

SUD BOSNE I HERCEGOVINE



СУД БОСНЕ И ХЕРЦЕГОВИНЕ

COURT OF BOSNIA AND HERZEGOVINA

Case No.: X-KR-07/336

**Date: Delivered 13 April 2010
Published 16 July 2010**

**Before: Judge, Davorin Jukić, Presiding
Judge Darko Samardžić
Judge Patricia Whalen**

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

SULJO KARAJIĆ

FIRST INSTANCE VERDICT

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

Vesna Ilić

Counsel for the Accused:

Hasan Veladžić
Alaga Bajramović

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IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, in the Panel comprised of Judges Davorin Jukić, as the Presiding Judge, and Darko Samardžić and Patricia Whalen, as members of the Panel, with the participation of Legal Officer Elma Karović, as the record-taker, in the criminal case against Accused Suljo Karajić, for the criminal offense offence of War Crimes against Prisoners of War under Article 175 (1) a) and b) and War Crimes against Civilians under Article 173 (1) c) and e), in conjunction with Article 180 (1) of the CC of BiH, as read with Article 29 of the CC of BiH, pursuant to the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-130/07 dated 25 December 2007, confirmed on 4 January 2008, amended on 23 September 2009, after the main trial, in the presence of Accused Suljo Karajić and his Defense Counsels, attorneys Hasan Veladžić and Alaga Bajramović and Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Vesna Ilić, on 13 April 2010 delivered and pronounced the following:

VERDICT

THE ACCUSED:

KARAJIĆ SULJO a.k.a. "HODŽA", son of Ćamil and Hata nee Šakanović, born on 20 July 1968 in the settlement of Trnovi, Municipality of Velika Kladuša, residing in Velika Kladuša, settlement of Joše, Lamela 4, entrance A, of Bosniak ethnicity, citizen of BiH, educator by occupation, in the bee-keeping business, literate, completed a teacher training college, married, father of two children, no previous convictions

Pursuant to Article 285(1) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: CPC of BiH)

IS GUILTY

Because:

During the armed conflict in Bosnia and Herzegovina between the members of the 5th Corps of the Army of BiH and members of the National Defense of the Autonomous Province of Western Bosnia, in the period from August 1994 until February 1995, in the territory of District of Bihać, in violation of Article 3 a) and c) of the Geneva Convention relative to the Treatment of Prisoners of War dated 12 August 1949, as a member of the 506th Brigade and then in the capacity as the

commander of the 2nd platoon of the military police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of BiH with the headquarters in Bužim, he committed and ordered his subordinate military police officers to commit the deprivation of life, infliction of severe physical and mental pain, inhumane treatment and to cause great suffering and serious injury to prisoners of war. Additionally, in violation of Article 3 a) and c), Article 27 (1) and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War dated 12 August 1949, in the capacity as the commander of the 2nd platoon of the military police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of BiH with the headquarters in Bužim, he committed, as well as ordered, incited and assisted the subordinate military police officers in the deprivation of life, intentional infliction of severe physical or mental pain or suffering, inhumane treatment and violation of bodily integrity or health, unlawful detention of civilian persons, inasmuch as he:

1. On 4 August 1994, in front of the cellarage of the Radoč Motel in Bužim, in which the captured members of the National Defense of the Autonomous Province of Western Bosnia were detained, called out a person known as “Kolač”, so when Amir Karajić a.k.a. Kolač, a captured member of the National Defense, climbed on the pallet bed in order to respond to him, he fired a short burst from the 5.65 mm SAR rifle in the area of his thorax which caused the instantaneous death of Amir Karajić a.k.a. “Kolač”;
2. On 6 December 1994, in the place of Vrnograč, Municipality of Velika Kladuša, together with the subordinate members of the military police platoon, from the detention unit of the Sub-station of the Police Station Vrnograč, he took out to the street Mujo Pehlić, a captured member of the National Defense of the Autonomous Province of Western Bosnia, and following a short interrogation he fired several shots at him which caused the instantaneous death of Mujo Pehlić;
3. In December 1994, in the village of Todorovska Slapnica, Municipality of Velika Kladuša, he was bringing in civilians to the elementary school without any grounds, and ordered the members of the military police subordinate to him to bring to the school premises the civilians who he assumed to have supported the idea of the Autonomous Province of Western Bosnia, whereupon he deprived them of life and subjected them to inhumane treatment and mental torture inasmuch as he:

- a. hit Derviš Ponjević on his head and body with a rifle; he hit person “B” with a rubber baton and kicked him and thereupon banged his head against the wall; he hit Bećir Džebić on the head with a baton and ordered his subordinate members of the military police platoon to punch the above mentioned civilians and kick them with their boots all over their bodies,
 - b. ordered Mahmut Abdić, Bećir Džebić and Hasan Mahmutović, whom he previously kicked twice in the temple, to fully undress and go out in the snow and stand for two hours in the snow while Husein Džaferović a.k.a. “Zvizda”, commander of the Civil Defense in Todorovska Slapnica, poured water upon them, which he did,
 - c. ordered his subordinate member of the military police platoon not to allow Rasim Osmankić, Derviš Ponjević, Šefik Abdić and Muhamed Džebić to enter the school for two hours and the subordinate member of the military police platoon had previously ordered the above mentioned to undress, to go out naked in the snow and pour buckets of water on each other and then, in his presence, the subordinate member of the military police platoon, Šemsudin Durmić a.k.a. “Šucko”, after Derviš Ponjević, Muhamed Džebić, Šefik Abdić and Rasim Osmankić were taken to the school, and while interrogating Rasim Osmankić told him to hold out his hands and hit him with the rubber baton in the hands some ten times, each time harder,
 - d. on several occasions, he hit Mirsad Čuturać with a police baton in the head and body whereupon, together with Derviš Ponjević and Bećir Džebić, he drove him to Vrnograč telling him during the ride that he had killed Šefik Abdić because he had tried to escape,
4. On 25 December 1994, after the members of the 5th Corps of the Army of BiH, in the close vicinity of the settlement of Latića Glavica, Municipality of Velika Kladuša, captured the members of the National Defense: “L”, “J”, “K”, “F”, Fikret Hušidić, Hajrudin Pilipović and Džumur Ogršević, he took them to the settlement of Todorovska Slapnica and lined them up, whereupon he approached Hajrudin Pilipović and fired a shot at his stomach and then he also fired a shot at the stomach of Fikret Hušidić as a result of which Hajrudin Pilipović and Fikret Hušidić fell to the ground; a uniformed soldier approached them then and fired a bullet into each man’s head; he took the remaining captured members of the National Defense to the catering facility “Stop”, in the place of Hajrat,

5. During the period from 25 December 1994 until February 1995, after he physically abused the captured members of the National Defense: “L”, “J”, “K”, “F”, Džumur Ogršević and Sabahudin Kajtezović in the catering facility “Stop”, in the place of Hajrat, in a manner that, together with the members of the 5th Corps of the Army of BiH, he punched and hit them with the rifle butt all over their bodies and ordered that Džumur Ogršević and “F” be executed which was prevented by the arrival of the members of the 5th Corps Command; he took the above mentioned members of the National Defense, together with a group of twenty seven previously captured members of the National Defense to the basement of the Radoč Motel in Bužim where on several occasions he hit them all over their bodies and he hit Sabahudin Kajtezović with the rifle butt in the back of the head, ordered him to lean with his back against the wall and to spread his legs apart and then he hit him in his sex organs until Sabahudin Kajtezović fainted; he ordered them, including “F”, to sprint and mount a horse drawn on the wall, which “F” and the others had to do and they would then hit the wall and fall to the ground; his subordinate members of the military police platoon also physically abused the captured members of the National Defense by punching and kicking them all over their bodies;
6. At the end of December 1994, in the early morning, in the village of Todorovo, having entered into the improvised clinic, without any cause and reason he slapped person “D”, and then he punched and hit her with a rubber baton in the head and arms which caused her injuries in the form of lacerations and contusions in the back of her head and her right fist while threatening her; thereafter he took her to the house of her brother and sister, where she was staying and with the other two soldiers he searched the house, so when they failed to find a radio set, he hit the witness D several times with flat side of a knife that he was holding in his hand, causing her to sustain bleeding head injuries.
7. On 27 December 1994, in the village of Donja Lučka, Municipality of Velika Kladuša, together with his subordinate members of the military police platoon, he took out Hasib Torić a.k.a. “Zilkin” from the house, having kicked him with his right leg in the face, ordered that his hands be tied behind his back and took him to an unknown location.
8. In late November or early December 1994, in the place of Podzvizd, Municipality of Velika Kladuša, he entered the house in which Jusuf Dizdarević stayed, he verbally assaulted him telling him to surrender weapons and a radio, and when he answered that he did not possess any of those, he addressed him using the following words: “Juso, speak, we killed one of

your kind yesterday in Bužim”, he took him out of the house and in the garage owned by Ibro Ćerimović he physically assaulted him by hitting him with a rifle, the so-called pump-action shotgun, in the head and then he took him to the prison in Bužim, where, after a certain period of time, Jusuf Dizdarević died;

Therefore,

in violation of the rules of international law in regard to prisoners of war, he committed, as well as ordered, deprivation of life, infliction of severe physical or mental pain, inhumane treatment and causing of great suffering or serious injuries; and in violation of the rules of international law in time of war he committed, ordered, incited and assisted in deprivation of life, intentional infliction of severe physical or mental pain or suffering, inhumane treatment and causing of great suffering or serious injury to bodily integrity or health and unlawful detention of civilian persons.

whereby he committed the criminal offenses, as follows:

the criminal offense of War Crimes against Prisoners of War in violation of Article 175(1) a) and b) of the CC of BiH under Counts 1, 2, 5 and 6 of the Indictment,

the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (e) of the CC of BiH under Counts 3 (c, d, f, h), 7, 8, 9 of the Indictment

as read with Article 180 (1) of the CC of BiH and Article 29 of the CC BiH.

Thus, pursuant to Article 285(1) of the CPC of BiH, having applied Articles 39, 40 and 42 of the CC BiH, the Panel of the Court of BiH **sentences him**

- **to the imprisonment for a term of 14 (fourteen) years for the criminal offense of War Crimes against Prisoners of War in violation of Article 175(1) a) and b) of the CC BiH,**
- **to the imprisonment for a term of 11 (eleven) years for the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) and (e) of the CC BiH**

and having applied Article 53 of the CC of BiH, the Court imposes on the Accused

THE COMPOUND SENTENCE OF IMPRISONMENT FOR A TERM OF

18 (EIGHTEEN) YEARS

Pursuant to Article 56(1) of the CC of BiH, the time that the Accused spent in custody under the Decision of the Court, starting on **17 October 2007** when he was deprived of liberty onwards, shall be credited towards the sentence of imprisonment.

Pursuant to Article 188 (2) and (4) of the CPC of BiH, the Accused is relieved of the duty to reimburse the costs of the criminal proceedings which will be paid from the Court's budget appropriations.

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

II

As to the remaining charges, pursuant to Article 284(1) c) of the CPC BiH, the Accused

IS ACQUITTED OF CHARGES

that:

1. In December 1994, in the village of Todorovska Slapnica, Municipality of Velika Kladuša, he was bringing in civilians to the elementary school without any grounds, and ordered the members of the military police subordinate to him to bring to the elementary school premises the civilians who he assumed have supported the idea of the Autonomous Province of Western Bosnia, whereupon he deprived them of life and subjected them to inhumane treatment and mental torture inasmuch as he:
 - a. entered the house of person "C" and ordered a subordinate member of his military police platoon to beat him with a baton saying: "Beat him and spare his face, he is going to the hangar", then he held an edge of a knife to the throat of his wife and told her to prepare a

white bed sheet because her husband would not need anything else, and then he kicked person "C" in the back, pushed him down the stairs, took him out of the house and while on their way they met person "B" and he ordered him to come along with them and with the rifle pointed at their back he took them to the aforementioned school where Mahmut Abdić, Mirsad Čuturić, Derviš Ponjević, Bećir Džebić, Muhamed Džebić and Šefik Abdić had already been brought and then he hit person "C" in the head several times,

b. kicked Mahmut Abdić, and then hit him several times in the head and the back of the head with a baton, which inflicted injuries to the soft parts of the tissue on the scalp with necrosis of parts of the scalp tissue, and asked him about his son Šefik Abdić, threatening to kill both of them; he ordered him to open his mouth and he placed the barrel of a pump-action shotgun in his mouth telling him that he would die slowly,

c. hit Abid Džebić in the head asking him where his rifle was, ordered him to undress and to go out naked in the snow, which he did and he stood in the snow for some twenty minutes, and he then ordered him to dress and be on guard around the aforementioned school,

d. after he brought Šefik Abdić, a member of the 506 Brigade of the 5th Corps of the Army of BiH, from the front line to the aforementioned school, under suspicion that he was cooperating with the members of the National Defense of the Autonomous Province of Western Bosnia, together with his subordinate member of the military police platoon Osman a.k.a. "Šekinov" and member of the 505 Chivalrous Motorized Brigade Hamo Durmić a.k.a. "Pišta" he physically abused him by hitting him all over his body and two or three days after that, together with Husein Džaferović a.k.a. "Zvizda", commander of the Civil Defense in Todorovska Slapnica and members of his subordinate military police platoon, Juso Bužimkić and Šemsudin Čaušević a.k.a. "Šucko", he took him out of the aforementioned school and thereafter they together fired some fifteen shots at him which resulted in the instantaneous death of Šefik Abdić,

e. physically abused Muhamed Džebić together with his subordinate members of the military police platoon Juso Bužimkić, Osman a.k.a. "Šekinov", Šemsudin Durmić a.k.a. "Šucko" and member of the 505 Chivalrous Motorized Brigade, Hamo Durmić a.k.a. "Pišta", beat him with the rubber batons all over his body which resulted in him being

covered in blood and unable to walk and as a consequence of the injuries he sustained, Muhamed Džebić died in the school.

2. At the end of December 1994, in the village of Trnovi, on the Džaferagić hill, Municipality of Velika Kladuša, after Rasim Dizdarević, a wounded member of the National Defense of the Autonomous Province of Western Bosnia, surrendered with his weapons, he kicked him and the blow knocked him down facing the ground, then he kneeled down next to him and started to cut his head with a hand-saw and thereupon he separated the head from the body with an axe blow and placed the head of Rasim Dizdarević on a pole and drove it into the ground.

3. In February 1995, in the settlement of Murtići, Municipality of Velika Kladuša, in the house in which the Municipal Headquarters of the Civil Defense of Velika Kladuša was located, after he verbally assaulted Ejub Čehajić, the commander of the Municipal Headquarters of the Civil Defense of Velika Kladuša, he forced him out of the house, drove him to the settlement of Donja Slapnica in a “Golf” vehicle and then, in a room that he used together with his subordinate members of the military police platoon, he physically attacked him by hitting him with a rubber baton in the head and other parts of the body in which Ejub Čehajić suffered injuries in the form of lacerations and contusions of the head, hematoma on the skin of his body, arms and legs; thereafter, in his presence, members of his platoon Hasica Suljanović and the person also known as “Šekinov” went on beating him and he ordered him to walk to the place of Vrnograč, three kilometers away from the place where he physically abused him, to report to the Detachment of the Ministry of Defense to give him call-up papers to go on the front line, which Ejub Čehajić did out of fear and he set out to the place of Vrnograč.

REASONING

I. INTRODUCTION

A. PRESENTED EVIDENCE

1. Prosecution

1. By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number: KT-RZ-130/07 of 25 December 2007, Accused Suljo Karajić is charged with the criminal offense offence of War Crimes against Prisoners of War under Article 175 (1) a) and b) and War Crimes against Civilians under Article 173 (1) c) and e) in conjunction with Article 180 (1) of the CC of BiH, as read with Article 29 of the CC of BiH. On 4 January 2008, the Preliminary Hearing Judge confirmed the said Indictment and then on 11 January 2008 the Accused pleaded not guilty of the criminal offenses he is charged with. The main trial commenced on 13 March 2008 and during the main trial, on 23 September 2009, the Prosecution filed an amended Indictment. In the introduction of the Amended Indictment the Prosecution amended the factual description so instead of the wording “... **in the capacity as the commander of the 2nd platoon of the military police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of BiH** ...a new wording is added reading**as a member of the 506th Brigade and then in the capacity as the commander of the 2nd platoon of the military police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of BiH...**” The Court provided the defense an opportunity to respond to the Amended Indictment but the Defense had no specific objections.

2. During the evidentiary proceedings, the Prosecution of BiH heard the following witnesses: Esad Čović, Sulejman Osmanagić, Mirsad Gračanin, Asija Karajić, Fikret Karajić, Semira Mešić - Pašalić, Alaga Budić, Ismet Majetić, Hamdija Veladžić, Zijad Nanić, Malić Agić, Namir Makić, Husein Čerimović, Sulejman Šahinović, Meho Čerimović, Mehmed Pehlić, Sulejman Pehlić, Slada Šabić, Mahmut Abdić, Muharem Abdić, Abid Džebić, Adil Džebić, Hasan Mahmutović, Rasim Osmankić, Huse Pajzetović, Fadila Sadiković, Refika Pilipović, Bajro Rizvić, Ejub Čehajić, Vesna Dervišević, Ekrema Dizdarević, Fikret Dizdarević, Mirsad Čuturović, and protected witnesses under the pseudonyms A, E, G, B, C, N, O, R, J, P, F, M, D, L, H, and expert witnesses dr. Hamza Žujo, specialist in forensic medicine, dr. Miroslav Rakočević, specialist in forensic medicine and dr. Abdulah Kučukalić, specialist in forensic medicine, neuropsychiatry. The list of the documentary

evidence presented by the Prosecutor and adduced as evidence is included in Annex 1 to the Verdict.

2. Defense

3. During the evidentiary proceedings, the Defense for Accused Suljo Karajić, heard the following witnesses: Sead Jusić, Mirsad Selmanović, Memaga Nuhanović, Ejub Keserović, Redžo Rizvić, Meho Čaušević, Nijaz Miljković, Remzija Ičanović, Šefik Vatreš, Alija Duraković, Zijad Latić, Fatmir Muratović, Samir Šabanagić, Sulejman Velić, Zuhdija Čerimović, Omer Velagić, Hasib Sefić, Zarif Alibašić, Amir Avdić, Hasica Suljanović, Akif Čelenka, Prof. Dr. Zaim Bilalbegović – expert witness for Accused Suljo Karajić who testified in the capacity as a witness, and presented the documentary evidence enumerated in Annex 2 to the Verdict.

B. CLOSING ARGUMENTS

1. Prosecution

4. In their Closing Argument, the Prosecution explained in detail the nature of the criminal offenses that Accused Suljo Karajić is charged with, as follows: the criminal offense of War Crimes against Prisoners of War under Article 175 (1) a) and b) and War Crimes against Civilians under Article 173 (1) c) and e) in conjunction with Article 180 (1) of the CC of BiH, as read with Article 29 of the CC of BiH. Also, the Prosecution made special reference to the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 1949 and in particular Article 3(1) specifying the term ‘civilians’ in the light of the Convention. In the proceedings at hand, they were the primary victims injured by unlawful conduct of the Accused as described under Count 3 with its sub-Counts, and Counts 7, 8, 9 and 10. None of these persons had arms, or was able to fight and the offense that the Accused is charged with was specifically directed against the civilians who the Accused assumed supported the idea of establishment of the Autonomous Province of Western Bosnia and members of the army of the National Defense. This category of civilians is especially protected by international law and injuries inflicted to health and bodily integrity of this category are especially prohibited. Therefore, it is evident that the criminal actions committed by the Accused were in violation of the international law provisions, that is, Article 3(1) a) and c) of the Geneva Conventions.

5. The Prosecution notes that the armed conflict started after 27 September 1993 when Fikret Abdić established the Autonomous Province of Western Bosnia (hereinafter: APWB) which is corroborated by the following prosecution exhibits: T 1 a, b, c, d, and f.; 119, 120, 121, 122, 123,

124, 125, 126, 131, 132, 133, 179. The said exhibits refer to the reports on the armed conflict between members of the 5th Corps of the Army of BiH and members of the Army of APWB in the area of the Bihać District. The existence of an armed conflict in the relevant area was further corroborated by both the Prosecution witnesses Esad Čović and Sulejman Osmanagić and Defense witnesses, primarily Mirsad Selmanović, Sead Jusić, Ejub Keserović and Memaga Nuhanović. It is important to note that the geographical area in which the laws of war apply does not necessarily correspond to where the actual fighting is taking place. The laws of war apply in the entire territory of the warring states or, in the case of internal armed conflicts, in the entire territory under the control of a party to the conflict, irrespective of whether a portion of the territory is not engaged in the fighting. A violation of the laws and customs of war may occur at a time and in a place where no fighting is actually taking place.

6. Based on the evidence of witnesses – direct victims of the unlawful conduct of the Accused the Prosecution concludes that the Accused committed, ordered, incited and aided and abetted in acts which constitute an element of the alleged criminal offences, contrary to international law and unacceptable towards unarmed persons. Thus, under Counts 3, 7, 8, 9 and 10, Accused Suljo Karajić is charged with having committed the criminal offence of War Crimes against Civilians referred to in Article 173(1)(c) and (e), in conjunction with Article 180(1) of the CC of BiH. The foregoing specially refers to the undertaken criminal actions, as follows: deprivation of life, inhumane treatment, serious injuries and detention, that is, depriving an individual of liberty, without regular legal proceedings.

7. All the foregoing undertaken criminal actions and the criminal offence are described under Count 3 with its Sub-counts, and Counts 7, 8, 9, and 10 of the Indictment, and the actions of the Accused fit the cited pattern to the very detail. The Prosecution states that the survivors testified about it but also testimony was heard from those who spoke on behalf of the persons who are now deceased. The Prosecution pointed out in particular that at the time of the commission of criminal actions, the victims – aggrieved parties were members of the Civil Defense. Units of the Civil Defense were not considered part of the armed forces.

8. Furthermore, the criminal actions described under Counts 1, 2, 4, 5, and 6 are qualified by the Prosecution as the commission of the criminal offense of **War Crimes against Prisoners of War under Article 175 (1) a) and b) of the CC of BiH**. In other words, violating the rules of international law, the Accused deprived the captured members of the National Defense of life, caused them great suffering and violation of physical integrity; treated them inhumanely; some criminal acts he committed on his own, and others jointly with members of his platoon, and thus

violated Article 3(1)(a) and (c) of the Geneva Convention relative to the Treatment of Prisoners of War.

9. In the very first contact with the Accused, the witnesses-victims were already enjoying protection under Article 3 of the Geneva Convention, which is a decisive fact known to the Accused. Bearing in mind the testimonies of the witnesses - victims there is no doubt that it was a category of captured persons who were 'deprived of liberty', which must have been known to the Accused, given the overall circumstances, just as he had to be aware that such persons enjoy adequate protection. The conduct of the Accused undoubtedly follows from the testimony of the survivor witnesses - captured members of the National Defense, while the proper ways to treat the captured members of the National Defense were also precisely noted in the testimonies of the defense witnesses Mirsad Selmanović and Sead Jusić. The Prosecution is pointing out in particular that the Accused knew how captured soldiers should and must be treated, but it is obvious that his treatment of them was just the opposite at the time of the commission of the criminal actions.

10. The Prosecution notes that the Accused bears individual criminal responsibility for not only the commission of the crimes concerned, which include the actual perpetration of the crime, but also that he ordered, instigated and aided and abetted in the commission of the relevant criminal offences. Referring to the foregoing, the Prosecution argues that when the Accused would finish the abuse he would observe what the members of his platoon were doing and thus encouraged them. He created the principal behavioral pattern which they then followed.

11. In reference to the commission of the criminal actions the Prosecution submits that that these were committed by Accused Suljo Karajić a.k.a. Hodža, specifically, in relation to Count 1 of the Indictment, as a member of the 506th Brigade, and as the Commander of the 2nd Platoon of the Military Police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of BiH in relation to the remaining criminal actions, which was proved beyond reasonable doubt. The military capacity of the Accused was known not only to the captured members of the National Defense, and the captured and physically abused civilians, but also members of his platoon, members of the civilian police, the civil defense, as well as members of the labor detail of the 5th Corps of the Army of BiH. Also, all the foregoing arises from the testimonies of both the Prosecution and Defense witnesses, as follows: A, G, E, M, Husein Ćerimović, Huso Pajazetović, Bajro Rizvić, Ejub Keserović, Meho Čaušević, Akif Čelenka, Sead Jusić, Nijaz Miljković, Fikret Karajić, Remzija Ičanović, Zijad Nanić and Fatmir Muratović.

12. The Prosecution paid a special attention to the medical documentation of the Accused and testimony given by the expert witness doctor Hamza Žujo which shows that the Accused sustained

the injuries on 18 June 1994, which was the reason why he had been wearing a fixator on his left arm by which witnesses identified him and the Accused himself did not deny that. Apart from this characteristic, the Prosecution witnesses also identified him in the courtroom, some even addressed him. At the time of commission of the criminal offences they consistently described him as a tall, spare man with a short beard, and some witnesses also described him as a man who used a baton for beatings and a specific short rifle.

13. It is important to note that there were no direct eyewitnesses to some criminal actions but the Prosecution believes that the “circumstantial evidence”, that is, indirect evidence represent the evidence on the facts, on the event and the criminal offense, which logically result in the fact concerned. This refers to the criminal actions committed by the Accused under Counts 2, 3g, 4 and 8.

14. At the end of the Closing Argument, the Prosecution states that Accused Suljo Karajić confessed to the commission of the criminal actions under Count 1, that he committed on 4 August 1994; commission of the criminal action under Count 7, as well as the criminal action under Count 10 committed in the month of February 1995. The Accused denied all the other Counts, saying that at the relevant time, and these were the criminal actions committed in December 1994, he was at Alatuša, in Trnovi and at Džaferagić Brdo. During the evidentiary proceedings the Prosecution proved beyond reasonable doubt that the Accused also committed the criminal actions that he did not confess to and that there is no doubt in reference to his capacity or the identity. All the witnesses consistently describe him as a tall man, with some beard and a fixator in his left arm.

15. The Prosecution holds that there are no mitigating circumstances pertaining to the Accused and submits that the Trial Panel, when deciding on the type of punishment and meting out the punishment, has to consider a series of aggravating circumstances, such as that Suljo Karajić, at the time of commission of the criminal actions, was in the 506th Brigade and later the 2nd MP platoon leader in 505th Chivalrous Brigade and that he needed to serve as an example to other fellow soldiers, as he did but in combat. However, his treatment of the captured soldiers and civilians was merciless. The Trial Panel also must take into consideration the aggravating circumstances such as the mode of commission and the number of criminal acts, the number of victims he killed and the number of victims that he brutally physically abused.

16. In reference to the aforementioned, the Prosecution moves, considering the mode of commission and serious consequences resulting from the commission of the offences, as well as the purpose of general and special prevention, that the Accused be sentenced to a long-term imprisonment.

2. Defense

17. Right at the beginning, the Defense referred to the principle of legality and the application of one of the fundamental principles contained in Article 4 of the CC of BiH which refers to time constraints regarding the applicability of the Criminal Code. The Defense is of the opinion that, beyond any doubt, the law which was in force at the time of commission of criminal offense has to be applied, that is the Criminal Code of the former SFRY. The Defense notes that in such situation with regard to the criminal law, the application of Article 4a) of the CC of BiH is inappropriate, meaning that in the case concerned the law which was in force at the time of commission of the crimes has to be applied or the law which is more lenient to the perpetrator, which in this case is the adopted CC of SFRY.

18. The Defense notes that the Court could see that there is not a single aggravating circumstance on the part of the Accused that might influence the pronouncement of a more severe punishment. The Defense further argues that the fact that there was an armed conflict is not disputable and that the Court had to take into consideration its special circumstances. Specifically, the then Bihać District was under a total siege for more than three and a half years and that the total mobilization of manpower and resources was ordered. The fact that a part of the population was supporting the idea of the Autonomous Province advocated by Fikret Abdić made this conflict very difficult and it had a devastating effect on the population, dividing families in the Bihać District.

19. Further, the Defense paid special attention to the protected persons stating that for the Prosecution in the case concerned the important fact is that the crime against civilians was committed during the armed conflict. The Defense holds that such a position of the Prosecution is opposite to the Geneva Conventions, in particular Article 4 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949. In order for civilian persons to enjoy protection stipulated under Geneva Convention, it is important that they are in the hands of the opposite party and that a member of the opposite party commits a crime against them in time of an armed conflict. The Defense argues that Accused Suljo Karajić, under the Counts 3, 7, 8, 9, and 10 of the Indictment, was charged with War Crimes against Civilians. The Defense stated that all the injured persons named in the aforementioned Counts of the Indictment were loyal to the party to the conflict to which Accused Suljo Karajić also belonged, thus, they do not enjoy the protection pursuant to the provisions of the Geneva Convention III and IV, that is, that they do not have the status of protected persons.

20. The Defense used numerous pieces of evidence to prove that at the time when the relevant criminal offenses were committed the Accused had no position, status or some other capacity in the

Army of BiH, that is, that Suljo Karajić was just a private who, due to his brave conduct, was respected by everyone. The Defense proved that the Accused did not receive any orders from the 506th Brigade nor was he subordinated or superior to anyone in the 506th Brigade.

21. The Defense for the Accused strongly believes that at the relevant time mental capacity of the Accused was considerably diminished which was corroborated by the expert witness Zaim Bilalbegović from Sarajevo, reminding the Court that in such situations the CC of BiH provides for the possibility of imposing a more lenient punishment on the perpetrator of the criminal offences. The Defense holds that during the hearing of the Prosecution witnesses one could notice facts which clearly indicate that these witnesses could not be fully trusted. The majority of the witnesses gave a “hear-say” testimony, that is, none of them were the eyewitness to the events and even if so they were uncertain about the facts they were giving account about. In particular, that refers to Esad Čović, a Prosecution witness, for whom the Defense deeply believes that by obtaining his own witnesses and evidence he led the Prosecution in the completely wrong direction and not in the direction of establishing the truth. The Defense states that the Prosecution is obliged to contribute to the establishment of the truth and not only establishment of its averments from the Indictment.

22. The second part of the closing argument consists of the address by Suljo Karajić himself, stating that this criminal proceedings was steered in the wrong direction given that the party of the Democratic National Union and its leaders used mistakes of the Accused that he himself confessed to in order to prove the crimes committed by the Army of BiH against them. The Accused specifically urges the Court not to take into consideration the testimonies of witness Bajro Rizvić and protected witness A because they were not true.

23. In the third and the last part of the closing argument the Defense for the Accused gives an analysis and evaluation of all evidence presented during the main trial, referring to all the Counts of the Indictment. First, the Defense for the Accused noted the fact that based on the presented documentary evidence and witnesses of both the Prosecution and Defense, the Prosecution failed to prove the criminal liability of the Accused pertaining to the circumstances that he was charged with under the following Counts of the Indictment: 2, 3 with all sub-counts, namely a, b, c, d, e, f, g, h and i, as well as 4, 5, 6, 7, 8 and 9. In reference to the foregoing the Defense for the Accused moves that the Accused be acquitted of the aforementioned Counts of the Indictment pursuant to Article 284 paragraph 1 c) of the CPC of BiH.

24. The Defense notes that Accused Suljo Karajić confessed to the circumstances he was charged with under Counts 1 and 10 of the Indictment and urges the Court, in the lack of aggravating circumstances, that all the enumerated extenuating circumstances for the Accused in

the case concerned become highly extenuating and they should be considered as such when meting out the punishment since they represent the grounds for punishment below the statutory minimum.

II. PROCEDURAL DECISIONS

A. DECISIONS ON PROTECTION OF WITNESSES

25. By the Decisions (2 decisions) number X-KRN-07/336 dated 19 October 2007 and 20 December 2007, the Court granted protection measures to a total number of (17) seventeen witnesses in these proceedings. By the aforementioned decisions, all personal details of witnesses, names and surnames and other personal details were declared confidential and the witnesses were allowed to testify using electronic distortion of the voice or image or both, by using technical means for image and sound transmission along with the measure of a ban on publishing their photographs in the media.

26. During the proceedings, the protected witnesses A, L, M and J were allowed to testify from another room utilizing electronic distortion of the voice or image of the witness. The witnesses under pseudonyms D, F, B, testified in the courtroom, under the pseudonyms and with a ban on publishing their photographs in the media. The other protected witnesses (P, R, O, N, C) testified in the courtroom and did not utilize electronic distortion of the voice or image so the people present in the courtroom could directly see and hear them. The Court rendered such decision with the consent of the witnesses.

27. The Court took into account the protection of the identity of the witnesses during the entire course of the proceedings, mindful not to mention a single identification detail. Therefore, these witnesses are not mentioned in the Verdict under their full name but under the pseudonyms assigned. All the details on the protected witnesses are in the case file which is also under special protection.

28. In the case concerned, the Court made an exception from the rule that at public trials other witnesses refer to the protected witnesses also by using their pseudonyms. This was a necessary step, taken after a hearing on the record, because the local community is small, the people belonged to different parties during the war and today they live and work in the same area. Relationships, even among families are still troubled due to the specific character of the conflict (Army of BiH versus members of the Autonomy). Thus disclosure of the pseudonyms to the Defense witnesses would contravene the reasons for granting the protection as their local community would be aware they testified in the proceedings.

29. At the trials held on 23 April/ 24 April/ 6 May/ 21 May 2009, all the protected witness were summoned to appear before the Court to be personally advised of the motion of the Prosecution and

state their position about it. On 23 April 2009, the witnesses D, M, B and C appeared; on 24 April 2009, the witnesses A, P, F; and on 6 May 2009 the witness N, O, R, E and G were heard. All agreed to the motion. The Prosecution obtained the statements from those who could not appear personally, witnesses H, J, and L because they live abroad. The Prosecution withdrew K and I and therefore she did not ask for their statements.

B. DECISION ON THE EXCLUSION OF THE PUBLIC

30. The Panel excluded the public from some parts of the main trial pursuant to Article 235 of the CPC of BiH, as follows: **on 10 April 2008**, additional protection measures for the witness A were discussed (testimony via video link and distorted voice and image); **on 8 May 2008**, to discuss protection measures for the witness E (not to publish photographs in the media); **on 10 July 2008**, the justification of granting additional protection measures to the witness O was discussed (not to publish photographs in the media); **on 21 August 2008**, granting of additional protection measures to the witness J was discussed (distorted image) and **on 20 August 2009**, to discuss the letter sent by a protected witness to the Panel, asking to finalize the proceedings in the case concerned as soon as possible.

31. The public was excluded for the entire main trials held on 23 April/ 24 April/ 6 May/ 21 May 2009. During the aforementioned trials the protected witnesses stated whether they agreed with the Prosecution motion not to inform the Defense witnesses that they testified under protection and whether they agree, if mentioned by Defense witnesses in their statements, that their identity be mentioned publicly.

32. In all the foregoing examples of the exclusion of the public, the Panel, when it discussed the jurisprudence indicating that it is not always possible to envisage and fully control dynamics of consideration of legal and factual matters, decided to exclude the public from parts of the main trial dealing with granting certain protection measures to the witnesses in accordance with the given circumstances. Each time when the trial was again open for public, the Panel would inform the public on the reasons for exclusion and any decisions made.

C. EXPIRATION OF 30-DAY DEADLINE

33. The parties to the proceedings agreed that the adjournment can be longer than 30 days and did not object to the main trial resumption, that is, did not require the recommencement. The recommencement of the proceedings which lasted more than 30 days occurred on 21 August 2008;

5 November 2009; and 14 January 2010. Taking into consideration Article 251 (1) of the CPC of BiH, reading: “The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defense attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene investigation and the testimony of the witnesses and experts given at the prior main trial be used instead.” Pursuant to this article, the Panel informed all parties to the proceedings of the aforementioned in advance and, as all were in agreement, there was no need for the trial to recommence from the beginning of the proceedings.

34. During the entire main trial, the Panel scheduled hearings within the legally prescribed time limits and was particularly mindful of the right of the Accused to a trial within a reasonable time.

III. APPLICABLE LAW

A. LEGAL PROVISIONS

35. The Criminal Code of the Socialist Federal Republic of Yugoslavia (“CC of SFRY”) was in force at the time when the criminal offense was committed. The SFRY Assembly adopted that code at the session of the Federal Council held on 28 September 1976 and published it in the Official Gazette of SFRY number 44 dated 8 October 1976. Following the proclamation of independence the Criminal Code of SFRY, pursuant to the Decree Law dated 22 May 1992, was adopted as a Law of the Republic of BiH (with small amendments) and entered into force on the day of its publication. The CC of SFRY was in force until 20 November 1998 in the territory of the Federation of BiH, until 31 July 2000 in the territory of Republika Srpska and until 2001 in the territory of the Brčko District. The new Criminal Code of Bosnia and Herzegovina (“CC of BiH”) entered into force on 1 March 2003, while the new Criminal Code of the Federation of BiH entered into force on 1 August 2003, and on 1 July 2001 the new Criminal Code of Republika Srpska became effective.

36. War Crimes against Civilians were regulated by Article 142 of the CC of SFRY and punishable by imprisonment for a term of not less than five years or the death penalty. The CC of BIH regulates War Crimes against Civilians by its Article 173 and they are punishable by imprisonment for a term of not less than ten years or long-term imprisonment. Similarly the CC of BiH regulates War Crimes against Prisoners of War, punishable by imprisonment for a term of not less than ten years or long-term imprisonment. War Crimes against Prisoners of War were regulated by Article 143 of the CC of SFRY which also stipulated the punishment of imprisonment for a term of not less than five years or the death penalty.

37. Comparing different legal provisions it has to be concluded: War Crimes against Civilians and War Crimes against Prisoners of War were regulated by both the CC of SFRY and CC of BiH but the penalty foreseen by the CC of BiH is more lenient.

38. Given the time of the perpetration of the offence (April- December 1992) and the substantive law applicable at the time, the Court finds it important to pay attention to the principle of legality (on both sides: *nullum crimen sine lege and nulla poena sine lege*) and the principle of time constraints regarding applicability of the criminal code.

B. PRINCIPLE OF LEGALITY

39. Article 3 of the Criminal Code of BiH prescribes the principle of legality which foresees that criminal offences and criminal sanctions shall be prescribed only by law and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, was not defined as a criminal offence by law or international law, and for which a punishment was not prescribed by law.

40. Article 4 of the CC of BiH (Time Constraints Regarding Applicability) provides 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. If the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied.

41. The principle of legality is also foreseen in Article 7(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) that has priority over all other laws in BiH.¹ Pursuant to the forgoing Article of the ECHR: “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.”

42. Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) stipulates: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”

43. Thus, it is prohibitive to pronounce a heavier penalty than the one applicable at the time when the criminal offence was committed. This is the principle of legality, but there is an exception from the principle of legality. Article 4a) of the CC of BiH adopted the provisions set forth in Article 7(2) of the ECHR and Article 15(2) of the ICCPR thus explicitly enabling exceptional departure from the principle referred to in Article 4 of the CC of BiH. It is a departure from the

¹ Article 2.2 of the Constitution of BiH.

mandatory application of a more lenient law when the act or omission which, at the time time when it was committed, was criminal according to the general principles of international law, and when the charges include violation of the rules of international law. Such a position was taken in the jurisprudence of the Court of BiH, following international jurisprudence.²

44. The criminal offenses of War Crimes against Civilians and War Crimes against Prisoners of War at the relevant period of time were stipulated by Article 142 and 143 of the Criminal Code of SFRY respectively which was in force in Bosnia and Herzegovina at that time. Article 173 of the CC of BiH also prescribes War Crimes against Civilians and Article 175 War Crimes against Prisoners of War. Therefore, the criminal offense of War Crimes against Civilians and the criminal offense of War Crimes against Prisoners of War were stipulated by the law and the principle *nullum crimen sine lege* is complied with.

C. EUROPEAN COURT OF HUMAN RIGHTS CASE LAW

45. Article 7(1) of the ECHR and Article 4 of the CC of BiH regulate that the law applicable at the relevant period shall be applied if it is more lenient to the perpetrator. In practice, the European Court finds a violation of Article 7 whenever “a convicted person is subjected to a heavier penalty than he would have faced at the time he or she committed the offense through the retroactive application of new law which either directly or indirectly (for instance, provisions on recidivism) affect the determination of the a sentence.”³

46. The abolishment of death penalty in BiH⁴ raised new issues in this respect, that is, in cases when the domestic law replaced death penalty (Article 142 of the CC of SFRY) with a long term imprisonment (Article 173 of the CC of BiH), the European Court acknowledges the principle of legality and the exception thereof as equally recognized and forming a part of the same principle. The European Court considered this issue in at least two cases.⁵

47. In the *Karmo* case, the applicant was convicted of a first-degree murder committed in 1993. The type of criminal sanctions foreseen by the Criminal Code of Bulgaria in force at the time were fifteen to twenty year imprisonment (maximum) or death penalty. By an amendment of 1995, the

² See Decision of the Constitutional Court of BiH on Admissibility and Merits in *Abduladhim Maktouf*, No. AP1785/06, 30 March 2007, and also ECtHR Decision on Admissibility and Merits in *Karmo v Bulgaria*, 9 February 2006.

³ See for example ECHR, *Jamil v. France*, Judgment dated 8 June 1995; ECHR, *Achour v. France*, Judgment, 10 November 2004; *Achour v. France*, Grand Chamber, Judgment, 29 March 2000.

⁴ Pursuant to Protocols No. 6 and 13 of the European Convention.

⁵ *Karmo v. Bulgaria*, Decision on Admissibility, 9 February 2006. See also *Ivanov v. Bulgaria*, Decision on Admissibility, 5 January 2006.

penalty of life imprisonment was introduced and in 1998 the death penalty was abolished. In 1996, the applicant was found guilty and sentenced to the death penalty. Upon appeal, the Supreme Court of Bulgaria, by judgment of 17 April 1998, revoked the first instance judgment and modified the sentence to life imprisonment.

48. The applicant complained under Article 7 of the Convention that a sentence of life imprisonment was imposed on him, which was not provided for under national law at the time the offences were committed. He considered that he should have been sentenced to no more than twenty year imprisonment. The European Court rejected the complaint as “manifestly ill-founded.”⁶

49. In accordance with the European Court’s jurisprudence, it does not violate Article 7 of the Convention to impose a life or long-term imprisonment sentence on an applicant for an offence which at the time of its commission was punishable by the death penalty, even though life or long-term imprisonment was not provided for under the law applicable at that time, because life imprisonment is manifestly a more lenient penalty than the death penalty.

50. Therefore, applying Article 175(1) a) and b) and 173(1) c) and e) of the CC of BiH does not constitute a violation of either the *nullum crimen sine lege* principle or the defendant’s right to receive a more lenient penalty. On the contrary, it is in total conformity with the “law and international law” or the “general principles of international law”, respectively, Article 3 and Article 4a of the CC of BiH.

⁶ On the following grounds: “The Court recalls that according to the Court’s case-law, Article 7 § 1 of the Convention embodies generally the principle that only the law can define a crime and prescribe a penalty and prohibits in particular the retrospective application of the criminal law where it is to an accused’s disadvantage. The Court notes that in the present case the domestic courts, arguing that the applicant should have been sentenced to death, imposed a joint sentence of “life imprisonment”, which they found to be more lenient than the death penalty. Accordingly, the amendment of the forms of penalties envisaged in the Criminal Code for the most severe offence for which the applicant was found guilty operated in the applicant’s favour and he received a more lenient penalty than was envisaged for that offence at the time it was committed” (ECHR, *Karmo v. Bulgaria*, decision of 9 February 2006).

IV. GENERAL CONSIDERATION OF EVIDENCE

51. Article 15 of the CPC of BiH regulates the principle of free evaluation of evidence as one of the fundamental principles. Pursuant to this Article evaluating the existence or non-existence of facts “shall not be related or limited to special formal evidentiary rules”. Therefore, the value of the evidence is not determined in advance both in terms of quality or quantity. It is the duty of the Court to evaluate every piece of evidence individually and in correspondence with all the other evidence and based on the result of such evaluation conclude whether a fact has been proved or not. The evaluation of evidence includes their logical and psychological evaluation. However, free evaluation of evidence is limited with the principle of legality of evidence (Article 10 of the CPC of BiH). During the Main Trial objections were considered as to relevancy or authenticity. Objections as to probative value were decided at the end of the proceedings.

52. Article 10 of the CPC of BiH (Unlawful Evidence), foresees that “The Court shall not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, or on evidence obtained through essential violation of this Code.”

53. At the hearing held on 6 November 2008, the Prosecution tendered the documentary evidence pursuant to Article 274(4) of the CPC of BiH. The Defense and the Prosecution agreed to submit without reading Exhibit T-1 through Exhibit T-175 because the Defense does not contest it, except for Exhibit T-39 (objection to authenticity) and Exhibit T-33 (objections to lawfulness). The Defense also objected to Exhibit T-176 (objection to authenticity) and Exhibit T-178 through T-181 (objection to the procedural relevance).

54. The Court accepted the Prosecution Exhibits T-33, T-39, T-176, T-178 through T-181, and refused the Defense objections as ill-founded. The reasoning on this evidence admissibility is provided in the part of the Verdict concerning Count 2 of the Indictment.

A. CREDIBILITY OF WITNESSES

55. In evaluating the evidence of witnesses who testified before the Court, the Court considered their conduct and character to the maximum possible extent.

56. The witnesses who testified can be placed in three categories:

- biased witnesses
- eyewitnesses
- hearsay witnesses

57. The hearsay witnesses in this case were most frequently the persons whose family members were the eyewitnesses to the event or direct victims. As 14 years have elapsed since the event concerned, some witnesses have passed away and therefore their close family members are telling what they heard or what was told to them. These persons are directly interested parties, and due to their close relationship with the eyewitnesses their testimony is given weight and duly considered.

58. When evaluating the evidence of the witnesses the Panel also took into consideration the nature of the conflict which took place in the territory of Western Bosnia. During this particular conflict the territories were constantly conquered, lost and recaptured which meant that members of the National Defense and their supporters would be left behind in the territory of the Army of BiH and vice versa. Those left behind were still supporting the idea of the Autonomous Province of Western Bosnia or remained supporters of the Army of BiH. In the same family, the father could be a member of the Army of BiH and his sons members of the National Defense and vice versa. This conflict became a conflict between son and father, among brothers, among friends and neighbors. Unlike the other conflicts at the time this was between members of the same ethnic group thus causing particularly bitter feelings. In the free territory of the 5th Corps of the Army of BiH there was a deep distrust of the National Defense supporters who were considered to be traitors and spies. It was obvious from the demeanor and testimony of the protected witnesses that these attitudes are still present today.

59. The evidence of the witnesses who directly testified before the Panel created an impression on the Panel that the parties to the conflict still have not put aside the reasons and consequences of the aforementioned conflict. Many who still reside in this area remain bitter, angry, afraid and indeed confused about the conflict.

60. When analyzing the eyewitness category the Panel took into account that 14 years have elapsed since the event, that they suffered major trauma because they were present during the execution of other people or physical abuse of other people, they feared for their lives, or were the victims of the abuse themselves. Therefore, smaller differences and inconsistency in the testimonies of this category of the witnesses were evaluated by the Panel through the prism of this analysis.

61. The Panel had the opportunity to observe all live witnesses, their conduct, voice, attitude, bodily and emotional reactions to questions, non-verbal conduct in relation to the parties and lawyers and the atmosphere in which they gave testimonies. Credibility determinations were based on these considerations as well corroborating and consistent evidence.

B. CIRCUMSTANTIAL EVIDENCE

62. Regarding the circumstantial evidence the Court notes that in the actions taken before this Court and in the case law of the Court it is established that circumstantial evidence is acceptable. In each individual case the court evaluated such evidence and combined it with the evidence of other witnesses and eyewitnesses taken as a whole.

63. The Constitutional Court of Bosnia and Herzegovina has taken the position that the establishment of facts through circumstantial evidence is not in contradiction to the principle of a fair trial set forth under Article 6(1) of the ECHR. In this regard the use of circumstantial evidence by the Panel, it is noted that in the actions taken before this Panel and in the case law of the Court, it is established that the use of circumstantial evidence is acceptable.

V. RELEVANT LAW ON CRIMINAL OFFENCES

64. The Prosecution alleged that the Accused Suljo Karajić committed the criminal offense of War Crimes against Prisoners of War pursuant to Article 175 (a) and (b) of the CC of BiH under Counts 1, 2, 4., 5 and 6 and the criminal offense of War Crimes against Civilians pursuant to Article 173(1) (c) and (e) of the CC of BiH under counts 3, 7, 8, 9. and 10.

65. The definition of the crime provided in Article 173 and 175 incorporates several general requirements which will be detailed below. In addition, sub-paragraphs (c) and (e) of Article 173 and (a) and (b) of Article 175 define the specific crimes. The elements of these offenses will also be detailed below.

A. ARTICLE 175 WAR CRIMES AGAINST PRISONERS OF WAR

66. The legal framework of the crimes cited in the indictment is thus the following:

67. Article 175 (a) and (b) of the CC of BiH reads as follows:

Whoever, in violation of the rules of international law, orders or perpetrates in regard to prisoners of war any of the following acts:

(A) Depriving another persons of their life (murders), intentional infliction of severe physical or mental pain or suffering upon persons (tortures), inhuman treatment, including therein biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation;

(B) Causing of great suffering or serious injury to bodily integrity or health;

...

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

68. Moreover, the Prosecution alleged that the Accused committed the criminal offense of War Crimes against Prisoners of War in violation of Article 175(a) and (b) because he acted in violation of Article 3 (1) a) and c) of the Geneva Convention relative to the Treatment of Prisoners of War ("Third Geneva Convention"). Article 3, which is common to all four Geneva Conventions of 12 August 1949 and is referred to as "Common Article 3".

69. Common Article 3 (1) a) and c) provides:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

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

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

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

....

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

...

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

70. Common Article 3 contains “the fundamental humanitarian principles which underlie international humanitarian law as a whole.”⁷ Common Article 3 is also widely recognized as being a foundation of customary international humanitarian law.⁸ These fundamental rules are a minimum which apply to all conflicts, no matter if they are of international or non-international armed conflict.⁹

71. Where the crimes are punishable under Article 175 based upon Common Article 3, the victims of the alleged violation of the rules of international law must have taken no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. For purposes of this case, under Article 175 prisoners of war are defined as members of armed forces who were placed *hors de*

⁷ *Prosecutor v. Delalić*, IT-96-21-A, Judgment, 20 February 2001, (“*Delalić* Appeal Judgment”) para. 143.

⁸ *Nicaragua v. United States*, International Court of Justice, Case Concerning Military and Paramilitary Activities In and Against Nicaragua, Judgment of 27 June 1986, in ICJ Reports, 1986, para. 218; *Prosecutor v. Tadić*, IT-94-1, Decision by the Appeals Chamber on the Defense Motion for Interlocutory Appeal on Jurisdiction, (“*Tadić* Jurisdiction Decision”) paras. 98 and 129; *Prosecutor v. Akayesu*, ICTR-96-4-T, Judgment, 2 September 1998, (“*Akayesu* Judgment”) paras. 603-605; See US decision in *Kadić v. Karadžić*, 70 F.3d 232 (2nd Cir., 1995).

⁹ *Delalić* Appeal Judgment, para. 143.

combat by sickness, wounds, detention, or any other cause. In addition, “the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed.”¹⁰

B. ARTICLE 173 WAR CRIMES AGAINST CIVILIANS

72. As mentioned previously, the Prosecution alleged that the Accused Suljo Karajić committed the criminal offense War Crimes against Civilians under Article 173(1) (c) and (e) of the CC of BiH.

73. Article 173(1) (c) and (e) reads as follows:

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

...

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

...

e) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) or forcible prostitution, application of measures of intimidation and terror, taking of hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial, forcible service in the armed forces of enemy’s army or in its intelligence service or administration;

...

74. The Prosecutor alleged the Accused committed the criminal offense of War Crimes against Civilians in violation of Article 173 because he acted in violation of Article 3 (1) a) and c), Article 27(1)¹¹ and Article 147¹² of the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (“Fourth Geneva Convention”).

¹⁰ *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82-A, Judgment, 19 May 2010, (*Boškoski and Tarčulovski* Appeal Judgment) para. 66.

¹¹ The first paragraph of Article 27 of the Fourth Geneva Convention reads: “Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.”

75. Similar to Article 175 of the CC of BiH, violations under Article 173 are based upon Common Article 3 which requires the victims of the alleged violation of the rules of international law must have taken no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. In addition, “the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed.”¹³

76. The Panel examined the Indictment in its entirety and in particular the allegations of violation of Articles 173 and 175 of the CC of BiH when analyzing the charges against the Accused. Following the analysis, it considers paragraphs (1) a) and c) of Common Article 3 is controlling in the present case.

77. In regards to Article 27 and Article 147 of the Fourth Geneva Convention, the issue exists whether these particular provisions apply in an internal armed conflict. The Third Geneva Convention, relative to the treatment of prisoners of war, with the exception of Article 3, common to the four conventions, is expressed to apply in an international armed conflict. The ICTY’s *Tadić* Jurisdiction Appeals Chamber decision held:

The emergence of the aforementioned general rules on internal armed conflicts does not imply that internal strife is regulated by general international law in all its aspects. Two particular limitations may be noted: (i) only a number of rules and principles governing international armed conflicts have gradually been extended to apply to internal conflicts; and (ii) this extension has not taken place in the form of a full and mechanical transplant of those rules to internal conflicts; rather, the general essence of those rules, and not the detailed regulation they may contain, has become applicable to internal conflicts.¹⁴

78. The *ICRC (International Committee of the Red Cross) Customary International Humanitarian Law Rules and Study 2005* concludes that some articles of this Convention, additional to Common Article 3, have attained customary law status and are now applicable in both internal and international armed conflict. Article 27 of the Fourth Geneva Convention provides a general legal framework prohibiting the harming of a civilian population. There are various references in the *ICRC Customary International Humanitarian Law Rules and Study 2005* that the

¹² Article 147 of the Fourth Geneva Convention reads: Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

¹³ *Boškoski and Tarčulovski* Appeal Judgment, para. 66.

rules contained in Article 27 are norms of customary international law and applicable in internal armed conflicts.¹⁵ Additionally, sections of Additional Protocol II, relating to the protection of victims of non-international armed conflicts, contain provisions similar to Article 27.¹⁶ The ICRC Commentaries also explain that Article 27, "...proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women."¹⁷ Further support that Article 27 is a norm of customary international law and applicable to an internal armed conflict is the Special Agreement of 22 May 1992 brokered by the ICRC in Geneva, and was signed by the conflicting parties in Bosnia and Herzegovina. The Autonomy was not a party to the Special Agreement, but the Republic of BiH (Army of BiH)(of whom the accused was a member) was a party to the agreement. Clause 2.3 provides "The civilians and the civilian population are protected by Articles 13 to 34 of the Fourth Geneva Convention of 12 August 1949."

79. Article 147, although it only applies to an international armed conflict, the agreement of 1 October 1992 entered into by the conflicting parties in Bosnia and Herzegovina, Article 3 of this Agreement implicitly implies prosecution and punishment of violation of Article 147.¹⁸ However, Article 147 of the Fourth Geneva Convention, for this case, it is used for definitional purposes.

C. GENERAL REQUIREMENTS: ARTICLE 173 AND ARTICLE 175 OF CC OF BiH

80. As stated above, Article 173 and Article 175 of the CC of BiH require certain elements be met for the conduct of the Accused to constitute a war crime against prisoners of war and war crime against civilians. The Panel recalls that in its First Instance Verdict of *Novak Đukić*, X-KR-07/394, 12 June 2009, it held all war crimes have to meet the following criteria. These elements are:

1. The conduct must be in violation of rules of international law in time of war, armed conflict or occupation;
2. The violation must take place in time of war, armed conflict or occupation;
3. The act must be related to the state of war, armed conflict or occupation;
4. The accused must order or perpetrate the act.

¹⁴ *Tadić* Jurisdiction Decision, para. 126.

¹⁵ *ICRC Customary International Humanitarian Law Rules and Study 2005 Volume 1: Rules*, Rule 93. Rape and other forms of sexual violence are prohibited; Rule 104. The Convictions and religious practices of civilians and persons *hors de combat* must be respected, pgs. 375-376; Rule 105. Family life must be respected as far as possible, p. 379; Rule 134. The specific protection, health and assistance needs of women affected by armed conflict must be respected, p. 475.

¹⁶ See Article 4 of Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977.

¹⁷ Commentaries of the ICRC on the Fourth Geneva Convention, Article 27 – General Remarks. Historical Background.

¹⁸ See *Tadić* Jurisdiction Decision, paras. 83 and 136.

81. The same general requirements or *chapeau* elements mentioned under Article 175 also apply to Article 173 because both articles regard war crimes. Although Article 175 of CC of BiH does not explicitly require an armed conflict it is implied because it is a war crime.

1. The conduct must be in violation of rules of international law in time of war, armed conflict or occupation

82. The source of law of the Court of BiH is domestic law, and the Panel is rendering its verdict based on Articles 173 and 175 of the CC of BiH. However, Article 173(1) and Article 175 state that the Accused must act in violation of “rules of international law”. Article 2(b) of Protocol I additional to the Geneva Conventions of 12 August 1949 defines rules of international law as “the rules applicable in armed conflicts set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict”.

83. Therefore, the Panel must also base its decision on specific rules of international law, whether conventional or customary in nature, which were applicable during the period defined in the Indictment. Article 173(1) of the CC of BiH and Article 175 of the CC of BiH criminalize the violation of these rules by anyone who orders or perpetrates these acts. Therefore, violation of the rules need not *per se* have been criminalized under international law during the period defined in the Indictment. The prescribed conduct must have been applicable under domestic and/or international law at the time the act was committed. Referring to the Indictment, the Panel concludes the violation of the rules of international humanitarian law contained in Common Article 3 and the customary provisions of Article 27 of the Fourth Geneva Convention are so and therefore that these provisions of international humanitarian law are applicable to this case insofar as they satisfy the requirements of Article 173(1) and Article 175 of the CC of BiH and of its reference to rules of international law.

84. According to the ICTY Appeals Chamber, “[i]nternational humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities (...)”¹⁹. As will be explained in the section below, the Panel finds that there existed an armed conflict in the territory of the District of Bihać during the period considered in the Indictment. The Panel recalls that these rules of international humanitarian law, that is to say Common Article 3 and Article 27 of the Fourth Geneva Convention were applicable to the territory of Bosnia and Herzegovina in 1994 and 1995. The State of Bosnia and Herzegovina, as a successor of the Socialist Federal Republic of

Yugoslavia, had ratified the Geneva Conventions and their additional Protocols.²⁰ The Accused is charged with murder and cruel treatment. All are prohibited conducts under international humanitarian law as they are contained in the relevant Geneva Conventions and their Additional Protocols. All are also generally recognized as being part of customary international law and apply to conflict both of internal and international nature. These rules of customary international law were applicable at the time of the offense in the territory of Bosnia and Herzegovina and the Accused was therefore bound to obey them.

85. Finally, regarding the required mental state, the Panel emphasizes that one need not have had specific knowledge of the existence of these international norms. It is sufficient that one violate these norms. It is never necessary that one have the ability to define the legal qualifications of his crime, only that he have notice that his actions and intentions are criminal. It is for the Panel to determine the crime then committed. One must however have the specific *mens rea* applicable to the underlying offence he is charged with to be found guilty, whether he is found guilty as a perpetrator or as one ordering.

86. In order to establish that rules of international law have been violated in the specific case, it is necessary to establish that the action was aimed against a protected category of persons, protected by all mentioned articles of the Geneva Convention.

87. The Panel recalls where the crimes are punishable under Article 173 and Article 175 based upon Common Article 3, the victims of the alleged violation of the rules of international law must have taken no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. The victims of the alleged violation must also meet the definition of protected person under the Fourth Geneva Convention, relative to the treatment to the protection of civilians. **This required a specific analysis as detailed below due to the nature of this conflict (See section under VIII).** For purposes of this case, under Article 175 prisoners of war are defined as members of armed forces who placed *hors de combat* by sickness, wounds, detention, or any other cause. In addition, “the perpetrator of a Common Article 3 crime knew or should have been aware that the victim was taking no active part in the hostilities when the crime was committed.”²¹

¹⁹ *Tadić* Jurisdiction Decision, para. 70.

²⁰ Ratified by the SFRY on 11 June 1979. See Bosnia and Herzegovina’s Declaration of Succession of 31 December 1992, where it declared that it had become party to the Geneva Conventions and the Additional Protocols as the date of its independence, 6 March 1992.

²¹ *Boškoski and Tarčulovski* Appeal Judgment, para. 66.

88. The status of the victims and whether or not they were “protected persons” defined under Common Article 3 and Article 4 of the Fourth Geneva Convention will be discussed below.

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

89. The Panel holds that:

[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.²²

90. The Panel has heard evidence that an armed conflict existed in Bosnia and Herzegovina between members of the 5th Corps of the Army of BiH and members of the National Defense of the Autonomous Province of Western Bosnia, in the period from August 1994 to February 1995, in the territory of the District of Bihać. In this case, this element is not disputed as both the Prosecution and Defense agreed there was a state of armed conflict.

91. During the evidentiary proceedings, it was established beyond reasonable doubt that an armed conflict existed in Bosnia and Herzegovina between the 5th Corps of the Army of Bosnia and Herzegovina and members of military formations of the APWB, namely the military of the National Defense at the relevant time.

92. This fact was not contested by any witness heard before the Court in this case, regardless of his membership in the ND or in the 5th Corps of the Army of BiH. During the proceedings, the Defense also did not contest the fact that the armed conflict existed. Abundant documentary evidence for both the Prosecution and the Defense, and a large number of witnesses, further speak about this. This follows from the Reports on armed conflicts between members of the 5th Corps of the Army of BiH and the APWB in the Bihać area territory, the Prosecution documentary evidence, particularly Exhibit T- 1, Declaration of Fikret Abdić for the population of West Bosnia of 22 September 1993.

93. The Panel concluded that this element was proved beyond reasonable doubt.

²² *Tadić* Jurisdiction Decision, para. 70. See also *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-A, Judgment, 17 December 2004, para. 341. In this case this element is not disputed as both the Prosecution and Defence agreed there was a state of armed conflict.

3. The act must be related to the state of war, armed conflict or occupation

94. The third condition of Article 173(1) and Article 175 of CC of BiH is that there must be a nexus between the act of the Accused and the armed conflict. Indeed, “[t]he armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit the crime, the manner in which it was committed or the purpose for which it was committed”²³. This requirement is fulfilled if the alleged crime was committed in furtherance of, or at least under the guise of, the situation created by the armed conflict.²⁴ ICTY’s Trial Chamber in the case *Prosecutor v. Dragoljub Kunarac et al* stated: “... Humanitarian law continues to apply in the whole of the territory under the control of one of the parties, whether or not actual combat continues at the place where the events in question took place. It is therefore sufficient that the crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. The requirement that the act be closely related to the armed conflict is satisfied if, as in the present case, the crimes are committed in the aftermath of the fighting, and until the cessation of combat activities in a certain region, and are committed in furtherance or take advantage of the situation created by the fighting. ...”²⁵

95. Several factors can determine the existence of a nexus between the act of the Accused and the armed conflict. Factors can include the position of the accused, the nature of the victim, the goal of the attack, or the fact that the act was committed in the context of the Accused’s official duties.²⁶

96. Based on the evidence heard by the Panel, which is set out below, it finds that the underlying crimes with which the Indictment is concerned were closely related to the armed conflict.

4. The accused must order or perpetrate the act

97. Finally, Article 173 (1) and Article 175 of the CC of BiH require that the Accused either directly perpetrate the illegal act or order the said act. The Panel emphasizes that this relates to the mode of liability of the Accused and does not constitute an element of the crime as such. The Prosecution alleged that the Accused perpetrated, in violation of Article 180 (1) and Article 29 of

²³ *Prosecutor v. Kunarac, Kovać and Voković*, IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002, (“*Kunarac et al* Appeal Judgment”) para. 58.

²⁴ *Kunarac et al*. Appeal Judgment, paras. 58-59.

²⁵ *Prosecutor v. Kunarac et al*, IT-96-23-T and IT-96-23/1T, 22 February.2001, para.568.

²⁶ See *Kunarac et al*. Appeal Judgment, para. 59.

the CC of BiH, the alleged criminal offenses. **This will be detailed under the section on Individual Criminal Responsibility.**

VI. GENERAL OVERVIEW

98. The 5th Corps of the Armed Forces of BiH was established on 21 October. It was responsible for area covering the Northwestern section of Bosnia and Herzegovina.

99. An armed conflict started on 3 October 1993 between a unit of the 5th Corps and members of the ND (T-1 – a verified copy of a handwritten document filed in the Archive of the SsiOBP PFMO). The reasons for which the conflict broke out in this territory can be observed from the document *Initiative for the Establishment of the Autonomous Province of West Bosnia* (APWB) (“the Initiative”) and the *Proclamation of Democratic Initiative of Citizens of West Bosnia* of 10 October 1993 (“the Proclamation”) (T-1). The referenced conflict started on 27 September 1993, right after the establishment of the 1st APWB by Fikret Abdić. Fikret Abdić was a local businessman who owned and operated Agrocommerce before the war.

100. The following was stated in the *Initiative*:

Since both in the peace and the war times the Bihać District proved that it wants, can and knows how to live, and in order to make this life possible, to ensure safety with full protection of interests of the population of this territory, respecting the referenced specifics and the reality of the present situation, it is necessary to:

1. Establish an Autonomous Province of „West Bosnia“ within the Republic of Bosnia and the Union of the Republic of Bosnia and Herzegovina as a community in which social relationships will be governed by laws and other regulations, constitutionality, lawfulness and equality of nations ensured, and the authority organized.
2. Stop the war, establish peace and enable the return of displaced persons and refugees.
3. Establish concrete relations with constituent peoples and neighbors and the whole civilized world;
4. Carry out an internal territorial organization based on freely expressed will of population.
5. Open roads and create conditions for further economic development, development of entrepreneurship, ownership transformation and market economy.
6. Open a free zone in Rijeka and transform the entire area in a customs-free zone with convertible means of payment.

101. The reasons for which the founder Fikret Abdić was led to launch the initiative were that, according to his estimate, the overall material and cultural goods were created by relying on their

own forces, with enormous sacrifice, and that the territory and the population should be defended by its own forces.

102. The Proclamation was sent to all citizens of West Bosnia. There was a message in the Proclamation for them: “To be against the Initiative means to be against Krajina and oneself too” and “Non-acceptance of the Initiative on the Establishment of the APWB means life with no bread and life, in blood, isolation and dungeon, on the island of fear, poverty and the darkest Stalinism.”

103. A Constitutional Parliament was held on 27 September 1993 with 400 signatories to the Initiative and in the presence of 10, 000 citizens. Necessary documents were passed and the AP “West Bosnia” was proclaimed.

104. Already during the phase of selection of constitutional-legal organization of West Bosnia in September 1993 there were dilemmas as to whether to proclaim a republic immediately or achieve the republic through the Autonomy.

105. Witness Esad Čović testified about the history and the establishment of the APWB from the perspective of a member.

106. The 1st Autonomy lasted from 27 September 1993 to 21 August 1994, while the 2nd Autonomy lasted from 16 November 1994 to August 1995.

107. In both cases, the forces of the National Defense of the APWB(ND) captured Velika Kladuša. Heavy fighting was carried out in order to return the territory of Velika Kladuša to the Army of BiH.

108. Within the context of existence of armed conflicts between members of the ND and the 5th Corps, both the Defense and the Prosecution submitted military charts showing the sites of combats and the time period in which certain important battles were led.

109. Combat at the hill of *Alatuša* was led during the period from 16 November to 2 December 1994, at the hill of *Trnovi* from 2-17 December 1994 and at the *Džaferagić* hill from 17 December 1993 to 13 January 1994 (O-1/0-2/0-3).

110. The authorities of the Republic of Bosnia and Herzegovina declared the establishment of the Autonomy an act of secession and treason. It is clear that this is still a prevailing view.

VII. FINDINGS REGARDING THE ACCUSED SULJO KARAJIĆ

111. The Prosecution proved beyond reasonable doubt the assertion that at the time of the commission of criminal offenses the Accused Suljo Karajić was a member of the 5th Corps of the Army of BiH, firstly as a “volunteer” in the 506th Brigade, and thereafter in the capacity of a Commander of the 2nd Platoon of the Military Police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of BiH.

112. The Defense agreed that he was a volunteer from 16 November 1994. Likewise, the Defense did not contest the status of Suljo Karajić as a Commander of the 2nd Platoon of the Military Police from 13 January 1995.

113. However, the Defense contested his membership in the 506th Brigade and his subordination to the 505th Brigade.

114. Among the evidence submitted in the case record by the Prosecution, there is also a letter of the Ministry of Defense of BiH number 08-04-1-995-1/07 of 12 March 2007 with the attachment of the unit personal file for Suljo Karajić, as Prosecution Exhibit No. **T - 128**.

115. The period from 31 August 1993 to 21 December 1994 was not consecutively connected in the unit personal file. However, it was entered in the military department personal file in which the data is subsequently entered that during the referenced period the accused Suljo Karajić was a member of the 506th Brigade, more precisely, during the period from 4 July 1994 to 21 December 1994 (Exhibit number **T -130**).

116. It is indisputable that the 2nd Platoon of the Military Police of the 505th Brigade was formally and legally established and that the lining up took place on 13 January 1995. Documentary evidence exists which was submitted by the Defense under number (O-6). This concerns the Order number 05/6-551 of 2 July 1995 releasing Suljo Karajić of the duty of the Commander of the 2nd Platoon of the Military Police Company of the 505th Chivalrous Motorized Brigade and that by this order the order number 05/6-19/95 of 13 January 1995 concerning the appointment of the named persons was terminated.

117. The records do not tell the whole story. The membership of the accused Suljo Karajić in military units and brigades during the 1992-1995 period was established based on the testimony of the witnesses who testified directly before the Court. According to witnesses, the Accused was firstly a member of the “Hamza” unit. In early 1993, he was in the 501st Brigade Bihać (anti-

sabotage platoon). At the beginning of the 1st Autonomy in September 1993 he was a member of Hega's group and was thereafter transferred to the MUP Velika Kladuša from December 1993 to 4 July 1994 when he left it on his own initiative. He was not military active during this time until the beginning of the 2nd Autonomy. During the period when he was not military active, he was out on sick leave. During this period, he was the President of the Association of War Disabled Veterans. According to his own testimony at the beginning of the 2nd Autonomy, he independently organized himself with other like minded inhabitants of Velika Kladuša since the 506th Brigade was disintegrated and had fled Velika Kladuša during that period.

118. However, the Defense witness Ejub Keserović testified before the Court that he was Assistant Commander for Morale in the 506th Brigade and that he was present at the briefings by the Command of the 505th Brigade at their forward command posts. He was present there on behalf of the Command of the 506th Brigade. He testified that the Accused Suljo Karajić also attended these meetings since 1 December 1994 and that he received orders from the Commander of the 505th Brigade because the 506th Brigade and its Commander had no authority over the Accused.

119. For this reason during this period, the 506th brigade was subordinated to the 505th Brigade. According to the witness testimony, this was frequent and normal during the war. A report by Senior Lieutenant Memaga Nuhanović on the situation in the 506th Brigade (T-174) also corroborated the Prosecution's position on the subordination of the 506th Brigade to the 505th Brigade. He testified that on 28 August 1994 he reported to the 506th Brigade. There were a large number of unprofessional personnel. The Brigade was unorganized, while Nijaz Miljković as the Brigade Commander was never present. In the end of his brief, he expressed his bitterness with the Command of the 5th Corps because it silently observed the events in the units of the 506th Brigade.

120. In the report made by Major Malić Agić regarding Count 2 of the Indictment (T-39) it was stated that Suljo Karajić aka Hodža was "a volunteer in the 506th Brigade". Furthermore, in the combat report sent by Nijaz Miljković to the Command of the 5th Corps and the 505th Brigade, although the signature indicated "on behalf of Nijaz Miljković", it was stated that "Due to continuous movements and changes of the units' areas of responsibility, the re-assignment of units under other commands and units, there was no possibility to establish and organize units in a quality manner."

121. The Panel concluded from the foregoing that the Accused Suljo Karajić was firstly a volunteer in the 506th Brigade, and already since 1 December 1994 he in fact started receiving orders from the Command of the 505th Brigade and perform the duty of a Commander of the Military Police Platoon which only later was formally and legally established on 13 January 1995.

122. When the 2nd Autonomy was established on 16 November 1994, according to the testimony of a number of witnesses and the Accused Suljo Karajić, the 506th Brigade had abandoned the town of Velika Kladuša. The Accused himself, along with other who remained in the town and on a voluntary basis, organized them to defend their posts. He organized a voluntary unit in the area. Although his volunteer unit was in the area of responsibility of the 506th Brigade, it was at all times during this period in contact with Commander Nanić of the 505th Brigade. Therefore, the Command was in fact in the hands of the Commander of the 505th Brigade, while the 506th Brigade existed only formally. Therefore, members of the 506th Brigade during this period were treated in documents as members of this Brigade.

123. In the context of analyzing the presence of the Accused Suljo Karajić at the places and at the time referenced in the Indictment of the Prosecutor's Office of BiH, the Court also analyzed the dates when the Accused Suljo Karajić was wounded and the periods during which he was in a hospital. The Accused Suljo Karajić was wounded five times (on 16 October 1993, 18 June 1994, 28 November 1994, 27 January 1995 and 6 March 1995).

124. When he was wounded for the first time at the area of Skokovi, the Accused Karajić sustained injuries to his head, namely his mouth. In that regard, the Defense also submitted the evidence, that is, a discharge letter (O-20) stating that the Accused Suljo Karajić was admitted to the Hospital department on 16 October 1993 and that he spent 8 (eight) months on a sick leave.

125. When he was wounded for the second time at the Golubović area, he sustained an injury to his left forearm. This required the need for a fixator. The Defense submitted a discharge letter O-21 stating that he was admitted to the hospital on 18 June 1994 and released for a home treatment on 21 June 1994 (according to the Accused Karajić he was on a sick leave from 18 to 21 June 1994 together with Nanić).

126. He was wounded for the third time on 28 November 1994 at Alatuša. He sustained injuries to his left leg and additional injuries to his left hand on which he still had a fixator.

127. He was wounded for the fourth time on 27 January 1995 at Prokres. The Defense submitted Exhibit number O-14, a discharge letter for the Accused Karajić from which it follows that he was admitted to the hospital on 26 January 1995 and released on 30 January 1995.

128. He was wounded for the last time on the Dizdarević hill, Defense Exhibit O-17, a discharge letter for Suljo Karajić, admitted to the hospital department on 7 March 1995 and released on 10 March 1995 for home treatment.

129. It follows from the finding of the Defense expert witness, Dr. Zaim Bilalbegović (O-11) that the Accused Suljo Karajić had an external fixator on his left upper arm during the period from 18 June 1994 to 29 May 1995, that is, for 11 months and 11 days. The foregoing also ensues from the document concerning the history of the Accused's illness that was submitted as the Defense Exhibit number (O-26).

130. The Prosecution did not contest at all that the Accused was wounded on the referenced dates. It is clear from the above, which the Accused admitted in his testimony, that despite being wounded he also participated in combat. It is not disputed that he suffered greatly or that he was sent by hospital personnel for home treatment. Despite records indicating he was on sick leave, by his own admission, he nevertheless participated in combat.

131. As to the specific whereabouts of the Accused, when it comes to the remaining Counts of the Indictment (2, 3, 5, 6, 8 and 9), the Panel established by the evaluation of the testimony of the eye-witnesses, the indirect witnesses whose testimonies were perfectly consistent, and the direct evaluation of the documentary evidence, that the Accused Suljo Karajić was present on 6 December in the place of Vrnograč, in December 1994 he was in Todorovska Slapnica, on 25 December 1994 at Latića Glavica, on 27 December 1994 in the place of Donja Lučka, and in late November/early December 1994 in the place of Podzvizd.

132. The Defense contested the presence of Suljo Karajić in December in Vrnograč, Todorovska Slapnica, Latića Glavica and Donja Lučka, stating that during this period Suljo Karajić was on the Alatuša frontline from 16 November to 2 December 1994, from 2-17 December 1994 at Trnovi, and from 17 December 1994 to 5 January 1995 at the Džaferović hill.

133. The Panel accepted that the Accused Karajić participated in combat at Alatuša, Trnovi and the Džaferović hill. Most of the witnesses also confirmed this. However, this Panel also evaluated the distance between the referenced places and the fact that none was more than 9 km apart. The stated distance could be passed over a very short period of time in a vehicle. A vehicle was proved to be available to the Accused behind the frontline. This was used in order to transport wounded persons, for food supply or in emergency cases. There is no evidence to support, particularly bearing in mind the fact that no witness testified, specifically regarding the actions referenced in Count 3 of the Indictment in Todorovska Slapnica, that the Accused Suljo Karajić was there all the time.

134. For the accused to be a perpetrator of the referenced criminal offense it was necessary to primarily prove the presence of the Accused at the place and the time referenced in the Indictment

at issue. In his testimony given in the capacity of a witness, the Accused admitted his presence at the place and the time referenced under Counts 1, 4, 7 and 10 of the Indictment.

135. The acts committed by the Accused were committed during the armed conflict, of which he was aware and of which he was undoubtedly a part.

VIII. FINDINGS ON THE STATUS OF CIVILIANS

136. The Panel took into account Article 3(1) of the 1949 IV Geneva Convention Relative to the Protection of Civilian Persons from which it ensues that the term civilian implies

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 (...)

137. Article 4 of the IV Geneva Convention states as follows:

.... Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

138. Furthermore, it is necessary to note that not everyone is covered by the Geneva Conventions. That is why there are specific categories and exemptions from categories. For example,

... Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are...

139. For example the ICTY Appeals Chamber in the *Tadic* case took the following position: “Instead of considering formal term ‘national’ the Panel takes into account the factual loyalty to a party in the conflict, which constitutes the control of that party over the individuals in the given territory. The criteria of factual loyalty, instead of a formal tie concerning the nationality, ‘protects all persons who do not participate in the hostilities, and not only those individuals who are linked to the government forces.’ However, after determining loyalty to a side you still have the issue of whether that person is then protected.

140. As in the *Tadić* case, this Panel must further define the nature of protected persons.

141. Therefore, bearing in mind the definition of the term “civilian” which explicitly stipulates that civilians are persons who do not take part in hostilities. The Panel finds it is necessary to also include the test of factual loyalty, due to the nature of this conflict. The Panel then found it

necessary to establish whether the victims stated in the factual description of the Indictment are entitled to enjoy the protection pursuant to the IV Geneva Convention, that is, whether they enjoy the status of protected persons.

142. In today's conflicts, like in the *Tadić case*, determination of allegiance is a factual one, subject to an examination of loyalties.

143. The principle taken by this Panel is that it is generally presumed that all civilians enjoy the protection in line with the IV Geneva Convention, unless there is evidence corroborating that a person was a member of the 5th Corps, or a unit with the Army of Bosnia and Herzegovina, or a supporter of the Army of BiH. If a person is found to be actually on the same side as the Accused Suljo Karajić, then due to the nature of this conflict, an alleged crime committed against ones own forces could not be prosecuted as a war crime.

144. The Panel agrees with the finding in *Galić case* "It is a matter of evidence in each particular case to determine whether an individual has the status of civilian".²⁷ In every single case the Panel took into account as evidence the statements of victims themselves, witnesses and documentary evidence tendered into the case file. In case there exists evidence, in a form of a statement, physical evidence, indicating that a particular person was a member of the Army of BiH or was loyal to the ABiH and there is no evidence to the contrary then those individuals in question are not considered protected persons.

145. An objective test of affiliation is not the application of ethnicity criteria (here all parties were Muslims) but rather of loyalty, which is whether a civilian is connected and gives his or her allegiance to one side or another. Also, the Panel had a view that the allegiance and loyalty of persons to the **I Autonomy** do not imply allegiance to the **II Autonomy**. The best evidence was what the person himself describes as his allegiance. Therefore, the Panel determined he status of each individual person as follows:

146. According to the Indictment, the persons referenced to in Counts 3 (and all convicting subparagraphs), 7, 8, 9 and 10 have the status of civilians.

147. By the application of the foregoing requirement, the Panel established that pursuant to the Geneva Convention, the following persons did not have the status of civilians: **the witnesses B and C, Mahmut Abdić, Hasan Mahmutović, Abid Džebić.**

²⁷ *Prosecutor v. Galić*, IT-98-29-T, Judgment, 5 December 2003, para 47.

148. Referenced to in Count 3 a) were the following persons: the protected witnesses under the pseudonyms **B and C**. According to his testimony given before the Court, the witness B was a member of the 506th Brigade of the Army of BiH. He was mobilized in 1994. After this incident, he again returned to the 506th Brigade. At the time indicated in the factual description of the Indictment and thereafter, he was a member of the 506th Brigade, that is, a soldier of the Army of BiH. He was on the same side as the Accused Suljo Karajić. The witness C was a member of the Civil Defense (“CD”) in Todorovska Slapnica. No piece of evidence whatsoever was submitted in the case record pointing to a relation or allegiance of the protected witness C to the II Autonomy. This indicates that he was on the same side as the Accused Suljo Karajić.

149. Referenced to in Count 3b) was **Mahmut Abdić**. According to his testimony given before the Court and the testimony of the other witnesses, during the II Autonomy, that is, at the time referred to in the Indictment, he was a member of the CD Todorovska Slapnica. The documentary evidence filed by the Prosecution of BiH– Letter of Acknowledgement to the name of Mahmut Abdić (T-61), awarded to him on behalf of the 5th Corps for his contribution, also points to the foregoing. There is no evidence pointing to the relation of this person with the II Autonomy West Bosnia.

150. Referenced to in Count 3d) was **Hasan Mahmutović**. He testified that he considered himself a member of the Army of BiH. His two sons were members of the Army of BiH. At the time of his suffering, he was a member of the CD Todorovska Slapnica. The documentary evidence was submitted into the case file, namely a certificate that Hasan Mahmutović was a member of the Civil Defense during the period from 17 June to 18 April 1995 (O-34). It can be concluded from this that Hasan Mahmutović was on the same side as the Accused Suljo Karajić.

151. Referenced to in Count 3e) was **Abid Džebić**. He was a member of the CD Todorovska Slapnica. There is no documentary evidence that he was a member of the II Autonomy or that he supported it in any manner.

152. Referenced to in Count 10 was **Ejub Čehajić**. In the factual description of the Indictment, he does not have the status of a protected person. He testified that he was on the side of the Army of BiH. It clearly follows from the documentary evidence submitted into the case record that he was a Commander of the Municipal Staff of Civil Defense Velika Kladuša during the period from 9 September 1994 to 30 January 1996 (O-32) and that he was on the same side with the accused Suljo Karajić.

153. Contrary to the foregoing, the persons referenced to in Count 3, namely Derviš Ponjević, Bećir Džebić, Muhamed Džebić, Mirsad Čturić, Šefik Abdić and Rasim Osmankić enjoy the protection pursuant to the IV Geneva Convention, like the protected Witness D referenced in Count 7, Hasib Torić aka Zilkin mentioned in Count 8, Jusuf Dizdarević from Count 9 of the Indictment.

154. With regard to **Derviš Ponjević, Bećir Džebić, Muhamed Džebić**, this Panel finds that the Prosecution proved that they enjoyed protection pursuant to the Geneva Convention. The documentary evidence, namely the death certificates from the Register of Deaths, was submitted to the case record. No information on any person was submitted as to whether they were under compulsory military or labor service at the time of commission of the offense or whether they were engaged in the Civil Defense. The Defense requested this information from the Department for Conscripts Record Issues for the Una-Sana Canton - Bihać. Bearing in mind the fact that the foregoing persons are not alive, and that thereby they did not testify before the Court and could not comment on their status, that there was no evidence indicating their affiliation to the same side as the Accused Karajić himself, this Panel submits that these persons enjoyed the protection of the Geneva Convention as civilians in the territory controlled by the Army of BiH.

155. **Mirsad Čturić, Šefik Abdić and Rasim Osmankić** also enjoyed the status of protected persons based on the following:

156. At the time when he was captured, **Mirsad Čturić** was a member of the National Defense, about which he testified himself, and this was also confirmed by other witnesses.

157. It follows from the documentary evidence submitted in the case record that **Šefik Abdić** was a member of the 5th Corps of the Army of BiH. However, it is clear from the testimony of a number of witnesses that he was treated as a traitor and that they had no trust in him. Therefore, the Panel gave credence to the witnesses and established that the person concerned had the status of a protected person pursuant to the Convention.

158. Pursuant to his testimony, **Rasim Osmankić** was a handyman in an infirmary and a member of the Civil Defense. However, it clearly follows from his testimony that upon a request by the Accused Karajić, he handed over to him a semi-automatic rifle “*papovka*” with which he was issued as a member of the I Autonomy, and which he kept during the II Autonomy. When they questioned him, they addressed him as “chetnik”. He was questioned about autonomy supporters. All the foregoing circumstances point to his allegiance to the Autonomy. Therefore, the Panel concluded that he was a protected person.

159. **Person D** has the status of a protected person as a member of the medical staff and the infirmary employee.

160. No piece of evidence was submitted indicating that **Hasib Torić** was on the same side as the Accused Karajić. Therefore, he had the status of a protected person.

161. **Jusuf Dizdarević** - According to the testimony of the daughter-in-law of Jusuf Dizdarević, he supported the idea of Autonomy. He returned to Podzvzd, but not to his family house because his daughter, who had supported the 5th Corps, lived there. He came to his daughter-in-law and did not allow her to tell his daughter that he had returned. The foregoing indicates that Jusuf Dizdarević was a sympathizer of the Autonomy, that he supported it and that he was not on the same side as the Accused Karajić.

162. Therefore, it follows from the foregoing that the Prosecution, which bears the burden of proof, did not prove beyond reasonable doubt that the persons-victims referenced in Count 3 (subparagraphs a, b, e, g, i) and the person referenced in Count 10 were persons protected pursuant to the IV Geneva Convention.

163. However, based on the adduced evidence, the Panel submits that Prosecution proved that the persons referenced in Counts 3 (subparagraphs c, d, f, h), 7, 8 and 9 have the status of protected persons. The facts of the case point quite clearly to a violation of the mentioned Articles. This was sufficient for the Panel to establish the existence of this essential element of the criminal offense described in Article 173 of the CC of BiH for the Counts concerned.

IX. FINDINGS ON THE STATUS OF PRISONERS OF WAR

164. It was necessary regarding the persons indicated under Counts 1, 2, 4, 5 and 6 of the Indictment to establish whether they were persons protected pursuant to the Geneva Convention, that is, whether they were prisoners of war.

165. The Panel recalls where the crimes are punishable under Article 175 based upon Common Article 3, the victims of the alleged violation of the rules of international law must have taken no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause. For purposes of this case, under Article 175 prisoners of war are defined as members of armed forces who placed *hors de combat* by sickness, wounds, detention, or any other cause.

166. If Prosecution alleged that the Accused violated an article of the Third Geneva Convention other than Common Article 3, the definition provided in Article 4 of the Third Geneva Convention would apply.

167. It clearly follows from the Prosecution evidence adduced at the main trial that Amir Karajić aka Kolač, Mujo Pehlić, Rasim Dizdarević, Fikret Hušidić and Hajrudin Pilipović, the protected witnesses L, J, K, F, Džumur Ogršević and Sabahudin Kajtezović were members of the army of the National Defense of the Autonomous Province West Bosnia.

168. The foregoing status of **Amir Karajić aka Kolač** follows from the testimony of witness Mirsad Gračanin, who was also captured in his capacity of a member of the ND together with Kolač, witness Zijad Nanić-Assistant for Security in Bužim within the TD District Staff, the documentary evidence submitted by the Prosecution concerning this person's status, particularly Exhibit T-29, Record on the on-sight investigation of the District Military Court Bihać of 5 August 1994 in which it was noted that Amir Karajić was a member of the ND.

169. The status of **Rasim Dizdarević** follows from the testimony of the Defense witnesses Esad Čović, Sulejman Osmanagić (Assistant Commander for Moral in the ND, the 1st Brigade, who kept records of the killed soldiers and soldiers of the ND APWB unaccounted for), and the protected witness N who pointed to his membership in the ND.

170. In addition to the testimony of these witnesses, the status of protected persons for **Amir Karajić aka Kolač, Mujo Pehlić, Rasim Dizdarević, Fikret Hušidić and Hajrudin Pilipović** also ensues from the Certificate of the Association of Families of Killed Members of the National Defense of the Autonomous Province of West Bosnia – Velika Kladuša issued to the names of the

persons at issue and submitted in the case record as the Prosecution evidence numbers T-143, T-146, T-162.

171. Witnesses L, J, K, F testified directly before the Court. They confirmed their membership in the ND army. They also confirmed in their testimony that Đumhur Ogršević and Sabahudin Kajtezović were their fellow soldiers in the ND.

X. FACTUAL FINDINGS

A. INTRODUCTION

172. According to the Court, by evaluation of the adduced evidence individually and collectively, the Prosecution proved beyond reasonable doubt that firstly as a member of the 506th Brigade and thereupon as a Commander of the 2nd Platoon of the Military Police of the 505th Chivalrous Motorized Brigade of the 5th Corps of the Army of Bosnia and Herzegovina, during the armed conflict between the Army of BiH and members of the Autonomous Province of West Bosnia that occurred at the time of the establishment of the 1st Autonomy during the period from 27 September 1993 to 21 August 1994 and during the existence of the 2nd Autonomy from 16 November 1994 to August 1995, the Accused committed the criminal legal actions described in detail in Counts 1, 2, 3 (c, d, f, h), 5, 6, 7, 8 and 9.

173. During the entire evidentiary proceedings, the Court evaluated the existence of the essential elements of the referenced criminal offenses, while the burden of proving was on the Prosecution.

174. The criminal offenses charged against the Accused are War Crimes against Prisoners of War in violation of Article 175(1)(a) and (b) and the War Crimes against Civilians in violation of Article 173 (1)(c) and (e).

175. The Court undoubtedly established and finds established the fact that at the relevant time an armed conflict existed in the wider area of North-West Bosnia. This ensues from the submitted documentary evidence (the Proclamation by Fikret Abdić, combat reports of the ND and the 5th Corps of the Army of BiH). Its existence was not contested by the Defense for the Accused Suljo Karajić either.

176. The Accused Suljo Karajić admitted the acts of commission as presented in Counts 1, 7 and 10 of the Indictment.

177. The Court indisputably established that on 4 August 1994 the Accused Suljo Karajić killed a member of the ND, Amir Karajić aka Kolač. The Accused admitted this. Furthermore, with regard to the underlying act referenced in Count 2, the Panel gave credence to the witnesses E, G and Namir Makić who were not eye-witnesses to the killing of Mujo Pehlić. However, the testimony of these witnesses is consistent with regard to the fact that Suljo Karajić took Mujo Pehlić outdoors from the prison. This was also confirmed by the Official Note made by Namir Makić and the

combat report made by Agić Malić, in which it was stated that Mujo Pehlić was killed by a volunteer from the 506th Brigade, Suljo Karajić.

178. The Court further found that the underlying acts referenced in Count 3 c), d), f) and h), 5, 6 and 9 occurred in the manner described in the factual part of the Indictment. According to the Panel, the Prosecution proved beyond reasonable doubt that the underlying acts were committed by the Accused in the manner as described in the Indictment.

179. After analyzing the testimony of the witnesses who testified about the circumstances referenced in Count 8 of the Indictment, the Panel established that the Prosecution proved that the Accused had abused civilian Hasib Torić aka Zilkin, but that it did not prove beyond reasonable doubt that the Accused had actually killed him. Accordingly, the factual description of this Count was amended.

180. After analyzing the testimony of the witness D, the Panel found that the incident occurred in the manner described in the Indictment. However, the Panel specified the factual description of this Count in accordance with the testimony of Witness D.

181. The Panel concluded that these elements were proved beyond reasonable doubt.

B. SPECIFIC CRIMES

1. Murder

182. The Court of BiH has previously identified the elements of the crime of murder::

1. the deprivation of life; and
2. the direct intention to deprive of life, as the perpetrator was aware of this act and wanted to act to be perpetrated.²⁸

(a) Count 1 (The killing of a war prisoner, member of the ND APWB Amir Karajić aka Kolač)

183. Count 1 concerns the killing of a captured member of the National Defense of the Autonomous Province West Bosnia, Amir Karajić aka Kolač, on the premises of the *Radoč* Motel in Bužim. The Court reached the conclusion that the Accused committed the incriminating act primarily based on the admission of the Accused Suljo Karajić, the convincing and consistent testimony of Prosecution witnesses, witnesses Fikret Karajić, Zijad Nanić, Mirsad Gračanin, Semira Mašić Pašalić, Asija Karajić, Alaga Badić, Ismet Majtić, Hamdija Veladžić.

²⁸ See *Milorad Trbić*, X-KR-07/386 (Court of BiH), First Instance Verdict, 16 October 2009, para. 177.

184. First, the Accused Suljo Karajić testified before the Court that eight months after he had been wounded Amir Karajić aka Kolač called him via Motorola radio and described him the manner in which he was wounded. Because of this, the Accused was certain that he had wounded him. When he heard that he was detained in Bužim, he did not want to kill him but to see him humiliated and helpless. The Accused described that upon his arrival in front of his cell door, he called him by his nick name Kolač. He responded to him by asking “Where are you, monster?” Thereafter, Kolač appeared at the opening above the door, a window with bars. The Accused testified that he remembered nothing after this, neither how he lifted up the rifle that was hanging from his right shoulder, the rifle’s barrel, nor how he fired. He only remembered that all of a sudden a Military Police Commander, Isaković, appeared next to him and ordered him to hand the weapon over to him. The Court did not accept as a mitigating circumstance the reasons presented by the Accused in his testimony as a motive for the commission of the criminal offense. This part of the Accused’s testimony was not found to be credible. There is no doubt he was distressed but there is no corroboration for the conversation he relays. It is confirmed by no one else including Kolač’s cell mate.

185. It is indisputable that Amir Karajić aka Kolač was killed and the perpetrator was Suljo Karajić. The death certificate for Amir Karajić was signed and made by Dr. Semira Mešić Pašalić, Chief Physician (T-20), stating that the death was a result of the injuries caused by a fire weapon inflicted in the chest area due to which Amir Karajić died on 4 August 1994.

186. The witnesses consistently testified that the murder took place in August 1994, but only witnesses Fikret Karajić and Semira Mašić-Pašalić specified that it was 8 August.

187. The Court did not give credence to the testimony of Witness A. The Court found it non-objective and unreliable because for the most part, the testimony of this witness was not corroborated by other evidence. In fact it differed from the testimony of the other witnesses who were consistent with regard to the manner of the commission of the offense.

188. Witness Zijad Nanić (Assistant Commander for Security) confirmed in his testimony that the basement premises of the Radoč Motel, generally used as a warehouse, were used as a prison in the war. He also confirmed that following his order, members of the ND, Amir Karajić aka Kolač, Mirsad Gračanin and Husein Čirić were locked up on these premises. He was not present when the killing took place.

189. Witness Mirsad Gračanin confirmed that as a member of the National Defense he was in the prison in Radoč together with Amir Karajić aka Kolač and Hasan Čirić, also a member of the ND.

Witness Gračanin is the only eye-witness of the referenced incident. He confirmed in his testimony that Suljo Karajić aka Hodža, whom he had known from before, came by and called Kolač to see him, that he had a fixator on the right hand and a SAR rifle, and that after the conversation between Amir Karajić aka Kolač and Suljo Karajić aka Hodža that lasted for a minute, Suljo Karajić fired from the SAR rifle at Kolač's chest. This witness testified that Fiko Karajić (Fikret) was also present at the spot when Kolač was killed and that he quarreled with Suljo Karajić. The Panel notes this was denied by Fikret Karajić during the testimony before the Panel, who stated that he had never seen the prison in Bužim. The Panel did not give credence to the testimony of witness Fikret Karajić. This witness was contradictory and inconsistent in his testimony. The slain Amir Karajić aka Kolač was his cousin. Originally, the witness emphasized in his testimony that he went to save him when he heard that Kolač had been detained in the Bužim prison. Subsequently, he denied that he knew where the prison in Bužim was located at all, and that generally, on the day when he came to Bužim and saw people gathered in front of the prison, he learned that Kolač had been killed. The Panel finds the testimony of this witness to be unreliable.

190. The sketch of the crime scene where Amir Karajić was killed, number 246/94 of 4 August 1994 (T-24), made by the crime technician in the Military Police of the 5th Corps of the Army of BiH, Alaga Badić, who was at the crime scene on the critical day, was submitted as the Prosecution evidence. From the stated document and the direct testimony of Alaga Badić, witness Mirsad Gračanin and the Inspector in the Police Department Cazin, Ismet Majtić, the Court made minor adjustments to the factual description of this Count of the Indictment, which is a result of the conducted evidentiary proceedings. The Court established that after being called by the Accused, Amir Karajić aka Kolač did not climb up on a bed but on a bed made of pallets that were covered with blankets and functioned as a bed. It should be noted that the modification is not of such nature so as to put the Accused into a more difficult position (i.e. increasing the charges against him) on any grounds than the one already contained in the Indictment.

(b) Count 2 (The killing of a war prisoner Mujo Pehlić, member of the ND APWB)

191. The Court established that the Prosecution proved beyond reasonable doubt that the Accused Suljo Karajić had killed Mujo Pehlić by using a firing weapon. The Panel heard witnesses for the BiH Prosecution, Namir Makić, Witness E, Witness G and Sulejman Šahinović all who confirmed that the killing took place. Husein Čerimović, Meho Čerimović, Sulejman Pehlić, Mehmed Pehlić, Slada Šabić and the witnesses for the Defense, Fatmir Muratović, Hasib Sefić, Nuhanović Memaga, Ejub Keserović also testified with regard to the circumstances referenced in this Count.

192. Witnesses E, G and Namir Makić confirmed that Mujo Pehlić was killed during the winter period in December 1994.

193. Witness Namir Makić was a member of an intervention platoon of the Police Station, Bužim Department. They were located in Vrnograč in a house. Witness Namir Makić described in his testimony the day when the killing took place. Mujo Pehlić entered the premises of the Police Department Vrnograč, where he found a young man, whose name he did not know and who was a member of the Vrnograč Police Department. He spoke with this young police officer about his father's killing that had taken place a couple of days earlier. His conversation was interrupted by the arrival of three persons who requested to see a detainee who was a member of the ND (Mujo Pehlić). He noticed that these three persons and the detainee went out to a plateau in front of the Police Station. He could see them no more, but he heard their conversation. One person questioned the detainee about the unit whose member he was and where he was captured. The detainee responded, and the witness was not quite certain whether he called out a pigeon, swan or a seagull, but it was definitely some bird. After the conversation that lasted for 10 minutes, a short burst of fire was heard. Witness Makić Namir immediately ran out with this young police officer and went to his Police Station which was located across the street. An older police officer (witness E), who was on duty that night with this younger police officer (witness G), had sat there.

194. Witness Namir Makić in his written report indicated that the shooting was by the Accused. The Court did not accept in whole the testimony of Namir Makić that he wrote the Official Note following the instruction of authorized persons from the MUP. The Defense contested the lawfulness of the Official Note made by Namir Makić on 7 August 2000 regarding the killing of Mujo Pehlić on 6 December 1994 (Exhibit T-33). The Defense submitted that at the time when he made the Official Note, Namir Makić did not have the status of an official person, and that it could not be seen from it on what basis and upon whose requests it was made. The statement of Namir Makić of 14 August 2000 was submitted under number T-34. This statement was given seven days after the Official Note had been made. In this statement, he corrected his Official Note stating that he had only heard that the Accused was a perpetrator, whom he did not even know at the time of Pehlić's killing.

195. The Defense contested the lawfulness of Exhibit T-33, namely the Official Note made by witness Namir Makić. The Defense contests that while making the Official Note Namir Makić acted in the capacity of an official person, arguing that it cannot be seen from the Official Note on what ground and upon whose request it was made. The witness confirmed during his testimony that he did produce the referenced Official Note, that he signed it in the capacity of an official person

(Chief of the Security Sector), and that it was made pursuant to the obligations prescribed by the CPC of BiH, more specifically an obligation of any official person to report criminal offenses of which they have knowledge, through information provided to them or learned in some other manner, Article 213 of the CPC of BiH. For this reason, the Panel finds this objection of the Defense ill-founded.

196. According to this Panel, the original official note was written sincerely, while subsequently under pressure, witness Namir Makić tried to change the contents of his statement. The witness's averment that he erred in the decisive fact with regard to which he made the Official Note is without credence to this Panel. It is possible to make a mistake in pleading certain details, but not in stating the perpetrator of the offense especially while describing the circumstances related to the personality of the perpetrator of the criminal-legal act details of which only a person who was present on the crime scene could be aware and who knew them very well.

197. Witness Makić Namir, also said that the senior police officer (witness E) sent for Beša (Bešir Rizvić) who was a Commander of the Vrnograč Police Department. Thereafter, Beša spoke with those two police officers (witness E and G). The younger police officer (witness G) appeared frightened. The witness himself joined the conversation trying to explain that everything happened very fast and that no one could imagine what would happen.

198. Witness Makić Namir heard that Suljo Karajić had committed the murder. He learned the name of the killed person only in 2000 when two inspectors of the Crime Police of the Cantonal Ministry of Interior Bihac asked him to make an official note regarding the killing of Mujo Pehlić. He made the Official Note on 7 August 2000 and described in detail that Mujo Pehlić was killed by Suljo Karajić. He also stated the circumstances indicating that he knew the person about whom he wrote "I then told Beša that Karajić was with colleagues, probably in the 'Galeb' coffee shop where he used to go frequently". However, in the direct examination, the witness explicitly stated that he had not known the Accused Karajić and that he had only heard about him.

199. Although there were no witnesses to the murder referenced in this Count of the Indictment, the consistent testimony of the witnesses that create an overall image of the incident led this Panel to consider established the allegations referenced in this Count of the Indictment.

200. The protected witness G supplemented the testimony of the foregoing witness and removed the Panel's dilemmas regarding the fact of whether Suljo Karajić was a perpetrator of the criminal offense at issue. He repeated in his testimony that he took over the safe-guarding of the Police building together with the witness E and that the police officer from whom they had taken over the

duty told them that Mujo Pehlić was in custody and that Suljo had brought him. The witness G testified that Suljo Karajić generally used to apprehend and bring people to the prison and that Bešir told him that they as the Police had no authority whatsoever over him. He further testified that the witness E was with him, but when Karajić entered the prison to see Pehlić, witness E went away in an unknown direction. Witness G confirmed that his father had died on 16 November 1994. However, he contested the averment of witness Namir Makić that he was with him in the duty officer room. When the murder took place, witness G went to see witness E who was in the adjacent building and told him about the murder of Mujo Pehlić in the following manner: “I said that Suljo had killed Mujo.”

201. The Court gave credence to witness G because he described in a convincing manner how the incident at issue had happened. What made the difference between his testimony and the testimony of the witness Namir Makić is that he contested Makić’s presence. However, he did not explicitly state that he was not present but that he could not remember. The information related to the witness G’s private life, that his father died on 16 November 1994, points to the fact that the witness Makić was present, but that due to a shock the witness G could not remember it, bearing in mind the fact that they were only acquaintances, and not friends, and that they saw each other no more after this incident.

202. The reaction of witness G was spontaneous and sincere.

203. Witness E confirmed that the detained person was Mujo Pehlić, a member of the ND, that around 8 o’clock on the critical day Suljo Karajić came there, took Pehlić out of the prison, and told the witness E to leave. Witness E went to the building located on the opposite side of the street, while witness G stayed at the entrance door, in front of the station. He stayed with other detainees in the building across the way and watched TV. At one moment the witness G burst inside and said “Suljo killed a man”. He first said so, while the second time around he said that Suljo killed Mujo Pehlić. Both the witness E and the witness G are consistent with regard to the fact that even if Bešir Rizvić, as the Police Commander, had been present there he could not have prevented Suljo from taking Pehlić outside. This is because Suljo and the other two were members of the Military Police and were entitled to take persons out of the building. They are also consistent regarding the fact that Bešir Rizvić made the Official Note about the incident at issue. This Official Note was submitted to the case record under number T-176. It was stated in it that on 6 December 1994, at 19:45 hours, Sulejman Karajić, armed with an automatic rifle and in concert with two other persons in uniforms, after a shorter conversation with Mujo Pehlić, took him out of the building and killed him by firing three bullets from the automatic rifle in front of the entrance to the Police Station.

204. Upon a review of the contested Exhibit T-176, it is obvious that it is a copy of the document to which the Defense objected. However, no modification can be observed on the copy or any redaction that could indicate that the document is not a copy of the original document. Also, witnesses E and G confirmed that on the critical day Bešir Rizvić made an Official Note concerning the murder of Mujo Pehlić. The Prosecution has made an effort in order to obtain the original document (Official Note). In that regard, the Prosecution submitted Exhibits T-178 – T-181 because of which the Panel notes that the referenced objection is ill-founded.

205. The referenced documents (T-178/T-181) serve to indirectly prove the status of the document T-176. Although they do not refer directly to the time period addressed in the Indictment, it does not *per se* mean that they are not relevant for understanding this case in its entirety. Therefore, the Panel refused the objection as to the procedural irrelevance as ill-founded

206. Meho Čerimović is a member of the ND who was also detained with Mujo Pehlić, but the witness E took him to the adjacent building to watch TV with other detainees. Thus he was present when the Witness G entered and said “A *Labud* has been killed”. Witnesses Sulejman Pehlić (son of his father’s brother), Pehlić Mehmed (brother of Mujo Pehlić) and Slada Šabić (the wife of Mujo Pehlić) confirmed that Mujo Pehlić was a Commander of a squad (*Labudovi-Swans*) in the ND, and that they indirectly learned that Pehlić was killed by Suljo Karajić aka Hodža.

207. The Court did not give credence to the Defense witnesses Fatmir Muratović, Hasib Sefić, Memaga Nuhanović and Ejub Keserović. They testified that they heard that Mujo Pehlić had been killed by Šerif Veladžić (Safo’s Šera). However, the assertions of these witnesses were not supported by the statements of other witnesses, that is, other documentary evidence. The foregoing witnesses based their information on what they had heard from others, but without specifying the persons from whom they heard it.

208. The Prosecution submitted to the case record as evidence an excerpt from the Register of Deaths for Mujo Pehlić number 04/2-13-1-620/2007 of 1 October 2007 (T-145).

209. At the critical period, witness Malić Agić was a Chief of the Counter-Intelligence Service Department whose task was counter-intelligence protection of the Command and units of the 5th Corps. The witness testified that he made reports from the field in writing, signed them and referred to an operator (signaler) to type it and send it via radio communication, the “packet communication”, as there was no possibility to send the original.

210. The Daily Report by the Chief of the Counter-Intelligence Service Department of the 5th Corps, Major Malić Agić, delivered to the Chief of the Military Security Organ of the 5th Corps Command of 7 December 1994, was submitted as the Prosecution Exhibit 39. The Report stated that on 4 December 1994 Mujo Pehlić was arrested during a search of terrain. As a member of the ND forces, he was hiding in his parents' house after making an incursion into the free territory of the district. It was also stated therein that on 6 December 1994, around 19:50 hours, Suljo Karajić aka Hodža from Trnovo, "a volunteer in the 506th Brigade", killed Mujo Pehlić. The killing was committed in front of the Police Station building in Vrnograč in the presence of a police officer on duty. It follows from the report that the arrest of Mujo Pehlić was part of the operation of locating infiltrated groups of ND members in the territory controlled by the 5th Corps.

211. During the direct examination, witness Malić Agić could not confirm that he had made the reports, but he also could not confirm whether the report had been made by an operations officer pursuant to his instructions. However, he explicitly testified that the referenced report could not have been made without his knowledge because the subordinates were very reliable men.

212. When he testified before the Court, this witness also indicated Suljo Karajić as a person of security interest and confirmed that giving such evaluations falls within his scope of responsibility.

213. The witness stated on a number of occasions that he could not confirm this because it was a very sensitive matter, but also that he cannot rule it out, although the referenced report departs from the focus of his interest.

214. The Court evaluated the testimony of witness Malić Agić before the Court and the referenced document which drafting the witness denied throughout his testimony. The Panel established that the Defense objections to the authenticity and lawfulness regarding this document are ill-founded.

215. It is clear from the referenced report that it was sent to the 5th Corps Command because it is indicated on the reception seal that it was received on 7 December 1994. The 5th Corps Command did not bring into question the information from the dispatch note sent by the Chief Security Officer. The Defense objection concerned the lawfulness and authenticity of the document because the dispatch note was not signed, and because there were certain things in the contents that he would not write in such a manner. A combat report is made in the form of a dispatch, and it is generally not signed. It can be easily seen from the dispatch note who sent it, and who received it.

216. The Court established that sufficient evidence and circumstances existed indicating that witness Malić Agić drafted the referenced document and that he was aware of the actions of Suljo Karajić committed in the critical period.

217. Witness Sulejman Šahinović, for whom Namir Makić also confirmed that they had been together in the intervention squad unit, testified that he participated in the action that was organized by Malić Agić in which Mujo Pehlić was arrested. He also testified that Malić Agić divided them into groups for search. On that morning, Malić Agić was in the Galeb coffee shop. He explained how the search would be carried out. The goal of the search was to find the ND members infiltrated into the free territory. The report signed by Malić Agić was forwarded to the 5th Corps.

(c) Count 5 (murder of prisoners of war Hajrudin Pilipović and Fikret Hušidić)

218. Based on the evidence given by the surviving witnesses, eye-witnesses F, L, J, the Panel found as proven beyond reasonable doubt that the Accused Suljo Karajić on 25 December 1994, at Latića Glavica, captured the members of the National Defense - L, J, K, F, Fikret Hušidić, Hajrudin Pilipović and Džumhur Ogršević, took them to the settlement of Todorovska Slapnica where he lined them up and fired shots at Pilipović and Hušidić in their stomachs, whereupon another soldier fired a bullet into each man's head; he took the remaining captured members of the National Defense F, L, J to the catering facility "Stop", in the place of Hajrat, leaving the bodies of those killed on the ground.

219. The witnesses are consistent in their testimonies about the identity of the person who captured them, noting that he was a tall, skinny man with some beard and a fixator on his left arm. This matches the consistent testimony of the other witnesses who saw him during this time.

220. In his evidence Witness J said that their group surrendered to three armed soldiers at Latića Glavica, who subsequently took them to Suljo Hodža. He provided the same description as others about the appearance of Suljo Karajić, a.k.a. Hodža. Suljo then sent the seven of them to Todorovska Slapnica, escorted by four men. This witness was an eye-witness to the murder of Hušidić and Pilipović, and he noted that he was sure that Suljo shot Hušidić and that Meho, who had a helmet on his head, shot Pilipović, and that subsequently somebody else shot him in the head.

221. Huso Pajzetović said that he was a member of the First Brigade of the National Defense, and that witnesses P, I, K, L, H, F, Hušidić, Pilipović, Ogršević were members of the same brigade. They split into two groups at Latića Glavica. The first group was captured by Gumeni, whereas Pajzetović, H and I were the first to be taken to the coffee-bar "Stop".

222. In his evidence, **witness F** noted that he was in the group which stopped when two soldiers in camouflage uniforms came by; one of them had a white cover over his camouflage uniform. He was tall, black-haired and wore a fixator on his left arm; he carried a pump-action shotgun in his right hand. He saw the fixator as the uniform was a bit torn up on that side, so the fixator was sticking out. The person in the white uniform with the fixator on his arm ordered them to set off in a column towards Todorovska Slapnica, and some 700-800 meters away, near the house of Abdul Aziz Latić, they were ordered to stop.

223. There were seven of them in total, and they emptied their pockets on a flatten tent. Furthermore, witness F gave an elaborate description as to how the murder of Fikret Hušidić occurred. At the time he did not know the name of the man with the fixator, (Witness F would learn later from Huso Pajzetović that it was Suljo Karajić a.k.a. Hodža, upon arriving in the coffee-shop Stop, and even before while Hušidić was dying); he asked Hušidić why he went to Batinoga, and he responded that it was because his wife stayed there with one or two children, whereupon the soldier with the fixator cursed his wife and children, took the pump-action shotgun in his right hand, and put a round in the barrel pointing it at Fikret Hušidić and firing a round into his stomach, following which Hušidić fell on the ground; he was still aware and managed to raise his head a bit to utter: “Suljo, don’t”.

224. This is when Witness F heard of the name of Suljo for the first time. Thereafter, the other guy in a camouflage uniform approached and fired a shot or two into Hušidić’s head. Further, he described the killing of Hajrudin Pilipović, who was the second in the line when the person in a white uniform approached him cursing his mother and told Hajrudin that he had some beard and that he was a Chetnik.

225. He also took the pump-action shotgun in his right hand; he placed it on the stomach firing a shot at Pilipović. When Pilipović fell, he was still alive when the other soldier in a camouflage uniform approached him and shot him in the head from the automatic rifle.

226. Thereafter, a military police van of the 5th Corps came by and an officer with some rank on him got off, they entered the van with two or three soldiers and went to the coffee-shop Stop where they found the members of the National Defense from whom they separated at Latića Glavica (Pajzetović, H, I).

227. Witnesses **L and J** were in the group with witness F and they were also eye-witnesses to the killing of Pilipović and Hušidić. In their evidence given before the Court, witnesses L and J also confirmed that they were captured and that somebody in the group identified Suljo Karajić as he

was wearing a fixator on his left arm, that they laid down the weapons, that he took them further in the direction of Todorovska Slapnica only to stop them again at some point when they emptied their pockets; he repeatedly asked Fikret Hušidić “Where did you go“, but the man kept pulling back saying that he went with his wife and children, and implored Suljo not to shoot, but then Suljo killed him. Witness L believes that Suljo had a pump-action shotgun.

228. Witness L corroborated much of this testimony although he noted that he was not sure who killed Pilipović, since his head was bowed and he was very afraid expecting Suljo to kill them all. He only heard the shot and the fall of Pilipović who still rattled, and then he heard voices and conversation “Why him“, “Because he had un ugly face“, and later one said to the other “finish him off“, but the witness could not state which voice belonged to Suljo nor whether it was his voice at all, because he had not known him before. At the end of the direct examination when the Prosecutor presented to Witness L a statement he gave during the investigation in which he noted that at the time when Pilipović was killed he recognized one voice as Suljo Hodža's, but did not recognize the other one, Witness L confirmed that he was sure that one voice belonged to Suljo, but he does not know which one. Thereafter, they were ordered into the van which took them to the coffee-bar Stop in Hajrat.

229. In his statement Witness J also confirmed that there were seven of them; that two persons arrested them and took them to the person wearing a white coat and a fixator on his arm, that this person lined them up and shot Hušidić. He knows that Hajrudin Pilipović was also killed, and that he was killed by the person who had a helmet on his head, and who was called Meho.

230. The Court gave credence to witness F who described the incident in the way as described in the Indictment. There are some discrepancies in statements of witnesses F, L, J who were eye-witnesses, however those discrepancies are insignificant and irrelevant, and pertain only to the apprehension and murder of two members of the National Defense, and therefore the Court gave full credence to Witness F, who was in close vicinity of the murder site, and whose testimony almost completely fits into the statements of other eye-witnesses.

231. The Court took into account the fact that this incident happened 14 years ago, that all eye-witnesses were terrified, that they feared for their lives, so the statement of Witness L is fully understandable when indicating “I did not see who shot at Pilipović, I watched out of the corner of my eye, my head was bowed, and I did not dare raise it, I thought that all of us would be executed“.

232. Witness L did not know Suljo, but his identity is corroborated based on other witnesses' statements and descriptions.

233. Having analyzed the statements of witnesses F, L, J, Huso Pajezetović in their entirety and in their correlation, the Court found that the witnesses gave consistent statements about the person in a white coat with the fixator on his left arm and a pump-action shotgun in his right hand, that he was a skinny tall man with some beard, whom Hušidić addressed as Suljo, and about the identity of the person who physically maltreated the captured prisoners belonging to the National Defense at Latića Glavica.

234. Witnesses are in agreement that Suljo was the one who shot at Hušidić, while Witness J is certain that Suljo shot at Hušidić, but he indicated that Pilipović was killed by another person with a helmet on his head whose name was Meho. However, witness F was explicit that Suljo did it, while Witness L did not see that because his head was bowed.

235. However, the Court started from the fact that Witness F gave an elaborate description of the incident, while witness L did not say that Suljo had not done it; he knows that he took part in the conversation, but he does not know if he did that or not, while witness J explicitly claims that Meho killed Pilipović.

236. This count of the Indictment charges Suljo Karajić that he shot Hušidić and Pilipović in the stomach from a pump-action rifle, noting at the same time that one of the soldiers in his escort fired bullets into the heads of the wounded captives of the National Defense. Therefore, the statement of witness J that Meho killed Pilipović does not exclude a possibility that Karajić had shot at him before that.

237. The Court accepted the statements of witnesses F and L, while the discrepancy in the statement of witness J regarding the identity of the person who shot at Pilipović was put down to a high degree of fear, because all captives expected to be executed, so bearing in mind that all of them had their heads bowed, only those standing in the rows close to the persons who were killed (such as witness F who was standing right next to them) could be sure of what they saw, particularly considering that another person, not Suljo, was the one who shot the wounded Hušidić and Pilipović in the head.

2. Cruel treatment/ Inhumane treatment

238. The ICTY Appeals Chamber has defined the elements of cruel treatment as a violation of the laws or customs of war, in relation to Common Article 3 (1) (a) of the Geneva Conventions as:

(i) an intentional act or omission ... which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;

(ii) committed against a person taking no active part in hostilities.²⁹

(a) Count 3 c) (Physically abused Derviš Ponjević, the witness B and Bećir Džebić)

239. Regarding the incriminating acts referred to in Count 3 of the Indictment, before addressing the disputable fact of whether the Accused committed the incriminating acts referenced in this Count of the Indictment, in the manner as presented in the Indictment, the Court established whether the Accused Suljo Karajić was present in Todorovska Slapnica at the critical time which the Defense contested during the proceedings.

240. The Court finds that the Prosecution proved beyond reasonable doubt that the Accused Suljo Karajić was in the territory of Todorovska Slapnica in December 1994.

241. Based on the objective testimony of the witnesses B, Mirsad Čuturić, Mahmut Abdić and Adil Džebić the Court established that Suljo Karajić had beaten Derviš Ponjević, the witness B and Bećir Džebić in the primary school in Todorovska Slapnica because he assumed that they had supported the idea of the Autonomy of West Bosnia.

242. Witness B confirmed that on the same day, together with him, the Accused Suljo Karajić brought Derviš Ponjević to the school where Bećir Džebić had already been brought. He also described the manner in which the Accused Karajić had beaten him, stating that “he kicked me with military boots on his legs, hitting my head against the wall“. The Accused Karajić forced Derviš Ponjević to take off a thick sweater and a coat and then beat him with a rifle butt and the rifle barrel all over his head and he beat Bećir Džebić only on his head. Witness Mirsad Čuturić and Witness C confirmed that they saw “the man with a fixator” and the others beating Bećir Džebić. Witness C described in detail the manner in which Džebić was beaten, namely that he was forced to lay down on a table and that he was thereupon beaten by a stick on his back. Witness Mirsad Čuturić specified in his testimony the manner in which the Accused Karajić questioned Bećir Džebić. He

²⁹ *Prosecutor v. Zejnir Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo*, IT-96-21-A, Judgment, 20 February 2001, para. 424 (“*Delalić Appeal Judgment*” – also known as the “*Čelibići Appeal Judgment*”).

testified that Suljo had told him to lay down on the table and that he would break his spine. Đebić then said: “Stop, brothers, I will confess.” He was thereupon taken away to find weapons. Witness Mahmut Abdić testified that Suljo had beaten Bećir Đebić so heavily that his skin fell off. Adil Džebić is son of Bećir Đebić who testified that his father told him that Suljo Hodža had beaten him and that two years after this he had a stroke and died. The Prosecution tendered as evidence (T-160) an excerpt from the Register of Deaths for Bećir Džebić, 04/2-13-1-2820/02 of 30 November 2002. It was noted in the excerpt that he died on 28 November 2002, seven years after the incident in Todorovska Slapnica. In the Finding and Opinion of Dr. Hamza Žujo (T-107), it was concluded based on the reviewed medical documentation that Bećir Džebić had a cerebral hemorrhage. From the Prosecution evidence number (T-159), an excerpt from the Register of Deaths for Derviš Ponjević, issued under number 02/2/13-1-4638/2007 of 11 October 2007, the indicated date of death of Derviš Ponjević was 2 March 1995.

(b) Count 3 d) (Ordered Mahmut Abdić, Bećir Džebić and Hasan Mahmutović to get out naked while Husein Džaferović poured cold water on them)

243. Based on the testimony of survivors Mahmut Abdić and Hasan Mahmutović, the Court found that Prosecution proved beyond reasonable doubt that the Accused Suljo Karajić ordered Mahmut Abdić, Bećir Džebić and Hasan Mahmutović to strip naked, go out in the snow and stand there for two hours. He ordered Husein Džaferović aka Zvizda to pour water on them.

244. In the testimony given directly before the Court, both witness Mahmut Abdić and witness Husein Mahmutović described the referenced incident in detail. The inconsistency in the testimony of these witnesses appeared with regard to the fact of whether they poured water over each other or Husein Džaferović poured water on them. Witness Husein Mahmutović testified that Suljo firstly ordered them to undress. While taking off his underwear, the witness commented that it was worse than being killed. Then Karajić kicked him in his temple with his legs wearing boots and then forced them out. Džaferović poured each of them with a can containing 1,5 liter of water. They stayed outside for two and a half hours, while Mašo (Mahmut Abdić) spent 2 hours outside. Mahmut Abdić testified that they poured water over each other. In his statement given before the Prosecutor’s Office in Bihać, he stated that Džaferović poured water over them while in the direct testimony before the Court he stated that they poured water on each other. In addition to the testimony of the direct victims of Suljo Karajić’s mistreatment, the eye-witnesses to the referenced incident, Witness C and Mirsad Čturić, also testified directly before the Court. Both witnesses saw naked persons in front of the school in Todorovska Slapnica. Witness C recognized Abdić and

Džebić, while he was not sure about the third person, whether it was Hasan Mahmutović or Mirsad Čturić. Witness Mirsad Čturić testified that he saw naked persons and Džebić who had fallen in the snow begging them to kill him and saying that he would forgive them for everything. Witness Čturić confirmed that Suljo Karajić ordered that the men be taken inside. When they entered they confirmed to the others that they had been outside in the snow for a long period of time. Witness C was not certain about the identity of the third person (Mahmutović or Čturić). However, witness Čturić himself confirmed that he saw naked persons who stood in the snow and that he was not among them.

(c) Count 3 f) (Ordered that Rasim Osmankić Derviš Ponjević, Šefik Abdić and Muhamed Džebić must not enter the school for two hours)

245. The Court found that it was proven beyond reasonable doubt that the Accused Suljo Karajić ordered the subordinated members of the Platoon not to let Osmankić, Ponjević, Šefik Abdić and Džebić to enter the school for two hours leaving them out in the freezing air. Prior to this, one of his subordinated soldiers, also ordered those persons to strip naked, go out in the snow and pour water over each other from cans.

246. Of all the persons mentioned in this Count of the Indictment only Rasim Osmankić is alive today. He therefore was the only one who testified with regard to the fact of their physical abuse in the primary school in Todorovska Slapnica.

247. In his testimony, Rasim Osmankić described the incident referenced in this Count of the Indictment stating that on 23 December 1994 he was called to the infirmary which was located in the school. Suljo Karajić and Šemsudin Durmić waited for him at the door. Upon their request, he handed over to them his papovka rifle with which he had been issued at the time of the 1st Autonomy. At the time, Šemsudin Durmić questioned Džebić, while Suljo Karajić hit him several times on his head. Thereafter, Šemsudin Durmić took him and Derviš Ponjević to the room where Šefik Abdić and Muhamed Džebić had already been detained. He ordered them to strip naked, go outside and pour each other with water. Suljo Karajić stood a bit further near a van. He ordered a guard not to let them go inside for at least two hours.

(d) Count 3 h) (Physically abused Mirsad Čturić)

248. The Court finds established the underlying act in this Count based on the testimony of the survived witness Mirsad Čturić. The Court evaluated the testimony of this witness in relation to the testimony of the other witnesses who testified about the cruel treatment in the Primary School in

Todorovska Slapnica. Mirsad Čuturić was a member of the ND. When he was captured by members of the Army of BiH, he was wounded in both legs and then sent to a hospital in Bihać. After he was released from the hospital he did not return to his home because his mother was a refugee in Croatia. Instead he went to his sister who lived in Todorovska Slapnica. He was severely wounded and he could not walk. Therefore he told nobody about his arrival.

249. The witness testified that on one evening, Suljo Karajić came to take him and his brother-in-law Derviš Ponjević. He recognized Suljo Karajić for he had a fixator on his left hand. He notes there were rumors among people that “a man with a fixator was beating people”. He had known Suljo from before the fighting. When he was a secondary school student, Suljo Karajić played football in the Krajišnik Football Club. The witness was also a member of this club. Čuturić testified that while they were in the house the Accused took turns beating him and Ponjević, that he even got so tired that he had to sit down to have a rest. He thinks that the Accused fell asleep for a moment while resting.

250. Witness Mirsad Čuturić further testified that the Accused Suljo Karajić entered the house and asked him: “Are you Čuturić?” He then cursed his mother and told him: “I killed Kolač, I killed Mujo Pehlić – you are the third”.

251. He requested him to hand his rifle over to him. Čuturić told him that he had handed it over to the 5th Corps and that he could go there and inquiry about this because he knew the rifle number. However, this request was only a pretext for Suljo’s arrival.

252. The witness described the period when he was in the school in Todorovska Slapnica in a clear, detailed and undoubted manner. He testified that Karajić used to beat him even back in the school days. Once he addressed him with the words: “Why are you so still?” and hit him strongly.

253. Then witness Čuturić described how they left the school in Todorovska Slapnica and were taken to the prison in Vrnograč. Šemsudin Kudić came to pick them up, witness Čuturić, Derviš and Bećir. When they left the building, Karajić and his driver waited for them in front of the building. His driver told them to sit in a Golf vehicle. They drove toward the Hajrat asphalt base with the lights turned off. Then Karajić turned and told them that he had killed Šefik Abdić when he tried to run away. Witness Čuturić responded to that: “Serves him right!” Thereafter they were transferred to another car. Suljo told them that they were going to the prison in Vrnograč until the investigation against them was completed.

254. His testimony, brought into connection with the testimony of other witnesses, makes a credible overall image of the events in the school during this period. The other witnesses mentioned by witness Čuturić in his testimony have since died.

(e) Count 6 (physical abuse of Sabahudin Kajtezović, Witness F)

255. That Suljo Karajić committed the criminal offences elaborated under Count 6 of the Indictment, that is, that during the period from 25 December 1994 until February 1995, after he physically abused the captured members of the National Defense : “L”, “J”, “K”, “F”, Džumhur Ogršević and Sabahudin Kajtezović in the catering facility Stop, in the place of Hajrat, in a manner that, together with the members of the 5th Corps of the Army of BiH, he punched and hit them with the rifle butt all over their bodies and ordered that Ogršević and “F” be executed which was prevented by the arrival of members of the 5th Corps, and subsequently in the Radoč Motel in Bužim, he abused Kajtezović Sabahudin, in the way that he hit Sabahudin with the rifle butt in the back and the head, ordered him to lean his back against the wall and to spread his legs apart and then he hit him in his sex organs until Sabahudin Kajtezović fainted, and he also ordered them, including “F”, to sprint and mount the horse drawn on the wall, follows from the evidence given by witness F, as well as the evidence by Husein Pajzetović and witnesses P and L, who were eye-witnesses to the incident.

256. Husein Pajzetović was in the first group that was separated at Latića Glavica, which was subsequently captured by Gumeni, and then the Platoon Commander Kolupčić was killed, whereupon they were taken to the place called Hajrat in the catering facility Stop, and it was only later that the military police brought witnesses F, L, K, J.

257. Witness H gave evidence about the ordered execution of witness F, confirming that Suljo Karajić threatened to execute Witness F the same way he executed the other two if he did not find the 53 light machine gun. Witness H indicated that Suljo Karajić slapped him in the face in the coffee-bar Stop.

258. Witness F noted that Suljo Karajić inquired about a light-machine gun M-53, which was issued to Ogršević, who had given it to witness F, but he could not carry it so he threw it in the snow. No members of the National Defense reported to have been issued with the light machine gun, and therefore he ordered one police officer to take Ogršević and witness F outside and execute them. This is when witness K came forward saying he knew where the light machine gun

was. K managed to find the light machine gun, whereupon they spent one additional hour in the coffee-bar Stop, wherefrom they were taken to Bužim's Radoč Motel.

259. The 505th Brigade Command was quartered in the Radoč Motel, where **witness F** spent a month and a half. Furthermore, witness F noted that he recalled that a man with a fixator kicked Sabahudin a.k.a. "Budo" with a military boot in the sex organ. According to the evidence of witness F, the man with a fixator came to the room on four or five other occasions, and every time he would beat the people who happened to be there. Furthermore, he described that there was a horse drawn on the wall below the premises where they were held, so he would force him to jump on that horse, which he tried and sustained severe injuries as a result. Witness F confirmed that he abused other members of the National Defense in the same way. Witness L confirmed that while they were in Stop Ogrješević was taken out for execution, and he also confirmed that Suljo would come by while they were in Bužim but he saw him only once on the occasion when he was beating Kajtezović Sabahudin, having taken him outside and leaned him against the wall, after which he kicked him with his right leg in the sex organ.

260. **Witness Husein Pajzetović** gave a detailed description as to how Suljo Karajić was beating Kajtezović. He described the incident as of the point when Suljo arrived in front of the cell, when one of the police officers in Bužim asked if anyone knew that man and everyone kept silent, and fortunately Kajtezović came forward confirming that he knew him. One police officer then said "This is Suljo Hodža, he is your neighbor, your townsman". At first they talked, and then Suljo started beating him, first he was punching him and then since he had the fixator, he ordered him to lean against the wall and kicked him with a military boot in the genitals.

261. Witness P confirmed that Suljo wanted to kill witness F in the Stop, because one soldier of the Army of BiH was killed with a 7.9 caliber (M 53-light machine gun), and since Witness F was the one issued with a M 53 light machine gun, Suljo wanted to kill him. He also described the way how Kajtezović was tortured, noting that Izet Nanić had ordered that they should be taken to prison in Bužim.

262. This witness also gave a detailed description of the manner in which Suljo maltreated Kajtezović, Čaušević and another person in Bužim, noting that he first separated them and then kicked them in the genitals with his boot on.

(f) Count 7 (physical abuse of Witness D)

263. This Panel holds that Prosecution proved beyond reasonable doubt that the Accused Suljo Karajić, in the village of Todorovo, having entered into the improvised clinic there, without any cause and reason slapped person “D”, and then he punched and hit her with a rubber baton in the head and arms, which caused her to sustain injuries in the form of lacerations and contusions in the back of her head and her right fist, while threatening her, and then he took her to the house of brother and sister where she was staying and together with two other soldiers searched the house, and having found no radio station, he hit witness D with the flat side of the knife he was holding in his hand, causing her to sustain bleeding injuries to the head.

264. The Court gave full credence to protected witness D, who gave a detailed description of the incident, and found that she had no reason not to tell the truth before the Court. Witness D noted that Suljo Karajić a.k.a. “Hodža“ arrived in the morning around 7:30 in the provisional infirmary in Todorovo looking for a female doctor, and as soon as she introduced herself he gave her a first slap and continued beating her with a baton in the head. He beat her in the top of her head for a while asking her to confess to something, but she still does not know what. After beating her for more than a half an hour, he took her to a neighboring room where people started gathering, she tried to protect herself with her arms but only sustained injuries in her upper arm. Thereafter he took her to the house of her brother and sister, where she was staying as well, which was located 300-400 meters from the infirmary. Upon arriving in the house, they entered and looked for something, they took the ladders to the loft when Suljo said “there is nothing there“ hitting her several times with the flat side of the knife, resulting in her head being covered with blood. There were two other soldiers with him, they carried weapons, but did not abuse her physically. When leaving, Suljo told her to stay at home and not to go anywhere. These two armed soldiers were in the attic when one of them said that there was no radio-station up there. As evidence, the Prosecution tendered documentary evidence, findings and medical records about the injuries of Witness D, under the numbers T-107, T-111, T-112.

265. The Accused Suljo Karajić and defense witness Meho Čaušević testified about these circumstances. The Accused Karajić Suljo confessed to have physically abused witness D in the infirmary in Todorovo, while witness Meho Čaušević confirmed that Karajić Suljo abused witness D, and that he was one of the soldiers in his escort, so he was an eye-witness to the incident.

266. There are discrepancies in the statements of witness D, the Accused Suljo Karajić and Meho Čaušević about the injuries sustained and instruments used to inflict the injuries. Suljo Karajić noted that after she repeated that she did not want to re-dress the soldiers as it was a civilian

infirmity, he took a broom handle and beat her with it, until Meho Čaušević prevented him, so that he immediately stopped. The wounded man remained for her to redress him. Witness Meho Čaušević confirmed the testimony of Suljo Karajić.

267. The discrepancies in witness statements also appear with respect to the manner of inflicting injuries upon witness D, the duration of cruel treatment, and the arrival in the house of witness D to search for a radio station.

268. The Court gave full credence to witness D, because she gave her evidence clearly including details, the Court had no reason to doubt its veracity and notes the Accused's testimony and that of his subordinate was not as credible.

269. The Court also made certain adjustments and small corrections that resulted from the state of facts as established by the Court. One should note however that these modifications are not such so as to put the Accused into a worse position than the one described under the Indictment.

270. The Court modified the factual description of Count 7, so that instead of thereafter he took her to the house where she was staying and told her to surrender to him a radio set saying that she was the one who was informing the authorities in the Autonomous Province of Western Bosnia about everything, and while doing so he was holding the edge of a knife against her neck and was hitting her with it in the head , the following is inserted

....he took her to the house of her brother and sister where she was staying, and then he, together with two other soldiers, searched the house, and since they found no radio set, he hit witness D several times with the blade of the knife, causing her to sustain bleeding injuries to her head.

(g) Count 8 (physical abuse of Hasib Torić a.k.a Zilkin)

271. This Panel made a small intervention with respect to the state of facts, because based on the evidentiary proceedings a different state of facts was established in comparison to the one presented in the Indictment. This Panel removed the names of subordinated members of military police "... Juso Bužimkić and Hančin Hasica..." from the state of facts of the Indictment, inserting instead the words "unknown soldiers", in the factual description. Furthermore, the Court removed the last line from the factual description of Count 8 "...he fired several shots at him causing instantaneous death of Hasib Torić a.k.a. 'Zilkin'..." and added the following "...after getting out of the stream, Hasib Torić was deprived of life under unknown circumstances...". None of the aforementioned interventions to the state of facts were made to the detriment of the Accused.

272. This Panel holds established and indisputable that on 27 December 1994, in the settlement of Donja Lučka, Suljo Karajić a.k.a Hodža took Hasib Torić a.k.a. Zilkin from the house, having kicked him with his right leg in the face, ordered that his hands be tied and took him to the settlement of Bare, then ordered him to fully undress, enter the stream and have a bath. This Panel also holds indisputable that Hasib Torić died, as the Prosecution presented documentary evidence about those circumstances, particularly Exhibits 85 through 92 with respect to the death and subsequent body exhumation. Under the ordinal number T-87 a Death Certificate issued in the name of Hasib Torić is enclosed, showing that the death occurred on 28 December 1994, and it was issued subsequently on 6 June 1997 by the Cazin Health Center, signed by Dr. Sead Sadiković.

273. Protected witness M and witness A testified about this. The Court gave full credence to witness M, however due to the aforementioned reasons in the previous counts the Court did not give credence to witness A.

274. Witness M indicated that on 27 December 1994, after 23:00 hours somebody started banging on the windows and door. Witness M lived with mother and father. When they started shouting and demanding the door be opened for the military police, her mother and she went to the upper floor where her father was. Then her mother went down and opened the door for Suljo who entered followed by another unknown person. Witness M had known Suljo from before; she knew him from Kladaša; whenever they would see him, everyone would say “There's Suljo Hodža“ - everyone was afraid. Suljo entered the house escorted by two other men. Suljo told her father to get dressed and to come along. He ordered him to get dressed in front of him /Suljo/, and the father said “You would kill me anyway, so kill me here“. Suljo kicked Hasib Torić twice in the left cheek causing the blood to cover him, and then Suljo ordered that his hands be tied; he allowed witness M to help him/her father/get dressed, and then they took him out. On the following day her mother reported the incident to the Local Community of Pećigrad. Three days later two children Nedžad and Bahrija arrived, they were sent by their mother to convey to Hasib Torić's wife that Suljo came with soldiers on the same night when they took Hasib, to pick her up and told her “Get ready to come with us, I will kill you the same way I killed Hasib”.

275. The Court evaluated the witness testimony as a whole, including the parts that were not directly linked to the establishing of the state of facts in this count of the Indictment, such as the part of the testimony related to the children who reported that Torić was killed and the part related to the private circumstances of a family. The witness provided details in her testimony, which according to this Panel's finding she had no reason to make up, and when she was not certain about some circumstances she openly spoke about it.

276. Witness M was an eye-witness to the incident, however further arguments in the indictment are exclusively based on the statement of witness A, whom this Panel did not give credence. As such there is no evidence as to the exact circumstances of his death. Without such evidence this aspect of the Count cannot be proven beyond a reasonable doubt.

(h) Count 9 (physical abuse of Jusuf Dizdarević)

277. This Panel finds established the allegations under this count of the Indictment based on the testimony of witnesses Bajro Rizvić and Ekrema Dizdarević (daughter-in-law). Other members of the deceased Jusuf Dizdarević's family (son and daughter) also testified about the circumstances under this count, as well as other witnesses who obtained the information about the incident indirectly.

278. This Panel finds established and indisputable that in late November or early December 1994, in the place of Podzvizd, Municipality of Velika Kladuša, he entered the house in which Jusuf Dizdarević stayed, he verbally assaulted him telling him to surrender weapons and a radio station, and when he answered that he did not possess any of those, he addressed him using the following words: "Jusuf, speak, we killed one of your kind yesterday in Bužim", he took him out of the house and in the garage owned by Ibro Ćerimović physically assaulted him by hitting him with a rifle, the so-called pump-action shotgun, in the head and then he took him to the prison in Bužim, where, after a certain period of time, Jusuf Dizdarević succumbed to the injuries. Based on the state of facts that the Panel established, this Panel made one correction to the state of facts in the Indictment, by replacing the word "killed" in the last sentence of the count with the words "succumbed to the injuries". Based on the presented evidence this Panel found that it was more appropriate to use the words "succumbed to the injuries" than "killed" when referring to the circumstances related to the death of Jusuf Dizdarević.

279. Witness Ekrema Dizdarević lived in the same household with Jusuf Dizdarević (father-in-law) and her mother.

280. She gave evidence about the arrival of Suljo Karajić and his taking her father-in-law from the house, while Bajro Rizvić testified about the physical abuse of Jusuf Dizdarević in the garage owned by Ibro Ćerimović.

281. In her testimony witness Ekrema Dizdarević said that her husband, her two sons, brother-in-law and daughter-in-law took refuge in Turanj because they were concerned about their safety. Her father-in-law was the first one to come back from exile but did not go to his own house because his

wife and daughter who supported the Army of BiH and 5th Corps, were there. According to the witness, he was a National Defense supporter. Eight days later, four soldiers arrived and ransacked the house; they found him but said nothing. Several days thereafter, a white car arrived and a man with a rifle and fixator got off from the co-driver's seat; her mother-in-law was watching through the window and recognized Suljo, and she herself also assumed that it was him; she heard a lot about him and later her neighbors also confirmed that it was Suljo Hodža. When he entered he was looking for Juso and asked him if he brought the radio station and weapons, and when Juso replied that he did not, Suljo said "We killed one of your kind yesterday". Soon thereafter their best man Ibro Ćerimović arrived and asked if they knew anything about Juso, informing them on that occasion that Suljo beat up Juso at the shop, that he urinated blood immediately thereafter and that he was taken to prison in Bužim.

282. Witness Bajro Rizvić was the Civilian Protection Chief, who indicated that Juso Dizdarević was the National Defense member whom he saw for the last time in Ibro Ćerimović's garage made of concrete blocks without doors, as Suljo Hodža was beating him in the head with a pump-action-shotgun, while his subordinated soldiers kicked him. He only passed by, and when the Prosecutor asked him why he did not try to help Juso Dizdarević and prevent Suljo from beating him, he said that he was afraid that he would fare the same as Juso, adding it was impossible to intervene with the words "I, a peasant, to beg such an officer, soldier."

283. Witnesses Fikret Dizdarević and Vesna Dervišević are a son and a daughter of the deceased Juso Dizdarević; they received indirect information about the incident based on what they heard and what they were told. Hence, Fikret Dizdarević only confirmed Bajro Rizvić's arguments, indicating that Bajro Rizvić conveyed the information that his father was beaten up by Karajić, while Vesna Dervišević, the daughter, testified before the Court about the search for her father's body and about the organization of exhumation.

284. Witness Zuhdija Ćerimović, who was detained in Bužim, together with Juso Dizdarević, stated that Juso died in his arms in Bužim as a result of physical abuse, but he does not know who was beating him in Bužim. This implied to the court that there were other physical injuries received by Juso. There was no autopsy or other medical evidence submitted to confirm that Juso died as a direct result of the injuries he sustained solely at the hands of the Accused. Nor was there any evidence to show the Accused had the *mens re* necessary for an intentional killing. If there was sufficient evidence as to the cause of death, the Accused might be held responsible for this death as well. Without it the conviction is for cruel treatment.

C. CONCLUSION

285. Finally, the Panel concluded that the actions of the Accused include all important elements of the criminal offence of War Crimes against Civilians, in violation of Article 173 paragraph 1 c) and e) of the CC of BiH and the criminal offence of War Crimes against Prisoners of War, in violation of Article 175 paragraph 1 a) and b).

286. When evaluating the evidence, the Court also took into account other evidence presented during the main trial. However, the Court did not give particular importance to those pieces of evidence, nor did the Court find necessary to conduct their comprehensive analysis, since they did not considerably affect the state of facts and conclusions the Court reached based on the evidence evaluated in the verdict.

287. It is clear from these findings that the Accused possessed the *mens re* necessary for both types of crime. These were direct actions meant to cause physical harm and mental suffering. For the crime of murder these were killings using lethal weapons for which their intent is clear.

XI. INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED

SULJO KARAJIĆ

288. It was stated in the Indictment that the Accused is responsible for the crimes charged against him pursuant to Article 180(1), in conjunction with Article 29 of the CC of BiH

289. Article 180(1) of the CC of BiH prescribes 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 171 (*Genocide*), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws and Practices of Warfare) of this Code, shall be personally responsible for the criminal offence.”

290. It is clear from the foregoing statutory definition that individual criminal responsibility exists for planning, instigation, ordering, perpetration or incitement to the commission of a criminal offence, or for aiding and abetting in the preparation or execution of a criminal offence.

291. **Committing** covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law.³⁰

292. **Ordering** entails a person in a position of authority using that position to convince another to commit an offence.³¹

293. **Instigating** means prompting another to commit an offence.

294. **Aiding and abetting** means rendering a substantial contribution to the commission of a crime.

295. The crimes of deprivation of lives of the war prisoners (Kolač, Mujo Pehlić, Fikret Hušidić and Hajrudin Pilipović referenced in Counts 1, 2., 5, 6, physical abuse of witnesses D, Hasib Torić, Jusuf Dizdarević, Witness F, Sabahudin Kajtezović, Džumur OGREŠEVIĆ represent only the **acts of commission of the Accused**.

296. Also, for the crimes of inhumane treatment and mental torture of the persons detained in the school in Todorovska Slapnica, he is directly responsible for his **acts of commission** (physical

³⁰ *Prosecutor v Radoslav Krstić*, IT-98-33-T, Judgment, 2 August 2001, (“*Krstić Trial Judgment*”) para.601.

abuse of Witness B, Bećir Džebić, Mahmut Abdić, Hasan Mahmutović, Mirsad Čturić), but he is also responsible as the person who **ordered** his subordinate members of the platoon to abuse civilians (3c) and (3f) Rasim Osmankić, Derviš Ponjević, Šefik Abdić and Muhamed Džebić and to (3d) pour water (Mahmut Abdić, Bećir Džebić and Husein Mahmutović).

297. Article 29 of the CC of BiH prescribes 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, each shall be punished as prescribed for the criminal offence.”

298. The Accused bears individual responsibility not only for the commission of the criminal offences including the physical perpetration, but also for ordering, inciting and aiding in the commission of these offences. This Panel finds that the Accused committed the referenced criminal offences with a direct intent. In actions involving his subordinates it is clear that at all times the Accused held an authoritative position over his men. Despite the term volunteer, it is clear that men followed him willingly. They did what he asked because of admiration, fear or liked mindedness. He actively influenced his men and in the case of the minor, Sucko, he looked after him and gave him guidance.

A. DEFENSE OF DIMINISHED CAPACITY

299. During the main trial the Defense questioned the accountability of the Accused Suljo Karajić at the time of the perpetration of the criminal offences to which he confessed in his testimony. With the view to proving this argument, the Accused Suljo Karajić was analyzed by Dr. Zaim Bilalbegović, neuropsychiatrist, who produced his Findings and Opinion in writing, which was tendered as defense’s Exhibit No. O-11. The aforementioned findings indicated that the Accused was in a state of an extremely increased heat of passion and reduced awareness at the time of the perpetration of the offence, i.e. the time when he shot at Amir Karajić, due to which, according to the expert's opinion, the ability to comprehend the offence and the ability to control his actions were considerably diminished.

300. This Panel gave credence to this expert witness in the part of his findings that was objective and that pertains to the wounding of Karajić and the pain he experienced, whereas the Court could not accept the remaining part of the expert’s findings and opinion in their entirety, primarily

³¹ *Krstić* Trial Judgment, para 601.

because they were made 15 years after the fact and because his opinion was based solely on the basis of the psychiatric interview, that is, the things that the Accused disclosed himself. The psychiatrist did not examine the entire record or the accounts of other witnesses to the event. At a minimum a psychiatric report should contain an awareness of all the offences charged and witnesses' statements should be examined. Most weight should be given to observations by others and not necessarily that of the Accused. In this instance the Panel did not give credence to the testimony of the Accused about the circumstances preceding the murder of "Kolač" based on an assessment of the evidence by other witnesses. It is this very testimony which the Panel found not to be credible that the expert based his opinion on.

301. Expert witness Bilalbegović noted that he did not know what was the condition of the examinee in the period from late 1994 until early 1995, but based on the interviews with the Accused's wife and fellow combatant Meho Čaušević, the expert concluded that the Accused was in a state of diminished awareness where his ability to comprehend his actions and control them was considerably reduced. There is not enough evidence to support this as a defense to his actions. However, the Panel notes that his physical state was such that it will be considered a mitigating factor in sentencing.

XII. ACQUITTAL

302. The Accused is acquitted of charges under Counts 3 (sub-counts a, b, e, g, i), 4 and 10 of the Indictment, because the Prosecution did not prove beyond reasonable doubt that the persons referred to in those counts enjoyed the status of protected persons under the Convention. Hence, one important element of the criminal offences is missing, and therefore the Panel rendered a decision to acquit the Accused of charges regarding the aforementioned criminal offence. The basis for this acquittal is without this element, these crimes are not considered war crimes. They are crimes committed in times of war but were and should have been prosecuted under the existing law and legal structure in place at the time. The statute of limitations for these offenses has now expired. For this reason the Panel will not make findings on the actual incidents themselves but just on the critical issue of status for each injured party.

303. Count 3a of the Indictment indicates that the Accused committed the criminal offence of torturing witnesses B and C, in the way that he ordered a subordinated member of his military police platoon to beat him with a baton saying: "Beat him and spare his face, he is going to the hangar", then he held the edge of a knife to the throat of his wife and told her to prepare a white bed sheet because her husband would not need anything else, and then he kicked person "C" in the back, pushed him down the stairs, took him out of the house and while on their way they met person "B" he ordered him to come along with them and with the rifle pointed at their back he took them to the aforementioned school. The Court found, as previously explained in the chapter *Status of Civilians* that the Prosecution did not prove beyond reasonable doubt that the injured parties B and C had the status of protected persons (civilians) according to the Geneva Convention. Therefore, taking into account that the existence one important element for the existence of the criminal offence of War Crimes against Civilians has not been proven, pursuant to Article 284 c) of the BiH of CPC, the Court acquitted the Accused Suljo Karajić of charges under this count of the Indictment, because the existence of the aforementioned element was prescribed as a special element of the criminal offence, which is included in the legal description of the offence.

304. Count 3 b - (physical abuse of Mahmut Abdić) - as in the previous Count of the Indictment, pursuant to Article 284 c) of the CPC of BiH the Court acquitted the Accused Suljo Karajić of the charges under this Count, because the Prosecution did not prove beyond reasonable doubt that the injured party Mahmut Abdić had the status of a protected person, which was envisaged as a special element of this criminal offence, which is included in the legal description of the offence.

305. Count 3 e - (physical abuse of Abid Džebić) - as in the previous Count of the Indictment pursuant to Article 284 c) of the CPC of BiH, the Court acquitted the Accused of the charges under

this count, because the Prosecution did not prove beyond reasonable doubt that the injured party Abid Džebić had the status of a protected person, which was envisaged as a special element of this criminal offence, that is, it was included in the legal description of the offence.

306. Count 3g – (physical abuse and murder of Šefik Abdić) - Count 3g of the Indictment indicated that the Accused committed the criminal offence of torture and killing of Šefik Abdić, after he disarmed and brought Šefik Abdić, a member of the 506th Brigade of the 5th Corps of the Army of BiH, from the front line to the aforementioned school, under suspicion that he was cooperating with the members of the National Defense of the Autonomous Province of Western Bosnia, together with his subordinated member of the military police platoon Osman a.k.a. “Šekinov” and member of the 505th Chivalrous Motorized Brigade Hamo Durmić a.k.a. “Pišta” he physically abused him by hitting him all over his body, and two or three days after that, together with Husein Džaferović a.k.a. “Zvizda”, commander of the Civil Defense in Todorovska Slapnica, and members of his subordinated military police platoon, Juso Bužimkić and Šemsudin Čaušević a.k.a. “Šucko”, he took him out of the aforementioned school and thereafter they together fired some fifteen shots at him, which resulted in the instantaneous death of Šefik Abdić. Witnesses A, B, C, Mahmut Abdić, Bajro Rizvić, Abid Džebić testified about the circumstances under this count. Based on the presented evidence it is indisputable that Šefik Abdić was killed, however in their evidence the aforementioned witnesses did not mention the Accused Suljo Karajić as the person who abused and killed Šefik Abdić.

307. Only witness A who claims that he was present at the site, claims that he saw the Accused Karajić, but he said he did not see who was shooting, because there were three of them, while the father of the killed Šefik, who testified before the Court, stated “Karajić, the Džaferović brothers and Šemsudin Durmić know who killed my son”.

308. Taking into account the evidence given by Witness A, to which this Panel did not give credence and whose testimony was largely different from the testimonies of other witnesses, because he added many things and was imprecise about decisive facts, and the lack of other evidence, the Court could not reliably and beyond reasonable doubt establish that the Accused committed the aforementioned actions, and thus pursuant to Article 284 c) of the CPC of BiH the Court acquitted the Accused of the charges under this count of the Indictment.

309. Count 3i - (physical abuse of Muhamed Džebić) - allegations that the Accused committed the criminal offence of physical abuse of Muhamed Džebić, that together with his subordinated members of the military police platoon Juso Bužimkić, Osman a.k.a. “Šekinov”, Šemsudin Durmić a.k.a. “Šucko” and member of the 505th Chivalrous Motorized Brigade, Hamo Durmić a.k.a.

“Pišta”, by beating him with rubber batons all over his body resulting in his being covered in blood and unable to walk, and as a consequence of the injuries he sustained Muhamed Džebić died in the school.

310. It is indisputable that Muhamed Džebić had the status of a protected person, that is, civilian, at the time when the incident occurred; it is also indisputable that Džebić succumbed to the injuries, however, according to this Panel the Prosecution failed to prove beyond reasonable doubt that the Accused Suljo Karajić committed the criminal offence in the way described in the Indictment. Witness A, witness B, Rasim Osmankić, witness C, Mirsad Čturić and Adil Džebić testified about these circumstances. The Court did not give credence to Witness A for the aforementioned reasons, while the other witnesses obtained the information about this incident indirectly, that is, they heard about the incident; witness Osmankić, witness C and Čturić confirmed that he was beaten up and that he was in a pretty bad condition, but they did not know who had beaten him.

311. Count 4 - it was not proven beyond reasonable doubt that the Accused Suljo Karajić committed the criminal offence under Count 4 of the Indictment; the Panel concluded that the Prosecution did not prove beyond reasonable doubt that the Accused committed the criminal offence under this Count. The protected witnesses A, N, O, R, Meho Čaušević, Sulejman Osmanagić testified about the circumstances under this count. None of these witnesses was an eye-witness; rather they are individuals who have indirect knowledge of this incident. Only witness A indicated that Suljo Karajić was the perpetrator of this offence under Count 4, but the Court did not give credence to this witness for the aforementioned reasons.

312. Count 10 - (physical abuse of Ejub Čehajić) - the Prosecution did not prove beyond reasonable doubt that the injured party Ejub Čehajić had the status of a protected person, that is, civilian, in accordance with the Geneva Convention. When giving evidence the Accused Karajić described his view of the incident under this count of the Indictment noting that he indeed had beaten Ejub Čehajić, but he did not do it with a wooden board or a rubber baton as indicated in the Indictment. Witnesses Ejub Čehajić and Hasica Suljanović testified about the circumstances under this count, and medical documentation related to the health condition of the Accused was tendered in the case record. Pursuant to Article 284 c) of the CPC of BiH he was acquitted of the charges under this count of the Indictment, because the status of a civilian was envisaged as a special element of the criminal offence, which is contained in the legal description of the offence.

313. Article 3 of the CPC of BiH provides for the presumption of innocence and *in dubio pro reo*. Pursuant to the above, the Court was obliged to render an acquittal in case when a doubt still exists. The Accused shall be acquitted not only in case when the innocence of the Accused has been

proven, but also when the culpability of the Accused has not been proven beyond reasonable doubt. This means that in case of any suspicion about the relevant facts, the presumption of innocence shall prevail and must be considered to the benefit of the Accused. The Court must establish facts with certainty and without any doubt as to their existence.

314. The burden of proof is on the Prosecution, and therefore they must prove the culpability beyond reasonable doubt. The Trial Panel interprets the “beyond reasonable doubt“ standard as a high level of probability; it does not imply the existence of certainty or that it was proved beyond any shadow of doubt.³² Again, in accordance with the *in dubio pro reo* principle, any possible lack of clarity or doubt is resolved to the benefit of the Accused.

³² *Prosecutor v. Halilović*, IT-01-48-T, Judgement, 16 November 2005, footnote 24.

XIII. SENTENCING

A. SENTENCING THAT IS NECESSARY AND COMMENSURATE WITH THE GRAVITY OF THE CRIMINAL OFFENSE

315. In terms of the criminal offence of War Crimes the Panel considered a sanction which is necessary and consistent with the cited legal aims, including the relevant legal elements. The killings and suffering which took place in the north western section of Bosnia and Herzegovina has been the focus of this trial for the last two years. The Panel recognizes that for victims no sentence will be commensurate with the gravity of these offences. The renegade nature of his actions instilled fear in many.

1. The sentence prescribed shall be necessary and commensurate with the level of the threat against persons and values protected (Article 2 of the CC of BiH)

316. In this regard, the Panel shall also be mindful of the legal elements pertaining to this specific purpose, that is, the sufferings of direct and indirect victims.³³ Here the suffering of the direct victims was heard by the survivors who came to court and testified. The indirect victim. Family and friends also told of their own fear, suffering and mental anguish.

2. Criminal sanction shall be commensurate with the extent of suffering, and be sufficient to deter others from similar criminal offenses in the future (Article 6 and 39 of the CC of BiH)

317. Deterrence is an important consideration as the crime is so great every tool available to the rule of law must and should be utilized to ensure these acts are never repeated. These acts must never be repeated again in potential future conflicts. In order to deter others a sentence must be effective to sufficiently convey the enormity of the offence. These crimes are the crimes of a soldier out of control who was not supervised or sanctioned by his superiors. While others have responsibility here it is important that these offenses are treated as the serious violations they represent so that others take note.

³³ Article 48 CC of BiH.

3. The criminal sanction shall reflect the community's condemnation of the conduct of the accused (Article 39 of the CC of BiH)

318. In the relevant case, the community. International law as well as the law of BiH describes the conduct of the Accused as criminal under national and international regulations. Both communities have clearly voiced their positions that crimes of this nature are to be condemned notwithstanding the affiliation of the perpetrator or the site of the commission, and that they must not go unpunished. The sanction must be of sufficient weight to ensure this crime is not condoned with impunity.

4. Criminal sanction shall be necessary and commensurate with the educational purposes of the Code, meaning that persons should be made aware of the danger of the crime as well as the justice inherent in punishing criminals (Article 39 of the CC of BiH)

319. Trials and sanctioning of these crimes must demonstrate zero tolerance for the crimes committed at the time of war, but also show that criminal procedure is an appropriate way to unmask the crimes and end the circle of personal retaliation. The Panel or its judgment cannot order or mandate reconciliation. However, a sanction that fully recognizes the gravity of the offence may contribute to reconciliation by offering a legal and non-violent response, and promote the commitment to serve justice instead of a drive for a personal or community retaliation. This particular offense affected not only the victims but an entire part of the country that was subjected to a conflict within a conflict. In this case the Court hopes the sentence illustrates that even the most severe crimes can be adjudicated fairly.

B. THE SENTENCE OR CRIMINAL SANCTION MUST BE NECESSARY AND COMMENSURATE WITH THE INDIVIDUAL PERPETRATOR

320. Fairness as a legal requirement shall also be taken into consideration in calculating a sanction,³⁴ aside from the specific circumstances of not only the criminal offence, but of its perpetrator as well. The Code foresees the two aims relevant for the person convicted of the criminal offence: (1) to deter the perpetrator from perpetrating criminal offences in the future;³⁵ and (2) rehabilitation³⁶. Rehabilitation is a purpose not only foreseen under the Criminal Code as one of the duties of the Court, but it is moreover the only purpose of sanctioning exclusively demanded by

³⁴ Article 39 CC of BiH.

³⁵ Article 6 and 39 CC of BiH.

³⁶ Article 6 CC of BiH.

international human rights law that the Panel is to adhere to in accordance with the Constitution. Article 10(3) of the International Covenant on Civil and Political Rights stipulates that: “The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”.

321. There are a number of rules relevant to these purposes for they affect the sanction an individual convicted person receives.³⁷ The rules, among others, include the degree of criminal liability, the conduct of the perpetrator before, during and after the commission of the criminal offence, motives for perpetrating the offence, and personality of the perpetrator. These considerations can be used in aggravation or mitigation of the sentence, as the facts dictate. The aim behind consideration of all these elements is to assist the Court in determining a sanction that is necessary and commensurate in terms of the purpose of sanctioning and elements that had already been taken into consideration in relation to the crime itself and its consequences upon the community, provided that the sanction corresponds to the preventive and reformatory demands upon the specific perpetrator.

C. DEFENDANT

1. The degree of liability

322. The Accused, Suljko Karajić, is directly responsible for the crimes he committed.

2. The conduct and personal situation of the Accused

323. Conduct and the personal situation of the Accused Suljko Karajić before, during and after the commission of the crime contain both aggravating and mitigating facts, and are relevant in view of prevention and rehabilitation.

(a) Prior to the commission of the criminal offense

324. According to the findings of Dr. Bilalbegović, defence evidence no. (O-11) Accused was growing up in socially and emotionally unstable environment. That is, the father of the examinee was a womanizer and he used to bring different women to the house, live with each for some time and then to bring the second, then the third and so on. So, the mother of the examinee was

³⁷ Article 48 CC of BiH.

frequently in the situation that she had to leave the house and children because he was bringing other women. He requested absolute obedience from the children and responsibility in carrying out jobs referring to farming while ignoring education or other needs of the children. Every time when they were disobedient the punishment was physical abuse. Due to such conduct of the father, although he was the only son of his mother, Suljo had to leave his father and mother before he turned 15 and went to Slovenia to look for a job where, with full-time job, he completed secondary school for construction workers. He was not in a contact with his father because he was afraid of him.

(b) The circumstances of the criminal offense

325. This was an extremely painful conflict. It was Muslim against Muslim. It was clear for some of the witnesses that many young people were caught up in this conflict without any clear sense of why this conflict was occurring. For many it was simply a matter of geography. It is clear the Accused felt the enemies here were traitors and as such he particularly despised them. No one made any attempt to remove him from the field despite his many injuries.

(c) The circumstances after the relevant time

326. The Accused finished teacher training after the war. He had another child and was living peacefully in Velika Kladuša. He was not able to teach due to his mouth injuries. He continues to suffer greatly from this injury. He ran a catering establishment and was not convicted of any crimes.

(d) Conduct during the proceedings

327. In the course of the proceedings, the conduct of the Accused was appropriate. He was respectful of the Court and his behavior was proper. His conduct during the case was appropriate and met the Panel's expectations, and is therefore neither an aggravating nor mitigating factor. The Panel notes that appearing and speaking in Court were very difficult for the Accused due to his obvious pain and discomfort from his mouth injury. However, he at all times conducted himself in dignified manner.

3. Motive

328. The existence of a motive does not constitute an essential element of the criminal offence in the relevant case nor is it linked with the intent. The Accused had the necessary intent to commit the crimes prescribed under the Code and established in the reasoning to the Verdict. Therefore, the

Panel will make no findings on this issue and motive is neither an aggravating nor mitigating factor. The Panel will note that he was particularly angry by what he perceived as treason by the members of the autonomy.

4. The personality of the Accused

329. The Court does not have sufficient evidence to make findings in this regard. The Panel observed the nature of protected witnesses who were clearly afraid of the Accused but also notes the different behaviour of the Accused during the war and during the present day.

5. Reduction of punishment according to the Code

330. Article 49 of the CC of BiH cites the following in terms of the reduction of punishment:

The court may set the punishment below the limit prescribed by the law, or impose a milder type of punishment:

- a. When law provides the possibility of reducing the punishment; and
- b. When the court determines the existence of highly extenuating circumstances, which indicate that the purpose of punishment can be attained by a lesser punishment.

Bearing in mind the cited article, the Panel inferred that the conditions set under this article have not been met, and hence the punishment could not be reduced.

6. Deterrence and social rehabilitation

331. The length of a sentence and the time spent in jail as punishment for the crime are legitimate deterrents in most cases. They provide the offender with an opportunity to consider the effects of his actions on victims, to reflect on his past mistakes and to make amends for his criminal actions.

D. CONCLUSION

332. Given the above factors the Panel did not find the long term sentencing appropriate here. Instead, the Panel found a compound sentence of 18 years to be appropriate.

333. The individually determined sentences and eventually the compound sentence of 18 years reflect both the mitigating as well as the aggravating factors. The Court finds that the type of criminal sanction is commensurate with the gravity of the offence given the existing aggravating and mitigating factors, and the participation and the role of the Accused in the commission of the

crime, whereas the sentence shall achieve the overall purpose of criminal sanctions and punishing in terms of Article 39 of the CC of BiH.

334. **Pursuant to Article 56 of the CC of BiH**, the time the Accused spent in custody shall be credited towards the sentence of imprisonment, starting with the day when he was deprived of liberty on 17 October 2007.

XIV. DECISION ON THE COSTS AND PROPERTY CLAIMS

335. Pursuant to Article 188 para 2 and 4 of the CPC of BiH, the Accused is relieved of the duty to pay the **criminal proceedings costs**, which shall be paid from the budget appropriations of the Court.

336. **Claims under property law** - deciding on property claims filed by the injured parties, the Court, pursuant to Article 198 para 2 of the CPC of BiH, referred the injured parties: Asija Karajić – mother of Amir Karajić a.k.a Kolač, Mehmed Pehlić (brother of Mujo Pehlić), Slada Šabić (wife of Mujo Pehlić), Mahmut Abdić (father of Šefik Abdić and victim), witness C, witness B, Adil Džebić (son of Bećir Džebić), Mirsad Čturić, Hasan Mahmutović, witness D, Ejub Čehajić, Rasim Osmankić, witness N, Muharema Abdić – (wife of Šefik Abdić), Fadila Sabljaković – (common law wife of Fikret Hušidić), Refika Pilipović – (wife of Hajrudin Pilipović), witness F, witness P, witness L, witness J, Husein Pajezetović, witness M, Ekrema Dizdarević – (daughter-in-law of Juso Dizdarević), Fikret Dizdarević – (son of Juso Dizdarević), Vesna Dervišević – (daughter of Juso Dizdarević) to take civil action, considering that the establishing of facts related to the amount of property claim would take a fairly long period of time, which would result in the prolongation of these proceedings and therefore the Court referred them to take civil action. On 16 February 2010 the Prosecution submitted the agreement of the injured parties who raised property claims in order that the Court of BiH refer them to resolve their claims in civil action.

RECORD-KEEPER

Elma Karović

PRESIDING JUDGE

JUDGE

Davorin Jukić

/signature and stamp duly affixed/ _____

LEGAL REMEDY: This Verdict may be appealed with the Appellate Panel of the Court of BiH within 15 days as of the receipt of the written copy thereof.

XV. ANNEX 1 AND ANNEX 2

ANNEX 1				
LIST of the evidence of the Prosecutor's Office of BiH submitted to the Court during the proceedings, case X-KR-07/336, against SULJO KARAJIĆ				
Evidence	Description	Date of submission	Number in the Indictment	Note
T-1	Proclamation of Fikret Abdić to the population of Western Bosnia dated 22 September 1993 Initiative for the Establishment of the Autonomous Province of Western Bosnia Proclamation of the Democratic Initiative of the Citizens of Western Bosnia dated 10 October 1993	20.03.2008.	Evidence 1 Evidence 2; Evidence 3;	COURT Proclamation of Fikret Abdić to the population of Western Bosnia dated 22 September 1993 and attachments A) explanation of the Declaration on Proclamation of the Republic of Western Bosnia B) Initiative for the Establishment of the Autonomous Province of Western Bosnia as a part of the Republic of Bosnia and the Union of the Republics of Bosnia and Herzegovina C) newspaper article D) membership application form to the Western Bosnia Muslim Democratic Party E) Proclamation of the Democratic Initiative of the Citizens of Western Bosnia F) Consent with the Initiative to establish the Bihać District as Autonomous Province of Western Bosnia being a part of the Republic of Bosnia and the Union of the Republics of Bosnia and Herzegovina
T-2	Witness Examination Record for Esad Čović of the Prosecutor's Office of BiH number KT-RZ-130/07 dated 6 December 2007	20 March 2008	Stated in the Indictment	
T-3	Witness Examination Record for Esad Čović of the Prosecutor's Office of BiH number KT-RZ-130/07 dated 29 March 2007	20 March 2008	Stated in the Indictment	
T-4	Map	20 March 2008	n/n	Adduced as a document not evidence
T-5	Report on the killed soldiers of the National Defense of Western Bosnia made by Sulejman Osmanagić, Assistant Commander for Moral Guidance of the 1 st Brigade of the National Defense,		Evidence 15;	

	for the period from 15 November 1994; for the period from 16 November 1994 to 15 March 1995; for the period 16 November 1994 to 28 March 1995; for the period from 16 November 1994 to 19 April 1995; for the period from 16 November 1994 to 2 May 1995, for the period from 16 November 1994 to 23 June 1995; Report on the Missing Soldiers of the 1 st Brigade of the National Defense of Western Bosnia, made by Sulejman Osmanagić, Assistant Commander for Moral Guidance of the 1 st Brigade of the National Defense; List of the Captured – Missing Soldiers of the 1 st Brigade of the National Defense of Western Bosnia, dated 5 January 1995			
T-6	Witness Examination Record for Sulejman Osmanagić of the Prosecutor’s Office of BiH number KT-RZ-130/07 dated 28 November 2007	20 March 2008	Stated in the Indictment	
T-7	Maps of: A) Velika Kladuša Municipality B) Cazin Municipality C) Bužim Municipality	10 April 2008	n/n	
T-8	Book “ All the crimes of Fikret Abdić”, author Emin Huskić A) Photograph – surviving members of the “Hego’s group” in the free Velika Kladuša	10 April 2008	n/n Evidence 24;	
T-9	Witness Examination Record for “A”- Kapić Fikret Prosecutor’s Office of BiH, number KT-RZ-130/07 dated 19 February 2007	10 April 2008	Stated in the Indictment	
T-10	Witness Examination Record for “A”- Fikret Kapić, State and Investigation and Protection Agency, number : 17-12/3-04-2-1/07 dated 25 January 2007	10 April 2008	Stated in the Indictment	
T-11	Witness Examination Record for Mirsad Gračanin, number KT-125/98-RZ dated 6 July 2006 made	17 April 2008	Stated in the Indictment	

	by the Bihać Cantonal Prosecutor's Office			
T-12	Witness Examination Record for Mirsad Gračanin, Prosecutor's Office of BiH number KT-RZ-117/07 and KT-RZ-130/07 dated 11 April 2007	17 April 2008	Stated in the Indictment	
T-13	Witness Examination Record for Fikret Karajić number KT-125/98-RZ dated 20 June 2006 made by the Bihać Cantonal Prosecutor's Office	17 April 2008	Stated in the Indictment	
T-14	Witness Examination Record for Fikret Karajić number, Prosecutor's Office of BiH, number KT-RZ-130/07 dated 3 July 2007	17 April 2008	Stated in the Indictment	
T-15	Request of Enisa Karajić and Asija Karajić dated 12 March 1997 submitted to the Sanitary Inspection of Bihać Municipality which refers to reburial and exhumation of the mortal remains of Amir Karajić,	17 April 2008	Evidence 32;	
T-16	Decision of Una-Sana Canton, Municipality of Bihać, Economic Sector number 3/30-510-26/97 dated 13 March 1997	17 April 2008	Evidence 33;	
T-17	Transit letter to move the deceased Amir (father's name Arif) Karajić number 3/30-510-26/97 dated 13 March 1997	17 April 2008	Evidence 34;	
T-18	Witness Examination Record for Asija Karajić number KT-125/98-RZ dated 20 June 2006 made by Bihać Cantonal Prosecutor's Office	17 April 2008.	Stated in the Indictment	
T-19	Witness Examination Record for Asija Karajić; Prosecutor's Office of BiH, number KT-RZ-130/07 dated 14 November 2007	17 April 2008	Stated in the Indictment	
T-20	Attestation of death of Amir Karajić, signed and made by the chief physician Semira Mešić Pašalić, MD, from 1997	24 April 2008	Evidence 40;	
T-21	Witness Examination Record for Samira Mešić Pašalić,	24 April 2008	Stated in the	

	Prosecutor's Office of BiH, number KT-RZ-130/07 dated 7 November 2007		Indictment	
T-22	Witness Examination Record for Zijad Nanić number KT-125/98-RZ dated 21 June 2006, made by Bihać Cantonal Prosecutor's Office	24 April 2008	Stated in the Indictment	
T-23	Witness Examination Record for Zijad Nanić, Prosecutor's Office of BiH, number KT-RZ-130/07 dated 27 April 2007	24 April 2008	Stated in the Indictment	
T-24	Sketch of the Crime Scene of the murder of Amir Karajić number 246/94 dated 4 August 1994	24 April 2008	Evidence 39;	
T-25	Witness Examination Record for Alaga Badić number KT-125/98-RZ dated 20 June 2006 made by Bihać Cantonal Prosecutor's Office	24 April 2008	Stated in the Indictment	
T-26	Witness Examination Record for Alaga Badić, Prosecutor's Office of BiH, number KT-RZ-130/07 dated 26 April 2007	24 April 2008	Stated in the Indictment	
T-27	Witness Examination Record for Ismet Majetić, number KT-RZ-125/98 dated 20 June 2006 made by Bihać Cantonal Prosecutor's Office	24 April 2008	Stated in the Indictment	
T-28	Witness Examination Record for Ismet Majetić, Prosecutor's Office of BiH, number KT-RZ-130/07 dated 26 April 2007	24 April 2008	Stated in the Indictment	
T-29	Record on the Crime Scene Investigation of the District Military Court in Bihać number KRI-1525/94 dated 05 August 1994,	24 April 2008	Evidence 38;	
T-30	Official Note number KTA:20/94 made about the correction of the mistake in the Record on the Crime Scene Investigation of the District	24 April 2008 Attached to the		

	Military Court in Bihać number KRI-1525/94 dated 05 August 1994,	Records dated 25 June 2002		
T-31	Witness Examination Record for Hamdija Veladžić, number KI-1/01-RZ dated 25 June 2002 made by the Bihać Cantonal Court	24 April 2008	Stated in the Indictment	
T-32	Witness Examination Record for Hamdija Veladžić Prosecutor's Office of BiH, number KT-RZ-130/07 dated 21 May 2007	24 April 2008	Stated in the Indictment	
T-33	Official Note of the Cantonal Ministry of Internal Affairs – Police Administration Bužim, Police Station Bužim number 05-7/01-13-734/00 dated 7 August 2000, made by the authorized official person Namir Makić referring to the circumstances of the event which happened on 6 December 1994	8 May 2008	Evidence 45;	
T-34	Record of the Cantonal Ministry of Internal Affairs Bihać 05-1/03-2-152/00 dated 14 August 2000, as an amendment to the Official Note dated 7 August 2000	8 May 2008.	Evidence 46;	
T-35	Witness Examination Record for Namir Makić number KT-125/98-RZ dated 21 June 2006 made by the Cantonal Prosecutor's Office Bihać	8 May 2008	Stated in the Indictment	
T-36	Record of the Prosecutor's Office BiH number KT-RZ-130/07 dated 26 April 2007	8 May 2008	Stated in the Indictment	
T-37	Record on Examination of the Witness "E" number KT-125/98 dated 21 June 2006 made by the Cantonal Prosecutor's Office Bihać	8 May 2008	Stated in the Indictment	
T-38	Record of the Prosecutor's Office BiH number KT-RZ-130/07 date 21 May 2007	8 May 2008	Stated in the Indictment	
T-39	Daily Report of the Chief of the Department for Counter-intelligence Tasks of the Command of the 5 th Corps – major Agić Malić, submitted to the Chief of the Military Security of the Command of the 5 th Corps dated 7 December 1994	8 May 2008	Evidence 44;	

T-40	Witness Examination Record for Malić Agić, Prosecutor's Office of BiH, number KT-RZ-130/07 dated 30 May 2007	8 May 2008	Stated in the Indictment	
T-41	Witness Examination Record for Sulejman Šahinović number KT-125/98-RZ dated 21 June 2006. made by Cantonal Prosecutor's Office Bihać	8 May 2008	Stated in the Indictment	
T-42	Witness Examination Record for Sulejman Šahinović, Prosecutor's Office of BiH, number KT-RZ-130/07 dated 21 May 2007	22.05.08.	Stated in the Indictment	
T-43	Witness Examination Record for "G" number KI-1/01-RZ dated 29 June 2001 made by Cantonal Prosecutor's Office Bihać	22 May 2008	Stated in the Indictment	
T-44	Witness Examination Record for "G", Prosecutor's Office of BiH, KT-RZ.130/07 dated 31 May 2007	22 May 2008	Stated in the Indictment	
T-45	Witness Examination Record for Husein Ćerimović made in the Cantonal Court in Bihać, on 2 July 2001	22 May 2008	Stated in the Indictment	
T-46	Witness Examination Record for Husein Ćerimović, Prosecutor's Office BiH, number KT-RZ-130/07 dated 26 June 2007	22.05.08.	Stated in the Indictment	
T-47	Witness Examination Record for Meho Ćerimović, number KT-125/98-RZ dated 21 June 2006 made by Cantonal Prosecutor's Office Bihać	12 June 2008	Stated in the Indictment	
T-48	Record of the Prosecutor's Office BiH number KT-RZ-130/07 dated 31 October 2007	12 June 2008	Stated in the Indictment	
T-49	Witness Examination Record for Sulejman Pehlić made by the Cantonal Court Bihać dated 2 July 2001	12 June 2008	Stated in the Indictment	

T-50	Record number KT-RZ-130/07 dated 31 October 2007	12 June 2008	Stated in the Indictment	
T-51	Witness Examination Record for Mehmed Pehlić, number KT-RZ-130/07 dated 31 October 2007	12 June 2008	Stated in the Indictment	
T-52	Witness Examination Record for “B”, number KT-125/98-RZ dated 2 March 2006 made by Cantonal Prosecutor’s Office Bihać	19 June 2008		
T-53	Record number KT-RZ-130/07 dated 19 April 2007	19 June 2008		
T-54	Witness Examination Record for Muharema Abdić number KI-1/01-RZ dated 29 June 2001 made by Cantonal Court Witness Examination Record, Cantonal Prosecutor’s Office Bihać	19 June 2008		
T-55	Record number KT-RZ-130/07 dated 3 July 2007	19 June 2008		
T-56	Witness Examination Record for Mahmut Abdić number KRI-12/2000 made by the Cantonal Court in Bihać dated 18 September 2000,	19 June 2008.		
T-57	Witness Examination Record number KT-125/98-RZ dated 2 March 2006 made by	19 June 2008		
T-58	Record number KT-RZ-130/07 dated 19 April 2007	19 June 2008		
T-59	Certified copy of the identity card of Šefik Abdić	19 June 2008	Evidence 57;	
T-60	Certified copy of the permit to leave the premises of the military barracks issued by the Army of BiH, military post 5045, issued to Šefik Abdić, allowing departure to Todorovska Slapnica dated 9 to 10 December 1994 for the leave of absence	19 June 2008	Evidence 58;	

T-61	Letter of thanks of the Army of BiH issued to Mahmut Abdić	19 June 2008	Evidence 68;	COPY (THE WITNESS HAS THE ORIGINAL)
T-62	Witness Examination Record for Adil Džebić number KI-1/01-RZ dated 24 August 2001 made by the Bihać Cantonal Court.	26 June 2008		
T-63	Witness Examination Record for Adil Džebić number KT-RZ-130/07 dated 25 June 2007	26 June 2008.		
T-64	Witness Examination Record for Abid Džebić number KRI-12/2000 made by the Bihać Cantonal Court dated 18 September 2000	26 June 2008.		
T-65	Witness Examination Record for Abid Džebić number KT-RZ-130/07 dated 25 June 2007	26 June 2008		
T-66	Witness Examination Record for Hasan Mahmutović number KRI-12/2000 dated 18 September 2000 made by the Cantonal Court in Bihać and	26 June 2008		
T-67	Witness Examination Record for Hasan Mahmutović number KT-RZ-130/07 dated 25 June 2007	26 June 2008		
T-68	Witness Examination Record for Rasim Osmankić number KI-1/01 dated 28 June 2001 made by the Cantonal Court in Bihać	3 July 2008		
T-69	Witness Examination Record for Rasim Osmankić number KT-RZ-130/07 dated 4 July 2007	3 July 2008		
T-70	Witness Examination Record for "C" number KRI-12/2000 dated 20 September 2000 made by the Cantonal Court in Bihać	3 July 2008		
T-71	Witness Examination Record for "C" number KT- 125/98-RZ dated 2 March 2006 made by the Cantonal Prosecutor's Office Bihać	3 July 2008		
T-72	Witness Examination Record for "C", Prosecutor's Office of BiH number KT-RZ-130/07 dated 19 April 2007	3 July 2008		
T-73	Witness Examination Record for "N" , Prosecutor's Office of BiH number KT-RZ-130/07 dated 29 November 2007	10 July 2008		

T-74	DVD with the recording of exhumation of the head of Rasim Dizdarević and with the recording of exhumation of the body of Rasim Dizdarević, submitted by the Association of Camp Inmates of Western Bosnia	10 July 2008	Evidence 82;	
T-75	Witness Examination Record for "O" Prosecutor's Office of BiH number KT-RZ-130/07 dated 10 December 2007	10 July 2008		
T-76	Witness Examination Record for "R" number KT-RZ-130/07 dated 17 December 2007	10 July 2008		
T-77	Witness Examination Record for Huso Pajzetović number KT-RZ-130/07 dated 19 April 2007	21 August 2008		
T-78	Witness Examination Record for "P" number KT-RZ-130/07 dated 21 November 2007. godine	21 August 2008.		
T-79	Witness Examination Record for "J" number KT-RZ-130/07 dated 5 July 2007	21 August 2008		
T-80	Witness Examination Record for "F" number KT-RZ-130/07 dated 21 May 2007	4 September 2008		
T-81	Witness Examination Record for Fadila Sabljaković number KT-RZ-130/07 dated 21 November 2007	4 September 2008		
T-82	Witness Examination Record for Refika Pilipović number KT-RZ-130/07 dated 21 November 2007	4 September 2008		
T-83	Witness Examination Record for "D" number KT-RZ-130/07 dated 27 April 2007	11 September 2008		

T-84	Witness Examination Record for "M" number KT-RZ-130/07 dated 27 September 2007	11 September 2008		
T-85	Certificate on delivery of the documentation made by the State Investigation and Protection Agency number 17/12/3-04-2-8/07 dated 11 October 2007 and photographs of the exhumation of the body of Hasib Torić	11 September 2008	Evidence 96;	
T-86	Photographs of the exhumation of the body of Hasib Torić	11 September 2008	Evidence 96;	
T-87	Attestation of death of Hasib (father's name Hasan) Torić, issued by the health institution Medical Center Cazin, ordinal number 5/96 dated 6 June 1997	11 September 2008	Evidence 97;	
T-88	Document of the Municipality of Cazin – Service for Non-Economic Activities and Ecology, number 02-510-77-1/97 dated 20 December 1999, and it refers to the delivery of the documents for exhumation and transfer of the mortal remains Hasib (father's name Hasan) Torić	11 September 2008	Evidence 98;	
T-89	Certificate of the Public Utility Company Cazin number 3-99 dated 21 December 1999	11 September 2008	Evidence 99;	
T-90	Agreement of the Commission for Exchange for Hasib Torić a.k.a "Zilkin"	11 September 2008	Evidence 100;	
T-91	Handwritten certificate dated 21 December 1999	11 September 2008	Evidence 101;	
T-92	Certificate of the Office for Missing Persons and Captured Persons of Republika Srpska number 115/2003 dated 10 November 2003	11 September 2008	Evidence 102;	
T-93	Witness Examination Record for Bajro Rizvić dated 2 October 2007 made by the SIPA authorized officials	11 September 2008		

T-94	Witness Examination Record for Bajro Rizvić dated KT-RZ-130/07 dated 17 December 2007	11 September 2008		
T-95	Witness Examination Record for Ekrema Dizdarević number KT-RZ-130/07 dated 6 December 2007	2 October 2008		
T-96	Witness Examination Record for Fikret Dizdarević number KT-Rz-130/07 dated 29 November 2007	2 October 2008		
T-97	Witness Examination Record for Vesna Dervišević number KT-RZ-130/07 dated 29 November 2007	2 October 2008		
T-98	SIPE Certificate on take over of the medical documentation to the name of Ejub Čehajić from Ejub Čehajić	2 October 2008		
T-99	Medical documentation for Ejub Čehajić- Findings and Opinion of the specialist	2 October 2008	Evidence 105;	
T-100	Medical documentation for Ejub Čehajić- discharge letter	2 October 2008	Evidence 105;	
T-101	Medical documentation for Ejub Čehajić- Results, Findings and Opinion	2 October 2008	Evidence 105;	
T-102	Witness Examination Record for Ejub Čehajić number KT-RZ-130/07 dated 29 November 2007	2 October 2008		
T-103	Witness Examination Record for Mirsad Čuturić number KRI-12/00 dated 19 September 2000 made by the Cantonal Court in Bihać	2 October 2008		
T-104	Witness Examination Record for "H" number KT-RZ-130/07 dated 31 May 2007	16 October 2008		
T-105	Witness Examination Record for "L" number KT-RZ-130/07 dated 5 July 2007	16.10.08		
T-106	Medical documentation for Sulejman Karajić issued by the Regional Hospital Bihać, Surgery Service, dated 21 June 1994			
T-107	Finding and Opinion of dr. Hamza Žujo, specialist in forensic medicine, dated 10 November 2007, for Suljo Karajić			

T-108	Medical documentation for Bećir Džebić			
T-109	Medical documentation for Abdić Mahmut			
T-110	Certified copy of the book of protocol starting with numbers 4047-5986/94, 01-1995/95 in which under ordinal number 5876 the name of “D” was written and the date 28 December 1994			
T-111	Medical documentation to the name of “D” ” dated 28 December 1994 and 30 December 1994			
T-112	Finding and Opinion of the forensic expert dr. Hamza Žujo dated 13 December 2007 for Ejub Čehajić See Evidence 106; (medical documentation to the name of Ejub Čehajić)			
T-113	Order of the Cantonal Court Bihać number KRI-54/99 dated 24 February 2000 ordering the exhumation of the body of Šefik Abdić			
T-114	Record of the Cantonal Court Bihać number KRI-54/99 dated 14 March 2000 referring to the exhumation-examination of the body of Šefik Abdić ,			
T-115	Record on exhumation and autopsy of the body of Šefik Abdić, made by the chief physician Miroslav Rakočević, MD; specialist in pathology and forensic medicine			
T-116	Record on autopsy and exhumation of the body of Muhamed Džebić made by the chief physician Miroslav Rakočević, MD, specialist in pathology and forensic medicine			
T-117	Medical documentation for “B” , evidence 80;			
T-118	Forensic-psychiatric finding for the person “B”, dated 24 December 2007, made by the expert witness professor Abdulah Kučukalić			
T-119	Order for the Active Defense of the 1 st Light Brigade of the National Defense of the Armed Forces of the AP Western Bosnia number 02/8-2 dated 14 April 1994, Evidence 5;			

	certified by ICTY, number 00498391			
T-120	Information of the Ministry of Internal Affairs, Security Service Center – State Security Service Sector Bihać, marked as “state secret” number 01-395/94 dated 2 May 1994, delivered to the 5 th Corps of the Army of BiH, Military Security Service Sector			
T-121	Report of the 501 st Mountain Brigade, Military Security Service Sector, strictly confidential 03/29-46 dated 14 June 1994 , Evidence 7; (attached to the document of the Ministry of Defense dated 3 May 2007)			
T-122	Document – Assault Operations Command “Štit-94”, Office of the President of the AP of Western Bosnia, dated 28 June 1994 , Evidence 8 ; – certified by			
T-123	Report of the 506 th Combat Brigade, command post Mrcelji, strictly confidential 01/161-66 dated 13 July 1994 , Evidence 9; Evidence – Binder 1, Section 27			
T-124	Document – Prohibition of Crossing the Lines of Contact with the units of the 5 th Corps and Movement of Civilians within the zone of Responsibility of the Units, signed by the Supreme Commander Fikret Abdić dated 20 July 1994 Evidence 10; certified by the ICTY 00498362			
T-125	Extraordinary Report of the Command of the 5 th Corps, Military Security Service Sector, strictly confidential 03/1-220/7 dated 7 August 1994 Evidence 11; (attached to the document of the Ministry of Defense dated 3 May 2007)			
T-126	Analytical Breakdown of the Army of BiH for 1993, 1994 and 1995, General Staff of the Army of the Republic of BiH, command post Kakanj, number 1-1/1992-1, dated 31 December 1995			

	Evidence 12; - certified by the ICTY , number MKS06001878,			
T-127	Certified copy of the unit and personal record to the name of Suljo (father's name Ćamil) Karajić, submitted by the Ministry of Defense of BiH number 08-04-6541-4/06 dated 20 December 2006, Evidence 16			
T-128	Letter of the Ministry of Defense of BiH number 08-04-1-995-1/07 dated 12 March 2007			
T-129	Document of the Federation Ministry of Defense, Bihać Defense Administration, Velika Kladuša Defense Department, strictly confidential No. 22-14-03-2155/99 dated 15 December 1999, submitted by the Cantonal Ministry of Internal Affairs of Una-Sana Canton, Administration of Police, Crime Police Sector, number 05-1/04-5-04-3-503/07 dated 31 October 2007 Evidence 18,- submitted to the Prosecutor's Office of BiH on 5 November 2007			
T-130	Document of the Federation Ministry of Defense, Military Post 5025 – Bihać, number 30-27/11-1/3/169-1/01 dated 27 February 2001, referring to the period of assignment of Suljo (father's name Ćamil) Karajić, born on 20 July 1968, for the period from August – December 1994			
T-131	Personal Data Review of the 505 th Chivalrous Brigade , Evidence 20;			
T-132	Report on the Activities on Establishment and Start of Operation of the Sabotage and Reconnaissance Detachment, military unit 5025/30, strictly confidential 02/2-2 from December 1993, signed by the Commander Osman Omanović			
T-133	Document of the Army of BiH, military unit 5045 Bužim - record on the wounded members of the			

	military unit 5045 Bužim, the period from 1 January 1995			
T-134	Excerpt from the criminal record for Suljo Karajić, son of Ćamil, born on 20 July 1968, in the place of Trnovi, Municipality of Velika Kladuša, submitted by the II Police Administration, Police Station Velika Kladuša number 05-1/07-3-04-13-186/07 dated 15 June 2007			
T-135	Letter of the Cantonal Prosecutor's Office Bihać number KT-125/98-RZ dated 18 June 2007 with the attachments: document of the Cantonal Ministry of Internal Affairs of Una-Sana Canton dated 11 April 2007; document of the Cantonal Ministry of Internal Affairs, Police Administration 2, Police Station Velika Kladuša dated 3 April 2007; Official Note of the Administration of Police, Crime Police Sector number 05-1/03-1-371/07 dated 26 March 2007; Information of the Pathology Service of the Cantonal Hospital "dr.Irfan Ljubijankić" Bihać dated 15 March 2007			
T-136	Letter of the Cantonal Prosecutor's Office Bihać number KT-125/98-RZ dated 13 March 2007 , Evidence 29;			
T-137	Document of the Federation Ministry of Defense, Joint Command of the Army of the Federation, military unit 2001/5, marked as "military secret – confidential" number 30-12/03-30/4-211/01 dated 9 March 2001			
T-138	Letter of the 2 nd Police Administration, Police Station Bužim, number 05-1/07-4-1-1248/07 dated 13 June 2007, Evidence 31-"correspondence"			
T-139	Minutes of the Municipality of Bihać, Economic Sector – Sanitary Inspection number 3/30-510-26/1997 dated 13 March 2007		Evidence 35;	
T-140	Certified copy of the record of the Cantonal Hospital "Dr. Irfan		Evidence 36;	

	Ljubijankić” for Amir a.k.a. “Kolač”, registered under ordinal number 627, dated 5 August 1994			
T-141	Official note of the authorized employee of the Cantonal Ministry of Internal Affairs of Una-Sana Canton Bihać, Nihad Mešić, submitted by the document of the Cantonal Ministry of Internal Affairs of Una-Sana Canton Bihać number 05-1/03-2-04-3441/99 dated 30 December 1999		Evidence 37;	
T-142	Death Certificate for Amir Karajić, issued under the number 2003-12-3433/2007 in Bihać on 2 October 2007		Evidence 41;	
T-143	Certificate of the Association of the Families of Killed Members of the National Defense of the Autonomous Province of Western Bosnia – Velika Kladuša, No. 02”UO”-417/07 dated 1 October 2007, issued to the name of Amir Karajić		Evidence 42;	
T-144	Document of the Federation Ministry of Defense, military post 5025 Bihać number 30-27/49-1/10/2-133/01, marked as “military secret, confidential”		Evidence 52;	
T-145	Death certificate for Mujo Pehlić, number 04/2-13-1-620/2007 dated 1 October 2007		Evidence 53;	
T-146	Certificate of the Association of the Families of Killed Members of the National Defense of the Autonomous Province of Western Bosnia – Velika Kladuša number 02”UO”-426/07 dated 2 October 2007		Evidence 54;	
T-147	Document of the Ministry of Defense of BiH number 08-04-1-2666-3/07 dated 18 July 2007 referring to military assignment of Šefik (father’s name Mahmut) Abdić		Evidence 55;	
T-148	Certified copy of the military protocol of the of the Army of BiH, 5 th Corps, 506 th Combat Brigade, 2 nd Battalion, marked as “P 1 – 539/94/95” with the recorded		Evidence 56;	

	period 3 October 1994 – 22 January 1995, the name of Šefik (father's name Mahmut) Abdić is recorded under the ordinal number 643, born in 1956			
T-149	Document of the 5 th Corps – data on the killed soldier– Town Command Velika Kladuša, marked as “official secret – confidential”, number conf. 03-3/136-1032/95 dated 5 November 1995, issued to Šefik Abdić		Evidence 59;	
T-150	Photo-documentation and crime scene sketch – exhumation, identification and autopsy of the body of Šefik Abdić with the written date- 14 March 2000, number 6/00		Evidence 61;	
T-151	Death Certificate for Šefik Abdić number 04/2-13-1-1452/99 dated 3 August 1999		Evidence 64;	
T-152	Certificate on salaries of members of the Armed Forces of the Republic of BiH in the name of Šefik Abdić dated 1 October 1996		Evidence 65;	
T-153	Certificate of the Federation Ministry of Defense, Defense Administration Bihać, Defense Department Velika Kladuša, No. 22-14-03-025/99 dated 13 May 1999, issued to Šefik (father's name Mahmut), Abdić			
T-154	Decision of the Municipality of Velika Kladuša, Sector for the Affairs of the War Veterans and Invalids of the Homeland War number 06-569-418/96 dated 12 September 1996, issued upon the request of Mahmut Abdić			
T-155	Notice of the Cantonal Court Bihać number KRI-12/2000 dated 7 July 2000			
T-156	Sketch of the crime scene of the exhumation and autopsy of Muhamed Džebić dated 13 July 2000			
T-157	Photo-documentation of the exhumation and autopsy of the body of Muhamed Džebić made on 13 July 2000			
T-158	Death certificate for Muhamed Džebić number 04/2-13-1-5517/99			

	dated 16 August 1999			
T-159	Death certificate for Derviš Ponjević, issued under the number 02/2/13-1-4638/2007 dated 11 October 2007			
T-160	Death certificate for Bećir Džebić number 04/2-13-1-2820/02 dated 30 November 2002		Evidence 75;	
T-161	Death certificate for Dizdarević Rasim, number 04/2-13-1-620/2007 dated 1 October 2007		Evidence 83;	
T-162	Certificate of the Association of the Families of the Killed Members of the National Defense of the Autonomous Province of Western Bosnia – Velika Kladuša, number 02"UO"-427/07 dated 2 October 2007, issued to the name of Rasim (father's name Memaga), Dizdarević		Evidence 84;	
T-163	Certified copy of the Mortuary book number 438/95-4/01 in which under ordinal number 480, on 4 April 1995, the name of Rasim (father's name Memaga) Dizdarević was recorded		Evidence 85;	
T-164	Death certificate for Hajrudin Pilipović, number 04/2-13-1-620/2007 dated 1 October 2007		Evidence 86;	
T-165	Certificate of the Association of the Families of the Killed Members of the National Defense of the Autonomous Province of Western Bosnia – Velika Kladuša, number 02"UO"-424/07 dated 2 October 2007, issued to the name of Hajrudin (father's name Husein) Pilipović		Evidence 87;	
T-166	Certified copy of the Mortuary book number 438/95-4/01, in which under ordinal number 471, on 23 March 1995, the name of Hajrudin (father's name Husein) Pilipović was recorded		Evidence 88;	
T-167	Death certificate for Fikret Hušidić, number 04/2-13-1-620/2007 dated 1 October 2007		Evidence 89;	
T-168	Certificate of the Association of the Families of the Killed Members of the National Defense of the Autonomous Province of Western		Evidence 90;	

	Bosnia – Velika Kladuša, number 02”UO”-423/07 dated 2 October 2007, issued to the name of Fikret (father’s name Hasan) Hušidić			
T-169	Certified copy of the Mortuary book number 438/95-4/01 in which under the ordinal number 470, on 23 1995, the name of Fikret (father’s name Hasan) Hušidić was written		Evidence 91;	
T-170	Death certificate for Hasib Torić, number 02-13-2445/07 dated 4 October 2007		Evidence 103;	
T-171	Death certificate for Jusuf Dizdarević, number 2003-12-3434/2007 dated 2 October 2007			
T-172	Information of the military unit 5025/30, strictly confidential, 01/37-2 dated 10 March 1994, signed by the commander Osman Omanović –		Evidence 4;	
T-173	Information on the Evaluation of Special Units of the 5 th Corps		Evidence 13;	
T-174	Document made by the senior lieutenant Memaga Nuhanović on the stay in the 506 Combat Brigade at the formation post of the Assistant Commander for TIPP number 03/294-2 dated 26 March 1995			
T-175	Formation book of the 505 th Chivalrous Motorized Brigade, strictly confidential, 1994, ordinal numbers 1 – 66, with recorded “place : Bužim”			
T-176	Official Note of the Security Services Center Bihać – Public Security Service Velika Kladuša, Sub-Station Vrnograč number 14-5/01-2-279/94 dated 6 December 1994, made by Bešir Rizvić			
T-177	Letter of the Cantonal Ministry of Internal Affairs of Una-Sana Canton - II Police Administration, Police Station Bužim number 05-1/07-4-552/07 dated 16 May 2007, and in reference to the Official Note dated 7 August 2000			
T-178	Letter of the Cantonal Ministry of Internal Affairs of Una-Sana Canton - II Police Administration, Police Station Velika Kladuša			

	number 05-1/07-3-1-203/07 dated 17 May 2007			
T-179	Document of the Cantonal Ministry of Internal Affairs of Una-Sana Canton - II Police Administration, Police Station Velika Kladuša number 05-1/07-3-1-04-3-246/07 dated 13 June 2007			
T-180	Letter of the Cantonal Ministry of Internal Affairs of Una-Sana Canton number 05-1/07-4-1-1248/07 dated 13 June 2007 with the attachments – Official Note number 05-1/07-3-878/07 dated 12 June 2007, made by the authorized official person of the PS Velika Kladuša, Elvir Isaković			
T-181	Official Note of the Cantonal Ministry of Internal Affairs of Una-Sana Canton number 05-1/07-3-1-598/07 dated 4 July 2007			
T-182	Document of the Federation Ministry for the Issues of Veterans and Disabled Veterans of the Defensive-Liberation War – Department for Records of Military Service for Una-Sana Canton, marked as “secret”, number 07/5-03-1-11/07 dated 25 October 2007		Evidence 92;	
T-183	Record on Questioning of the Accused for Suljo Karajić, Cantonal Court in Bihać dated 16 April 2001	16 April 2009		
T-184	Witness Examination Record for Sulejman Velić number KT-RZ-130/07 dated 6 November 2009			
T-185	Examination Record for Fatmir Muratović			
T-186	VOB for Hasica Suljanović			
T-187	Examination Record for Hasica Suljanović –police			

ANNEX 2

LIST of the evidence of the Defense submitted to the Court during the proceedings, in case X-KR-07/336, against SULJO KARAJIĆ

Evidence	Description	Date of submission	Note
O-1	Map - the separation line between the 5th Corps forces and SČA (10 December 1994);		
O-2	Map - the 5th Corps defense line surrounding Velika Kladuša (dated 17 December 1994);		
O-3	Map - marked Alatuša, Džaferović brdo, Latića Glavica, Todorovska Slapnica in relation to Velika Kladuša;		
O-4	Satellite image – the defense line dated 22 December 1994 in the area of Džaferovića brdo marked on the satellite image with a yellow line. The defense line at the end of December 1994 in the area of Džaferovića brdo marked on the satellite image with red line;		
O-5	Certificate of the Department for Military Records to the name of Suljo Karajić dated 10 December 2008		
O-6	Order on Relieve of Duties dated 2 July 1995		
O-7	Article from Večernji list, Sunday 17 November 2000		
O-8	Merit Award dated 24 June 1996		
O-9	Letter of the Colonel J.A.M. Pouliot, Service Battalion of the Canadian IFOR from September 1996 (IFOR – September 1996)		
O-10	English translation of the evidence O9		
O-11	Forensic evaluation of Prof. Dr Zaim Bilalbegović, neuro-psychiatrist		
O-12	Verdict of the District Military Court in Bihaću, IK-118/94 dated 21 April 1994;		

O-13	Verdict of the Section of the Supreme Court of B-H, KZ-38/94 dated 7 September 1994;			
O-14	Discharge letter to the name of Sulejman Katajić dated 30 January 1995			
O-15	Discharge letter to the name of Suljo Karajić, from 7 March - 10 March 1995, number: 2285			
O-16	Discharge letter for the period from 26 January until 30 January 1995 to the name Suljo Karajić RB 882			
O-17	Discharge letter to the name of Suljo Karajić dated 10 March 1995, number: 2285			
O-18	Discharge letter to the name of Karajić Suljo dated 11 April 1995, number: 2810			
O-19	Finding, evaluation and opinion of the Military Medical Panel dated 18 September 1995 to the name of Suljo Karajić;			
O-20	Discharge letter dated 24 November 1993 to the name of Sulejman Karajić			
O-21	Discharge letter, "copy", dated 21 June 1994 with the results dated 1 September 1995;			
O-22	Discharge letter MB 10010, from 16 October until 19 November 1993, to the name of Suljo Karajić			
O-23	Discharge letter dated 11 April 1995 to the name of Suljo Karajić			
O-24	Discharge letter from the Gata psychiatry;			
O-25	Referral slip to VVLJK (Military Medical Panel), dated 31 August 1995, Referral slip to the specialist dated 29 May 1995;			
O-26	History of disease dated 15 September 1998;			

O-27	Finding, evaluation and opinion of the Military Medical Panel dated 22 October 1995 to the name of Suljo Karajić (not accepted –no certification);			
O-28	Opinion on a need to refer the members of the Armed Forces for a treatment abroad dated 1 September 1995, Ministry of Health Sarajevo			
O-29A	Request of the Attorney Veladžić to the Municipal Court Velika Kladuša dated 15 March 2008 to forward the data on criminal proceedings;			
O-29B	Note on access to information of the Municipal Court Velika Kladuša dated 27 March 2008;			
O-29C	Certificate of the Municipal Court Velika Kladuša			
O-30	Request of Attorney Alaga Bajramović to forward the data from the military records of Accused Suljo Karajić			
O-31	Letter of the Bihać Military Records Department dated 18 September 2009			
O-32	Certificate of the Bihać Military Records Department to the name of Ejub Čehajić dated 17 September 2009			
O-33	Certificate of the Bihać Military Records Department to the name of Čuturić Mirsad dated 17 September 2009;			
O-34	Certificate of the Bihać Military Records Department to the name of Hasan Mahmutović dated 17 September 2009			
O-35	Certificate of the Bihać Military Records Department to the name of Zijad Latić dated 17 September 2009			
O-36	Certificate of the Bihać Military Records Department to the name of Zarif Alibašić dated 17 September 2009;			

O-37	Certificate of the Bihać Military Records Department to the name of Suljanović Hasica dated 17 September 2009			
O-38	Certificate of the Bihać Military Records Department to the name of Fikret Kapić dated 17 September 2009			
O-39	Certificate of the Bihać Military Records Department to the name of Sulejman Nuhanović dated 17 September 2009			
O-40	Certificate of the Bihać Military Records Department to the name of Meho Čaušević dated 17 September 2009			
O-41	Personal file to the name of Fikret Kapić			
O-42	Personal file to the name of Hasica Suljanović			
O-43	Personal file to the name of Zijad Latić			
O-44	Personal file to the name of Zarif Alibašić			
O-45	Decision of the Cantonal Ministry for Veterans and Disabled War Veterans of Una Sana Canton dated 20 May 2005 to the name of Suljo Karajić			
O-46A	Golden Lily” Monograph, decorated members of the Army of BiH 1992 – 1995 (copy)			
O-46	Excerpt from the Military Records Department of Una- Sana Canton to the name of Jasmin Kulenović dated 26 October 2009			
O-47	Letter of the Military Records Department of Una- Sana Canton dated 2 November 2009;			
O-48	Certificate of the Bihać Military Records Department to the name of Bajro Rizvić dated 17 September 2009			
O-49	Personal file to the name of Bajro Rizvić			
O-50	Personal file to the name of Damir Fazlić			
O-51	Personal file to the name of Bešir Rizvić			

O-52	Personal file to the name of Hasan Miljković			
O-53	Personal file to the name of Din Dizdarević			
O-54	Personal file to the name of Ejub Čehajić			
O-55	Personal file of the witness R			
O-56	Personal file of the witness O			
O-57	Personal file to the name of Esad Čović			