!"*. Cursing their Baliya's mother, he yelled: *"Don't you know that this is a Serb country!"* On her arrival in the camp, she saw him again, when he said to her brother's son: *"The foxes are all brought to the furrier. You were in hiding, but you can be there no more."*

The Defence contested the statement by the witness, maintaining that she could not recognize the accused on the relevant night, because all of the soldiers wore stockings on

their heads, but she stated at the trial that she knew him perfectly, identifying him in the courtroom and explaining that he behaved, at that time, as a “*big boss*“, because he “*would burst into houses and issued orders*“, for the reason of which he was not masked. On the relevant night, however, he spoke most loudly when he ordered the prisoners to take the dead bodies of the aggrieved parties out of the houses and load them on the tractor. In that process, owing to moonlight and good visibility, among the uniformed persons she recognized a certain Miroslav Mićo Koroman who, for a moment, pulled the stocking off his head, and having raised a bottle with alcohol, he shouted: “*Long live tonight's massacre of Muslims in Vlasenica!*“.

As the statement by the witness is precise, clear and unequivocal, the Panel did not have an impression that it was aimed at accusing the accused without any firm grounds, for which the Defence did not tender a single argument, except that her credibility was challenged by the assertion that she enjoyed the identity protection. However, the Panel found that such objection was unacceptable, because such protection referred solely to the public, whereas the defence counsels and the accused had the possibility to check, by cross-examination, the authenticity and veracity of her averments, which was done. Besides, Witness 7 did not enjoy the highest degree of identity protection, as prescribed by Articles 13 through 24 of the Law on Protection of Witnesses, when a sentencing verdict could not be based in a decisive part on her statement only.

After the state of facts thus established had been reviewed in the context of the previously presented elements of the criminal offence, the Panel arrived at the conclusion that the accused Predrag Bastah, acting in his capacity as a reserve police officer, within a widespread and systematic attack against the civilian population, knowing about such attack and as a part of that attack, in an organized manner, came to the execution site, followed by prisoners from the Sušica camp whom he ordered to come into the houses after the murdering of civilians and take out their dead bodies, load them on the tractor and transport them in an unknown direction. The evidence presented during the proceedings did not indicate the existence of any agreement between the accused and the other persons with whom he operated, but beyond doubt he indicated by his acts that he had awareness about the concerted action by which he satisfied the elements of the criminal offence. The accused acted with a direct intent, because from the beginning he was aware and intended the death of the aggrieved parties as the consequence thereof. With his presence at the site of the execution of the aggrieved parties – civilians, and by ordering the permanent removal of their bodies, that is, by concealing the traces of the criminal offence, he gave a decisive contribution to its perpetration, whereby as a co-perpetrator, he satisfied, by the acts taken, the essential elements of the criminal offence of Murder referred to in Article 172(1)a) of the BiH CC as read with Article 29 of the BiH CC.

#### **VIII.1. Section I.5. of the Operative Part of the Verdict**

The conclusion by the Court that the accused Predrag Bastah is criminally responsible for the enforced disappearance of the aggrieved party Ragib Ferhatbegović, in the manner as described in Section I.5. of the convicting part of the Verdict, is based on the statement

by the witness Fadila Muranović who was present in the hangar of the Sušica camp when the accused Bastah approached the aggrieved party Ragib Ferhatbegović, grabbed his shoulder and said: *“I need you”*. Dragan Nikolić aka Jenki then came into the room and had a brief conversation with the accused, and then they came out together with the aggrieved party. The witness distinctly recalled the event at issue, because every day she counted men who were taken to forced labour. Thus, she remembered that the aggrieved party was 18<sup>th</sup> or 19<sup>th</sup> in a row to come out that morning. The event occurred beyond doubt during the period from 4 June 1992 until 29 July 1992, while she was detained in the Sušica camp, which is also evident in the Certificate issued by the Municipal Red Cross Organization of the Vlasenica Municipality of 6 March 2000. The referenced witness did not know at that time that the accused Predrag Bastah was known by the nickname *Car /Tzar/*, but she became aware of that when her friend Huna said before his arrival: *“Car Bastah is coming into the camp”*, and later on, when he came into the hangar, she nudged her and, pointing in the direction of the accused, she said: *“This is Car Bastah, in leather clothes”*. In order to confirm that, on the relevant occasion, it was exactly the accused who participated in taking the aggrieved party out of the camp, the witness stated in the investigation that earlier she had known him as Dragan and that she *“distinctly remembered”* his appearance, so that she identified him in the courtroom with no difficulties whatsoever.

Although the Tuzla Neuro-Psychiatry Clinic medical findings about the health state of the witness were presented to the Panel, it was established that, except for stressing the referenced fact, the Defence for the accused did not adduce during the proceedings a single piece of evidence which would call into doubt the chronology and consistency of the witness's statements. On the contrary, the Panel found her statement to be consistent and reliable, and there is no doubt that she was impartial and that she objectively testified about the things to which she was an eye-witness, in which connection one does not have an impression that her testimony was aimed at incriminating the accused Bastah without any firm grounds, because she herself stated that, except for the described event, she did not see the accused in the camp any more.

Given that, by this Section, the accused is charged with enforced disappearance of the aggrieved party, the Panel referred to international and national legal regulations on this issue. Thus, current sources of international law define the notion of enforced disappearance as a crime against humanity, whereas in 1992 the UN General Assembly adopted the Declaration on protection of all persons from enforced disappearance, in which the third paragraph of the Preamble reads: *“enforced disappearance jeopardizes basic values of any society which is committed to the rule of law, human rights and fundamental freedoms, and systematic practice of such acts has the nature of crimes against humanity”*.<sup>17</sup>

The referenced paragraph was adopted in the national criminal legislation, so that Article 172(1)i defines the act of *“enforced disappearance of persons”* in the context of crimes against humanity the elements of which are reflected in the following:

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<sup>17</sup> Resolution by General Assembly 47/133, UN doc. A/RES/47/133, 18 December 1992

- that there exists the act of apprehension/abduction of persons,
- that the act was committed with the consent and support of a country or political organization,
- that the perpetrator refused to give the information about the fate or place where the abducted persons are,
- that he has intention to keep such persons away from the protection of law for a long period of time.

Therefore, the Panel considered the established state of facts in relation to the listed elements of the act, so that it will take the analysis at issue into consideration always when the accused is charged with the act of enforced disappearance referred to in Article 172(1)i) of the BiH CC.

At this point, the Panel will also explain the existence of the first three elements of objective nature which will refer to all sections of the Verdict in which the accused are found guilty of this offence.

Therefore, it is incontestable that the accused were, at the material time, a part of armed forces of the newly-established Srpska Republika BiH, later on the Republika Srpska, in the capacity of which they apprehended the captured persons in Vlasenica PSS rooms, the prison behind the court building in Vlasenica and in the Sušica camp, wherefrom they occasionally took them out for a forced labour, from which a large number of them never returned and remain unaccounted for. Hence, the Panel finds that by detaining or, in the present case, by taking the persons from the initial locations of detention to other locations known to them, the first element of this act is satisfied, whereas the second element is satisfied by the fact that the referenced actions were perpetrated with the knowledge and support of the most relevant authorities of the Vlasenica Municipality, which is evident from the material documentation tendered as evidence of the Prosecutor's Office, including the Instructions for securing the Sušica facilities by guards, the Order by the Commander Major Slobodan Pajić for providing additional security to the camp, etc., showing clearly that the most relevant military structures of the RS Army were aware of the purpose of the Sušica facility and were, on the principle of the hierarchy of providing information, certainly informed about the events therein. Thus, the Instructions for Operation clearly prescribed 10 soldiers as camp regular security staff, whereas, in the event of a heightened security, a patrol of 3-4 police officers of the Vlasenica PSS was called, which further confirms that during the apprehension of civilians in the Sušica camp and during their transportation to forced labour, the police was also engaged, as needed. The same Instructions noted that guards, in the event of "their being insulted", had the right to treat the prisoners "more harshly than usual".

It is noted however that official documents which date from that period always give general and ordinary data regarding the exchange, transportation and treatment of prisoners, most likely in order to conceal the actual state of facts, whereas the real conditions in which detained persons were held in the Sušica camp were not mentioned at all. Such inference was drawn by the fact that the military and civilian authorities of the Vlasenica Municipality never contacted international organizations or the Red Cross

Committee, so that they could record the actual number of detainees and examine the appropriateness of conditions in which the detainees were kept. This omission by the then authorities additionally only made it easier for certain individuals to, in some events, never return detainees to the camp after the performed labour, without providing any piece of information about the further fate of those persons.

The inhumane treatment of civilians in the Sušica camp could not therefore remain unknown to the civilian authorities of the Vlasenica Municipality, because almost all Defence witnesses regarded the referenced facility as a kind of a collection centre, wherefrom, on a number of occasions, the transportation of Muslim population was organized to the territory of Kladanj, and it was in the vicinity of the town in which the authorities had their seat. Therefore, the referenced circumstances indicate beyond doubt that the authorities of the Vlasenica Municipality were certainly well aware of the actual conditions in which the detainees were kept, but they, nevertheless, took no action to improve such situation.

According to the witness Amor Mašović, President of the Commission for the Search of Missing Persons, a consequence of such actions is reflected in the statistical datum that, under the updated data, a total 393 persons were found in the territory of the Vlasenica Municipality. The remains of those persons were found at 109 locations of this Municipality, in 12 mass graves, among which the largest were Ogradice or Debelo Brdo. In this connection, it is noteworthy that one third of all of the missing persons came from the Sušica camp, because out of 839 persons, 243 of them were last seen alive in the camp. This witness stressed in the end that statistical data have been changed relatively often, because mass graves are still being discovered or the found persons are subsequently identified, but it does not change the fact that a large number of persons have not been found to date, nor does there exist any information about their fate.

The existence of the subjective elements of this offence is reflected in the refusal of the perpetrator to provide information about the fate of a person taken away with the intention of his keeping away from the protection by law for a long period of time, and it will be explained individually for each section in which the existence of the act of enforced disappearance, referred to in Article 172(1)i) of the BiH CC, is established.

Based on the evidence presented, it was found beyond doubt that the Accused Predrag Bastah, acting as a reserve police officer, within a widespread and systematic attack against the civilian population, on the relevant day took the aggrieved party Ragib Ferhatbegović out of the camp and brought him in a direction unknown to him. He has been missing ever since. The accused refused to give any piece of information about that. Thus, he kept him unprotected by law for a long period of time. Thereby he satisfied the essential elements of the criminal offence of enforced disappearance referred to in Article 172(1)i) of the BiH CC. The accused perpetrated the offence with a direct intent, because when the aggrieved party was taken away he was aware of the consequences of his acts, but despite that he refused to give any piece of information about the further fate of the abducted person, intending to keep him unprotected by law for a longer period of time.

### VIII.1. Section I.6. of the Operative Part of the Verdict

The belief of the Court that, in the manner, at the place and at the time stated in Section 6 of the convicting part of the Operative Part of the Verdict, the accused Predrag Bastah participated in taking the aggrieved parties Sulejman Pezić, Bego Handžić, Sakib Šabić, Muhamed Šabić, Šukrija Efendić, Mehmed Hadžić, Ejub Hadžić and Hasan Parić out of the camp, and in bringing them in an unknown direction, since when they have been unaccounted for, is based on the statements given by the witnesses Arifa Golić, Zarifa Pezić, Ramiza Handžić, Kadira Zubović, Ferid Hadžić and the Protected Witness 16. By virtue of the evidence presented, the Panel established that the relevant event took place, most likely, on 17 or 18 July 1992. Because of that, and to that effect, a correction was made to the factual description of the Operative Part of the Verdict. A correction was also made regarding the number of abducted civilians. They numbered between 10 and 12, because the presented evidence did not indicate that it was exactly 12 persons who were taken out.

All of the heard witnesses confirmed the presence of the accused Predrag Bastah at the time and at the place of taking the aggrieved parties out of the camp. However, their statements contain specific imprecisions in respect of the contribution of the accused to the selection of persons who would go to perform the forced labour. Thus, the witness Zarifa Pezić maintained that, the day after Nikolić had taken down persons' names, the accused Bastah came up with a group of people, including a blond woman who was making a list at his order. The witness Kadira Zubović saw the accused in front of the camp when the aggrieved parties were taken away; he said then that they were taking them to Pelemaš for a mowing exercise. Therefore, a number of witnesses maintained that, on the accused Bastah's order, Nikolić made a list of men, whereas the witness Ferida Hadžić maintained that on that day Bastah “*was picking up whoever he wished*“, irrespective of Nikolić's list. The role of the accused in the selection of persons, including the aggrieved parties Sulejman Pezić, Bego Handžić, Sakib Šabić, Muhamed Šabić, Šukrija Efendić, Mehmed Hadžić, Ejub Hadžić and Hasan Parić, was beyond doubt relevant, and the accused certainly knew where the persons were taken away and what their further fate was, given that they were not brought back to the camp afterwards, and remain unaccounted for.

Bearing in mind the existence of objective elements of the offence of enforced disappearance, referred to in Article 172(1)i) of the BiH CC, as stated in VIII.1. Section I.5. of the Reasoning of the convicting part of the Verdict, the Panel found that the accused Predrag Bastah, acting as a reserve police officer, within a widespread and systematic attack against the civilian population, of which he was a part, on the relevant day, accompanied by Dragan Nikolić aka Jenki, came in front of the Sušica camp with the aim of taking the aggrieved parties to perform forced labour, whereupon he did not bring them back to the camp, nor did he give any information about their further fate, thus keeping them unprotected by law for a long period of time, whereby he satisfied the essential elements of the criminal offence of enforced disappearance, referred to in Article 172(1)i) of the BiH CC. The accused committed the offence with a direct intent, because by taking the aggrieved parties away he was aware of the consequences of his

acts, but in spite of that he refused to provide any information about their fate, thus wishing to keep them unprotected by law for a long period of time.

### VIII.1. Section I.7. of the Operative Part of the Verdict

The Court's satisfaction regarding the criminal responsibility of the accused Predrag Bastah for the forcible transfer of the population in respect of the aggrieved parties Ajša Saračević and Umija Šabić, is based on statements of the aggrieved parties who described in detail the manner in which the accused Bastah, by making threats, forced them to leave their homes, by leaving the territory of the Vlasenica Municipality. Thus, the witness Ajša Saračević stated that, on one occasion, she saw the accused Bastah in Ferida Hadžić's courtyard, with a notebook on his knees, and on that occasion he turned to her, asking her if she wanted to leave Vlasenica or stay. She said that she would ask her husband, who said that they would stay if no one would cause any harm to them. The accused's only comment was: *"You see, the old man is clever."* However, some time later, he returned and came in front of the witness's house, saying: *"In half an hour I wanna see you at the station leaving!"* She reminded him that they had already said they did not want to leave Vlasenica. Then, the accused threatened them saying that he would pull their house down with an armoured personnel carrier if they fail to act as he said. The witness, who was shocked at such an order, ran barefoot over to the Vlasenica PS building to check the justification and necessity of such order by the accused. The police officers whom she found at the station only said: *"If Bastah told you to leave, then you must do so!"*

After she had returned home and told her husband that they anyhow must set off for the bus station and, together with the other residents, leave the town, having no much time, they took only the basic items and packed them in plastic bags and left for the station where they found a great number of fellow townspeople, among whom she recognized the accused Bastah who *"was going around gathering people"*. When she asked the accused again why they had to leave, as they did not want to abandon the only property they had, he just made a brief comment, without providing the witness with any response to the question asked.

The witness Umija Šabić stated at the main trial that, on 21 August 1992, the accused Bastah came to the town where she lived, accompanied by Vojka Čeliković. By means of megaphone he repeatedly addressed the Muslim population, requiring them to leave their houses and go towards the bus station in Vlasenica, otherwise they would all be killed. Thereafter, together with her mother-in-law, her child and with the children of her husband's brother's wife, the witness went to the bus station where *Boksit trans* buses were parked and where she again saw the accused rounding up people. Upon departure, with people going after him, he set off, operating a police vehicle. On the half way towards Šekovići, the bus was stopped and she saw him bringing over a certain Razija. The column proceeded along the road towards Pelemiš where it was briefly halted. On that occasion, a few women were separated, who remain unaccounted for. After that interruption, she no more saw the accused who was followed by the column that proceeded to move.

During the proceedings, the Defence did not contest the veracity of averments by the witnesses who recognized the accused in the courtroom, but it did the quality and range of his acts, maintaining that he only executed orders issued by his superiors. In order to examine such objection, the Panel examined in the established state of facts whether all essential elements of the offence, referred to in Article 172(1)d) of the BiH CC, are satisfied in his actions perpetrated in the manner as described above. To that effect, its individual elements have been analysed:

- deportation or forcible transfer of population
- from the area in which they are lawfully present
- without grounds permitted under international law.

It is concluded from the listed elements of this offence that it is sufficient that persons be expelled from the territory in which they are lawfully present, without grounds permitted under international law, in the context of which it is important to indicate Article 17 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol Additional II) which 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".

Besides, deportation and forcible transfer of population across internationally recognized borders as well as forcible transfer and displacement within the state borders constitute the crime against humanity under customary international law, and generally, they are absolutely prohibited, save in specified restricted circumstances, but even then Article 49, paragraph 2 of the Fourth Geneva Convention specifies that "Persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased". It ensues thereof that evacuated persons must be returned to the place from which they were evacuated as soon as circumstances because of which they were initially evacuated cease to exist.

In the ICTY case law, unlawful deportation, with forcible transfer, constitutes a form of forcible displacement of population, that is, displacement of persons by expulsion or by other forcible actions, from the area in which they are lawfully present, and without grounds in international law<sup>18</sup>, whereas, unlike the ICTY Statute, the Criminal Code of

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<sup>18</sup> ICTY Statute, Article 7, Paragraph 2 Sub-paragraph d). Also see: ICTY Trial Judgement in the *Blaškić* Case, para 234 and ICTY Trial Judgement in the *Stakić* Case, para 680.

BiH prescribes forcible transfer and deportation as one offence in the base of the crime which covers the transfer within state borders and beyond. Therefore, under the BiH CC, the relevant issue is only whether a victim was transferred by expulsion or by the act of coercion, while the place where they were transferred to is not of great importance<sup>19</sup>. In addition to those elements, the Court naturally must apply even broader elements connected to a widespread or systematic attack.

The first element of the criminal offence of forcible transfer or deportation therefore implies the force which was exerted in the removal of persons, and which is necessary to be interpreted in such a manner so as to include physical violence, threat of force or other forms of coercion (to the extent causing the fear of violence), duress, detention, psychological oppression, abuse of power or taking advantage of a coercive environment. In the present case, the state of violence and chaos was found in the very town of Vlasenica, but also in the immediate environment, which prevailed during the material time. This was confirmed even by the Defence witnesses.

On the other hand, *mens rea* of this criminal offence is the intention that victims be removed and that they are not brought back to the place from which they were removed. By his behaviour, the accused Bastah clearly showed the intention of permanent removal of the Muslims from the area of the Vlasenica town and beyond, which he repeatedly confirmed by his active participation to that effect. The removal was followed by numerous comments concerning the aggrieved parties, but likewise the other citizens, and thus he made it clear to them that their stay in Vlasenica was “undesirable“.

While examining the actual intention on the part of the accused, the Panel also examined the existence of actual possibility of choice on the part of the aggrieved parties Ajša Saračević, her husband and Umija Šabić. In that connection, it was guided by the position of the ICTY Trial Chamber in the *Šimić* case (paragraph 125) which found that a person is involuntarily displaced if he is “not faced with a genuine choice as to whether to leave or to remain in the area... an apparent consent induced by force or threat of force should not be considered to be real consent“. In the present case, it is evident that the aggrieved parties’ departure from the town was not voluntary, given that it was preceded by a direct order of the accused Bastah, followed by a subsequent threat, which the aggrieved parties understood as quite realistic and feasible, given the general state of unrest which existed in the Vlasenica Municipality at that time. The witness Umija Šabić clearly replied to the Defence question stating that she would have never left Vlasenica had the accused Bastah not come and ordered that departure. His actions were apparently a direct cause of departure of the aggrieved parties and abandoning the only property they had, whereby, according to the witness Ajša Saračević, they lost their human dignity at the same time.

The decision on the transfer of the population was certainly not an arbitrary decision taken by the accused. However, by his actions, he took an active part in the implementation thereof. In that connection, as a reserve police officer, he knew that an ethnically homogeneous space was being created as a consequence of the mass transfer of

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<sup>19</sup> Verdict by Court of BiH in the *Rašević and Todović* Case, Number X-KR-06/275 of 28 February 2008, p. 96.

the Muslims, which was one of the segments of a widespread and systematic attack in which he took part and of which he was a part, so that, wishing the occurrence of such consequence, it was with a direct intent that he perpetrated the criminal offence of forcible transfer of population referred to in Article 172(1)d) of the BiH CC.

## **VIII.2. The accused Goran Višković aka Vjetar - alone**

### **VIII.2. Section II.1. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused Goran Višković for the perpetration of Other Inhumane Acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health in respect of the aggrieved party Mirsad Džebo, in the manner as described in Section II.1. of the Operative Part of the convicting part of the Verdict, is based on the statement by the aggrieved party who stated at the main trial that he knew well the accused Goran aka Vjetar, whom he identified in the courtroom, as far back as the time when the accused worked at the *Polet*, so that there is no doubt about the person who on the relevant day brought him in and detained him in the Vlasenica PSS building. This witness testified impartially about the event, so that, bearing in mind that his statement was not challenged by Defence witnesses to a decisive extent, the Panel found as established that the event occurred in the manner that, on the relevant day, the aggrieved party Mirsad Džebo came to the Municipal Assembly building to apply for a certificate of leaving the town, because of his departure for Germany. On that occasion, the accused Višković noticed him in the queue. The former was uniformed and armed with an automatic rifle with a bayonet. He was accompanied by another soldier whose family name is Garić, as the witness would learn later on.

When asked why he was waiting for the issuance of the certificate, the witness said that he wanted to travel, at which the accused Višković yelled: "What Germany?! No Germany!". He snatched the witness from the queue, hit him with a rifle butt and by kicking him he forced him to walk in front of him, and thus brought him to the Vlasenica PSS building. On the entry into the rooms of the station, the accused Višković ordered the witness to empty his pockets. The other man who accompanied him hit him, thinking that the witness had a bomb with him, given that his hand had stuck in his pocket. According to the statement from the investigation, when the witness stated that he did not have any weapons, the soldier whom he did not know and who was standing nearby, slapped the witness on his face and kicked in his right hip. Afterwards, the accused Višković left the office together with Garić. On his leaving, he ordered some soldiers to detain the witness, which they did instantly. When the witness asked why they were doing that, they replied: "Your name is Mirsad. All is clear to you".

After the witness had been detained, he was interrogated every day. He was asked to admit the possession of weapons. This was repeated until the third day when a certain Ljuban Stanišić, who has family ties with his wife, came up. He did not know that the witness was apprehended, so that he promised to help him by taking him out of the building when Goran was not present in the station. Otherwise, he explained, he could

kill both of them. On that basis, the witness concluded that the accused had evidently a dominant role in the army. He had the reputation as “the terror of Muslim people by way of using a submachine gun”.

Reasons for his apprehension and detention were subsequently explained to the witness by Ljuban Stanišić who told him that there existed a particular list of persons who possessed weapons, and that the referenced list was allegedly made by hodja Munib. In the list, next to the witness’s name, there was a marking: “submachine gun (manufacturer’s number) 90 bullets”. The witness explained that it certainly was the automatic weapon which men from his street were issued at the time when they were organized to stand guard, but that it never was in his possession. Therefore, the witness might have provided the same explanation to the accused too if the latter had imparted to him the reasons for his apprehension and detention.

Besides, the Panel also established some other unlawful acts on the part of the accused Višković, given that he, as a military police officer, did not have the authorities which the accused Bastah, as a reserve police officer, had, as he could bring civilians to the Vlasenica PSS rooms, that being a part of his regular duties, and following an oral or written order. As opposed to him, the authorities that the accused Višković had were very explicit and definite, and according to the Defence witness Cvijetin Vlačić, they referred mainly to the apprehension of deserters or conscripts of Serb ethnicity who failed to respond to calls for mobilization.

Hence, by virtue of the evidence presented, the Panel concluded that the accused Goran Višković, acting in his capacity as a military police officer, within a widespread and systematic attack against the civilian population, of which he was a part, exceeded his authorities when, on the relevant day, unreasonably exerting his physical force, he apprehended the aggrieved party Mirsad Džebo who was battered in the rooms of the Vlasenica PSS with the aim of being extorted information about the possession of weapons. The accused then ordered his detention, without providing any explanation of reasons for such act, whereby he satisfied all essential elements of the criminal offence of detention (explanation on page 43 of this Verdict) referred to in Article 172(1)e) of the BiH CC, but not the elements for Other Inhumane Acts referred to in Article 172(1)k) of the BiH CC, given that the Prosecutor’s Office did not present the evidence relating to the seriousness of injuries inflicted on the aggrieved party as a result of the battery. By perpetrating the offence referred to in Article 172(1)e) of the BiH CC, the accused Višković acted with an intent, being aware in each segment of the unlawfulness of his acts, wishing without any legal ground to detain the aggrieved party Mirsad Džebo.

## **VIII.2. Section II.2. of the Operative Part of the Verdict**

The conclusion by the Court referring to the accused Goran Višković’s criminal responsibility for torturing the aggrieved parties Mirsad Smajlović, Abdurahman Kurjak and Osman Kurjak, in the manner as described in Section II.2. of the Operative Part of the convicting part of the Verdict, is based on statements by the witnesses Mirsad Smajlović, Abdurahman Kurjak and the Protected Defence Witness O-1 who, at the same

time, were injured by this criminal offence. Thus, in their statements they described in detail that, at some point around 25 May, they heard that Muslim population were being killed in the environs of the town of Vlasenica, such as the villages of Gradina, Piskavice, Drum and Đamdići, and that intensive shooting was heard and houses in the mentioned villages were seen burning. Because of that, out of fear for their own lives, those two witnesses, together with 5 more persons, set off towards the territory of Kladanj, but were captured by Serb soldiers at the location of Malo Polje. At this point, it is noteworthy that no uniformed or armed persons were in the captured group, except for a certain Emir Muranović, former active police officer from Vlasenica, who had a pistol with him. The Defence persistently insisted on that, treating the mentioned persons as military conscripts, that is, military prisoners of war. However, contrary to such opinion, the Panel did not consider that the presence of one armed person deprived the group of persons of its civilian character, given that, at the time of their capturing, they were not armed, uniformed, nor did they take any active part in the hostilities, as they were simply trying to leave the area in which a widespread and systematic attack against the Muslim population took place.

After the apprehension in Malo Polje, soldiers brought the captured persons to the house owned by the accused Predrag Bastah's father, where, according to them, they intended to execute them by firing squad, but were prevented in doing so by a certain police officer Drago who, on the relevant occasion, arrived by a vehicle at the site, and thus they were transported to Han Pijesak and afterwards to an old prison which was located behind the building of the court in Vlasenica. On their arrival in the rooms of the prison, they heard screams and loud noise, and someone said: "*You've caught the leading protagonists!*", and then they started beating the aggrieved parties with whatever they had at hand, without allowing them to raise their eyes. According to the statement by witnesses, Emir Muranović, who was captured on the relevant occasion, was not brought into the prison, nor did the aggrieved parties see him alive any more. The witness Mirsad Smajlović stated that in the referenced prison he experienced the most difficult moments in his life, because every day soldiers would come in, drunk, took out whoever they wished and beat them. Thus, on one occasion, accompanied by some soldiers, the accused Goran Višković came into the room in which the aggrieved parties were held, took out his brother Abdurahman and the Alihodžić brothers, and after they had come out, he turned to him, saying: "*Dule, raise your head! I will not kill you, but I must kill your brother!*". He then produced a pistol, put it into his brother's mouth and pulled the trigger, but there was no bullets in the barrel. As he promised, he did not beat the witness Mirsad Smajlović, so that he was brought back to the cell from which he could still hear the voice of the accused Višković, addressing Abdurahman and asking him where his SDA flag was, which he and Hazim Arnaut used to carry around the valley. Afterwards, blows and screams were heard, and some time later, when he pushed the aggrieved parties into the cell, consequences of the battery were clearly evident, because they were all "covered in blood caused by blows". They confirmed to the witness that the accused Goran was beating them. The witness saw this accused three or four times in prison rooms, and each time when he came, screams and battery were heard, because, according to the witnesses, he abused people by "behaving in the worst possible manner". Bearing

in mind that on those occasions the accused did not beat the witness, the Panel omitted it from the factual description.

Details of abuse to which they were subjected were more thoroughly explained by the aggrieved party Abdurahman Kurjak who knew the accused from before, so that he recognized him in the courtroom, specifying that during his stay in the prison the accused often came there, sometimes twice a day, dressed in a camouflage uniform, armed with an automatic rifle and a pistol. On his arrival, he would stay in a corridor, in front of the cells where he previously took out people and battered them, hitting them with the rifle, pistol, foot, hands; thus, he beat up the witness at least 20 times. On those occasions, he would punch and hit him with the rifle; he would put an unloaded pistol into his mouth, pulling the trigger. Also, he would beat him with a pistol casing, which left permanent scars on him. Once he allowed some Romanies to hit him with stakes. This witness also confirmed that the accused would take out Mirsad Smajlović and his brother who were brought back to the room after the battery, covered with blood; at the first glance, it can seem contradictory to the statement by the witness Smajlović who explicitly stated that the accused never beat him. However, the Panel noted that the witness Smajlović explained that, besides the accused Višković, other persons too participated in everyday beating, such as Nedeljko Muminović, Dušan Đurić and a certain Deurić who did beat the witness, whereas the accused Višković would only watch the scene, because of which he, in fact, stated that the accused did not personally hit him, which does not mean that he was never battered.

The abuse was also confirmed by the Defence Protected Witness O-1, because he was personally injured by the perpetration of the criminal offence, stating precisely that the most active part in that exercise was played exactly by the accused Višković who was beating him and his brother, by kicking and punching them, and putting a pistol in their mouths. In that connection, he stressed that the battery usually lasted for a long time, but it was considerably more difficult for him to watch the beating of his brother whom he could not help at all.

Therefore, the heard witnesses described in detail and unequivocally the manner in which prisoners in the prison behind the building of the court were abused by the accused Višković who would come there together with other unidentified Serb soldiers, because of which the statement by the Defence witness Cvjetin Vlačić that those prisoners were not under control of the military police only attaches additional weight and illegality to the actions of the accused.

In order to examine whether the established state of facts and consequences suffered by the aggrieved parties satisfy the standards of the legal qualification of torture referred to in Article 172(1)f) of the BiH CC, the Panel analysed individual elements of the offence which are reflected in the following:

- The infliction, by act or omission, of severe pain or suffering, whether physical or mental;
- The act or omission must be intentional;

- The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person.<sup>20</sup>

Article 173(1)c) of the BiH CC requires that the pain and suffering be “severe”, which is a standard that considerably depends on context. Specifically, the definition of torture which causes the “severe” pain or suffering must be compared with less severe criminal offences of inhumane treatment, cruel treatment and Other Inhumane Acts which require “serious” pains or sufferings. In that context, the Panel had in mind the consequences of abuse which could clearly be seen on the aggrieved parties. Thus, the witness Abdurahman Kurjak described his hard physical state in the manner that he could not “digest the food” and, therefore, could not meet one of the fundamental human needs. Besides, the battering was intensive, frequent and lasted for a long period of time, whereby it became unbearable. The Protected Witness O-1 also went through the mental torture, watching every day his brother being tortured. As a consequence of receiving the beating in the right side of his body, his brother still cannot raise up his arm.

If the Defence argument is accepted that the accused, as a military police officer, did not have the authority to bring people in the prison behind the building of the court, it is clear then that he came into its rooms solely with a view to abusing the group of men, including the aggrieved parties. His motive, beyond doubt, had a discriminatory nature, because all of the aggrieved parties were Muslims whom he insulted on ethnic grounds during the battering.

Besides, the aggrieved parties were initially brought into the prison rooms because of their intention to come to the territory where the Muslim population was in majority, so that, according to the Panel, it was a primary reason for their abuse in the prison rooms. Therefore, during the widespread and systematic attack against the civilian population, about which he knew and of which he was a part, the accused Goran Višković, abusing his authorities of a military police officer, came into the prison rooms in which he battered the prisoners and mentally abused them by putting the pistol into their mouths and pulling the trigger of the unloaded pistol, which he did almost every day and which resulted in severe physical and mental pain and suffering among the aggrieved parties. Thereby he satisfied the essential elements of the criminal offence of Torture referred to in Article 172(1)f) of the BiH CC. It is beyond doubt that the accused acted with intent during the perpetration of the offence, because he was aware of the seriousness and gravity of his acts, and he wished that the battery of the aggrieved parties should result in such serious consequences, which is evident from the brutality he showed during the batteries and frequency of the acts of abuse.

### **VIII.2. Section II.3. of the Operative Part of the Verdict**

The Court’s satisfaction regarding the criminal responsibility of the accused Goran Višković for the commission of Other Inhumane Acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health in respect of the aggrieved parties Bego Handžić and his wife Ramiza Handžić, in the

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<sup>20</sup> *Kunarac* Case, Appeals Judgement, para 142.

manner as described in this section of the convicting part of the Verdict, is based on the statement by the aggrieved party Ramiza Handžić whose statement was substantiated by the statement of the witness Muška Šestović which was read out at the main trial. Specifically, she stated that, on the relevant day, that is, on 11 July 1992, she was in the apartment with her husband when she heard some noise near the neighbouring buildings. From her balcony she saw the persons who “pushed the Muslim people into the car”. Among them she recognized the accused Višković whom she identified in the courtroom and who, a couple of minutes later, after he had seen her on the balcony, banged on her door and ordered her and her husband to leave the apartment. The aggrieved party’s husband stood up and he did not have time even to get ready when the accused, together with another soldier, started punching him and hitting him heavily with rifle butts, because of which “blood splashed on the stairs”.

After they had driven him out of the apartment, the witness turned to the accused Višković whom she knew from before, imploring him not to beat her husband. They started punching her then, and the accused kicked her in the back, so that she fell downstairs on the asphalt. Because of that blow two of her teeth were knocked out and her elbow and knee were injured. However, even after that, she continued imploring the accused to stop, asking him why he was doing that. He brashly replied that she should not mention his name, cursing her Baliya’s mother, whereas the other soldier threatened that he would rape her.

In front of the building where there was a van in which they “crammed” people, they kept on beating her husband with rifle barrels in the groin region, so that the witness had to stand between him and the soldiers in order to prevent further battery. They then told her that she had to bring back whoever remained in her house. Because of that, she returned to the apartment in which there was an old woman who had fled from the village of Gradine after the attack on the village. On her return she saw the van going away without her, so she started running, but the accused Višković halted her, saying: “*Where are you going, you bitch? You will not go anywhere. We shall shoot you!*”, ordering her to lie down on the asphalt where they continued kicking her, keeping the cocked rifles pointed at her back. Until the arrival of the following van, the witness was not able to walk any more, so that Muška Šestović helped her to get in it. The statement by Muška Šestović which was read out at the main trial is, in all decisive segments, consistent with the statement by the aggrieved party.

During the proceedings the Defence for this accused tried to contest the credibility of the witness Muška Šestović whose statement was read out at the main trial, given that her medical documentation was provided by the Neuro-Psychiatry Clinic, which calls into doubt her mental state at the time when she gave her statement at the Prosecutor’s Office. In respect of that circumstance, the Finding and Opinion was made by Dr. Alma Bravo - Mehmedbašić, neuropsychiatrist, who on the basis of the medical documentation submitted by the Sweden Clinic where the witness is receiving medical treatment, found that she suffers from the chronic PTSD followed by panic and depression as secondary disorders, which has completely frustrated her to appear before the Court and give a testimony at the main trial. However, she could not explicitly explain her abilities at the

time of giving her statement during the investigation. With regard to such conclusion by the expert witness, the Panel considered the contents of her statement in the context of all evidence presented, and especially in connection with the statement by the aggrieved party Ramiza Handžić with which it is consistent in important segments. Therefore, the Panel found that the statement by the witness is clear, precise, chronologically consistent and comprehensible. For that reason it was concluded that her capacity for reproducing the events she lived through was not impaired at the time of giving the statement. Besides, the aggrieved party gave quite sufficient details in her statement and, beyond doubt, identified the accused as a perpetrator of the offence at issue, so that the statement by Muška Šestović was accepted only as a corroborating evidence.

The Defence also contested the identification of the accused in the crowds of masked soldiers who walked through the town at that time, but the aggrieved party Ramiza Handžić, the Witness 3, the Witness 6 and some other Prosecution witnesses explained that, at that time, the accused Višković and Bastah did not have any form of camouflage, because of which the majority of witness, their fellow townspeople, could simply notice them in the crowd of armed, uniformed and masked persons.

The state of facts having been thus established, the Panel examined whether the actions of the accused Goran Višković achieved the standard which is required by the criminal offence or Other Inhumane Acts referred to in Article 172(1)k) of the BiH CC, and to that effect it analysed the existence of the following elements:

- that the act or omission is of a gravity similar to the gravity of other acts referred to in Article 172(1) of the BiH CC;
- that the referenced act or omission caused severe pain or suffering, whether physical or mental, in other words, that they constitute a serious attack on human dignity;
- that the act or omission was intentionally perpetrated by the accused or a person or persons for the acts and omissions of which the accused bears criminal responsibility.

The referenced analysis shall always be taken for the purpose of this Verdict when the accused are charged with the act – Other Inhumane Acts referred to in Article 172(1)k) of the BiH CC.

In order to assess the gravity of some act, in the present case the Panel took into account all circumstances surrounding the present case, primarily those concerning the character of the act or omission, the context in which they occurred, personal state of a victim including the age, sex and state of health, as well as physical, psychological and moral consequences of that act for the victim. The fact that the act has far-reaching consequences can also be of importance while establishing the gravity of the act<sup>21</sup>.

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<sup>21</sup> See *Vasiljević* Case, ICTY Trial Judgement, para 235. Also see *Blaškić* Case, ICTY Trial Judgement, para 243.

According to the accepted ICTY case law, *mens rea* for inhumane acts laid down in this Article is satisfied if, at the time of the commission or omission, a perpetrator had the intention to inflict severe bodily or mental pain or to carry out a serious attack on the human dignity of a victim, or if he knew that his act or omission will, most likely, cause severe bodily or mental pain or a serious attack on human dignity, and if he behaved towards it with unscrupulous inattention<sup>22</sup>. Pains inflicted on a victim by the referenced act need not be permanent; it is sufficient that they are realistic and serious<sup>23</sup>, and most frequently psychological pain necessarily follows the physical abuse, although it can be a consequence of the environment and conditions in which persons live, being subjected to everyday abuse.

Given all the aforementioned, the Panel found beyond doubt the participation of the accused Goran Višković who, acting as a military police officer, during the widespread and systematic attack against the civilian population, of which he knew and of which he was a part, jointly with another unidentified soldier, battered repeatedly the aggrieved party, and later on, in an inhumane and brutal manner, abused the aggrieved party Ramiza Handžić, carrying out a serious attack on her human dignity. In perpetrating the offence, the accused beyond doubt acted with a direct intent, because he knew that his acts would result in the physical and psychological injuries to the integrity of the aggrieved parties, so that he wished it and he performed it, which is indicated by his /sic/ which did not prevent him from showing extraordinary persistency in taking the actions of battering and insulting the aggrieved parties, so that the forbidden consequence actually occurred. So, the Panel concluded that he actually wished the occurrence of the forbidden consequence. The evidence presented during the proceedings did not indicate the existence of any arrangement between the accused and other persons, but on the basis of active participation of the accused in the commission of the act, it is clear that he was aware of the concerted action, whereby as a co-perpetrator of the acts taken, he satisfied the essential elements of Other Inhumane Acts referred to in Article 172(1)(k) of the BiH CC as read with Article 29 of the BiH CC.

#### **VIII.2. Section II.4. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused Goran Višković for the commission of the Other Inhumane Acts in respect of the aggrieved parties Rašid Dautović, his wife Hajra Dautović and two underage children, in the manner as described in Section II.4. of the Operative Part of the convicting part of the Verdict, is based on the statement by the Protected Witness 3 whose statement is detailed and consistent, and uncontested by the Defence evidence. According to this witness, on the relevant day, the accused Bastah and Vjetar came to the street in which she resided with a view of "rounding up people". Thus, at that very moment, when she was brought out in front of the building by other armed persons, across the street she could see the accused Goran hitting Rašid, his wife and two children with a rifle butt and slapping them in their faces, whereupon he forced Rašid to pray in the Muslim way on the asphalt, and then he forced all those who were in the street to get into a white van which transported

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<sup>22</sup> Ibid, para 132.

<sup>23</sup> See *Krnjelac* Case, ICTY Trial Judgement, para 131.

them to Sušica. On that day, the witness and her husband were picked up by unknown uniformed persons who wore stockings on their heads, which the accused did not wear, because of which she instantly recognized the accused Višković immediately upon her exit from the building, and she also identified him in the courtroom.

Bearing in mind the elements which have been analysed in the previous section of the Reasoning of the convicting part of the Verdict, the Panel found that the accused, acting as a military police officer, during the widespread and systematic attack against the civilian population, of which he knew and of which he was a part, by the described behaviour he reached the standard of Other Inhumane Acts, that is, he satisfied the essential elements of the criminal offence referred to in Article 172(1)k) of the BiH CC, because battering the aggrieved parties, especially the children and the woman, using a rifle butt certainly resulted in injuries to bodily integrity, whereas by insulting and forcing the aggrieved party to pray in a Muslim way on the asphalt, his human dignity was seriously attacked, as was the dignity of his family members who were forced to watch all that. The accused acted with a direct intent, because he was aware of the consequences of his acts and he intended them to occur in respect of the aggrieved parties whom he was ruthlessly hitting, insulting and humiliating while they were helplessly lying on the asphalt.

#### **VIII.2. Section II.5. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused Višković for the enforced disappearance of Salko Muminović, Ibro Muminović and a young boy from the place of Kula, the Zvornik Municipality, in the manner as described in Section II.5. of the Operative Part of the convicting part of the Verdict, is based on statements by the witnesses Olga Tatomirović, Sakib Zekić and Halida Muminović who confirmed that the date of abduction of the aggrieved parties is, most likely, 2 June 1992, whereas the Witness 4, Izet Hurić, Mirsada Zekić and Hajrudin Merić, who were present in the camp when the aggrieved parties were taken away, consistently confirmed that they were taken out of the camp late in the evening and were never brought back. Witness Hasib Agić was also an eye-witness of the relevant event. In both his statements he clearly and unequivocally indicated the accused Višković as a person who, on the relevant evening, attended the taking of the aggrieved parties out of the room, whereupon they remain unaccounted for, until his body was exhumed from a mass grave. The witness identified the accused in the courtroom and explained that, at the time of their being taken out of the camp, he was standing in the door with a number of men, which he could notice because the aggrieved party Salko Muminović was in his close vicinity, so that he could hear when they called his name and told him that he would not need the jacket at the place where he was going.

The witness Olga Tatomirović, the wife of the aggrieved party, was not in Vlasenica when her husband was taken to the camp, but on her return she learnt from her neighbours that a certain Petko Gradinac took him there. Subsequently, one of the former students of this witness recounted to her that he was in the camp when Salko Muminović was brought out, saying to her that a certain Đoko Ilić, who at that time was a Vlasenica

PSS member, came at the door of the hangar and asked: “Who of the Muminovićs is here?” whereat Salko and his brother Ibro responded. They have not been seen alive ever since.

During the proceedings the Defence indicated the fact that out of all of the witnesses heard, only the witness Hasib Agić indicated the accused Višković as a person who, on the relevant occasion, took the aggrieved parties out of the camp, considering that it was not sufficient for establishing the criminal responsibility of the accused. However, the Panel found that the witness’s statement was clear and unequivocal, and it gave credence to it.

Bearing in mind the existence of objective elements of the act of enforced disappearance referred to in Article 172(1)i) of the BiH CC, as stated in VIII.1. Section I.5. of the Reasoning of the convicting part of the Verdict, the Panel found that the accused Goran Višković, acting as a military police officer, within a widespread and systematic attack against the civilian population, on the relevant day, took out the aggrieved parties from the camp, so that the further fate of those persons, who were not seen alive any more, could certainly have not remained unknown to him. In addition, the accused never provided any information about them, so that, until the exhumation on 29 September 2000, they were kept unprotected by law, whereby he satisfied the essential elements of the criminal offence of enforced disappearance referred to in Article 172(1)i) of the BiH CC. The accused perpetrated the act with a direct intent, because when the aggrieved parties were taken away, he was aware of the consequences which occurred to the aggrieved parties, but refusing to give any piece of information he wished to keep them unprotected by law for a long period of time.

#### **VIII.2. Section II.6. of the Operative Part of the Verdict**

The Court’s satisfaction regarding the criminal responsibility of the accused Goran Višković for the perpetration of Other Inhumane Acts in respect of the aggrieved parties Džemo and Hašim Ferhatović, in the manner as described in Section II.6. of the Operative Part of the convicting part of the Verdict, is based primarily on the statement by the witness Hajrudin Merić who stated that the relevant event took place on 27 June 1992, that is, the day prior to his transportation to the Batković camp, in such a manner that the accused Višković came in front of the Sušica camp by a truck which in fact was a refrigerator truck of the *Polet* Company and ordered Hašim Ferhatović to select 20 detainees whom he would take for forced labour in the field near the Veterinary Station. In the truck by which the accused transported the persons later on, besides the witness, there were Hašim Ferhatović, Džemo Ferhatović, a certain postman Alihodžić, Sasić and others. On their arrival at the field, the accused Višković ordered them to dig up potatoes, and shortly after he approached Džemo Ferhatović, and giving him a spade, he ordered him to dig up a hole of a human body size. Then, he produced a pistol from a case, ordering him to kill Alihodžić, which the latter refused, replying: “*I can’t do that. Kill me.*” Afterwards, the accused gave the pistol to Hašim ordering him to kill the postman Alihodžić, and when neither he could do that, he ordered them to get in the truck, and

driving at such a high speed that prisoners bumped against the side of the truck, falling on each other, brought them back to the Sušica camp.

The witness Abdurahman Kurjak confirmed at the main trial that, on one occasion, the accused Višković took for forced labour a group of persons including Meho Alihodžić and Huso Hadžić who recounted to the witness on their return from the forced labour that the accused Višković forced the detainees to dig up a grave, whereupon he ordered Ferhtović and Alihodžić to kill each other, so that on the basis of their statements, consistent in respect of decisive facts, the Panel concluded that the event did take place in the described manner and that the accused Višković, whom the witnesses identified in the courtroom, participated in it.

In respect of this circumstance, the Defence adduced the evidence by hearing the witness Radojka Radić who, at the material time, resided in the vicinity of the Veterinary Station and who maintained that next to it was a field sown with potatoes where they brought detainees for forced labour. She maintained that detainees were not brought by the accused, but by “one“ Miroslav Gajić who would bring them by a military vehicle – refrigerator truck. The Panel did not give credence to her statement, assessing that it was partial and aimed at helping the accused who helped her during the war. In terms of contents, it is unclear why, in identifying the person who brought men to perform the forced labour, the witness used the expression “one“ Miroslav Gajić. The Panel concluded thereof that the witness did not know that person personally, so that it is inexplicable how she, with certainty, marked him as a person who brought men to perform forced labour. Further, she explicitly stated that detainees were brought by a refrigerator truck. In that connection, while explaining that expression she stated that it was a military vehicle, which raised doubt that the statement of the witness was previously prepared even in that part. The aim of all that was to testify in favour of the accused Višković, and thus express gratitude for helping her and her husband during the material time. In any case, the non-objective and unsubstantiated averments of this witness would not be sufficient to contest the substantiated and unequivocal statements by the witness Hajrudin Merić who is an eye-witness of the relevant event, and by the aggrieved party Hašim Ferhatbegović who, in regard to the record from the investigation, was not examined about the referenced circumstances, but did confirm that it was exactly the accused Višković who often took detainees to perform forced labour.

Bearing in mind the elements which were analysed in Section II.3. of the Reasoning of the convicting part of the Verdict, the Panel found that the accused, acting as a military police officer, during the widespread and systematic attack against the civilian population, of which he knew and of which he was a part, by forcing the aggrieved party Džemo Ferhatović to dig up a hole of the human body size and by ordering the aggrieved parties to deprive the detainee Alihodžić of his life, he achieved the standard of the Other Inhumane Acts, that is, he satisfied the essential elements of the criminal offence referred to in Article 172(1)k) of the BiH CC. The accused perpetrated the act with a direct intent, because he was aware that his acts would result in severe mental pain, which he actually wished to achieve.

## VIII.2. Section II.7. of the Operative Part of the Verdict

The conclusion by the Panel about the criminal responsibility of the accused Goran Višković for the perpetration of the Other Inhumane Acts in respect of the aggrieved party Salih Mehičić and other persons whom he took to perform forced labour, and in the manner as described in Section II.7. of the Operative Part of the convicting part of the Verdict, is based on the statement by the aggrieved party whose statement was not contested by the Defence. Specifically, while testifying, this witness recognized the accused Višković, stating that he took detainees for forced labour very often, and that he did so in the manner that he would come into the hangar and asked who wished to go voluntarily. However, he who would refuse to go was battered. In the same manner he behaved during the performing of forced labour. He would beat detainees and then asked who did not wish or who could not come the following day. According to the witness, on the relevant day in June, the accused Višković came to the camp and assigned some 13 detainees, including, besides the witness, his brother Dževad and father Smajo, Sead Sasić, Mujo Ćatić and some other detainees who were from Kalesija and Bratunac, in order to take them to work the field of Slobodan Mitrović who was present there while they were working. On that occasion, the accused ordered them to dig up without leaving a single leave of grass or otherwise such detainee would be battered. He fulfilled his threat when a young boy, who according to the witness, was not of majority age, allegedly skipped a patch of grass, so that the accused approached the witness and ordered him to hit that boy. After the witness refused to do so, he ordered the boy to hit the witness. As he was young and was not strong enough, the hitting was taken over by the accused Višković who punched and kicked the witness Mehičić as hard as possible in order to knock him down on the ground, insulting him on that occasion and telling the young boy that that was how you do it.

Afterwards, they set off in a column along the path towards a cattle market. After the witness's foot had slipped, the accused turned to him and asked him whether he intended to escape, cocking a rifle called drum magazine gun which was aimed at him, and threatening that he would kill him, on which the witness replied that he could kill him if he thought that he had done something wrong. On their arrival at the cattle market, they received some tins for lunch, but the young boy whom the accused previously abused could not eat, so that the accused slapped him in the face, saying that he refused to eat because he wished to take the tin along and give it to someone. He ordered all of them to come aboard the refrigerator truck, which he closed from the outside. Given that it was June and that it was very hot and that 13 persons were closed in the refrigerator truck, they quickly ran out of the air. Some fainted and some vomited. Because of that, fearing for their own lives, they were compelled to vigorously bang on the door in order that someone could hear them and open the door. Almost one hour later, Miroslav Gajić aka Šibicar heard them and opened the door, cursing and asking them angrily how the accused could leave them there where they could die.

Therefore, the statement by this witness is very clear, precise and unequivocal. Because of that, the Panel decided to give credence to him, whereas the behaviour of the accused during the selection of the persons whom he would take to perform forced labour, and

during the labour, was also corroborated by other witnesses' statements from which it is possible to notice his violent and, in principle, inhumane pattern of behaviour towards the detainees. The state in which the detainees were found in this situation is demonstrated by reaction of Miroslav Gajić who opened the door, angrily cursing the accused and expressing disbelief that he, in cold blood, could leave the men in such conditions that could have resulted in their stifling to death.

Bearing in mind the elements analysed in Section II.3. of the reasoning of the convicting part of the Verdict, the Panel found that the accused, acting as a military police officer, during the widespread and systematic attack against the civilian population, of which he knew and of which he was a part, by battering the aggrieved party, by insulting him verbally and by forcing the detainees to hit each other, as well as by locking up 13 civilians in the refrigerator truck in June, he endangered their lives and health, whereby he achieved the standard of the Other Inhumane Acts, that is, he satisfied the essential elements of the criminal offence referred to in Article 172(1)(k) of the BiH CC. In perpetrating this offence, he acted with a direct intent, because he was aware of the consequences that could have occurred in respect of the locked up persons, but ignoring the noise, banging and yelling which were heard from the refrigerator truck, he wished that they take place.

#### **VIII.2. Section II.8. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused Goran Višković for the rape of the Protected Witness 8, in the manner as described in Section II.8. of the Operative Part of the convicting part of the Verdict, is based on the statement by the Protected Witness, which the Panel finds to be detailed, unequivocal, and consistent in decisive facts with the statement from the investigation. In early June, the witness was taken to the Sušica camp which was 200 metres away from her house. On her arrival there, she immediately recognized a large number of her neighbours of Serb ethnicity, including the accused Višković and the accused Bastah.

Describing the relevant event, the witness stated that on an unidentified date in June, late in the evening, at around 23.00 hours, the guard Đorđe Ilić from Tugovo came to the hangar in which she was held. Grabbing her hair, he ordered her to come with him to a "guards room", which in fact was a small facility situated next to the hangar in which the guards stayed. On her coming into the room in which there were a table, a chair and an iron bed, she recognized the accused Višković, Slobodan Milić, Stanoje aka Krune and Dragan Nikolić aka Jenki.

Ilić grabbed her hair and ordered her to sit down, and the accused Višković said: "*We shall use our way now*", and when Jenki gave him a pair of handcuffs, he tied the witness to the chair, they were kicking and punching her and questioned her about her brother. Jenki then ordered them to take off her handcuffs. Ilić approached and Vjetar and Stanoje threw her in the direction of the bed, and Ilić held her hands while the accused Višković was raping her. In that connection, she added at the main trial that afterwards the accused was putting a police baton in her sexual organ, and after the accused, she was also raped by Stanoje. When the witness was already bloodstained due to the blows and when she

implored them to kill her, Ilić took her out of the room, grabbing her hair and ordering her to lick from the floor, on her way to the hangar, the blood of a young boy on whose forehead they had previously been carving the cross.

The fact is that the witness did not mention the accused Višković in the statement which is contained in the Camp Detainees File /Association of Camp Detainees of BH/. However, it was found by reviewing the statement that she also failed to mention many other details which she explicitly explained at the main trial. In that regard, the witness stated that she did not mention some details even during the investigation, such as the putting of the baton in her sexual organ, because she was ashamed. Given that the witness explained all contestable parts of her statement, the Panel did not find that, during the proceedings, the Defence successfully challenged her credibility, or that it seriously undermined the decisive parts of her statement which speak of the very act of the rape and the participation of the accused Višković in the perpetration thereof.

Given that the statement by the aggrieved party - the witness is clear, concise and unequivocal, and, as such, was not contested during cross-examination, the Defence raised an objection that it was not sufficient for establishing the criminal responsibility of the accused, because this was a witness whose identity is protected, and under the Law on the Protection of Witnesses, no Verdict can be founded, to a decisive extent, on such a statement, given that none of the heard witness confirmed the averments by the protected witness, nor was any of them an eye-witness of her being taken out and brought back to the hangar. The referenced argumentation was not accepted by the Panel, because this witness did not enjoy the utmost degree of identity protection, as prescribed in Article 14 through 23 of the Law on the Protection of Witnesses, whereby she is not subject to Article 23 which prohibits basing a Verdict to a decisive part on the statement of such a witness. This witness in fact enjoyed the identity protection only in respect of the members of the public, because it was in the interest of protection of her personal and private life, whereas the accused and defence counsels had the possibility of cross-examining her, and checking and challenging her averments.

Further, this is a criminal offence which is exceptionally sensitive and traumatic for the victim. Therefore, one cannot expect that, on her return to the hangar, she would recount to the others who were present there what had just happened to her, given that she herself stated that she was ashamed of what happened. The aforementioned was also confirmed by the witness Hasib Agić who stated that, from time to time, guards took women out of the hangar and brought them back, weeping. But those women never told what had happened to them. This indicates that such occurrences were usual, so that it is understandable why none of the heard witnesses could specifically recall whether and when the aggrieved party – the Witness 8 was taken out of the hangar, as it especially occurred in the late evening. Finally, the Defence averments that the witness's statement was aimed at inculcating the accused without grounds because, as a victim of rape, she receives financial assistance from the state and because she submitted a claim under property law in this case, are completely arbitrary and ungrounded, and as such they are not appropriate to undermine the credibility of her testimony.

Bearing in mind all the aforementioned and the fact that the aggrieved party recognized the accused Višković in the courtroom, the Panel found that his participation in the rape of the Protected Witness 8, in the manner as she described, was established beyond doubt.

The state of facts having been thus established, the Panel examined whether the elements of the offence of Rape referred to in Article 172(1)g) of the BiH CC are satisfied by the acts of the accused Goran Višković, and to that effect the existence of the following elements was analysed:

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

For the purpose of further development of the referenced elements, the Panel had in mind the ICTY case law in the *Furundžija* case in which the ICTY Trial Chamber gave the opinion that sexual penetration will constitute rape if it is not truly voluntary or consensual on the part of the victim, whereas 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 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"<sup>24</sup>. In order that there should exist the criminal offence of rape, the following factors which must be satisfied (alternatively, not cumulatively) 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.

Like torture, rape is used for such purposes as intimidation, degradation, humiliation, discrimination, punishment, control or destruction of a person<sup>25</sup>.

The analysis at issue shall also be applied in Section II.9. of the Reasoning of the convicting part of the Verdict which also refers to this criminal offence.

In the present case, the Panel found that the required elements are satisfied, given that the accused and the other persons used force against the aggrieved party from the very moment she was taken out of the hangar when Ilić, pulling her hair, brought her to the

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<sup>24</sup> See *Kunarac et al* Case, ICTY Trial Judgement, para 440.

<sup>25</sup> See *Furundžija* Case, ICTY Trial Judgement, para 176.

“guards” rooms where they were punching and kicking her, insulting her and abusing her sadistically. At that time, the aggrieved party was in the room together with at least 5 men, so that she did not have any realistic possibility of opposing them or offering any resistance and, notwithstanding that, she was forced to sexual intercourse by extremely violent and brutal acts - the accused Višković tore her clothes off, and all the time she was severely battered. The severity of the injuries inflicted were best reflected in the fact that she implored all those who were present to kill her because she was not able to endure the torture any longer.

Therefore, the Panel found that the accused Goran Višković, acting as a reserve police officer, during a widespread and systematic attack against the civilian population, of which he knew and of which he was a part, together with the other guards of the Sušica camp, in the relevant evening, took an active part in battering and raping the aggrieved party - the Witness 8. The accused Višković acted with a direct intent, because he was aware of the consequences that would occur in respect of the girl who was brought in, he intended those consequences to take place by taking a direct part in the act of commission of the criminal offence, further humiliating her by exceptionally brutal and degrading acts. The evidence presented during the proceedings did not indicate the existence of an agreement between the accused and the other persons, but based on the direct participation in the act of commission of the offence it is clear that he was aware of the concerted action, whereby as a co-perpetrator of the actions taken he satisfied the essential elements of the criminal offence of Rape as referred to in Article 172(1)g) of the BiH CC as read with Article 29 of the BiH CC.

### **VIII.2. Section II.9. of the Operative Part of the Verdict**

The Court’s satisfaction regarding the criminal responsibility of the accused Goran Višković for the rape of the protected witness Jasmina Huremović, in the manner as described in Section II.9. of the Operative Part of the convicting part of the Verdict, is based on the statement by Tima Huremović, the aggrieved party’s sister, who was an eye-witness of the relevant event which she described clearly and unequivocally. The aggrieved party herself confirmed to her immediately after the event that she had just been raped, and when she arrived at the camp she recounted in detail what had happened. According to her personal statement, until 10 July 1992 the witness Huremović lived in her apartment in Vlasenica together with her common-law husband Ibrahim Lelo, and she had stayed there until her mother and the aggrieved party Jasmina Huremović, her sister, came over. On that day, at around 21:40 hours, Vukša and Čedo Vržina’s son came to the door. They banged against the door with a rifle-butt and asked her where her brothers were. They came into the house, took her, her mother, her sister and Ibrahim Lelo out, brought them to the street and ordered them to lie down on the asphalt. On that occasion, at the junction across the street, she noticed the crowds of people and military, and among them she recognized the accused Višković whom she identified in the courtroom. The accused approached the group in which there was the aggrieved party and, together with Vukša and Čedo Vržina’s son, he brought her back to the apartment from which they returned half an hour later, loudly saying that they had just raped the aggrieved party. According to the witness, it was apparent by her look, and the aggrieved party

confirmed that herself, too. A white van operated by a certain Trifunović came to pick them up. It took them to the Sušica camp in which they were detained from 10 to 17 July. During that time, the aggrieved party recounted to the witness in detail what had happened, explaining that they forced her to get undressed, and all three of them raped her and cut her hair. According to the witness Huremović, at the location of Luke, the aggrieved party was separated from the convoy which was heading towards Kladanj and it was the last time that she was seen alive.

The Panel found that the witness's statement is clear and precise, submitting that during the proceedings the Defence did not, in a decisive manner, brought into question her credibility, nor did it manage to challenge the presence of the accused Višković on the scene, because, on that occasion, he was also recognized by Ibrahim Lelo who was even calling his name loud, imploring him to help them, whereupon the accused brashly replied: "*Don't mention my name!*" Therefore, there is no doubt that the accused Višković, together with the other soldiers, brought the aggrieved party back to the apartment in which all three of them raped her.

Bearing in mind the elements analysed in the previous section of the reasoning, the Panel took into account the circumstance that the aggrieved party was in the room with three men, so that she objectively did not have any possibility of opposing them or offering any resistance to them. The fact that she was raped by all of the three soldiers present there additionally indicates the heinousness and brutality of the crime itself. They cut her hair afterwards and for her it was the final act of humiliating treatment of her. The state in which the aggrieved party found herself after she had been taken out of the apartment was described by the witness Huremović, stating: "*It was apparent by her look that she had been raped*".

Therefore, the Panel found that the accused, acting as a military police officer, during a widespread and systematic attack against the civilian population, of which he knew and of which he was a part, on the relevant day, together with the other two soldiers, took the aggrieved party to the apartment in which all three of them forced her to sexual intercourse. In the perpetration of the offence, the accused acted with direct intent. He was aware of the consequences which would occur in respect of the aggrieved party and he wished the occurrence of those consequences. He proved that by taking a direct part in the rape of the aggrieved party whom they further humiliated by cutting her hair, and on her coming out, on the street, they loudly yelled that all three of them raped her. The evidence presented during the proceedings did not indicate the existence of a previous agreement for the perpetration of the act, but based on a direct participation in the act of commission of the offence, it is clear that he was aware of the concerted action, whereby as a co-perpetrator of the actions taken, he satisfied the essential elements of the criminal offence of Rape referred to in Article 172(1)g) of the BiH CC.

### **VIII.3. The accused Predrag Bastah aka Dragan and Goran Višković aka Vjetar - jointly**

#### **VIII.3. Section III.1. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused for the enforced disappearance of Fehim Ferhatović and Fadil Ferhatović, in the manner as described in Section III.1. of the Operative Part of the convicting part of the Verdict, is substantiated by statements of the witnesses Fikret Ferhatović, the Protected Witness 8, the Witness 4, Hajrudin Merić and Salih Mehičić, whereas the statement by Hašim Ferhatović was read out at the main trial. The testimony by Fikret Ferhatović, the aggrieved parties' brother, was based solely on the facts he received from his father, Ahmo Ferhatović, who at the material time was detained in the Sušica camp together with his sons Fehim and Fadil Ferhatović, but he did not see who took them out of the camp on the relevant night. According to this witness, on one occasion his father was brought in the police station by the accused, but they did not abuse him then. Given that the presented evidence did not indicate the existence of a nexus between the acts of the accused and taking this person to the Sušica camp, the Panel decided to omit the allegations about the severe deprivation of liberty of the aggrieved party Ahmo Ferhatović from the factual description of this section.

Given that, at the time of taking the aggrieved parties away, their father felt nauseous and fainted, because of which he could not recall all details later on, the Panel based the criminal responsibility of the accused for the referenced event which, beyond doubt, occurred on the statement by the Protected Witness 8 who was in the same hangar with the aggrieved parties and who explicitly stated that the accused Bastah and Višković aka Vjetar and the guard Ilić came into the camp on the relevant night, and approaching the Ferhatović brothers, grabbed Fadil's shoulder and ordered both of them to get out. During that time, they were beating them with hands and automatic rifles, which continued even after they closed the iron door, as they heard sound of the bodies repeatedly bumping on the ground, while the witness also heard Jenki laughing. Half an hour later, upon their being taken out, a shot was heard, too. After the shot, the aggrieved parties' father felt nauseous, so that the women were banging on the door, asking for water to help him. Jenki opened the door and, laughing, he brought in a table on which they put down Ahmo Ferhatović who was unconscious. This witness had the opportunity only in the morning to leave the hangar and then, in front of the entrance door, she noticed the blood which belonged, as she assumed, to the killed Ferhatovićs. The other referenced witnesses confirmed that, late in the evening, brothers Fehim and Fadil Ferhatović were taken out of the hangar of the Sušica camp, but were never brought back, nor have their bodies ever been found.

The witness Hašim Ferhatović, whose statement was read out at the main trial, assumed that that the relevant event occurred on 21 June 1992, whereas the witness Hajrudin Merić, who stayed in the camp from 2 June to 28 June 1992, believed that the event took place two or three days upon his arrival. However, the Panel noticed that, irrespective of

those differences, the statements by the witnesses are consistent in respect of the decisive facts, in other words, that the event took place in the manner as described, and that both of the accused took part in taking the aggrieved parties away.

During the proceedings the Defence contested the participation of the accused in the relevant event, stating that the eye-witness of the event Ahmo Ferhatović, the aggrieved parties' father, never mentioned the accused Bastah and Višković to the witness Fikret Ferhatović. However, the witness explained that by the fact that at that time his father underwent a minor infarction and he did not see who took them away, which was confirmed by the Witness 8, too, who described the state in which Ahmo Ferhatović was, because of which the Panel accepts that was not been able to recall all details of the event. The Defence objected to the reading out of the statement by the late Hašim Ferhatović, because it was taken from the investigation against Dragan Nikolić and is thus inapplicable in this case; this argument is unacceptable, given that the statement by the witness was taken under the procedure prescribed by law and, in that connection, he was instructed about his rights and obligations, so that the existence of a formal and legal obstacle for its admission into the evidence was not established. Regarding the contents of that statement, the Panel found ungrounded the objection by the Defence that he had never mentioned the accused, given that he clearly stated that the accused Dragan Bastah aka Car certainly participated in taking the aggrieved parties away.

The Panel however could not establish beyond any reasonable doubt that on the same night a lethal consequence took place in respect of the aggrieved parties, nor was it possible to establish, on the ground of the presented evidence, the responsibility of the accused for its taking place, but it is beyond doubt that the accused, together with the other guards of the camp, participated in the taking of the aggrieved parties out of the hangar, whereupon they were not seen alive.

Bearing in mind the existence of objective elements of the offence of Enforced Disappearance referred to in Article 172(1)i) of the BiH CC, as stated in VIII.1. Section I.5. of the Reasoning of the convicting part of the Verdict, the Panel found that the accused Bastah, in his capacity as a reserve police officer, and the accused Višković, in his capacity as a military police officer, during a widespread and systematic attack directed against the civilian population, participated beyond doubt in taking the aggrieved parties out of the hangar, and were also present in front of the hangar door, during which time the blows and screams of the aggrieved parties were heard, from which it clearly ensues that they knew what would happen to them, but they never provided any information thereof, thus keeping them unprotected by law for a long time. The evidence presented during the proceedings did not indicate the existence of an agreement, but on the basis of the active participation in the commission of the offence it is clear that the accused were aware of the concerted action, in the connection of which they acted with a direct intent, being aware of the consequences of their acts, that is, knowing what happened to the aggrieved parties on the relevant night, but by concealing the information about their further fate they wished to keep them unprotected by law for a long period of time, so that they even today are listed as missing. Thereby, as co-perpetrators of the actions taken, they satisfied the essential elements of the criminal offence of Enforced

Disappearance referred to in Article 172(1)i) of the BiH CC as read with Article 29 of the BiH CC.

### **VIII.3. Section III.2. of the Operative Part of the Verdict**

The Court's satisfaction regarding the criminal responsibility of the accused for the enforced disappearance of Ibrahim Lelo, in the manner as described in Section III.2. of the Operative Part of the convicting part of the Verdict, was substantiated by the statement of the witness Bekir Lelo, the aggrieved party's nephew, who prior to the relevant event lived with the aggrieved party and the wife of his father's brother Tima Lelo in the village of Jarovlje, the Vlasenica Municipality. At some point in early June, the witness was present when the aggrieved party was taken out of the house. After the accused Bastah and Višković arrived in the village by a blue Niva and stopped in front of the house in which the aggrieved party lived, they called him to come with them. The witness did not have any doubts about the persons who took the brother of his father away on that day, because he knew them from before, given that they had often associated with the aggrieved party Ibrahim Lelo. He also recognized them in the courtroom during the testimony. According to the witness, on that occasion, the accused did not apply any form of force or coercion in order that the aggrieved party would come with them. On the contrary, it was "in a friendly way" that he left with the accused in the direction of Vlasenica. So, regarding such averments, the Panel decided to omit the expression "severe deprivation of liberty" from the factual description of this section.

However, the same witness was explicit in his further explanation stating that it was exactly these accused who, shortly after Ibrahim Lelo was brought in the Sušica camp, took him, together with 6 or 7 more persons, to an unknown direction, since when he remains unaccounted for. On that occasion, the accused were escorted by Dragan Nikolić. They were standing in the door and, during that time, 3-4 soldiers came into the hangar and took out of there the aggrieved party Ibrahim Lelo and 6 or 7 more persons. This was confirmed by the witness Tima Lelo who attended the event but did not see who took those persons away.

Given that the witness Bekir Lelo was an eye-witness of the relevant event, that he knew the accused persons well at that time and that he recognized them in the courtroom, the Panel decided to give credence to him, finding his statement to be objective and impartial, and uncontested by Defence evidence.

Bearing in mind the existence of the objective elements of the offence of Enforced Disappearance referred to in Article 172(1)i) of the BiH CC, as stated in VIII.1. Section I.5. of the Reasoning of the convicting part of the Verdict, the Panel found that the accused Bastah, in his capacity as a reserve police officer, and the accused Višković, in his capacity as a military police officer, during a widespread and systematic attack directed against the civilian population, attended beyond doubt the taking of 6 or 7 persons out of the hangar of the Sušica camp, among whom there was the aggrieved party Ibrahim Lelo who was last seen alive on that occasion, so that it is clear that the accused knew about his further fate. They never provided any information about that to either

relatives of the aggrieved party or to humanitarian organizations, and thus they kept him unprotected by law for a long period of time. The evidence presented in the proceedings did not indicate the existence of an agreement between the accused and the other persons, but based on their active participation in the commission of the offence it is clear that there existed the awareness of the concerted action, and in that connection they acted with a direct intent, being aware of the consequences of their actions, that is, knowing what happened to the aggrieved party after he had been taken out, but by concealing the information about his further fate they wished to keep him unprotected by law for a long period of time, so that he is still listed as a missing person. Thereby, as co-perpetrators of the actions taken, they satisfied the essential elements of the criminal offence of Enforced Disappearance referred to in Article 172(1)i) of the BiH CC as read with Article 29 of the BiH CC.

#### **VIII. 4. Persecution as an act underlying the crimes against humanity**

After the Panel had established the criminal responsibility of the accused persons for individual acts underlying the crimes against humanity, it also examined whether, by the aforementioned actions, they participated in the persecution of Muslim population of the Vlasenica Municipality.

Article 172(1)g) of the BiH CC additionally explains 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", and, consequently, 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 criminal offence referred to in Article 172(1) of the BiH CC, any criminal offence prescribed by the BiH CC or any criminal offence within the jurisdiction of the Court of BiH.

Under the ICTY case law, persecution may assume different forms, and the physical element is not necessary. Additionally, under customary international law, in the case of persecution, the victims of crimes against humanity need not necessarily, only and solely be civilians; they may also include military personnel.<sup>26</sup>

In fact, the key constituent element of persecution is the commission of any prohibited act aimed against the civilian population and motivated by discriminatory intent (on political, racial or religious grounds). In that regard, practical is the example of the ICTY Trial Chamber in the Judgement of the *Kupreškić et al* case which reads, *inter alia*, that

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<sup>26</sup> See: *Kupreškić et al* Case, ICTY Trial Judgement, para 568.

according to the International Military Tribunal, the notion of persecution covers various acts (...) such as: passing of discriminatory laws, exclusion of members of some ethnic or religious group from the spheres of social, political and economic life, restriction of their freedom and movement. Therefore, persecution may also cover various other acts of discrimination which include attacks on political, social and economic rights<sup>27</sup>.

However, limits of the offences which can be qualified as persecution must also be precisely established, because not every denial of human rights can constitute a crime against humanity. Thus, it is accepted in that context that acts of persecution must, at the very least, be equally grave or serious as other offences listed in Article 172 of the BiH CC.

Further, in the *Kupreškić et al* case, the Trial Chamber does not exclude the possibility that even a single act can constitute persecution if there exists a clear evidence of discriminatory intent, in which it is not necessary to show that the accused participated in the creation of a discriminatory policy or practice of some government authority.

Given the referenced elements of persecution, the Panel concluded in the first place that the previously described and established crimes were committed intentionally and all of them constitute severe deprivation of fundamental human rights contrary to international rules, that is, guarantees provided by Common Article 3 of the Geneva Conventions from 1949. In that way, the first and the second elements of persecution were satisfied.

Further, the Panel concluded that, in all counts of the referenced Indictment, victims of the committed criminal acts were Bosniaks/Muslims, whereas the witnesses Vukosava Klanco and Olga Tatomitović were also subjected to discrimination by reason of their relations with persons of that ethnicity.

Besides, a chart shows that, during the period from 4 April 1992 until 31 December 1992, in the area of the Vlasenica Municipality, out of all missing persons, 99,40% are members of Muslim ethnicity, whereas the rest are also non-Serbs, whereby the discriminatory nature of persecution is plain evident.

Therefore, bearing in mind that the previous part of the Verdict has reasoned the facts and circumstances as bases for the criminal responsibility of the accused for the commission of the act underlying the Crimes against Humanity referred to in Article 172(1) of the BiH CC, the ultimate element of persecution has thereby been satisfied.

By virtue of all the aforementioned, the Panel concluded beyond any reasonable doubt that the accused, during the period from April until the end of September 1992, within a widespread and systematic attack by parts of units of the JNA, military, paramilitary and police forces of the Srpska Republika BiH, directed against the civilian Bosniak and other non-Serb population of the Vlasenica Municipality, knowing about such attack and that their acts constituted part of that attack, as members of those forces, more precisely, Predrag Bastah, in his capacity as a member of the RS MoI reserve forces, Vlasenica

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<sup>27</sup> Ibid, para 615.

PSS, and Goran Višković, as a member of the Srpska Republika BiH Army, persecuted the civilian population of Bosniak and other non-Serb ethnicity on political, ethnic and religious grounds, by depriving other persons of their lives (murders), by unlawful incarceration, by mental and sexual abuse, by enforced disappearance of persons, by torture and by Other Inhumane Acts perpetrated with the view to inflicting physical and mental pains, whereby they committed the criminal offence of Crimes against Humanity referred to in Article 172(1)h) of the BiH CC, in conjunction with sub-paragraphs a), d), e), f), g), i) and k) as read with Article 29 of the BiH CC, and all in conjunction with Article 180(1) of the BiH CC.

## **IX ACQUITTING PART OF THE VERDICT**

Pursuant to Article 284 of the BiH CPC, the Panel handed down the Verdict by which the accused are acquitted of the charges under individual counts of the Amended Indictment. It provides hereunder a detailed argumentation and reasons by which it was guided to that effect.

### **IX.1. The accused Predrag Bastah aka Dragan – alone**

#### **IX.1. Section I.1. of the Operative Part of the Verdict (Count 1.1. of the Amended Indictment)**

Under this count the accused Predrag Bastah was charged with imprisonment or other severe deprivation of physical liberty of the aggrieved party Latif Zulfahar. In respect of this circumstance, the aggrieved party Zulfahari was heard. At the main trial of 10 July 2008 he described the event in detail, stating that on 23 April 1992 he was halted at a checkpoint by the accused Bastah who was with some more uniformed persons, whereupon he sat in the witness's vehicle and ordered him to drive towards the Vlasenica PS, without explaining the reasons for his apprehension. On their arrival at the station, he hit the aggrieved party with a rifle butt and he “threw“ him into a cell, cursing. Then, he brought him to the PS chief Mane Đurić who explained to him that the reason for his apprehension was the possession of weapons which he did not surrender upon call. When the witness said that he did not possess any, they closed him again in the cell. It was clear to him then that the reason for his bringing in were not the license plates on his car.

The Panel concluded in the present case that the accused Bastah, as a reserve police officer, was authorized to bring civilians in the PS if the bringing in was carried out under the order of his superiors. In such circumstances he was not allowed to exceed the Rules of Service by unjustified and excessive use of force. The fact that the aggrieved party was led to the chief Đurić for examination immediately upon his bringing in indicates that the accused acted under the order of his superior, in other words, that he was not aware of potential unlawfulness of the apprehension of the aggrieved party at that time, so that by bringing the aggrieved party in and by handing him over to his superior Đurić, the cause-and-effect connection of the accused's acts and further unlawful holding of the aggrieved party in the station was broken, because of which the accused Bastah cannot be charged

with it, since it was the chief Mane Đurić who made decision on bringing the aggrieved party back to the cell. He apparently also had the authority to decide on the release of apprehended persons. He subsequently imparted to the witness that some of his friends intervened on his behalf, whereupon he was released with the obligation to report there every two hours.

Witness Ramiza Handžić also testified about this circumstance. She confirmed that her brother-in-law (*translator's note: or son-in-law*) Latif Zulfahari was apprehended and held in the SUP */Secretariat of Interior Affairs/* rooms for three days, where he was battered, which the aggrieved party personally described in detail, stating that he was battered by the accused Bastah and some members of the Novi Sad Corps. They tied him to a chair, with handcuffs on his back, and were kicking him with military boots they had on. The Panel hence examined the severity of blows inflicted on the aggrieved party. In that context, the Panel assessed the Finding and Opinion by the medical doctor Hamza Žujo, specialist in forensic medicine, who made the forensic analysis of medical documentation of the aggrieved party of 10 August 1993, which was made after his coming out of the camp. On the basis of the referenced documentation, a contusion of the right kidney was diagnosed, as were the injuries which are, under classification, slight bodily injuries caused with a blunt mechanical tool. However, at the end of giving evidence, the expert witness clearly stated that it was not possible to connect the described injuries with the events from 1992, and given that they were not caused by serious injury to body or to physical or mental health, the threshold of severity and seriousness of injuries was not reached in order that the accused could be found guilty of the commission of Other Inhumane Acts of similar nature referred to in Article 172(1)(k) of the BiH CC. Thus, in respect of this count of the Indictment, it was not possible to make a legal re-qualification, so that the accused is acquitted of the charge that he committed the criminal offence with which he was charged.

#### **IX.1. Section I.2. of the Operative Part of the Verdict (Count 1.2. of the Amended Indictment)**

In this count the Amended Indictment charged the accused with imprisonment or other severe deprivation of physical liberty of the aggrieved party – the Witness 17. As in the previous section, during the proceedings the evidence was presented and it showed beyond doubt that the accused Bastah participated in the apprehension of the Witness 17. According to him, at some point in late March 1992, he came by a vehicle to the location of Jezero with another guy from Zalukovik and, armed with an automatic rifle, he turned to the witness requiring him to come with them. In the vehicle by which the accused came, the witness noticed Garić and Hadžan Iraldžić whom they brought from their house and who, in fact, showed to the accused the field where the Witness 17 was, because they did not find him in the house previously. On their arrival at the Vlasenica PS, they led him to an office where the accused gave him a pencil and a piece of paper, requiring that he write down who possessed weapons in the street. On that occasion, the accused exerted pressure on the witness, maintaining that Džemo Ambešković said that the witness possessed a pistol, which the latter persistently denied, maintaining that he surrendered it at the same time when the other fellow townspeople did. The witness

further stated that in the Vlasenica PS rooms he was abused in the manner that they threatened to beat him and throw a hand grenade if he did not admit who owned the weapons. The accused Bastah told him that he received orders by Stanić, of which the witness convinced himself shortly after, because Stanić confirmed that he "did order Bastah to apprehend the witness, but he did not approve the abuse."

According to the Panel, Bastah as a reserve police officer was obliged to act under the order of his superiors, so that the apprehension of the aggrieved party - the Witness 17 cannot be regarded as a voluntary and unlawful act. Potential unlawfulness in the acts of the accused, that is, the exceeding of authority which he had as a reserve police officer, could be reflected only in the fact that in the rooms of the Vlasenica PS he forced the Witness 17 to admit the possession of weapons, threatening him with a hand grenade and saying that he would kill all his family if he found it, which certainly is not in accordance with the rules of examination of the apprehended persons.

However, the Panel did not find that, with such behaviour, he achieved the required threshold of gravity because of which the act could be subsumed under the Other Inhumane Acts of similar nature referred to in Article 172(1)k) of the BiH CC, because the examination lasted but for a while, and the threat with the hand grenade did not result in a serious injury to body or to physical or mental health of the aggrieved party, because of which he is acquitted of charges in respect of this count.

**IX.1. Section I.3. of the Operative Part of the Verdict (Count 1.2.a) of the Amended Indictment)**

Under this count, the Amended Indictment charged the accused with detention or other severe deprivation of physical liberty of the aggrieved parties Ibrahim Đodaljević and Džemal Ambešković. During the proceedings, the evidence presented confirmed beyond a doubt that the event had taken place in the factually described manner. In respect of that circumstance, evidence was heard by Ramiza Handžić who knew the aggrieved parties well, and was present when they were taken away. According to her, the aggrieved parties were taken away by none other than the accused Bastah. He did so in the manner that, at some point in late May or in early June, he stopped a vehicle in front of the witness's house and asked if someone from Cerska was there. She clearly saw Ibrahim Đodaljević in the vehicle, and she also saw when he came to pick up Đemal Ambešković whom he was waiting in front of his house to get ready, and then took him away. This witness did not know where Bastah took the aggrieved parties, but that was confirmed by the Witness 8 and Đulsa Đodaljević who had an opportunity to visit the aggrieved parties in Vlasenica PS rooms where they were subjected to everyday battery.

Therefore, the evidence presented at the main trial shows that the accused Bastah did apprehend the two aggrieved parties in the Vlasenica PSS. However, there is no indication that he was aware of the unlawfulness of his acts, given that during the apprehension of the aggrieved party Ibrahim, he said to his wife: "*He'll be back soon, neighbour. We just want to examine him a bit*", from which the Panel concluded that he acted under the order of his superiors, and he cannot be regarded responsible for their

further arbitrary holding in the prison, so that the elements of the criminal offence of detention or other severe deprivation of physical liberty referred to in Article 172(1)e) of the BiH CC are not satisfied in his actions.

On the other hand, the factual description of the Indictment does not clearly link the accused to the inhumane treatment and torture of the aggrieved parties during their stay in the Vlasenica PSS rooms. Thus, in that part, the Panel did not consider the existence of elements of the other acts referred to in Article 172(1) of the BiH CC.

**IX.1. Count I.4. of the Operative Part of the Verdict** (Count 1.3. of the Amended Indictment)

In this count, the Amended Indictment charged the accused Bastah with detention or other severe deprivation of physical liberty of Ibro Osmanović. According to the aggrieved party who was heard at the main trial of 26 October 2009, the accused Bastah, together with a certain Rikanović and Đurić, reserve police officers of the Vlasenica PSS, came by a *Golf 2* to his house at 15 Omladinska Street, on 22 May 1992. On that occasion, all of them were uniformed and armed with automatic rifles. They turned to the witness, requiring him to come with them because he “*had to give some statement*“. The accused remarked that he would need neither shoes nor jacket, because “*there is no second half*“, which for the witness meant the end of his life.

He was taken to rooms of the Vlasenica PS which once had a provisional storehouse of weapons where they were lodged and where in the time to come they were exhausted from lack of food and drink, whereas going out to the toilet always meant battering. Subsequently, he was transferred to the prison behind the building of the Court, wherefrom the accused Bastah, together with some more civilians, transferred him to the Sušica camp on 18 June 1992.

Given the status of the accused Bastah at that time and the manner in which the aggrieved party was apprehended, the Panel concluded that he acted under the order of his superiors, and he orally stated the reasons for the apprehension, which annuls the existence of awareness of potential unlawfulness of his taking to the Vlasenica PS, and later on to the Sušica camp. In other words, the accused Bastah did not hold the aggrieved party in the prison arbitrarily, nor did he have authority to decide on his release, so bearing in mind that he did not use force during the apprehension and that he did not exceed the authority which he had as a reserve police officer, the Panel did not find that the elements of the criminal offence of imprisonment or other severe deprivation of physical liberty referred to in Article 172(1)e) of the BiH CC were satisfied, because of which he is acquitted of charges for the acts contained in this count.

Besides, the witness was explicit when he stated that the whole time during the detention the accused Bastah did not hit him on a single occasion or otherwise abused him, except that he stated that “*there is no second half*“, which according to the Panel, did not result in a serious injury to body or to physical or mental health of the aggrieved party, so that

the accused, by such behaviour, did not meet the standards for Other Inhumane Acts referred to in Article 172(1)k) of the BiH CC.

**IX.1. Section I.5. of the Operative Part of the Verdict** (Count 1.4. of the Amended Indictment)

In this count the Amended Indictment charged the accused with imprisonment or other severe deprivation of physical liberty of Enis Pezić. Arifa Golić and Zarifa Pezić testified in respect of that circumstance, and it was found on the basis of their testimonies that the relevant event occurred in the described manner. Specifically, on 15 May 1992, Dragan Bastah came by a white *Niva* in front of the house in which they lived with the aggrieved party. He was dressed in a blue uniform and was accompanied by another man wearing a black shirt. He addressed the aggrieved party, calling him to come with him. He told his mother that he would be back in 4 days as he was going only to be questioned and that they could bring him a blanket and some cigarettes later on. He then waited for the aggrieved party to get ready and he drove with him in the direction of the Vlasenica PS where he was detained in a small cell with 9 more persons. His mother visited him in the prison as late as 18 July when she brought some food and clothes for him. In those days she saw the accused on a couple of occasions taking detainees by his red fire-engine *Niva* to clean the town, and together with the others he guarded them while they were performing forced labour.

In the present case the Panel did not find that the elements of the criminal offence of imprisonment or other severe deprivation of physical liberty referred to in Article 172(1)e) of the BiH CC were satisfied by the acts of the accused, because the accused as a reserve police officer apprehended people under the order of superior officers of the Vlasenica PS, and he did not use force during the deprivation of their liberty, and he orally stated the reasons for the apprehension, saying that he was going to the Vlasenica PS “*to be examined*”. The Prosecution did not prove the nexus between the accused Bastah and further potential unlawful holding of the aggrieved party in the Vlasenica PS, nor did it prove that he had any authority to release him. Finally, the facts of the Indictment did not provide the Panel with sufficient grounds for conclusion that the work to which the accused led detainees had the nature of forced labour, because it was not factually described in the indictment, which should have been done in order that the Panel could assess its potential unlawfulness.

**IX.1. Section I.6. of the Operative Part of the Verdict** (Count 1.4. of the Amended Indictment)

In this count the Amended Indictment charged the accused with imprisonment or other severe deprivation of physical liberty of the aggrieved party Smail Duraković. In respect of this circumstance, testimony was given by the aggrieved party who described the event in detail, stating that at some point in June 1992, the accused Bastah came in front of the house in Ive Andrića Street in which he lived together with his wife. He was dressed in a military uniform and was accompanied by a few soldiers. At the same time, a white TAM van, owned by one Popović, was parked in front of the house. The witness saw some

soldiers apprehending their neighbours, the Telalovići and the Šahbegovići, and a large number of people gathered around the vehicle. The accused then addressed him and the others, saying that they all should board the van. He did not notify them about the reasons for the apprehension, but the aggrieved parties themselves realised those reasons when they came in front of the Sušica camp where Dragan Nikolić and a certain Mijat Tešić's son received them and lodged them in the hangar which was used before as a weapons storehouse of the Civilian Protection. The aggrieved party knew that it in fact was a camp established at some point at the beginning of the conflict – in the spring of the year 1992.

However, the Panel did not find that the elements of the criminal offence of imprisonment or other severe deprivation of physical liberty referred to in Article 172(1)e) of the BiH CC were satisfied in the acts of the accused, because he only transported the aggrieved parties and the other persons to the Sušica camp and handed them over to Dragan Nikolić. Thereafter, the cause and effect connection of his acts and further unlawful holding of persons in the Sušica camp ceased to exist. During the proceedings, the Prosecution did not manage to prove that the apprehension of persons was an arbitrary decision by the accused, or that he had any authority to decide on their further fate. Given that during the apprehension the aggrieved party did not suffer any injury and that force was not exerted on him, the Panel decided to acquit the accused of the responsibility under this Count.

**IX.1. Section I.7. of the Operative Part of the Verdict (Count 1.4. of the Amended Indictment)**

In this count the Amended Indictment charged the accused with enforced disappearance of the aggrieved parties Zahid Klempić and Abdulkadir Subašić. First of all, the Panel considers that, on the grounds of the evidence presented, it is not possible to conclude beyond any reasonable doubt that the accused Bastah took part in the apprehension of Zahid Klempić, nor was it proved that it was exactly he who subsequently came into the prison and took the aggrieved party out of the cell. The referenced aggrieved party remains unaccounted for ever since.

In respect of this circumstance, a testimony was given by the aggrieved party's sister Almasa Klempić who was at home on 11 May 1992, when persons who introduced themselves as police officers banged on the door. After she opened the door for them, they turned to her brother, saying: *“Go. This won't take long. Just 5 minutes“*, and they took him out with his slippers on. She noticed then that one of them had a knitted cap, he was flushed-faced, whereas the one who was standing on the right was pale and *“slim“*. However, she explained that she did not see their faces well on that occasion, because they were hiding behind the door, and when they knocked, she did not dare to turn the light on in the corridor, so that at that very moment she knew /sic/ who the persons that took her brother away were.

The witness learnt later on from a certain Ismet Hasanović that her brother had been taken to the police station, since he said that he had been present in a Vlasenica PS cell when the aggrieved party had been taken out of the cell by the accused Bastah, Višković,

Vlado Stupar and a fourth person whom he did not know. Even upon her return to Vlasenica, she heard stories from fellow townspeople about the persons who were taking people away during the material time. They showed her the accused Viković whom she has henceforth considered to have participated in taking her brother away from their family house.

The Panel could not accept such uncertain averments by the witness as the only ground for establishing a sentencing verdict, nor could it have been done solely on the grounds of her indirect information about the events, because a certain Ismet Hasanović, as an alleged eye-witness of the event, was not heard as a Prosecution witness in this case, and thus his knowledge in that regard were not included in the assessment.

As far as Abdulkadir Subašić is concerned, the Panel found beyond doubt during the proceedings that the accused Bastah participated in his taking to Vlasenica PSS rooms, not to an unknown direction as stated in the Indictment. It was confirmed by the witness Kadira Zubović, the aggrieved party' wife, who learnt before the taking to the camp that her husband was in a Vlasenica prison, and in that regard, the Panel found that the responsibility of the accused Bastah in respect of the referenced person ceased by bringing him in and incarcerating in the Vlasenica PS. On that occasion, he neither beat nor otherwise abused him.

The fact that those persons were subsequently found and exhumed, and that they had entry-and-exit wounds, is incontestable, but no reliable evidence was presented during the trial which would beyond a doubt link the accused Bastah and the violent death of those persons, so that, in respect of this count, the accused was acquitted of the charges.

**IX.1. Section I.8. of the Operative Part of the Verdict** (Count 1.4. of the Amended Indictment)

In this count the Amended Indictment charged the accused with imprisonment or other severe deprivation of physical liberty of the aggrieved parties Hasiija Žepčanin and Mevludin Hatunić. That event was described in detail by the witness Hasma Efendić who, one day in June of 1992, together with Hasiija Žepčanin, found herself on a road along which the accused Bastah was travelling in a white *Lada*. He stopped the car next to them and told the aggrieved party to come into the vehicle in which there already was the aggrieved party Mevludin Hatunić.

In the present case the Panel did not find that the elements of the criminal offence with which he was charged were satisfied, because he brought the aggrieved parties in Vlasenica PSS rooms but he did not use force, nor is there any information that he did so after their incarceration in cells. If one has in mind that the accused Bastah, as a reserve police officer, executed orders of his superiors, then the potential unlawful detention of the aggrieved parties was not carried out with his intent. Given that the Prosecution did not prove any arbitrariness and disobedience in his acts, the Panel decided to acquit him of the charges.

**IX.1. Section I.9. of the Operative Part of the Verdict** (Count 1.4. of the Amended Indictment)

In this count the Amended Indictment charged the accused with forcible transfer. In respect of this circumstance a testimony was given by the Protected Witness 2 who described in detail at the main trial how the accused, armed, came in front of her door, ordering her to go to Kladanj with her children, otherwise they would be killed. However, the witness went to the station in Vlasenica, and then to another quarter of the town, so-called Klempići, where she stayed until her taking to the Sušica camp. Therefore, she did not leave the Vlasenica town because of the accused's threats, nor did she use to see him in the period that followed, so that the Panel did not find that the elements of the criminal offence of forcible transfer referred to in Article 172(1)d) of the BiH CC were satisfied, because of which, in respect of this count of the Amended Indictment, an acquitting verdict was handed down.

**IX.2. The accused Goran Višković aka Vjetar - alone**

**IX.2. Section II.1. of the Operative Part of the Verdict** (Count 2.2. of the Amended Indictment)

Under this count the Amended Indictment charged the accused with the Other Inhumane Acts of similar character intentionally causing great suffering, or serious injury to body or to physical or mental health of the aggrieved party Muhidin Dautović. In respect of this circumstance a testimony was given by the witness Miralem Đamđić who did not see how the aggrieved party was brought in the Vlasenica PS, but when the aggrieved party was released he showed him his wounds and his back "*black with blows*". According to the statement given by the witness during the investigation, upon getting out of the prison the aggrieved party said that he was beaten by the accused Višković, Dragan Ravnjak and others, which seemed likely to the witness because at that time he used to see them in groups of uniformed persons who were apprehending people. However, such indirect information did not provide the Panel with an adequate degree of belief that the person who battered the aggrieved party was none other than the accused Višković, nor can the seriousness of the inflicted injuries be examined on the basis of the description given by the witness, that is, whether their severity and seriousness met the standard of inhumane treatment referred to in Article 172(1)k) of the BiH CC, because of which an acquitting verdict was handed down in respect of this count of the Amended Indictment.

**IX.2. Section II.1. of the Operative Part of the Verdict** (Count 2.3. of the Amended Indictment)

Under this count the Amended Indictment charged the accused with Other Inhumane Acts of similar character intentionally causing great suffering, or serious injury to body or to physical or mental health of the aggrieved party Hasib Agić who was heard at the main trial when he described in detail that, upon his arrest and bringing in the prison by the Municipality building, they "*were beating him a bit*". After that, Šarić examined him, requiring that he admit the possession of weapons. During that time, the accused

Višković was present in the same room, whereas a certain Dragan, whom he knew from before, hit him. When the witness admitted that he possessed a rifle, Višković told him to come with him, adding that, if they found that rifle, they would shoot him with it before his wife and children. After finding the weapon, he turned to the witness, saying: “*If you have a son, you are all dead!*”. According to the witness, Šargić prevented him from fulfilling his threat.

In the present case the Panel had in mind that the witness himself said that he was not much beaten at the station. Therefore, the battery did not result in serious injuries to bodily integrity, and it was not concluded from the testimony of the witness that the threat which he had received from the accused Višković resulted in a serious injury to mental health or damage to health, so that it was assessed that the actions by the accused did not achieve the threshold of severity and gravity which would be sufficient for him to be found guilty of the perpetration of Other Inhumane Acts referred to in Article 172(1)k) of the BiH CC.

**IX.2. Section II.3. of the Operative Part of the Verdict** (Count 2.4. of the Amended Indictment)

Under this count of the Amended Indictment the accused was charged with Other Inhumane Acts of similar character intentionally causing great suffering, or serious injury to body or to physical or mental health of the aggrieved party Hasreta Klempić. In respect of this circumstance a testimony was given by the witness Amir Topčić who was 11 at the time of the relevant event, but as an eye-witness of the event he described in detail the arrival of the accused Višković at Ahmo Klempić’s house in which he lived with his mother, and his behaviour towards her which consisted of verbal insults and his calling her abusive names, on which occasion she was questioned about her husband, whereupon the accused slapped her in the face twice.

Although no circumstances justify such behaviour of the accused towards the aggrieved party, the referenced situation lasted for a very short period of time, and the accused’s behaviour towards the aggrieved party did not result in serious injuries to bodily integrity or mental health, therefore, with its intensity it did not achieve the level of seriousness which is required by the qualification of the criminal offence referred to in Article 182(1)k) of the BiH CC, because of which the accused is acquitted of the charge in respect of this Count.

**IX.2. Section II.4. of the Operative Part of the Verdict** (Count 2.7. of the Amended Indictment)

Under this count the Amended Indictment charged the accused with Other Inhumane Acts perpetrated in connection with the aggrieved party Muška Šestović. In her statement the witness described in detail how the accused Višković treated her in a humiliating manner, forcing her to crawl on the asphalt with a rifle pointed at her back, as he forced other civilians gathered around him. In the present case the Panel did not examine the seriousness of the acts which he perpetrated, the issue of their intensity and the

consequences for the aggrieved party, given that the convicting sentence in this part cannot be based solely on the witness's statement read out, because by such an act the right to a fair trial referred to in Article 6, Paragraph 1 and Paragraph 3, Sub-paragraph d) of the ECHR would be violated, given that the Defence did not have the right to cross-examination and direct examination of this witness, with a view to checking the credibility and accuracy of the statement. The accused would therefore be placed in a more unfavourable position in relation to the prosecutor, whereby the principle of equality of arms guaranteed by Article 14 of the BiH CPC would be violated, so that the Panel decided to acquit the accused of the charges in respect of this Count of the Amended Indictment.

**IX.2. Section II.5. of the Operative Part of the Verdict (Count 2.12. of the Amended Indictment)**

In this count the Amended Indictment charged the accused with Other Inhumane Acts perpetrated in connection with the aggrieved party Hajrudin Osmanović. In respect of this circumstance a testimony was given by the witness Ibro Osmanović who described in detail the event which was factually presented under this Count of the Indictment, maintaining that his brother recounted to him that the accused Višković had battered him and hit him in the head with a pistol, and although he did not see it himself, after his brother came back from the forced labour he noticed that he was apparently physically exhausted.

The witness also attended the event when the accused Višković ordered the aggrieved party to drink water from a jar in which there were insects - potato beetles, which he did. The Panel considered this action of the accused to be inhuman and humiliating. At the same time, it did not find that the referenced action resulted in serious injuries to physical or mental health of the aggrieved party, in other words, it did not reach the threshold of seriousness and gravity required by the standard of inhumane acts referred to in Article 172(1)k) of the BiH CC, because of which the accused is acquitted of the charges in respect of this Count.

**X.2. Section II.6. of the Operative Part of the Verdict (Count 2.15. of the Amended Indictment)**

By this count of the Amended Indictment the accused was charged with the rape of the Protected Witness 6 whose statement was read out at the main trial pursuant to Article 273(2) of the BiH CPC. The Finding and Opinion by Dr. Alma Bravo-Mehmedbašić, the neuropsychiatrist, found a mental disorder of the Protected Witness, because of which she was incapacitated to give her testimony at the main trial. However, in that regard, the Panel had in mind the fact that the expert witness was not able to make an explicit statement what her abilities were at the time when she was giving her statement to the Prosecutor's Office, and during the analysis and reading out of that statement, the Panel found the existence of certain vague points, contradictions and listing of events which were not confirmed by any other witness in the proceedings.

Therefore, no clear consistency, chronology and precision of statements, or a connection of persons who were participants of the relevant event exist here, because of which the statement by this witness, with numerous deficiencies, was not a suitable ground for establishing the criminal responsibility of the accused. The manner in which the relevant event was recounted, made the Panel to reasonably conclude that witness stressors had already been activated at the time of giving the statement, which finally brought into doubt the participation of the accused in the event with which he was charged, so that under the *In dubio pro reo* principle, he is acquitted of the charge.

### **IX.3. The accused Predrag Bastah aka Dragan and the accused Goran Višković aka Vjetar - alone**

#### **IX.3. Section III.1. of the Operative Part of the Verdict (Count 3.1. of the Amended Indictment)**

Under this Count the Amended Indictment charged the accused with severe deprivation of physical liberty of Avdo Ambešković and Sadidin Hodžić. In respect of this circumstance, testimony was given by the Protected Witness 1 who watched the apprehension of the aggrieved parties from the window of his house in late April 1992. He saw the accused Bastah and Višković came by a vehicle in front of the house of Avdo Ambešković whom they took out in front of the house and led him towards the vehicle by which they had come. During that time, his wife was “*clung to him*”, screaming, because the accused were punching him all the time as they moved from the entrance into the house to the vehicle. According to the statement by this witness, after the accused had driven the aggrieved party they came back to pick up his son-in-law Sadidin Hodžić whom they did not beat during the apprehension.

However, the witness Aida Hodžić, whose father is the aggrieved party Avdo Ambešković and whose husband is the aggrieved party Sadidin Hodžić, who was at home when they were taken away, did not describe the event in a consistent manner. She stated that she did not recognize the persons who on the relevant occasion had picked up her father and husband, so that she was not able to state whether on that occasion they were battered. However, she did notice injuries on the aggrieved parties when they were brought back from the Vlasenica PSS. They had never said either to her or her mother the names of persons who battered them in those rooms.

Given these essential inconsistencies in the statements of the witnesses – eye-witnesses of the criminal offence, the Panel could not establish beyond any reasonable doubt that the relevant event took place in the manner as described by the Protected Witness 1. Since the participation of the accused in that event was contestable, the Panel decided to acquit them of the charges under the *In dubio pro reo* principle, because of which it did not consider the aspects of unlawfulness of deprivation of liberty, nor did it examine the existence of the elements of the criminal offence of imprisonment or severe deprivation of physical liberty in violation of Article 172(1)e) of the BiH CC.

**IX.3. Section III.2. of the Operative Part of the Verdict (Count 3.4. of the Amended Indictment)**

Under this count the Amended Indictment charged the accused with the forcible transfer of population, but in the present case the Panel considered that the charge did not manage to establish, beyond a doubt, the presence of the accused Višković on the location of Luke when women and children were separated from the convoy which was heading towards Kladanj.

Specifically, a large number of witnesses gave testimony about this circumstance. All of them were consistent in stating that, there was a check-point on that location manned by the Serb soldiers who were separating women and children exactly on that relevant occasion, on the pretext that they were going to gather some hay at Pelemiš. The presence of the accused Bastah in the manner as stated in the Indictment was confirmed by the witness Ramiza Handžić, but she did not see the accused Višković on that occasion, as did not the witness Tima Lelo, whereas witness Bekir Lelo maintained that, besides the accused Bastah, he saw the accused Višković, too, in Luke, although he did not mention him in the statement given during the investigation. Therefore, the presence of the accused Višković was not proved beyond any reasonable doubt, whereas a large number of witnesses described in an identical manner the presence of Bastah who was driving one of the trucks from the convoy and who, according to the witnesses, upon their arrival at that location, called soldiers by a whistle to come to the check-point.

The Indictment charged the accused Bastah that he, by such acts, participated in the commission of the criminal offence in a decisive manner, which for this Panel was unacceptable, because almost all of the witnesses confirmed that the accused, at the time of the separation, was only standing next to the truck and watching. At that time, he was neither a member of the Army nor a superior officer to the unit deployed there, and as such he was not able to prevent the separation of people. In addition, incontestable is the fact that, at that place, there was a check-point of the Serb Army and that it was necessary to go through it in order to reach the territory of Kladanj, so that the allegations of the Indictment that the accused called soldiers by a whistle to come out are pointless and overestimated, because, according to the Panel, immediately on the arrival of trucks and buses at the check-point soldiers would certainly have come out even without the whistle.

Therefore, the presented evidence does not provide sufficient grounds for conclusion that the accused Bastah's actions constituted complicity, in other words, that he participated in a decisive manner in the separation of women and children, or that his actions constituted incitement, because in that case it should have been proved that such action of the accused Bastah resulted in making a decision by soldiers on the separation of women and children, and to that effect the Prosecution did not present evidence. The comments which the accused gave at that very moment, saying: "*Do separate as many women as possible, and sow as many our seeds as possible*" were more for the purpose of approving of the actions that had already been underway, so he evidently was not aware of the ultimate consequence that would ensue in respect of those who were taken away.

The Panel also noted that the factual substratum of the Indictment did not concretize even the manner of the accused's participation in the perpetration of the criminal offence, nor was it possible to draw a conclusion from it as to what level of contribution to the act of commission was concerned, because of which the accused are acquitted of the charges in respect of this count of the Amended Indictment.

## **X THE DISMISSING PART OF THE VERDICT**

Given that the prosecutor on the case, by filing the Amended Indictment of 16 November 2009, omitted from the factual description of the Indictment number: KT-RZ-137/05 of 18 April 2008, confirmed on 23 April 2008, Count III. 6. referring the accused Goran Višković, and the common Counts IV.5. and IV.6., the Panel handed down a dismissing verdict in respect of the accused; the same was done in connection with Count II.9. of the Amended Indictment which the prosecutor dropped at the hearing for presenting the Closing Arguments of 14 December 2009.

While assessing the evidence, the Panel also assessed the other pieces of evidence presented at the main trial. However, the Panel did not find that they were relevant for rendering the final decision on the criminal responsibility of the accused for the perpetration of the referenced criminal offence. In other words, those pieces of evidence, after all, would not influence the finally established state of facts and conclusions which were reached by the Panel on the basis of the evidence the assessment of which it provided in the Verdict.

## **XI METING OUT THE PUNISHMENT**

Article 2 of the BiH CC prescribes that “the prescription of criminal offences, as well as the types and the range of criminal sanctions, shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values.”

Article 39 of the BiH CC prescribes the general and specific purpose of prescribing and imposing the criminal sanctions which, in addition to the reformation of the perpetrator, consist of the prevention of unlawful behaviour which violates or imperils the fundamental general or individual values.

In meting out the punishment for the criminal offence of which they were found guilty by this Verdict, given the general purpose of punishment prescribed by Article 39 of the BiH CC and following the principles of meting out punishments referred to in Article 48 of the BiH CC, the Panel assessed and took into account all extenuating and aggravating circumstances on the part of the accused Predrag Bastah and the accused Goran Višković and imposed on them the prison sentence for terms as stated in the Operative Part of this Verdict.

As extenuating circumstances, the Panel took into account the past of the accused, that is, the fact that up until the time of perpetration of the specific criminal offence they had not been convicted. The Panel also took into account as an extenuating circumstance the fact that the accused Višković has 4 children, one of which is underage. Further, according to some Defence witnesses, during the period when the accused took the actions of which they were found guilty by this Verdict, they helped a certain number of persons of Muslim ethnicity, so that the Panel regarded this fact as extenuating circumstances. However, the Panel did not bring into question the final assessment of the discriminatory relationship of the accused to the population of Muslim ethnicity, given that such treatment by the accused had the character of a sporadic and an isolated case.

As extenuating circumstance on the part of the accused Predrag Bastah, the Panel took into account the fact that his ability was diminished, but not essentially, to comprehend the relevance of the actions taken and the consequences ensued at the time of the perpetration of the criminal offence of which he was found guilty. This fact was established on the basis of evidence presented by the Defence for Predrag Bastah, that is, on the basis of the Finding and Opinion by the expert witness Dr. Senadin Ljubović, neuropsychiatrist, whose Finding and Opinion was not objected. However, as assessed by the Panel, this circumstance, in its character, did not constitute such circumstance which would bring about an acquitting verdict, but it indeed is an extenuating circumstance which the Panel took into account in meting out the punishment to the accused Predrag Bastah.

On the other hand, while meting out the punishment the Panel also evaluated and took into account as an aggravating circumstance the degree of damage to the protected object and, in this regard, it had in mind the number of victims and the severe consequences that ensued from the actions of the accused which they had taken at the material time, so that the Muslim population of Vlasenica, their former neighbours and friends, would call the appearance of the vehicle operated by Predrag Bastah as the “vehicle of death“; they saw and perceived the appearance of the accused as powerful persons who were “a pure terror“, and they realized that, in the atmosphere thus created, they themselves could become their next victims whom they would take away, incarcerate or physically deprive of liberty, torture, rape, murder. Further, in meting out the punishment the Panel also considered as an aggravating circumstance the fact that the accused Predrag Bastah, during the period from June-September of 1992, and Višković during the period from April-July of 1992, therefore, during a relatively short period of time, had an active role and showed persistency and perseverance in the continuous perpetration of a great number of criminal offences described in the Operative Part of the Verdict. All hereunder mentioned the Panel assessed in its entirety as aggravating circumstances in meting out the punishment to the accused Predrag Bastah and Goran Višković: the number of victims-civilians, especially if one has in mind that they included children as the most vulnerable population, women against whom the acts of rape were committed in such a manner and by use of such a method which makes such treatment worth of contempt, with inevitable consequences in the form of physical pain and mental suffering present today and a degradation which the victims of rape suffer, mental suffering of the victims caused by the loss of their beloved ones and the fact that the majority of them has been

still seeking their mortal remains. The Panel also took into account as an aggravating circumstance the fact that the accused, in the majority of situations, were direct perpetrators of the actions of which they were found guilty by this Verdict.

In the present case, the Panel did not find that, on the part of the accused, there existed especially extenuating circumstances which would, pursuant to Article 49 of the BiH CC, constitute the grounds for meting out a punishment below the limit prescribed by law.

Given all the aforementioned, the Panel found that the purpose of punishment would be achieved in its entirety by imposing the sentence of a long-term imprisonment of 22 years in respect of the accused Predrag Bastah and the sentence of imprisonment of 18 years in respect of the accused Goran Višković.

## **XII DECISION ON COSTS**

Pursuant to Article 189(1), in the part of the Verdict by which the charges are dismissed and the accused acquitted of the charges, the Court decided that the costs of criminal proceedings and the necessary expenditures and remuneration of defence attorneys should be paid from within budget appropriations.

With regard to the convicting part of the Verdict, the Court relieved the accused of the duty to reimburse the costs of criminal proceedings pursuant to Article 188(4) of the BiH CPC, given that they are indigent, which clearly ensues from the fact that even the costs of the expert witness and their defence counsels were paid from within budget appropriations of the Court.

Besides, the accused Višković is unemployed and he has a large family that he sustains, whereas the accused Bastah was in custody during the proceedings, so that during that period he did not have any salary or benefit. Further, the Panel took into account and assessed the fact that lengthy sentences of imprisonment (appealable) were imposed on the accused, and that the subsistence of their families would certainly be jeopardized by imposing the obligation on them to reimburse the costs of the proceedings.

Given such circumstances, the Court decided that the costs of the criminal proceedings should be paid from within budget appropriations.

## **XIII DECISION ON CLAIMS UNDER PROPERTY LAW**

By the application of Article 198, Paragraphs (2) and (3) of the BiH CPC, the Court instructed the aggrieved parties to take a civil action in order to satisfy their claims under property law. Specifically, some of the aggrieved parties clearly stated the amount of their claims under property law, whereas the others were not able to make any statement in that regard. Bearing this in mind, as well as the fact that the information gathered during these proceedings did not provide the Panel with reliable grounds for either entire

or partial award, the decision about those claims had to be rendered as stated in the Operative Part of the Verdict.

**Record-taker:**

**Lejla Haračić**

**President of the Panel  
Judge**

**Zoran Božić**

*/signatures and seal duly affixed/*

**LEGAL REMEDY:** This Verdict may be appealed with Section I of the Appellate Division of the Court of Bosnia and Herzegovina within 15 (fifteen) days upon receipt of the written copy of this Verdict.

\* Sufficient copies of an appeal shall be submitted to this Court.