

**Number: X-KR-05/59**

**Date: 16 June 2010**

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**BEFORE THE TRIAL PANEL**

**Composed of: Judge Minka Kreho, Presiding Judge  
Judge Marjan Pogačnik  
Judge Željka Marenić**

**PROSECUTOR**

**v.**

**RADOJE LALOVIĆ AND SONIBOJ ŠKILJEVIĆ**

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**FIRST INSTANCE VERDICT**

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**Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina:  
Behaija Krnjić**

**Counsel for the Accused Radoje Lalović:  
Attorney Slaviša Prodanović  
Attorney Vesna Tupajić-Škiljević**

**Counsels for the Accused Soniboj Škiljević:  
Attorney Milorad Rašević  
Attorney Refik Arnautović**

**Record-taker:  
Legal Advisor-Assistant: Emil Pinkas**

**Number: X-KR-05/59**  
**Sarajevo, 16 June 2010**

## **IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, the Panel comprised of Judges Minka Kreho, as the President of the Panel, and judges Marjan Pogačnik and Željka Marenčić, as members of the Panel, with the participation of the Legal Advisor-Assistant Emil Pinkas, as the record-taker, in the criminal case against the Accused Radoje Lalović and Soniboj Škiljević, with regard to the amended Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number: KT-RZ-33/05 dated 15 April 2010, under which the Accused Radoje Lalović and Soniboj Škiljević were charged with the commission of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) as read with subparagraphs e), k), a), f) and c), all in conjunction with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina (hereinafter: CC BiH), upon a publicly held main trial from which the public was partially excluded, in the presence of the Accused Radoje Lalović and his Defense Counsels, Attorneys Slaviša Prodanović and Vesna Tupajić-Škiljević, and the Accused Soniboj Škiljević, his Defense Counsels, Attorneys Milorad Rašević and Refik Arnautović, and Mr. Behajja Krnjić, Prosecutor of the BiH Prosecutor's Office, delivered and on 16 June 2010 publicly announced the following:

## **VERDICT**

### **I**

#### **The Accused:**

**Radoje Lalović aka Ratko**, son of Ljubo and Vida, née Zelović, born on 15 July 1946 in Kalinovik, with permanent residence in Bijeljina, 1b Đure Jakšića Street, Serb, BiH citizen, personal identification number (JMBG) 1507946171507, pensioner, literate, completed the two-year post-secondary school for social workers, married, father of two adult children, served the army in 1969/70 in Kruševac, Republic of Serbia, not registered in the military records, no medals, average financial standing, no prior convictions, no other ongoing criminal proceedings against him, prohibiting measures imposed on him under the Decision of the Court of BiH number X-KRN-05/59, dated 19 November 2008,

## **IS FOUND GUILTY**

#### **BECAUSE:**

From late June until mid-December 1992, within a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the so-called Serb Republic of BiH, and subsequently Republika Srpska, directed against the non-Serb civilians of the city of Sarajevo, aware of that attack and that their acts constituted part of

that attack, Radoje Lalović, in his capacity as the warden of the Penal and Correctional Institution (KPD) *Butmir* in Kula, Ilidža Municipality, which functioned as a detention camp, knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of abuse of the non-Serb detainees detained in the mentioned KPD and the commission of crimes against them, sharing the objective with the personnel performing guard duties in that penal and correctional organization, and the military and police structures of the so-called Serb Republic of BiH, and subsequently Republika Srpska, which implied the persecution of the non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, within which he aided and abetted the implementation of the joint plan, according to which, contrary to the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by inhuman treatment, violation of bodily integrity and health, torture and forced labor, inasmuch as:

1. By virtue of his office, Radoje Lalović was responsible for **the functioning of the Penal and Correctional Institution *Butmir* in Ilidža** from late June until mid-December 1992, which in addition to its primary jurisdiction also operated as a detention camp during the mentioned period, where he had and exercised effective control over the work and conduct of all the guards who performed guard duties in the camp, and while holding these offices he maintained daily contacts with the political, military and police authorities outside the camp and thus, contrary to the fundamental rules of international law, he participated in the severe deprivation of physical liberty and imprisonment of hundreds of non-Serb civilians, particularly Bosniaks, without any legal ground, in the way that, with their knowledge and consent, the camp guards took over these persons from army and police members who brought them in, while he not seldom attended the takeover himself, and then they placed them on the camp premises where they were detained and guarded by the camp guards for different periods of time, and during their detention these persons were never informed of the reasons for their detention and no proceeding was conducted against them, and then:
  - 1.(a) with the knowledge and consent of Radoje Lalović, who, although he had the powers to change the detention conditions, determine the detainees' daily regime and grant them more freedom and rights in the camp, including reasonable living conditions and hygiene standards, while supervising the detention conditions, did not exercise these powers at all or exercised them insufficiently, during the mentioned period the detainees were imprisoned and placed in inhumane conditions in the way that they stayed in rooms with inadequate conditions which had no heating during winter and which were frequently overcrowded, they had no possibility to satisfy their basic hygienic needs, they were starved by being given very meager daily meals, as a result of which many of them lost weight, and they were deprived of medical aid, due to which the health of some of them deteriorated, which resulted in the death of **Izet Ramić, son of Malaga**, born in 1956, during the mentioned period,

- 1.(c) with the knowledge and consent of Radoje Lalović, who significantly contributed to the functioning of the camp system of abuse, the guards took the detainees out of the rooms in which they were detained and physically abused them, or they took them to the rooms where they were interrogated by police operatives or army members and then also abused, and thus the detainees were subjected to intentional infliction of severe physical and mental pain in the way that they were physically abused by the guards and other persons, police and army members, whereby **Adil Čaušević, Zlata Čaušević, and a number of other civilians sustained bodily injuries**, and although Radoje Lalović had the powers to completely control the behavior of the guards in the camp who were not allowed to use physical force against the detainees and were obliged to prevent or at least control the conduct of other persons, police and army members, who came to the camp, they did not exercise these powers, and thus they failed to prevent the abuse of the detainees;
- 1.(d) with the knowledge and consent of Radoje Lalović in the creation of the forced labor system, the detainees were made to perform forced labor against their will in the way that Radoje Lalović, cooperating with the civilian and military authorities outside the camp, knew and approved of making the lists of detainees who were supposed to go and perform forced labor, whereupon, with his knowledge, encouragement and approval, although he was aware that they could be killed or wounded while performing such labor, the detainees were taken out of the rooms in which they were detained by the camp guards and then taken by the guards to the locations where they performed forced labor while guarded by the guards, or they were handed over to army members at the camp gate, who took them away and guarded them while performing forced labor, and thus the detainees performed forced labor at the camp farm estate, dug connecting trenches and trenches at the front lines, collected and buried the army members who had been killed, cut trees, loaded items which Serb soldiers pillaged from non-Serb houses and performed other forms of labor, and during the forced labor they were frequently verbally or physically abused and beaten, and many persons were killed or seriously wounded, among whom the following persons were killed during the mentioned period: **Vahid Gačanović, son of Muhamed**, born in 1942, **Zulfo Vatrić, son of Vejsil**, born in 1927, **Mehmed Isić, son of Atif**, born in 1945, **Ramiz Smajić, Hasib Šahović and Hasan Šabanović**, while the following persons were wounded: **Munib Isić, son of Muharem**, born in 1952, **Nusret Šunj, Adem Balić, Nedžad Salihović, Dževad Smajić, Muharem Rešidović, Avdo Pizović, son of Adem**, born in 1949, **Junuz Harbaš, son of Bego**, born in 1957, **Mehmed Agić, son of Abdulah**, born in 1943, and **Almin Dželilović, son of Zilko**, born in 1971, and following these abuses and killings and wounding, which he was aware of, he never objected to such practice of dispatching the detained persons to forced labor:

### **The Accused:**

**Soniboj Škiljević**, son of Vojin and Mileva, née Andrijašević, born on 14 August 1948 in Izgori, Gacko Municipality, with permanent residence in Istočna Ilidža, 21 Ravnogorska Street, Serb, BiH citizen, personal identification number (JMBG) 1408948171514, pensioner, literate, completed the faculty of political sciences, married, father of two adult children, served the army in 1974/75 in Zagreb, Republic of Croatia, and Belgrade, Republic of Serbia, holds a non-commissioned officer rank, not registered in the military records, no medals, poor financial standing, no prior convictions, no other ongoing criminal proceedings against him, prohibiting measures imposed on him under the Decision of the Court of BiH number X-KRN-05/59, dated 19 November 2008

## **IS FOUND GUILTY**

### **Because:**

From mid-December 1992 until mid-December 1995, within a widespread and systematic attack carried out by the military and police as well as paramilitary forces of Republika Srpska, directed against the non-Serb civilians of the city of Sarajevo, aware of that attack and that his acts constituted part of that attack, in his capacity as the warden of the Penal and Correctional Institution (KPD) *Butmir* in Kula, Ilidža Municipality, which functioned as a detention camp, knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of abuse of the non-Serb detainees detained in the mentioned KPD and the commission of crimes against them, sharing the objective with the personnel performing guard duties in that penal and correctional organization, and the military and police structures of the so-called Serb Republic of BiH, and subsequently Republika Srpska, which implied persecution of the non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, within which he aided and abetted the implementation of the joint plan, according to which, contrary to the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by inhuman treatment, violation of bodily integrity and health, and forced labor, inasmuch as:

2. By virtue of his office, he was responsible for **the functioning of the Penal and Correctional Institution *Butmir* in Ilidža** from mid-December 1992 until mid-December 1995, which in addition to its primary jurisdiction also operated as a detention camp during the mentioned period, where he had and exercised effective control over the work and conduct of all the guards who performed guard duties in the camp, and, while holding these offices, he maintained contacts with the political, military and police authorities outside the camp and thus, contrary to the fundamental rules of international law, he participated in the severe deprivation of physical liberty and imprisonment of hundreds of non-Serb civilians, particularly Bosniaks, without any legal ground in the way that, with their knowledge and

consent, the camp guards took over these persons from army and police members who brought them in, while he not seldom attended the takeover himself, and then they placed them on the camp premises where they were detained and guarded by the camp guards for different periods of time, and during their detention these persons were never informed of the reasons for their detention and no proceeding was conducted against them, and then:

2.(a) with the knowledge and consent of Soniboj Škiljević, who, although he had the powers to change the detention conditions, determine the detainees' daily regime and grant them more freedom and rights in the camp, including reasonable living conditions and hygiene standards, exercised these powers insufficiently, during the mentioned period the detainees were imprisoned and placed in inhumane conditions in the way that they stayed in rooms with inadequate conditions which had no heating during winter and which were frequently overcrowded, they had no possibility to satisfy their basic hygienic needs, they were starved by being given very meager daily meals, as a result of which many of them lost weight due to which the health of some of them deteriorated, and thus, as a result of that, **Bahrudin Bećirović, son of Agan**, born in 1946, **Mihrudin Begović, son of Idriz**, born in 1971, and **Mirsad Zečević** died during the mentioned period,

2.(c) with his knowledge and consent, by which he significantly contributed to the functioning of the camp system of abuse in the way that he made it possible for the guards to take the detainees out of the rooms in which they were detained and physically abuse them or take them to the rooms where they were interrogated by police operatives or army members and then also abused, the detainees were subjected to intentional infliction of severe physical and mental pain **in the way that** they were physically abused by the guards and other persons, army and police members, whereby many of them sustained bodily injuries, and thus the following persons were beaten and abused during the mentioned period: **Halid Aruković, son of Ahmed**, born in 1958, **Šemso Jašarević, son of Hasan**, born in 1952, **Marijan Malešić, son of Anto**, born in 1941, **Josip Sogović, son of Andrija**, born in 1961, **Slavko Srđić, Salko Jašarević** and **Islam Zulović**, and although he had the powers to completely control the conduct of the guards in the camp who were not allowed to use physical force against the detainees and who were obliged to prevent or at least control the conduct of other persons, army and police members, who came to the camp, he did not exercise these powers, and thus he failed to prevent the abuse of the detainees in any way whatsoever,

2.(d) with his knowledge and consent in the creation of the forced labor system, the detainees were made to perform forced labor against their will in the way that he, cooperating with the civilian and military authorities, knew and approved of making the lists of detainees who were supposed to go and perform forced labor, whereupon, with his knowledge, encouragement and approval, although he was aware that they could be killed or wounded while performing

such labor, which he never objected to, the detainees were taken out of the rooms in which they were detained by the camp guards and then taken by the guards to the locations where they performed forced labor while guarded by the guards, or they were handed over to army members at the camp gate, who took them away and guarded them while performing forced labor and physically abused many of them during labor, and thus the detainees performed forced labor at the camp farm estate, dug connecting trenches and trenches at the front lines, collected and buried the army members who had been killed, cut trees, loaded items which Serb soldiers pillaged from non-Serb houses and performed other labor, and during the forced labor they were frequently verbally or physically abused and beaten, and many persons were killed or seriously wounded, among whom the following persons were killed during the mentioned period: **Ismet Hidić, son of Šerif**, born in 1956, **Safet Bešić, son of Hazim**, born in 1952, **Denis Ahmić, son of Mehmed**, born in 1965, **Suad Hasančević, son of Jusuf**, born in 1973, **Senad Hasančević, son of Mehmed**, born in 1968, **Izudin Hodžić, son of Uzeir**, born in 1971, **Samir Hidić, son of Ibrahim**, born in 1969, **Mustafa Hurtić, son of Hajrudin**, born in 1961, **Osmo Škiljan, son of Bečir**, born in 1962, **Salih Hurtić, son of Šerif**, born in 1968, **Rasim Čamdžić, son of Rasim**, born in 1966, **Ševal Čamavdžić, son of Mumin**, born in 1960, **Alen Kure, son of Tomislav**, born in 1973, **Šemsudin Smajić, Senji Lajoš and Fadil Osmanović, Kasim Hurtić, son of Mujo, and Munever Hidić, son of Ibrahim**, while the following persons were wounded: **Husein Hurtić, Jasmin Husaković, Vahidin Hasančević, Hasan Hurtić, Sead-Sejo Škiljan, Muhamed Hurtić, son of Muhamed**, born in 1969, **Omer Hidić, Rifet Husaković, Osman Hurtić, Fadil Šabanović, Vehid Alić, Refik Hodžić, Sadmira Husaković, Mujo Škiljan, Haris Jasenković, Senad Hurtić and Mevlid Hadžić, son of Hasan**, born in 1970, **Zenun Morina, Esad Klačar, Šaćir Čagalj, Nihad Mehmedović, Nedim Alić, Safić Čosić, Rasim Huskić, Ferid Hasančević, Asim Husaković and Rasim Selimović**, and following these abuses and killings and wounding which he knew of, he never objected to such practice of dispatching the detained persons to forced labor.

Therefore,

within a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the so-called Serb Republic of BiH, and subsequently Republika Srpska, directed against the non-Serb civilians of the city of Sarajevo, aware of that attack and that their acts constituted part of the attack, as responsible persons in the Penal and Correctional Institution *Butmir*, Ilidža Municipality, which in addition to its primary jurisdiction also operated as a detention camp for the non-Serb civilians, aware of the existence of an organized system of abuse of the detainees in the mentioned camp and the commission of crimes against them, they knowingly and willingly participated in a systematic joint criminal enterprise, aware of the existence of an organized system of abuse of the non-Serb detainees detained in the mentioned KPD and the commission of

crimes against them, sharing the objective with the personnel performing guard duties in that penal and correctional organization, and the military and police structures of the so-called Serb Republic of BiH, and subsequently Republika Srpska, which implied the persecution of the non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, within which they aided and abetted the implementation of the joint plan, according to which, contrary to the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by inhuman treatment, violation of bodily integrity and health, and forced labor

Whereby they committed the following criminal offenses:

**Radoje Lalović** – the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the CC BiH, in conjunction with:

- subparagraph e) of the same article for the acts stated under Count 1 of the Indictment,
- subparagraph k) of the same article for the acts stated under Count 1(a) and (c) of the Indictment,
- subparagraph c) of the same article for the acts stated under Count 1(d) of the Indictment,

all in conjunction with Article 180(1) of the CC BiH.

**Soniboj Škiljević** - the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the CC BiH, in conjunction with:

- subparagraph e) of the same article for the acts stated under Count 2 of the Indictment,
- subparagraph k) of the same article for the acts stated under Sub-count 2(a) of the Indictment,
- subparagraph c) of the same article for the acts stated under Sub-count 2(d) of the Indictment,

all in conjunction with Article 180(1) of the CC BiH.

Therefore, for the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the Criminal Code of BiH, in conjunction with subparagraphs e), k) and c), all in conjunction with Article 180(1) of the CC BiH, with the application of the quoted provisions and Article 39, 42 and 48 of the CC BiH, **the First-Accused Radoje Lalović** is

**SENTENCED  
TO IMPRISONMENT FOR A TERM OF 5 (five) YEARS**

while for the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the Criminal Code of BiH, in conjunction with subparagraphs e), k) and c), all in conjunction with Article 180(1) of the CC BiH, with the application of the quoted provisions and Article 39, 42 and 48 of the CC BiH, **the Second-Accused Soniboj Škiljević is**

**SENTENCED  
TO IMPRISONMENT FOR A TERM OF 8 (eight) YEARS**

**II**

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

**The Accused Radoje Lalović**

**IS ACQUITTED OF THE CHARGES**

**That:**

With a significant contribution by Radoje Lalović, who knew or at least had reason to know that their subordinates or other persons, mostly army members, by taking the detainees out of the camp, were making preparations, were able and wanted to kill them, and still took no action to prevent these persons from doing what they intended to, although he could have done so, but, with his consent or tacit agreement, he enabled them to take the detainees out of the camp and then take them to unknown locations where they intentionally killed them, and in this way on undetermined dates during the mentioned period the following persons were taken out of the prison and killed at an unknown location: **Alija Durić, son of Suljo**, born on 13 May 1935, **Samir Durić, son of Alija**, born on 24 October 1968, **Suvad Durić, son of Alija**, born on 4 December 1962, **Seid Dević, son of Hasan**, born on 16 April 1946, **Besim Dević, son of Seid**, born on 13 September 1970, **Bislim Gaši, son of Hašim**, born on 30 April 1941, **Mahmut Čatović, son of Avdo**, born on 11 January 1946, **Haris Kikić, son of Hamza**, born on 11 June 1971, **Salih Bihorac, son of Hajro**, born in 1940, **Dervo Bihorac, son of Hajro**, born in 1957, **Hasan Džanić, son of Zijad**, born on 20 January 1953, **Elmaz Džanković, son of Hamid**, born on 19 May 1936, **Rifat Džanković, son of Elmaz**, born on 6 October 1971, **Šefčet Džanković, son of Elmaz**, born on 7 March 1963, **Mujo Džindo, son of Hamid**, born in 1937, **Huso Gačević, son of Redžo**, born in 1959, **Šemso Gačević, son of Redžep**, born on 5 September 1950, **Zuvdija Gačević, son of Redžep**, born in 1968, **Emir Hajdarević, son of Zildžo**, born on 9 March 1973, **Zildžo Hajdarević, son of Abdulah**, born on 5 November 1948, **Rušid Kovač, son of Ibro**, born on 28 March 1956, **Emin Kulo, son of Mehmed**, born on 24 April 1934, **Hasan Kulo, son of Mehmed**, born on 10 April 1936, **Ervan Martinović, son of Latif**, born on 9 June 1966, **Elmaz Mulić, son of Ramiz**, born on 11 January 1962, **Sabahudin Mulić, son of Redžep**, born on 23 June 1957, **Ujkan Mulić, son of Redžep**, born on 2 January 1953, **Džafer Turković, son of Ibrahim**, born on 21 February 1956, **Husejin Turković, son of Jusuf**, born on 7 August 1953, **Kasim Turković, son of Jusuf**, born on 5 February 1958,

**Emin Katica, son of Hamza**, born on 1 June 1954, **Ibrahim Rastoder, son of Cano**, born on 5 November 1939, **Rahman Rastoder, son of Cano**, born on 18 October 1933, **Husein Ramović, son of Smajo**, born on 13 July 1954, **Sabid Selimović, son of Ćamil**, born on 24 January 1951, **Nail Maksumić, son of Alija**, born on 27 September 1948, **Feho Erović, son of Rašid**, born on 28 November 1956, and **Habib Medović, son of Rasim**, born on 23 June 1968, after which he took no action to report the perpetrators of these murders,

**Whereby he would have committed** the criminal offense of Crimes against Humanity referred to in Article 172(1)(h) of the Criminal Code of BiH, in conjunction with subparagraph (a) of the CC BiH.

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

**The Accused Soniboj Škiljević**

**IS ACQUITTED OF THE CHARGES**

**That:**

Soniboj Škiljević and Radoje Lalović together:

From early May until mid-December 1992, within a widespread and systematic attack carried out by the military and police as well as paramilitary forces of the so-called Serb Republic of BiH, and subsequently Republika Srpska, directed against the non-Serb civilians of the city of Sarajevo, aware of that attack and that their acts constituted part of that attack, Radoje Lalović, in his capacity as the warden, and Soniboj Škiljević, in his capacity as the deputy warden of the Penal and Correctional Institution (KPD) *Butmir* in Kula, Ilidža Municipality, which functioned as a detention camp, knowingly and willingly participated in a joint criminal enterprise, aware of the existence of an organized system of abuse of the non-Serb detainees detained in the mentioned KPD and the commission of crimes against them, sharing the objective with the responsible persons in the Ministry of Justice of the so-called Serb Republic of BiH, and subsequently Republika Srpska, primarily the then Minister of Justice Momčilo Mandić as well as the personnel performing guard duties in that penal and correctional organization, including guards Neđo Pandurović, Vule Govedarica, Božo Radović and others, and with the military and police structures of the so-called Serb Republic of BiH, and subsequently Republika Srpska, which implied the persecution of non-Serb civilians on political, national, ethnic and religious grounds, based on discriminatory intent, within which they planned, ordered and perpetrated and incited and aided and abetted the implementation of the joint plan, according to which, contrary to the rules of international law, severe deprivations of physical liberty and imprisonment of non-Serb civilians in inhumane conditions were carried out, followed by intentional deprivations of life (murders), inhuman treatment, violation of bodily integrity and health, torture and forced labor, and, as superiors and responsible persons, they knowingly failed to take the

necessary and reasonable measures to prevent the perpetration of the mentioned acts and punish the perpetrators thereof, in the way that:

1. By virtue of their offices, Radoje Lalović and Soniboj Škiljević were responsible for **the functioning of the Penal and Correctional Institution Butmir in Ilidža** from early May until mid-December 1992, which, in addition to its primary jurisdiction, also operated as a detention camp during the mentioned period, where they had and exercised effective control over the work and conduct of all the guards who performed guard duties in the camp, and, while holding these offices, they maintained daily contacts with the political, military and police authorities outside the camp and thus, contrary to the fundamental rules of international law, they participated in the severe deprivation of physical liberty and imprisonment of hundreds of non-Serb civilians, particularly Bosniaks, without any legal ground in the way that, with their knowledge and consent, the camp guards took over these persons from army and police members who brought them in, while they not seldom attended the takeover themselves, and then they placed them on the camp premises where they were detained and guarded by the camp guards for different periods of time, and during their detention these persons were never informed of the reasons for their detention and no proceeding was conducted against them, and then:

1.(a) by direct participation and with the knowledge and consent of Radoje Lalović and Soniboj Škiljević, who, although they had the powers to change the detention conditions, determine the detainees' daily regime and grant them more freedom and rights in the camp, including reasonable living conditions and hygiene standards, while supervising the detention conditions, did not exercise these powers at all or exercised them insufficiently, during the mentioned period the detainees were imprisoned and placed in inhumane conditions in the way that they stayed in rooms with inadequate conditions which had no heating during winter and which were frequently overcrowded, they had no possibility to satisfy their basic hygienic needs, they were starved by being given very meager daily meals, as a result of which many of them lost weight, and they were deprived of adequate and timely medical aid, due to which the health of some of them deteriorated, which resulted in the death of **Izet Ramić, son of Malaga**, born in 1956, during the mentioned period,

1.(b) with a significant contribution by Radoje Lalović and Soniboj Škiljević, who knew or at least had reason to know that their subordinates or other persons, mostly army members, by taking the detainees out of the camp, were making preparations, were able and wanted to kill them, and still took no action to prevent these persons from doing what they intended to, although they could have done so, but, with their consent or tacit agreement, they enabled them to take the detainees out of the camp and then take them to unknown locations where they intentionally killed them, and in this way on undetermined dates during the mentioned period the following persons were taken out of the prison and killed at an unknown location: **Alija Durić, son of Suljo**, born on

13 May 1935, **Samir Durić, son of Alija**, born on 24 October 1968, **Suvad Durić, son of Alija**, born on 4 December 1962, **Seid Dević, son of Hasan**, born on 16 April 1946, **Besim Dević, son of Seid**, born on 13 September 1970, **Bislim Gaši, son of Hašim**, born on 30 April 1941, **Mahmut Čatović, son of Avdo**, born on 11 January 1946, **Haris Kikić, son of Hamza**, born on 11 June 1971, **Salih Bihorac, son of Hajro**, born in 1940, **Dervo Bihorac, son of Hajro**, born in 1957, **Hasan Džanić, son of Zijad**, born on 20 January 1953, **Elmaz Džanković, son of Hamid**, born on 19 May 1936, **Rifat Džanković, son of Elmaz**, born on 6 October 1971, **Šefcet Džanković, son of Elmaz**, born on 7 March 1963, **Mujo Džindo, son of Hamid**, born in 1937, **Huso Gačević, son of Redžo**, born in 1959, **Šemso Gačević, son of Redžep**, born on 5 September 1950, **Zuvdija Gačević, son of Redžep**, born in 1968, **Emir Hajdarević, son of Zildžo**, born on 9 March 1973, **Zildžo Hajdarević, son of Abdulah**, born on 5 November 1948, **Rušid Kovač, son of Ibro**, born on 28 March 1956, **Emin Kulo, son of Mehmed**, born on 24 April 1934, **Hasan Kulo, son of Mehmed**, born on 10 April 1936, **Ervan Martinović, son of Latif**, born on 9 June 1966, **Elmaz Mulić, son of Ramiz**, born on 11 January 1962, **Sabahudin Mulić, son of Redžep**, born on 23 June 1957, **Ujkan Mulić, son of Redžep**, born on 2 January 1953, **Džafer Turković, son of Ibrahim**, born on 21 February 1956, **Husejin Turković, son of Jusuf**, born on 7 August 1953, **Kasim Turković, son of Jusuf**, born on 5 February 1958, **Emin Katica, son of Hamza**, born on 1 June 1954, **Ibrahim Rastoder, son of Cano**, born on 5 November 1939, **Rahman Rastoder, son of Cano**, born on 18 October 1933, **Husein Ramović, son of Smajo**, born on 13 July 1954, **Sabid Selimović, son of Ćamil**, born on 24 January 1951, **Nail Maksumić, son of Alija**, born on 27 September 1948, **Feho Erović, son of Rašid**, born on 28 November 1956, and **Habib Medović, son of Rasim**, born on 23 June 1968, after which they took no action to report the perpetrators of these murders,

- 1.(c) with the knowledge, consent and assistance by Radoje Lalović and Soniboj Škiljević, who significantly contributed to and furthered the functioning of the camp system of abuse, the guards took the detainees out of the rooms in which they were detained and physically abused them, or they took them to the rooms where they were interrogated by police operatives or army members and then also abused, and thus the detainees were subjected to the intentional infliction of severe physical and mental pain in the way that they were physically abused by the guards and other persons, police and army members, whereby many of them sustained bodily injuries, and thus the following persons were beaten and abused during the mentioned period: **Witness/injured party A, Salko Zolj, son of Ahmed**, born in 1945, **Džafer Turković, Husein Ramović, Dervo Bihorac, Alija Durić, Adil Čaušević, Zlata Čaušević, Mirsad Čerkez, Aladin Badžić, son of Hasan**, born in 1975, **Dubravko Smolčić**, and **Ahmo Fako, son of Adil**, born in 1951, and although Radoje Lalović and Soniboj Škiljević had the powers to completely control the behavior of the guards in the camp and prevent or at least control

the conduct of other persons, police and army members, who came to the camp, they did not exercise these powers, and thus they failed to prevent the abuse of the detainees or punish the perpetrators of such abuse in any way whatsoever when the guards were the perpetrators,

- 1.(d)** by the direct participation of Radoje Lalović and Soniboj Škiljević in the creation of the forced labor system, the detainees were made to perform forced labor against their will in the way that Radoje Lalović and Soniboj Škiljević, cooperating with the civilian and military authorities outside the camp, knew and approved of making the lists of detainees who were supposed to go and perform forced labor, whereupon, with their knowledge, encouragement and approval, although they were aware that they could be killed or wounded while performing such labor, the detainees were taken out of the rooms in which they were detained by the camp guards and then taken by the guards to the locations where they performed forced labor while guarded by the guards, or they were handed over to army members at the camp gate, who took them away and guarded them while performing forced labor, and thus the detainees performed forced labor at the camp farm estate, dug connecting trenches and trenches at the front lines, collected and buried the army members who had been killed, cut trees, loaded items which Serb soldiers pillaged from non-Serb houses and performed other forms of labor, and during the forced labor they were frequently verbally or physically abused and beaten, and many persons were killed or seriously wounded, among whom the following persons were killed during the mentioned period: **Vahid Gačanović, son of Muhamed**, born in 1942, **Zulfo Vatrić, son of Vejsil**, born in 1927, **Mehmed Isić, son of Atif**, born in 1945, **Ramiz Smajić, Hasib Šahović and Hasan Šabović**, while the following persons were wounded: **Munib Isić, son of Muharem**, born in 1952, **Nusret Šunj, Adem Balić, Nedžad Salihović, Dževad Smajić, Muharem Rešidović, Avdo Pizović, son of Adem**, born in 1949, **Junuz Harbaš, son of Bego**, born in 1957, **Mehmed Agić, son of Abdulah**, born in 1943, and **Almin Dželilović, son of Zilko**, born in 1971, and following these abuses and killings and wounding, which they were aware of, they never objected to such practice of dispatching the detained persons to forced labor nor did they ever raise the issue of accountability for those killings or wounding of the detainees.
- 2.(b)** he significantly contributed and knew or at least had reason to know that his subordinates or other persons, mostly army members, by taking the detainees out of the camp, were able and wanted to kill them, but still took no action to prevent those persons from doing what they intended to, although he could have done so, but rather, with his knowledge, consent or tacit agreement, he enabled them to take the detainees out of the camp and then take them to unknown locations where they intentionally killed them, and in this way on undetermined dates during the mentioned period the following persons were taken out of the prison and killed: **Kasim Hurtić, son of Mujo**, born in 1970,

and **Munever Hidić, son of Ibrahim**, born in 1961, after which he took no action to report the perpetrators of these murders,

**Whereby he would have committed** the criminal offense of Crimes against Humanity referred to in Article 172(1)(h), in conjunction with subparagraphs (e), (k), (a), (f) and (c) of the CC BiH.

### III

Pursuant to Article 186(1) and (2), the Accused Radoje Lalović and Soniboj Škiljević are relieved from the obligation to reimburse the costs of criminal proceedings, so that they shall be paid from within the budget appropriations.

## Reasoning

### The Indictment

1. By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, Special Department I for War Crimes, number KT-RZ-33/05, dated 30 December 2008, that was confirmed on 31 December 2008, the charges were pressed against Radoje Lalović and Soniboj Škiljević.
2. By the foregoing Indictment, Radoje Lalović and Soniboj Škiljević were charged with the commission of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with subparagraphs (e), (k), (a), (f) and (c) of the Criminal Code of Bosnia and Herzegovina (CC BiH), all in conjunction with Article 180(1) and (2) of the same Code.
3. Prior to completion of the main trial, the Prosecution specified the Indictment number KT-RZ-33/05 and submitted it on 15 April 2010, changing certain names of the Accused and defining the manner in which the Accused Radoje Lalović and Soniboj Škiljević contributed to the functioning of unlawful detention, torture, killing, commission of inhumane acts and forced labor within the Penal and Correctional Institution *Butmir*.
4. Furthermore, by the Indictment specified in this manner, the Prosecution dismissed the charges pursuant to the doctrine of command responsibility.
5. At the plea hearing held on 28 January 2009, Radoje Lalović and Soniboj Škiljević pled not guilty on all Counts of the foregoing Indictment that was confirmed on 31 December 2008.
6. After the Accused had pled not guilty, pursuant to Article 229(4) of the CPC BiH, the Preliminary Hearing Judge referred the case record to the Panel to schedule the main trial.

**(1) Evidence Adduced**

**a) Upon the Prosecutor's motion, the following witnesses were heard:**

7. Protected witness A, protected witness B, Ahmo Fako, Suvad Korjenić, Rešad Brdarić, Salko Zolj, Alisa Muratčauš, Aladin Badžić, Junuz Harbaš, Avdo Pizović, Munib Isić, Hasan Šunj, Mušan Šunj, Suno Dupovac, Delka Jamaković, Senaid Stupar, protected witness C, protected witness D, protected witness E, Almin Dželilović, Hajrudin Karić, Šučro Džihanić, Milenko Tepavčević, Edina Ceribašić-Begović, Vojislav Gojković, Hasib Dželilović, Fadil Vlajčić, Mujo Kalkan, Safet Gagula, Fikret Sirčo, Halid Aruković, Džemal Arnautović, Mehmed Agić, Mevlid Hadžić, Muhamed Hurtić, Nusret Kepeš, Šemso Jašarević, Izudin Husaković, Hazim Hadžihasanović, Mirsad Pleća, Edin Hidić, Josip Sogović, Marijan Malešić, protected witness F, Almir Garaplija, Azra Zahiragić, Šaban Zahiragić, Goran Bojić, Nezir Huruz and Miodrag Lalović.

**b) Upon the Prosecutor's motion, the following expert witness presented his Finding and Opinion:**

8. Hamza Žujo

**c) During the main trial, the Prosecution presented the following documentary evidence:**

9. Record of the BiH Prosecutor's Office, No. KT-RZ-33/05 dated 3 July 2007 on examination of witness A; Record of the BiH Prosecutor's Office, No. KT-RZ-33/05 dated 12 April 2007 on examination of witness B; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-33/05 dated 19 February 2007 for Ahmo Fako; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-33/05 dated 5 June 2007 for Suvad Korjenić; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-33/05 dated 5 January 2006 for Rešad Brdarić; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-42/05 and 33/05 dated 22 February 2006 for Salko Zolj; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-42/05 and 33/05 dated 23 February 2006 for Alisa Muratčauš; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-33/05 dated 10 April 2007 for Aladin Badžić; Witness Examination Record of the BiH Prosecutor's Office, No. KT-RZ-42/05 and 33/05 dated 9 March 2006 for Junuz Harbaš; Witness Examination Record of the BiH Prosecutor's Office dated 10 March 2006 No. KT-RZ: 42/05 and KT-RZ: 33/05 for Avdo Pizović; Witness Examination Record of the BiH Prosecutor's Office dated 9 March 2006 No. KT-RZ: 42/05 and KT-RZ: 33/05 for Munib Isić; Witness Examination Record of the BiH Prosecutor's Office dated 13 April 2006 No. KT-RZ: 42/05 and KT-RZ: 33/05 for Hasan Šunj; Witness Examination Record of the BiH Prosecutor's Office dated 23 February 2006 No. KT-RZ: 42/05 and KT-RZ: 33/05 for Mušan Šunj; Witness Examination Record of the BiH

Prosecutor's Office dated 13 June 2007, No. KT-RZ-33/05 for Suna Dupovac; Witness Examination Record of the BiH Prosecutor's Office dated 30 March 2007 No. KT-RZ-33/05 for Delka Jamaković; Examination Record of the BiH Prosecutor's Office dated 12 April 2007 No. KT-RZ-33/05 for protected witness C; Witness Examination Record of the BiH Prosecutor's Office dated 17 December 2008 No. KT-RZ-33/05 for Senaid Stupar; Examination Record of the BiH Prosecutor's Office dated 10 April 2007 No. KT-RZ-33/05 for protected witness D; Examination Record of the BiH Prosecutor's Office dated 12 April 2007 No. KT-RZ-33/05 for protected witness E; Witness Examination Record for Almin Dželilović dated 15 December 2008 No. KT-RZ-33/05; Witness Examination Record for Hajrudin Karić dated 8 February 2006 No. KT-RZ-42/05 and 33/05; Witness Examination Record for Šuhro Džihanić dated 20 February 2007 No. KT-RZ-33/05; Witness Examination Record for Milenko Tepavčević dated 19 April 2007 No. KT-RZ-33/05; Document No. 5/92 dated 20 May 1992, Document No. 10/92 dated 25 May 1992; Witness Examination Record for Edina Ceribašić-Begovac dated 5 June 2007 No. KT-RZ-33/05; Witness Examination Record for Vojislav Gojković dated 2 December 2008 No. KT-RZ-33/05; Witness Examination Record for Hasib Dželilović dated 23 February 2006 No. KT-RZ-42/05 and 33/05; Witness Examination Record for Fadil Vlajčić dated 10 December 2008 No. KT-RZ-33/05; Witness Examination Record for Mujo Kalkan dated 5 June 2007 No. KT-RZ-33/05; Witness Examination Record for Safet Gagula dated 26 April 2006 No. KT-RZ-33/05; Witness Examination Record for Fikret Sirčo dated 15 February 2006 No. KT-RZ-42/05, 33/05 and 39/05; Witness Examination Record for Halid Aruković dated 30 March 2007, No. KT-RZ-33/05; Witness Examination Record for Džemal Arnautović dated 26 December 2006 No. KT-RZ-24/06 and 33/05; Witness Examination Record for Mehmed Agić dated 19 February 2007 No. KT-RZ-33/05; Discharge Letter from the City Hospital Sarajevo-Kasindol for witness Mevlid Hadžić; Witness Examination Record for Mevlid Hadžić dated 12 June 2007 No. KT-RZ-33/05; Witness Examination Record for Muhamed Hurtić dated 7 February 2009 No. KT-RZ-33/05; Witness Examination Record for Nusret Kepeš dated 12 June 2007 No. KT-RZ-33/05; Witness Examination Record for Šemso Jašarević dated 7 March 2007 No. KT-RZ-33/05; Witness Examination Record for Izudin Husaković dated 4 October 2006 No. KT-RZ-33/05; Witness Examination Record for Hazim Hadžihasanović dated 20 February 2007 No. KT-RZ-33/05; Witness Examination Record for Mirsad Plećan dated 15 February 2006 No. KT-RZ-42/05 and 33/05; Witness Examination Record for Edin Hidić dated 8 February 2006 No. KT-RZ-42/05 and 33/05; Witness Examination Record for Josip Sogović dated 19 February 2007 No. KT-RZ-33/05; Witness Examination Record for Marijan Malešić dated 7 March 2007 No. KT-RZ-33/05; Examination Record for witness F dated 16 June 2006 No. KT-RZ-42/05 and 33/05; Witness Examination Record for Almir Garaplija dated 14 June 2007 No. KT-RZ-33/05; Witness Examination Record for Azra Zahiragić dated 13 June 2007 No. KT-RZ-33/05; Witness Examination Record for Šaban Zahiragić dated 13 June 2009 No. KT-RZ-33/05; Witness Examination Record for Goran Bojić dated 23 January 2009 No. KT-RZ-34/06 and KT-RZ-33/05; Witness Examination Record for Nezir Huruz dated 29 December 2005 No. KT-RZ-42/05

and 33/05; List of Croat refugees; Guard rosters (91 document); List of persons (titled Work-site roster for 1993); Work-site roster for 1994; List of the KPD *Butmir* prisoners dated 20 April, 21 April, 2 May, 6 May, 4 November, December 1993; 4 January 1994 and 5 January 1994; Notebook of the work-site for 1994; List of able-bodied Muslims; List of detainees noting the location where they perform work; Work-site list; Work-site list dated 10 August 1994; Work-site roster dated 27 September 1994; Overview of per diems and hours worked by prisoners of war at the work-sites for January 1994 and October 1994; Certificates dated 22 June 1994, 30 November 1993, 26 November 1993, 19 August 1993 and 31 January 1994; KPD *Butmir* duty officer's report for 21/22 March 1993 concluded with 16, 17, 18, 19 April 1995; Report on the work of the police service for May – April 1994 (2x), September 1994, December 1994, November 1994, February 1994, March 1994; Witness Examination Record for Miodrag Lalović dated 3 December 2008 No. KT-RZ-33/05 of 2 July 2009; Record on the handover of DNA samples dated 14 June 2007; Autopsy Records (different dates-38 Records); Identification Records and Reports on Corps Analysis; Finding and Opinion on Exhumation and Examination-Dr. Hamza Žujo dated 12 September 2000 and 4 October 2000; Finding and Opinion on Exhumation and Examination-Dr. Hamza Žujo dated 30 June 2000; Decision on the strategic objectives of the Serb people dated 26 November 1993; Decision dated 1 May 1992; Decision on the establishment of penal and correctional organizations in the territory of the Serb Republic of BiH dated 1 May 1992; Decision on the establishment of penal and correctional organizations in the territory of the Serb Republic of BiH dated 12-17 May 1992; Excerpt from the Official Gazette of the Serb People in BiH, number 5, dated 9 May 1992 with the Law on Ministries; Excerpt from the Official Gazette of the Serb People in BiH, number 10, dated 30 June 1992 with the Decision on Establishment of the KPD *Butmir*; Notice by the RS Ministry of Justice dated 22 January 2007 with a Decision dated 16 December 1992 on the appointment of Soniboj Škiljević and the Decision on the Appointment of Đorđe Faladžić; KPD *Butmir* Certificate dated 18 August 1992; KPD *Butmir* Certificate dated 14 September 1992; List of the KPD *Butmir* employees dated 30 September 1992; List of employees in the Ministry of Justice dated 18 May 1992; Official Letter from the Ministry of Justice dated 31 August 1992 with the recapitulation of paid and disbursed funds; List of the KPD *Butmir* employees who received the salary for October 1992; Official letter from the Penal and Correctional Institution *Butmir*, dated 17 November 1992; Decision of the Ministry of Justice and Administration of Republika Srpska, dated 16 December 1992 on the appointment of Radoje Lalović; Decision on the assignment to work obligation for Radoje Lalović issued by the Ministry of Justice and Administration of Republika Srpska, number 01/2-241/92, dated 16 December 1992; Certificate from the Consulate General of Serbia and Montenegro in Banja Luka, dated 24 February 2006, and Decision on granting the citizenship of the Republic of Serbia, issued by the Ministry of the Interior of the Republic of Serbia dated 27 June 2006; List of persons indicating years of service in the KPD *Butmir*; Certificate from the Ministry of Justice of Republika Srpska dated 3 January 2007; List of the identified civilians in the *Kula* camp the S.V.Č. barracks; List of prisoners in the *Kula* prison; List of prisoners from 1992; List of

camp detainees in the *Kula* camp made by the Association of Camp Detainees of BiH dated 15 February 2006; List of camp detainees – Lukavica *Kula* made by the Association of Camp Detainees of BiH dated 10 April 2006; List of prisoners made by the R BiH Territorial Defense Staff; List of prisoners in the KPD *Butmir* dated 2 September 1992 made by the Ministry of Justice; List of detainees-rooms 1, 3, 4, 5 and 6-Hadžići; 2 Lists of detainees-rooms 1-7 in the KPD *Butmir* and room No. 5 Pale; Official Letter of the Ministry of Justice dated 23 June 1992; Official Letter of the Ministry of Interior dated 30 August 1992; Official Letter dated 8 September 1992; Decision on the exchange of prisoners dated 2 December 1992; List of missing persons in Kasindolska Street dated 29 May 2005; Request for the issuance of the order for exhumation, dated 17 May 200; Request for the issuance of the order for exhumation, dated 17 May 2007; Order for exhumation issued by the Cantonal Court in Sarajevo dated 18 May 2007; Order for exhumation dated 22 May 2007; Record on exhumation dated 23 May 2007; Record on exhumation dated 25 May 2007; Official Note dated 25 May 2007; Official Note dated 13 June 2007; Record on the handover of items dated 15 June 2007; Order of the Cantonal Prosecutor's Office Sarajevo dated 20 September 2007; Order of the Cantonal Prosecutor's Office Sarajevo dated 25 September 2007; Order of the Cantonal Prosecutor's Office Sarajevo dated 27 September 2007; Record on identification dated 24 September 2007; Official note dated 5 October 2007; Notebook of the KPD *Butmir* *Kula* work-site for the period from September to December 1992; Overview of events in the *Kula* camp; Decision of the Basic Court II in Sarajevo dated 23 October 1996; Decision of the Cantonal Court in Sarajevo dated 27 April 1999; On-site investigation record dated 3 May 1999; Expert forensic finding and opinion dated 24 March 2000; Photo-documentation dated 3 May 1999; Official note dated 24 March 2000; Record on dated 26 February 2000; Excerpt from the register of deaths for the deceased Izet Ramić dated 3 March 2006; Admission document dated 5 May 1999; Burial permit dated 21 May 1999; Laissez-passer for a corpse dated 24 May 1999; Death certificate dated 21 May 1999; Excerpt from the register of deaths for the deceased Vahid Gačanović dated 6 March 2006; Decision of the Basic Court II in Sarajevo dated 13 September 1994; Decision of the Cantonal Court in Sarajevo dated 16 August 2000; Record on exhumation from the Cantonal Court in Sarajevo dated 12 September 2000; Report dated 12 September 2000 and Identification Record dated 25 October 2000; Photo-documentation dated 25 October 2000; Admission document dated 12 September 2000; Permit for the burial of the deceased dated 4 October 2000, Permit for the burial dated 4 October 2000; Laissez-passer for a corpse dated 7 October 2000; Excerpt from the register of deaths for the deceased Mehmed Isić dated 26 February 2008; Excerpt from the register of deaths for the deceased Ramiz Smajić dated 26 February 2008; Official letter from the Ministry of Justice of the Serb Republic dated 3 September 1992; List of Muslims; Official letter from the Ministry of Justice dated 22 September 1992; Minutes dated 10 June 1992; Decision dated 9 August 1992; Minutes dated 9 August 1992; Minutes dated 17 November 1992; Information dated 22 October 1992; Conclusion dated 6 August 1992; Official letter from the Presidency of Republika Srpska dated 22 October 1992; Official letter from the Ministry of Justice and Administration of Republika

Srpska dated 22 October 1992; 1 CD -Audio recording of the intercepted conversation between Momčilo Mandić and Radivoje Grković and the transcript of the conversation; Decision dated 5 June 1990; Decision and the Law on the basics of the state security system from April 1984; Request for funds allocation dated 28 August 1992; Order of the Ministry of Justice and Administration of RS dated 16 December 1992; Official letter from the Command of the Sarajevo-Romanija Corps dated 21 December 1992; Order of the Commission for the exchange dated 24 June 1992; Request from the Ministry of Justice dated 21 November 1992 and Request from the Commission for exchange dated 29 November 1992, 1 DVD (CNN video-recording) and the transcript of the recording in English with the translation into Bosnian; Report of the Ministry of Justice and Administration dated 16 November 1992; Information; Report dated 19 November 1992 and translation into BCS; Notice dated 4 July 1992; List of the KPD *Butmir* employees made by the KPD *Butmir* dated 28 January 1993; Data regarding persons under work obligation, KPD *Butmir* dated 14 February 1993; Records of work of employees dated 12 July 1993; Records of persons under work obligation, KPD *Butmir* dated 22 December 1993; List of employees in the KPD *Butmir* dated 26 December 1995; Book of rules on the internal organization of the KPD *Butmir*; Official letter from the KPD *Butmir* dated 10 July 1995; House Rules of the KPD *Kula*; List of the KPD *Butmir* employees dated 17 March 1995; Certificate from the KPD *Butmir* dated 20 July 1994; Financial plan for funds of the KPD *Butmir* dated 30 January 1994; Official letter of the KPD *Butmir* dated 22 January 1993; Official letter of the KPD *Butmir* dated 24 May 1993; Certificate dated 4 January 1994; Official letter of the KPD *Butmir* dated 13 December 1993; Information; Request of the Ministry of Justice and Administration RS dated 6 April 1994; Report of Elektro distribucija /Power-supply company/ dated 17 May 1994; List of prisoners in the *Kula* prison; List of prisoners of war; List of prisoners of war in the KPD *Butmir*; List of detainees placed in rooms; List of Muslim prisoners on 27 August 1993; List concluded with number 81, 2 lists of prisoners from 1993; Notebook from 1993/94 with the names of persons; 2 lists of persons; List of prisoners of war in the KPD *Kula*-92 persons, List of persons-rooms No. 4 and 5, List of persons in the room No. 3-Hadžići, room No.5-Pale; room No. 6-Hadžići and room No.9; List from the *Kula* prison dated 6 February 1993; List of Croats; List of persons-rooms 1, 2, 3, 4 and 7, List of prisoners of war from Rudo; List of Muslims in the KPD *Butmir* dated 18 April 1994 and List of Muslims in the KPD *Kula* dated 18 April 1994; List of able-bodied Muslims – old, dated 11 July 1994 and List of able-bodied Muslims – new, dated 11 July 1994; List of Muslim prisoners of war in the KPD *Butmir* from 1-50; List of persons 1-70 and 3 additionally entered; List of the Central commission for the exchange dated 13 July 1994; List of the Central commission for the exchange dated 17 July 1994; List of Muslim conscripts in 1995-added in pencil; Official letter from the Command of the Eastern Bosnia Corps dated 15 December 1992; KPD *Butmir* certificate dated 16 November 1993; Official letter from the Military Post 7512 dated 27 January 1994; Record of the handover of Muslim prisoners, dated 5 October 1994; Official letter from the 1<sup>st</sup> Sarajevo Mechanized Brigade dated 27 November 1994; Official letter from the 1<sup>st</sup> Sarajevo Mechanized Brigade, dated 19 May 1995; Official letter from the Central commission for the exchange

dated 23 March 1994; Official letter from the Central commission for the exchange dated 19 May 1994; Official letter from the Central commission for the exchange dated 4 July 1994; Official letter from the Central commission for the exchange dated 7 July 1994; Official letter from the Central commission for the exchange dated 16 July 1994; Official letter from the Central commission for the exchange dated 16 July 1994; Official letter from the Central commission for the exchange dated 13 August 1994; Official letter from the Central commission for the exchange dated 16 August 1994; Official letter from the Central commission for the exchange dated 17 August 1994; Official letter from the Central commission for the exchange dated 20 September 1994; Official letter from the Central commission for the exchange dated 24 October 1994; Official letter from the Central commission for the exchange dated 20 November 1995; Official letter from the Central commission for the exchange dated 28 October 1995; Request for taking prisoners out of the *Kula* prison dated 14 January 1993; Request by the Command of the 1<sup>st</sup> Battalion dated 16 January 1993; Request by the VP /Military Post/ 7512 dated 1 February 1993; Request by the VP /Military Post/ 7512 dated 4 February 1993; Request by the Command of the 1<sup>st</sup> Battalion dated 2 February 1993 and Request by the VP dated 8 February 1993; Request to hand over prisoners in order to perform labor; Request of the Military Post 7063 dated 24 May 1993; Request of the Military Post 7050 dated 5 September 1993; Request of the Military Post 7050 dated 3 March 1994; Document of the ICRC dated 7 March 1994; Decision of the Cantonal Court in Sarajevo dated 14 June 2000; Exhumation record dated 27 June 2000; Official note dated 7 July 2000; Identification record dated 5 July 2000; Photo-documentation dated 27 June 2000 and sketch of the crime-scene dated 26 June 2000; Admission document dated 27 June 2000; Permit for the burial dated 5 July 2000; Decision of the Basic Court in Konjic dated 31 July 1995; Record on exhumation from the High Court in Sarajevo dated 24 May 1996; Photo-documentation dated 24 December 1996; Excerpt from the register of deaths for the deceased Kasim Hurić dated 20 June 2007; Excerpt from the register of deaths for Ismet Hidić dated 14 April 2008; Excerpt from the register of deaths for Denis Ahmić dated 14 April 2008; Excerpt from the register of deaths Suvad Hasančević dated 14 April 2008; Excerpt from the register of deaths for Senad Hasančević dated 14 April 2008; Excerpt from the register of deaths for Samir Hidić dated 14 April 2008; Excerpt from the register of deaths for Mustafa Hurić dated 14 April 2008; Excerpt from the register of deaths for Osmo Škiljan dated 29 February 2008; Excerpt from the register of deaths for Rasim Čamdžić dated 17 April 2008; Death certificate dated 30 April 1993; Note regarding the killing of Alen Kure dated 29 September 1994; Statement by the security body of the 2<sup>nd</sup> Infantry Battalion; Document of the Federal Commission for Missing Persons dated 25 June 2007; Data of the Central commission for the exchange of prisoners; Expenditures record dated 25 February 1994; Expenditures record dated 25 February 1994; Report on the breakout of two prisoners dated 21 May 1993; Notebook of the work-site for January – April 1993; Work-site book for 1993; Work plan for August 1994 made on 29 July 1994 and Work plan for October 1994 made on 30 September 1994; Document of the International Red Cross number PAL 94/37, dated 15 October 1994; Report of Ilija Sorak dated 23 August 1993; Search Warrant of the Court of

BiH X-KRN-05/59 dated 4 November 2008; SIPA Record No. 17-04/2-4-04-2-31/08 dated 18 November 2008; SIPA Official Report No. 17-04/2-4-04-2-454-23/05 dated 18 November 2008; SIPA Receipt of seizure of items No. 17-04/2-4-04-2-33/08 dated 18 November 2008; Record of the BiH Prosecutor's Office on the opening and inspection of seized items dated 4 December 2008; Document of Correctional and Penal Institution Istočno Sarajevo on the delivery of documentation with attachments No. 08/1.01/017-870/07 dated 16 July 2007; Work book for Vlado Vasiljević No. 928430, registration number 776/75 from September 1975; Work-book for Soniboj Škiljević, identification number 3530; Document of the Serb Police Station Ilidža dated 20 May 1992-list of police officers employed in Kula; Document of the Public Security Service (PSS) Ilidža, Police Station Kula-list of reserve police force dated 20 May 1992; List of the PSS Novi Grad; Police Station Kula-reserve police force dated 9 July 1992; List of the PSS Novi Grad; Police Station Kula-active police officers dated 3 September 1992; List of active police officers, PSS Ilidža; Police Station Kula dated 22 September 1992; Certificate of the KPZ *Butmir* No. S1 dated 16 November 1992; Document of the KPD *Butmir* No. 03-424/98 dated 14 December (illegible year); Decision of the Ministry of Defense; Ilidža Department; Section in Kula No. 06-80-279/94 dated 18 May 1995.

**d) Upon the proposal by the Defense for the First-Accused, the following persons were heard in the capacity of witness:**

10. Witness G, Milenko Todorović, Branko Mandić, Radomir Divljanović, Fadil Kreho, Vladimir Kenjić, Dobroslav Planojević, Ida Kovačević, Ranko Tešanović, Ilija Vučković, Malko Koroman, Ahmo Elezović, Nazif Sarajkić, Latif Adžajlić, Vlado Vasiljević, Fehin Mehmedika, Nedo Kapuran, Momir Pandurević, Ljupko Tešanović, Božidar Radović, Vule Govedarica, Slobodan Trifković, Voja Janjetović, Milimir Gutić, Slobodan Avlijaš, Boro Trapara, accused Radoje Lalović and Emin Prndelj.

**e) During the main trial, the Defense for the First-Accused Radoje Lalović adduced the following documentary evidence:**

11. Certificate issued by the Security Services Center Sarajevo, Banja Luka, Doboj, Trebinje and Bijeljina dated 6 August 1992; Copy of the Certificate of MoI RS CJB Sarajevo, SJB Srpsko Sarajevo dated 27 September 2002 for Vule Govedarica; Copy of the Decision on the assignment to compulsory work obligation for Vule Govedarica signed by Soniboy Škiljević dated 17 July 1993; Copy of the Decision of the Ministry of Defense dated 28 September 1994 to the name of Vojo Janjetović; Decision on the assignment to compulsory work obligation for Milimir Gutić; Decree and Decision on the assignment to compulsory work obligation-Official Gazette of the Serb People in BiH; List of Official Gazettes of the Serb People in BiH No. 8/92 (Decree on the Organization of People's Defense and a form of the decision on the assignment to the compulsory work obligation); Official Gazette of the Serb People in BiH No. 7/92 (last page of the Gazette-Contents);

Data for Izet Ramić from the Clinical Center Istočno Sarajevo, Certificate that Radoje Lalović is not a member of the SDS, issued by the SDS on 7 December 2009; Decision on the establishment of penal and correctional organizations dated 1 May 1992; Decision on the establishment of the KPZ *Butmir* dated 30 June 1992; Response to the inquiry regarding the status of the KPD Foča by the RS Minister of Justice dated 25 July 1992; Decision on the establishment of the KPD Bijeljina dated 13 July 1992; Copy of the RS Official Gazette, page 335, dated 13 June 1992; Official Letter of the Commission for Exchange Iliđa dated 2 July 1992; Copy of the excerpt from the RS Official Gazette dated 13 June 1992; Order for the application of war law; Letter of the Commander of the Sarajevo-Romanija Corps, Department for Security and Intelligence Services dated 21 September 1993; Copy of the Laissez-passer from the military prison Lukavica dated 14 January 1994; Copy of the cover letter of the Command of the Third Sarajevo Department for Security and Intelligence Services dated 10 December 1994; Copy of the Document from the 1<sup>st</sup> Iliđa Brigade dated 6 March 1993; Copy of the letter concerning supply with the heating oil to the RS Government dated 13 November 1992; Request for forced evacuation of apartments and other premises dated 2 October 1992; Request for financial funds allocation, RS Government dated 28 August 1992 and request dated 1 September 1992; Request by the Command of the Sarajevo Light Infantry Brigade dated 14 January 1993; Request for human force labor dated 2 February 1994, Request by Military Post Kula dated 8 February; Request to hire human labor force by the 1st Sarajevo Brigade from 1994 and Request by the Command of the 3rd Battalion dated 16 January 1993; Document of the Command of the 2nd Infantry Battalion and copy of the letter of Miodrag Lalović dated 6 September 1994, List of the Commission for the exchange of prisoners of war dated 25 June 1992 and consent for relocation of the prisoners of war, RS Government dated 25 May 1994 and exchange of prisoners, RS Government dated 20 September 1994; Order of the Ministry of Justice of the RS Government dated 16 December 1992, Certificate of the SJB Iliđa, Police Station Kula No. 21/92 dated 4 June 1992; Review of the persons present at work in June 1992; Review of the persons present at work in July 1992; Review of the persons present at work in August 1992; Decision of the Ministry of Justice No. 01-145/92 dated 28 July 1992; official letter of the Ministry of Justice dated 01-140/92 dated 24 July 1992; Document of the Ministry of Justice dated 23 July 1992; Letter of the Command of the 2nd Sarajevo Brigade No. 146 dated 16 October 1992; Letter from the KPZ Istočno Sarajevo No. 08/1.01/240-205/10 dated 4 March 2010; Letter of the KPZ Istočno Sarajevo No. 08/1.01/240-210/10 dated 5 March 2010;

**f) Upon the proposal of the Defense for the Second-Accused Soniboj Škiljević, the following persons were heard in the capacity of witnesses:**

12. Ranko Tešanović, Ilija Vučković, Malko Koroman, Ahmo Elezović, Nazif Sarajkić, Latif Adžajlić, Vlado Vasiljević, Fehin Mehmedika, Neđo Kapuran, Momir Pandurević, Ljupko Tešanović, Božidar Radović, Vule Govedarica, Milimir Gutić, Slobodan Avlijaš, Boro Trapara, Željko Mrdić, Nedeljko Ljuboja, Mladen Prstojević, Neđo Pandurević, Mile Sladoje, Neven Lale, Vid Marčetić, Đorđe

Faladžić, Miroslac Stjepanović, Slobodan Škrba, Halid Husaković, Bruno Mrnjavac, Dragan Prizmić, Nisad Sarajkić, Neđo Drašković, Željko Mitrović, Goran Nešković, Slavko Ždrale, Milan Trbojević, accused Soniboj Škiljević and Dragomir Bulajić.

**g) Upon the proposal of the Defense for the Second-Accused Soniboj Škiljević, the following documentary evidence was adduced:**

13. Certificate of the Home for Children and the Youth with Disturbed Development Vetrenik dated 5 January 2009; Certificate of the SDS Istočno Sarajevo dated 7 December 2009; Letter of the MoI RS dated 7 September 2009 and List of active police officers of the PS Kula-SJB Ilidža, list of employees in PS Kula dated 20 May 1992; List of reserve police force PS Kula-SJB N. Grad dated 3 June 1992, I List, II List for May; Certificate from MoI-PS-Kula-SJB Ilidža dated 4 June 1992; Letter from the SJB N. Grad-PS Kula dated 10 July 1992 and Letter from SJB N. Grad-PS Kula dated 31 July 1992; Obituary list from *Dnevni avaz* newspaper dated 18 October 2009 – concerning 37 killed persons from Kasindolska street dated 25 May 1992; Letter from the SJB N. Grad No. 10/92 dated 25 May 1992; Letter from the SJB N. Grad No. 5/92 dated 20 May 1992; Letter No. 242/93-48 dated 12 February 1993; Document MoI-CSB Sarajevo- State Security Service Sector No. 538 dated 8 May 1991; Letter No. 01-03-927/93 dated 20 September 1993; Cadastre plan of the KPd *Butmir* dated 31 January 1966; Pavilion ground-plan No. 2-3 spread-sheets; Official Gazette dated 30 June 1992-Decision on establishment of the KPD *Butmir*; Official Gazette of the Serb People in the R BiH No. 9 – Instruction on the treatment of prisoners of war; Document of the Command of the Sarajevo-Romanija Corps No. 10/74-498 dated 22 October 1992; Authorization from the MoI-Serb Police Station Hadžići No. 01-2/92 dated 29 July 1992; Document of the Ministry of Justice of the Serb Republic BiH dated 30 July 1992; Document from the MoI Republika Srpska BiH No. 10-277792 dated 30 August 1992; Document of the Ministry of Justice of Republika Srpska BiH No. 72/92 dated 21 November 1992; Document of the VRS Commission for the exchange of prisoners; Document of the Command of Sarajevo Corps dated 31 December 1992; Document of the Command of the 1<sup>st</sup> Romanija Infantry Brigade without date; Document of the Command of Sarajevo-Romanija Corps-Intelligence Department dated 21 September 1993; Document of the Command of the 1<sup>st</sup> Romanija Infantry Brigade dated 21 May 1993; Document of the Command of the 1<sup>st</sup> Ilidža Infantry Brigade No. 01/2-351/94 dated 15 June 1994; Document of the 1<sup>st</sup> Ilidža Infantry Brigade No. 01-95/94 dated 6 March 1994; Working hours roster in the KPd *Butmir* r dated 30 April 1993; Document from the KPZ *Butmir* No. 01-61/93 dated 28 April 1993; Document from the Ministry of Justice and Administration-KPZ *Butmir* No. 01-141/93 dated 13 July 1993; Document of the KPZ *Butmir* No. 01-234-47/92 dated 16 December 1992; letter of the Ministry of Justice-KPD *Butmir* No. 01-207/92 dated 1 September 1992; Document from the KPd *Butmir* No. 01-09/93 dated 22 January 1993; Document dated 7 April 1993; Document from the KPd *Butmir* No. 01-10/93 dated 22 January 1993; Document from the 2<sup>nd</sup> Infantry Battalion No. 09/-4/94; Photo-documentation from the CJB Sarajevo No. Ku

25A/95 dated 31 May 1995; Decision to assign Neđo Ljuboja for compulsory work obligation; Discharge letter from the Kasindo Hospital No. 431/93 for Neđo Ljuboja; Certificate from the KPD *Butmir* No. 01-149/94 dated 30 April 1994 for Neđo Ljuboja; Discharge letter from the Kasindo Hospital No. 456/93 for Mevludin Hadžić; Certificate No. 01-170/94 dated 16 May 1994; Certificate No. 01-195/94 dated 6 June 1994; Document from the Central Commission for the exchange of prisoners of war and civilians No. 01-351/94 dated 17 August 1994; Document from the Central Commission for the exchange of prisoners of war and civilians dated 13 April 1994 with a list of persons; Exchange report dated 8 January 1993 dated 10 January 1993; Conclusions of the Commission for the exchange of prisoners for Municipality Hadžići (bottom of the page, no header)-list of persons concluded with No. 45; Fax message of from the Commission for the exchange of prisoners of war and detained persons dated 29 June 1992; Document from the Kasindo Hospital No. 04-175/09 dated 16 November 1992; Document from the Kasindo Hospital No. 05-28/10 dated 24 February 2010; Document from the Kasindo Hospital No. 04-140/09 dated 24 September 1992; Document from the Kasindo Hospital No. 02-237/09 dated 11 May 2009; Verdict of the Court of BiH No. X-KR-05/58 dated 18 July 2007; X-KRŽ-05/58 dated 1 September 2009; Work-site notebook for 1993(T239); Work-site list for 1994 (t56), Work-site notebook for 1994 (Z58); List of detainees with the work-site indication (T60); Notice of the RS Ministry of Justice dated 22 January with the Decision dated 16 December 1992 on the appointment of Soniboj Škiljević and the Decision on the appointment of Đorđe Faladžić; List of the missing persons from Kasindolska St. dated 29 May 2005; Note concerning the killing of Alen Kure dated 29 September 1994; Decision on the establishment of penal and correctional organizations in the territory of the Srpska Republika BiH dated 1 May 1992; Decision on the establishment of penal and correctional organizations in the territory of the Srpska Republika BiH dated 12-17 May 1992; Decision on the establishment of the KPZ *Butmir* Ilidža dated 30 June 1992; Copy of the excerpt from the RS Official gazette dated 13 June 1992; Order for application of war law; Letter from the Command of the Sarajevo-Romanija Corps; Security and Intelligence Department dated 21 September 1993; Copy of Laissez-passer from the military prison Lukavica dated 14 January 1994; Copy of the cover letter of the Command of the 3<sup>rd</sup> Sarajevo OBP dated 10 December 1994; Request of the Command of SLPB conf. dated 14 January 1993; Request to provide labor force dated 2 February 1994; Request by the Military post dated 8 February Kula; Request to engage labor force by the 1<sup>st</sup> Sarajevo Brigade dated 1994 and Request by the Command of the 3<sup>rd</sup> Battalion dated 16 January 1993; Document from the Command of the 2<sup>nd</sup> Infantry Battalion and copy of the letter of Miodrag Lalović dated 6 September 1994, List of the Commission for the exchange of the prisoners of war dated 25 June 1992 with a consent to relocate the prisoners of war from the RS Government dated 25 May 1994 and the exchange of prisoners, RS Government dated 20 September 1994; Order by the Ministry of Justice of the RS Government dated 16 December 1992; CD-T002523-1-B, time from 24 to 40min and from 18 to 50 minute.

## **(2) Closing Arguments**

### **a) BiH Prosecutor's Office**

14. In its closing argument, the Prosecution firstly referred to the general elements of the criminal offense of Crimes against Humanity, namely the existence of a widespread or systematic attack, the direction of such attack against civilians, the connection between the offense of the perpetrator and such attack, and that the acts of the perpetrator constituted a part of such attack, and that the perpetrator was aware of the relation between the offenses committed and the attack itself. The Prosecution stated that by the evidence adduced the Prosecution succeeded to prove the existence of all general and even the additional elements characteristic for the criminal offense charged against the Accused.
15. The facts and the evidence adduced during the evidentiary proceedings clearly prove the existence of a widespread or systematic attack directed against non-Serb civilians and the Accused's actual awareness of the existence of such an attack during the period covered by the indictment.
16. The Prosecution elaborated on the adduced documentary evidence and concluded that all the evidence was obtained in a lawful manner. This evidence as such is therefore acceptable and relevant in its entirety.
17. Furthermore, the Prosecutor particularly referred to the testimonies of both the Prosecution and the Defense witnesses heard directly at the main trial. The Prosecutor considered the testimonies of the heard witnesses relevant and credible. The Prosecutor added that the testimonies of the Defense witnesses could not have a significant probative value like the testimonies of the Prosecution witnesses given that it could be clearly observed that with their testimonies certain Defense witnesses tried to support the Accused in order to diminish their criminal liability.
18. When it comes to the examination of the Accused in the capacity of witnesses during the proceedings, the Prosecutor submitted that the Court had no legal basis for such hearing since it was not prescribed by the law. Therefore, the Prosecution considered the testimonies of the Accused as inconsistent, illogical and contrary to a large body of evidence adduced during the proceedings.
19. The evidence adduced confirmed in its entirety the Prosecution view that since early May 1992 to mid-December 1995 the KPD *Butmir* fully functioned under the exclusive responsibility of the Ministry of Justice and Administration of the established Republika Srpska, and with its army and the police acted in full cooperation in all segments of its responsibility, due to which their mutual relationship could be only be considered as full partnership.

20. Furthermore, the Prosecution stated that all the foregoing evidence clearly suggested the conclusion that although the accused Radoje Lalović was never *de iure* formally appointed warden of the KPD *Butmir*, he *de facto* performed this function after he had voluntarily reported and placed himself at the disposal of the Ministry of Justice regarding providing support in the functioning of the newly-established KPD *Butmir* continuously from late April 1992 through 16 December of the same year, which is when he was assigned to a new duty.
21. It can be also clearly concluded from the evidence adduced that since early May to mid-December 1992, although he was never formally appointed to this duty, the accused Soniboj Škiljević in fact performed the duty of the deputy warden of the KPD *Butmir*, and that thereupon, during the period from mid-December 1992 to mid-December 1995, both *de iure* and *de facto* he performed the duty of the warden of the KPD *Butmir*.
22. The Prosecution emphasized that it followed from the evidence adduced that during the period from May 1992 to mid-December 1995, dozens and hundreds of non-Serb civilians were detained on the premises of the KPD *Butmir*, of whom only a small number could be considered prisoners of war pursuant to the provisions of the Geneva Conventions. Furthermore, the Prosecution considered such detention arbitrary and non-selective. Also, the Prosecution considered that such detention constituted a collective measure directed against a concrete group of persons based solely on their ethnicity, not a legitimate security measure.
23. The testimonies of the witnesses and the evidence adduced clearly indicated that during the detention period in the KPD *Butmir* referenced to in the Indictment, the detained persons were exposed to extremely inhumane accommodation and hygienic conditions, intentional policy of starvation and deprivation of food, timely and adequate medical care, which resulted in severe violations of physical and mental health of the detained persons, including even the death of certain persons.
24. Furthermore, the evidence adduced confirmed that all 37 persons who had been brought from the Kasindolska St. and detained in the KPD *Butmir* were on unspecified day taken out from the premises of the KPD *Butmir* by unidentified persons, and taken to an unknown direction and deprived of their lives at an unspecified location.
25. Given the foregoing evidence, the Prosecution stated that it could be concluded beyond a reasonable doubt that during the detention period referenced in Count 1c and 2c, the detained persons were subjected to severe ill-treatment by both the guards who performed those duties in the KPD *Butmir* and also the persons who performed certain police duties in the then Police Station Kula. The ill-treatment was based on discrimination against them and resulted in great sufferings and severe consequences to their physical and mental health.

26. With regard to taking into slavery the detained persons referred to in Counts 1d and 2d of the Indictment, it clearly and undoubtedly follows from the evidence adduced that the non-Serb civilians that had been unlawfully detained in the KPD *Butmir* during the entire period included in the Indictment were exposed to the taking to forced labor that was performed on different locations.
27. Regarding all individual acts constituting the criminal offense of persecution charged against the Accused, it can be clearly concluded that all the elements of this criminal offense were satisfied because all the established crimes constituted an intentional and serious deprivation of fundamental rights in violation of international law, and that they were committed exclusively against a group of non-Serbs with the intent to deprive this group of their fundamental rights only because they were members of this ethnic group.
28. When it comes to the responsibility of the Accused, the Prosecution submitted that it followed from the evidence adduced that both Accused had taken the actions and participated in a joint criminal enterprise in the manner in which the first and the second category of the enterprise in fact overlapped. The Prosecution also submitted that it was clear that both Accused were not only mere accessories to the main perpetrators of the criminal offense of persecution directed against non-Serb civilians, but exclusively the co-perpetrators who enormously contributed with their actions and the participation in the enterprise to the joint plan implementation, that is, the persecution of non-Serb civilians on exclusively discriminatory grounds.
29. Furthermore, taking into account the functions that they performed during the referenced periods, both Accused can be considered fully responsible for unlawful detention and deprivation of liberty in violation of the standards of international humanitarian law, and that they did so in the capacity of co-perpetrators because they were fully aware of such unlawful detention. Both Accused were also aware of the conditions of accommodation of the persons detained in the KPD *Butmir*, concerning the conditions in the room where they were detained, possibilities to get out to fresh air, hygienic conditions, food supply and medical care.
30. Finally, bearing in mind all aggravating circumstances on the part of the Accused, the Prosecution moved the Court to sentence the Accused to imprisonment for a term that would entirely achieve both the general purpose and the special purpose, which should last longer than five years.

#### **b) Defense for the First-Accused Radoje Lalović**

31. Without contesting that the crime was committed against the persons who had been arrested in Kasindolska St., that the arrested persons were interrogated and ill-treated on the premises of the KPD *Kula*, and subjected to inhumane treatment, the Defense Counsel for the First-Accused stated in his closing argument that all this

had been happening before the establishment of the KPD and at the time when the accused Radoje Lalović was not its warden, either „*de iure*” or „*de facto*”.

32. The Defense Counsel firstly objected to the application of the CC BiH. The Counsel stated that by the application of the CC BiH in the referenced proceedings, the rule of application of a more lenient law was violated.
33. Given that the death penalty was abolished from the penalty system in 1993, an imprisonment for a term of 20 years, but not over 20 years was the most severe punishment before the CC BiH was adopted in 2003. The Defense wanted to indicate that it was not possible to check the gravity of one law only based on the prescribed punishment, as the Constitutional Court BiH held in the *Maktouf* case, but the gravity must be viewed in general terms. Article 142 of the CC SFRY is more lenient to the perpetrator in any respect.
34. According to the Defense, Article 180 of the CC BiH retroactively prescribes different forms of the commission of criminal offenses referred to in Chapter 17 of the CC BiH thereby violating the principle of retroactivity and Article 7 of the European Convention for the Protection of Human Rights. Furthermore, it is clear that neither Article 7 of the European Convention nor Article 4.a of the CC BiH addresses the application of a more lenient law, but the bans pertaining to the fundamental principle of criminal law “*nullum crimen, nulla poena sine lege*”. This differs from the principle of time constraints regarding the application of the law, which prescribes an obligation of application of the most lenient law to the perpetrator.
35. According to the Defense, Article 142 of the CC SFRY as the adopted law should be applied. This Article prescribes only two ways of the commission of all forms of this criminal offense, namely that the offense is committed upon an order or that the perpetrator himself undertakes that acts of commission. This view ensued from the view of the Appellate Panel in the *Kurtović* case, where the Court correctly concluded that each case should be viewed *in concreto*, and that for each case separately it should be evaluated which law is more lenient.
36. Furthermore, the Defense Counsel stated that the concept of joint criminal enterprise as a form of participation in the commission of the criminal offense is not prescribed by either the CC SFRY or the CC BiH, not even as a part of customary international law at the time when the accused allegedly committed the offenses charged against them. To this end, the doctrine of joint criminal enterprise was not at all “a general principle of international law” and/or customary international law at the relevant moment or on any occasion. Therefore, this doctrine cannot constitute a part of the national criminal law.
37. Also, the Indictment does not contain the nature of the Accused’s participation in the joint criminal enterprise. The Prosecution stated that within this joint criminal enterprise, the accused Lalović participated in concert with the military and the

police structures of the so called Serb Republic of BiH, subsequently Republika Srpska. Therefore, the Prosecution did not make even a minimum specification of the units of military and police structures at issue, or the names of individual responsible persons in those units.

38. When it comes to the intent, the Defense submitted that the Prosecution did not prove and was not proving at all this essential element against its client. The Prosecution presented no piece of evidence whatsoever from which at least an indication of the existence of any discriminatory intent on the part of the Accused Lalović could have been drawn.
39. As to the existence of general goal pertaining to the joint intent, the Prosecution referred to the evidence titled “Instruction on the Organization and Activities of the Serb People” that was issued by the SDS Main Board on 19 December 1991. However, the Defense stated that the Accused Lalović was not a member of the SDS and consequently of the Main Board of this Part either. Therefore, it is not clear why the Prosecution reached the conclusion that the Accused Lalović could be aware of the contents of the Instructions or agree with the views contain therein.
40. Regarding the application of command responsibility and the subordinate-superior relationship, the Defense Counsel stated that it was necessary that a superior person held an effective control over the persons who committed the initial violations of international humanitarian law in terms that this person had an effective possibility to prevent and punish the commission of these violations.
41. When it comes to the knowledge of the Accused Lalović, the accused superior person can be responsible only if he knew or had reason to know that his subordinates were making preparations to commit a crime, or that they have already committed it. Therefore, the Prosecution had to show that the superior possessed the information that warned him of the criminal offenses that were committed or would be committed by his subordinates.
42. The Defense recalled that a number of witnesses testified in this case that during the period charged against him the Accused Lalović was absent from Kula-Butmir on several occasions, which is important in terms of his criminal liability.
43. Furthermore, the Accused Lalović could not know that his subordinates committed any crime, because, according to the Defense, no evidence existed nor was adduced to this end. Also, no act of a crime committed by a person subordinated to the Accused Lalović was described in the Indictment.
44. The view of the Defense was that the Indictment was supported with no arguments because the Accused Lalović was charged with the same offense like the then Minister of Justice, Momčilo Mandić, who was mentioned in the factual description of the Indictment as a leader of the joint criminal enterprise because he was superior to the Accused Lalović.

45. Furthermore, the Defense stated that the indictment could not contain a description of the acts of planning, ordering, inciting and adding or abetting on the part of the Accused Lalović because no evidence existed from which the factual description of the referenced actions would follow.
46. When it comes to persecution, the Defense stated that the Accused could be found guilty of the criminal offense of persecution if the existence of a discriminatory intent was proved. The Defense also stated that during the evidence presentation, the Prosecution suggested in no manner the existence of intent on the part of the Accused to discriminate against any person in any manner.
47. Furthermore, the Defense considered relevant the fact that the Accused was retired before the war, and that as a conscript he had had an option to go to the front line or accept the position of a warden in the KPZ *Butmir*. Due to his long experience in the work on managerial positions in penal and correctional institutions, he accepted the post of warden believing that the prison would be established as a legal system in which he would have all legal powers and obligations pertaining to this function.
48. According to the Defense, the inability of the Accused to establish order in the correctional and penal institutions culminated with the order of the then President of the Presidency of the Serb Republic of BiH, Radovan Karadžić, authorizing the Minister of Defense of the Serb Republic of BiH to sign the instruction on the treatment of captured persons, at the same time ordering that the army of the Serb Republic of BiH and the Serb Ministry of Interior apply and comply with the rules of international war law. It can be concluded from this that the Ministry of Defense, the Ministry of Interior and the Army of the Serb Republic of BiH were exclusively responsible for the situation in the penal and correctional institutions in the territory of the Serb Republic of BiH, including the situation in the institution because of which the charges were pressed against the Accused.
49. The Defense submitted that the referenced Indictment was generalized and imprecise both in respect of the legal qualification of the criminal offense and the individually described alleged underlying acts, the form of responsibility of the Accused and the manner of the alleged commission of the criminal offense.
50. According to the Defense, the evidence adduced by the Prosecution did not prove that Lalović personally committed, ordered, incited, aided and abetted the commission of criminal offenses or any action described in Counts 1, 1 a), 1b), 1c) and 1d) of the Indictment, or that he made any omission referenced in the Indictment.
51. It ensues from the evidence adduced that after the war outbreak, the KPD *Butmir* was disbanded, the Serb guards called to work in the Central Prison, and that the KPD in fact started operating in late July and early August 1992.

52. It follows from the testimonies of certain witnesses that since 1 August 1992 the PS Kula was located on the premises of the pre-war penal and correctional institution *Butmir*, while the police management was located in the administrative building of the KP Dom until the indicated period. Furthermore, it ensues from the evidence adduced that the military had exclusive authority over non-Serbs.
53. Finally, the Defense stated that the Prosecution did not succeed in proving the existence of general elements or separate criminal offenses for which the Accused Lalović would be responsible, which is the main reason for which the concept of joint criminal enterprise should be applied with great caution.

#### **c) Accused Radoje Lalović**

54. In his closing argument, the Accused Lalović supported the arguments of his Defense Counsel. The Accused added that he was not a member of any joint criminal enterprise nor did he consciously and willingly join such an enterprise, as stated in the Indictment.
55. The Accused Lalović stated that his duty was to organize the re-establishment of the KPD *Butmir* as a penal and correctional institution. He also stated that he received the Decision on his appointment on 16 December 1992 when he had already worked in the KPD Bijeljina. Until that time, he had exclusively dealt with the *Privrednik* economy unit in the KPD *Butmir*.
56. According to the Accused Lalović, the conditions of food supply and accommodation of non-Serbs in the CP Institution were the same as for the Serbs.

#### **d) Defense for the Second-Accused Soniboj Škiljević**

57. In his closing argument, the Defense Counsel for the Second-Accused firstly referred to the concept of joint criminal enterprise as a form of responsibility that can be applied only to the highest political and military superiors but not to the guards in the KPD *Butmir*, which would in that case result in collective responsibility.
58. Furthermore, the Defense considered ill-founded and arbitrary the Prosecution arguments that the Accused Škiljević was a deputy warden in the KPD *Butmir* since early May 1992 because the KPD *Butmir* was established no sooner than on 30 June 1992.
59. When it comes to the persecution of non-Serb population, the Defense stated that the persecution was carried out exclusively by the police members and that his client did not participate in the persecution as the warden in the KPD *Butmir*.

60. The Defense further stated that the acts of planning, ordering and perpetrating, inciting, aiding and abetting in the implementation of the joint plan were neither concretized nor described in the Indictment as the acts of commission on the part of the Accused.
61. Regarding the detention in inhumane conditions, willful deprivation of lives and forced labor of the prisoners of war, that were charged against the Second-Accused, the Defense stated that these acts were committed by members of the army or the police, and that the Prosecution adduced no piece of evidence whatsoever that would connect his client with the referenced acts.
62. When it comes to the crime committed in the Kasindolska Street, the Defense submitted that the Prosecution brought the Accused Škiljević into connection with the commission of this crime on no ground, and that his contribution in the commission thereof was not supported with any piece of evidence whatsoever.
63. Furthermore, in speaking about the accommodation conditions referenced in Count 2a of the Indictment, the Defense stated that the accommodation and the quality of food supply in the KPD *Butmir* was appropriate to the war conditions, that no prisoner was starved because daily meals were equally distributed to the detainees and the KPD employees. The Defense considers ill-founded the arguments of certain witnesses regarding the inhumane conditions of accommodation and very meager daily food rations.
64. The Defense considers ill-founded and arbitrary the part of the Indictment in which the Accused Škiljević was charged with non-providing timely and adequate medical aid to the prisoners of war which resulted in the death of three detainees. This is so because in the adduced evidence named Notebook of the work-site for 1993, the data on the medical aid provided to the prisoners were precisely indicated.
65. In referring to the acts listed in Count 2c of the Indictment, the Defense Counsel stated that as a member of the Ministry of Justice and Administration, his client had no possibility to control or prevent members of the military and the police from physically abusing the detainees.
66. It follows from the Indictment that the Accused Škiljević participated in the creation of the system of forced labor of the detained persons. According to the Defense Counsel, the Defense evidence, but also the Prosecution evidence, showed that the army members had taken out the prisoners of war to work, on which his client could have no influence whatsoever.
67. Finally, being of the opinion that the Prosecution did not prove that the Accused Škiljević committed the offense as charged, the Defense Counsel for the Second-Accused moved the Court to render a verdict acquitting his client of the charges.

The Accused Soniboj Škiljević agreed with his Defense Counsel in all essential facts.

**(3) Procedural Decisions**

**a) Established Facts**

68. The mechanism of acceptance of the facts established by final judgments in the proceedings conducted before the ICTY constitutes a very important way to improve the efficiency and the judicial economy of the criminal proceedings. To wit, by taking judicial notice of certain facts a contestable assumption about them is being created thereby enabling the opposing party to contest and dispute these facts.
69. In order to protect the rights of the accused persons in the procedure of taking judicial notice of established facts, a larger number of standards were elaborated, which *inter alia* implied the cases in which final verdicts were rendered or in which the appellate proceedings were pending, provided that the appeals did not contest the facts whose acceptance was proposed, that these were not the facts taken from the verdicts rendered based on guilty plea agreements.
70. Furthermore, the applicable standards include among others, the following: (1) the conclusions are not of the legal nature (these conclusions are under the exclusive responsibility of the trial panel), and (2) that the facts concerned do not directly imply the criminal responsibility of the accused both with regard to the actions taken and his subjective relation toward these actions, that is, whether he was mentally capable at the time of the commission of the criminal offense charged against him.
71. In other words, "the established facts" primarily refer to the issues such as the existence of a widespread or systematic attack, that is, the existence of an armed conflict and its nature.
72. On 4 March 2009, the BiH Prosecutor's Office filed the Motion No. KT-RZ-33/05 petitioning the Court to accept as established the facts defined in the ICTY Judgment in the *Prosecutor v. Stanislav Galić* case (IT-98-29-T) dated 5 December 2005.
73. By this Motion, the Prosecution moved that the total of forty eight facts established in the referenced Judgment be accepted as proved.
74. Thereupon, on 17 March 2009, the Prosecution submitted the second Motion to accept established facts, moving the Court to accept as established seventy two facts from the ICTY Trial Judgment in the *Prosecutor v. Momčilo Krajišnik* case (IT-00-39-T).

75. In commenting on the Prosecution Motion, the Defense for the First-Accused Radoje Lalović stated that only the Fact No. 8 was acceptable for the Defense, while all other facts were disputable. To wit, the Defense considered the remaining proposed facts as untrue or irrelevant. The Defense also submitted that a larger number of facts were incorrectly stated, namely that they were practically retold.
76. Furthermore, the Defense objected to the application of the principle of established facts because thereby the right to a fair trial is being jeopardized given that the arguments referenced in the Indictment constitute only the factual conclusions of one of the ICTY Chambers.
77. Regardless of the insistence on the part of the Panel President, the Defense for the Second-Accused did not submit a written comment on the Prosecution Motion asking for the acceptance of the facts established in the ICTY Judgment in the *Prosecutor v. Stanislav Galić* case dated 5 December 2005.
78. When it comes to the second Motion of the Prosecution, the Defense for the First-Accused and the Second-Accused expressed their objections because the Second Instance modifying Judgment in the *Prosecutor v. Momčilo Krajišnik* case (*IT-00-39-T*) was not translated into BCS.
79. On 30 August 2009, pursuant to Article 4 of the Law on the Transfer of Cases, the Court partially granted the Prosecution Motion. The Court accepted as proved 17 facts proposed by the Prosecution. These facts were established in the proceedings before the ICTY, namely:
  1. “In September 1991, the Main Board of the SDS recommended the formation of Serbian Autonomous Regions. The first of these was the region of Romanija-Birač in the Sarajevo area ...” (par. 194.);
  2. “On 24 October 1991, BiH Serbs formed the Assembly of the Serbian People of BiH and, in a plebiscite held on 9 and 10 November, overwhelmingly voted to remain part of the SFRY.” (par. 185.);
  3. “On 9 January 1992, the Serbian Republic of BiH (Republika Srpska) was proclaimed with the aim of confederating part of BiH with the SFRY, or otherwise of declaring secession from BiH in order to join the SFRY. During the first months of 1992, Serbian institutions in competition with the ones controlled by the Presidency of the BiH Republic (“the Presidency”) were established throughout BiH, including in most of Sarajevo’s ten municipalities.” (par. 195.);
  4. “In early March 1992, conflict broke out along ethnic lines in various locations in BiH.” (par. 196.);

5. “Armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992.”<sup>1</sup> (par. 199.);
6. “On 2 May 1992, a major JNA attack on the centre of Sarajevo occurred while President Izetbegović was in Lisbon for negotiations.” (par. 200.);
7. “After the JNA partially withdrew, the parliament of Republika Srpska on 12 May 1992 ordered the formation of the Bosnian-Serb Army (“VRS”), designating General Ratko Mladić Chief of its General Staff. On 22 May 1992 BiH was admitted as a member state of the United Nations. The Security Council called for the withdrawal of foreign forces, including the JNA, from BiH territory.<sup>361</sup> That same day, General Mladić ordered the formation of the Sarajevo Romanija Corps (“SRK”)...(par. 201.);
8. “The city of Sarajevo came under extensive gunfire and was heavily shelled during the Indictment Period.”<sup>2</sup> (par. 210.);
9. “The Trial Record shows however that there was more shelling going *into* the city and that civilians, and the civilian population as such, in ABiH-held areas of Sarajevo were targeted from SRK controlled territory.” (par. 213.);
10. “The Trial Record also contains evidence that civilians were deliberately targeted while engaged in civilian activities or while in civilian locations.” (par. 217.);
11. “The evidence shows that civilians in Novo Sarajevo were targeted from the SRK-controlled area of Grbavica.” (par. 228.);
12. “UNPROFOR documents reported extensive shooting and shelling in the central area of Sarajevo during the Indictment period.” (par. 231.);
13. “The Trial Chamber finds beyond reasonable doubt that on 4 February 1994 around 11.30 a.m. three mortar shells struck a residential neighbourhood in Dobrinja ...” (par. 407.);
14. “The Trial Chamber thus finds that the fourth scheduled shelling incident constituted an attack that was, *at the very least*, indiscriminate as to its target (which nevertheless was primarily if not entirely a residential neighbourhood), and was carried out recklessly, resulting in civilian casualties.”<sup>3</sup> (par. 410.);

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<sup>1</sup> This part originates from the section describing the events in Sarajevo.

<sup>2</sup> 10 September 1992-10 August 1994

<sup>3</sup> The fact number 13.

15. "The evidence is that the shelling of the city was fierce in 1992 and 1993."<sup>4</sup> (par. 561.);
16. "The Trial Chamber understands that submission as pointing to the ultimate purpose of the campaign of sniping and shelling against civilians in Sarajevo." (par. 576.);
17. "The Trial Chamber finds beyond reasonable doubt that many hundreds of civilians were killed and thousands were injured in ABiH-controlled areas during the Indictment Period." (par. 581.);
80. The Court also partially granted the second Prosecution Motion. The Court accepted the facts established in the final Judgment of the ICTY Trial Chamber in the *Prosecutor v. Momčilo Krajišnik* case as established in the scope and in the order in which they are listed in the text below:
  18. „In early May 1992, the SDS held a session to establish a Serb municipality of Hadžići and to define its boundaries." (par. 542.);
  19. "On 7 May 1992, armed Serb reservists and Serb policemen entered the Hadžići municipal building, evicting the employees. The same day, the SDS issued an ultimatum demanding that the Muslim police, TO officers, and members of other municipal bodies leave Hadžići municipality by the following day." (par. 542.);
  20. "On 8 May 1992, an artillery attack against the police station of Hadžići was launched." (par. 542.);
  21. "During the next few days, Serbs took control over parts of the municipality and started to arrest people and expel and evict large parts of the non-Serb population." (par. 543.);
  22. "Two to three thousand Muslim and Croat men, women and children left Hadžići town, many left on foot and withdrew through the woods. Serb women and children were evacuated from Hadžići on buses." (par. 543.);
  23. "Only two to three hundred members of the original Muslim and Croat population remained in Hadžići town." (par. 543.);
  24. "On 20 May 1992, armed Serbs in JNA uniform or dressed in olive-green camouflage uniforms entered Musići, gathered fourteen Muslim men and took them to the garage in the Hadžići municipal assembly building. Another 46 men were held in the same garage. The Serb forces ill-treated the detainees and did not give them sufficient food and water." (par. 544.);

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<sup>4</sup> This note concerns Sarajevo.

25. "On 25 May 1992, Serb forces transferred some of the detainees from the garage of the municipal building to the Hadžići sports centre..." (par. 545.);
26. "While in detention in the Hadžići sports centre, the detainees were often beaten and sexually abused by members of the paramilitary units." (par. 545.);
27. "In the beginning of March 1992, a Serb SJB was created after the Muslim police officers were dismissed from their positions." (par. 552.);
28. "By the end of April 1992, under the orders of Lieutenant Colonel Tadija Manojlović, JNA heavy artillery, rocket launchers, anti-aircraft guns, and tanks, fired every evening on targets in Sarajevo, including the neighbourhoods of Butmir and Hrasnica in Ilidža municipality." (par. 553.);
29. "By early May 1992, Serb forces controlled Ilidža." (par. 553.);
30. "The Chamber concludes that, after Serb forces took control over Ilidža municipality in May 1992, they detained mainly Muslim and Croat civilians in twelve detention facilities in the municipality." (par. 556.);
31. "Many Muslims left the territory of Ilidža municipality out of fear and due to repressive measures undertaken against them." (par. 556.);
32. "Preparations to take over the majority-Muslim village of Lješevu began in March 1992 when Serbs erected checkpoints, distributed arms to the locals, and placed heavy artillery on the surrounding hills." (par. 560.);
33. "Serb authorities detained mostly Croat and Muslim civilians at nine detention centres in the municipality in 1992..." (par. 563.);
34. "The Chamber concludes that, in total, at least 22 Muslims were killed by Serb forces in the municipality of Ilijaš in May and June 1992. Serb forces attacked several Muslim-majority villages and destroyed a large number of historical and religious monuments." (par. 565.);
35. "A May 1993 MUP report indicates that 13,000 Muslims and 40 Croats had left the municipality while 3,400 Serbs had arrived."<sup>5</sup> (par. 572.);
36. "Serbs detained mostly Muslim and Croat civilians in four detention centres around the municipality. The detainees were severely beaten and mistreated by Serb guards."<sup>6</sup> (par. 73.);

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<sup>5</sup> Concerns the Municipality of Novi Grad.

<sup>6</sup> Concerns the Municipality of Novi Grad.

37. „Srpske vlasti su 1992. godine u toj opštini civile pretežno hrvatske i muslimanske nacionalnosti držale zatočene u zatočeničkim centrima.”<sup>7</sup> (par. 580.);
38. “On 22 May, Serb forces attacked and shelled the predominantly Muslim village of Donja Vinča, setting houses on fire and forcing the villagers to leave.” (par. 584.);
39. “In Pale, Muslims were detained in five detention facilities.” (par. 588.);
40. “In late June and July 1992, buses organized by the crisis staff transported a huge number of Muslims from Pale to the Muslim part of Sarajevo.” (par.588.);
41. “Around 29 or 30 May 1992, Serb residents started leaving Trnovo expecting an imminent attack. The following day, Serb forces under the command of Ratko Bundalo shelled Trnovo for several hours. Houses owned by Muslims were the main target of the shelling. In addition, a Serb unit set Muslim houses in town on fire and destroyed the town mosque.” (par. 591.);
42. “About 2,500 Muslims left Trnovo as a result of this attack. Those who remained—mainly women, children, and the elderly — were taken for questioning before the crisis staff.” (Par. 592.);
43. „On 2 May 1992, Serbs surrounded and shelled the villages of Svrače and Semizovac, in Vogošća municipality.” (par. 599.);
44. “After the take-over of Svrače and Semizovac in early May 1992, the Serbs took 470 Muslim men, women, and children to the barracks in Semizovac.” (par. 599).
81. By the application of the standard of relevancy, the Court refused to accept paragraphs of the Trial Chamber Judgment in the ICTY case *Prosecutor v. Stanislav Galić* ( IT-98-29-T), number: 3, 6, 7, 9, 10, 11, 15, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 35, 36, 37, 38, 42, 43, 44, 45, 46 and 47, a part of paragraph 33 and the paragraphs in the *Prosecutor v. Momčilo Krajišnik* case (IT-00-39-T) number 1, 2, 9, 13, 14, 15, 16, 18, 21, 24, 25, 26, 28, 29, 33, 34, 35, 36, 37, 38, 40, 42, 43, 44, 46, 49, 50, 51, 53, 56, 57, 58, 61, 62, 63, 64, 67, 68, 69, 70, 71 and 72, and parts of paragraphs number 11, 30, 31, 47, 54, 65 and 66.
82. Furthermore, the Prosecutor’s motions for the acceptance of paragraphs of the Trial Chamber Judgment rendered in the ICTY case *Prosecutor v. Stanislav Galić* (IT-98-29-T) under number 13 were refused. This is so because within the context of the overall Judgment the Panel concluded that essentially this was a quotation from the testimony of one witness, not a precise conclusion of the ICTY Trial Chamber.

<sup>7</sup> Concerns the Municipality of Novo Sarajevo.

83. Also, the Panel refused to accept the Fact No. 48 from the Judgment in the *Prosecutor v. Momčilo Krajišnik* case (IT-00-39-T), and the Fact No. 48 from the Judgment in the *Prosecutor v. Stanislav Galić* case (IT-98-29-T). This was because these paragraphs stated that the Serb forces carried out a mass scale persecution, namely that there was a widespread and systematic attack. This is in fact a conclusion of the legal nature, not of the factual nature.
84. Bearing in mind all the foregoing, it should be emphasized that judicial economy is achieved by formal taking judicial notice of the facts established before the ICTY. This purpose is in accordance with the right of the Accused to a trial without any delay guaranteed in Article 13 of the CPC and Article 6(1) of the European Convention. However, regardless of this, judicial economy was not the only prevailing standard in the case at hand given that that it is coordinated with the principle of presumption of innocence and the right of the Accused to a fair trial enshrined in Article 6 of the European Convention.

#### **b) Manner of Examination of Witnesses**

85. During the investigative procedure in the case against the then suspects Radoje Lalović and Soniboj Škiljević, the Preliminary Proceedings Judge and the Preliminary Hearing Judge did not issue a decision granting any protective measure to the witnesses in this case.
86. After the commencement of the main trial in this case, in deciding upon the Prosecution Motion number KT-RZ-33/05, on 9 March 2009, pursuant to Article 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, the Court issued the Decision number: X-KR-05/59 granting protective measures to two witnesses by giving them the pseudonyms A and B. At the same time, their personal details were declared confidential and will thereby remain secret for the public for the following 30 years.
87. Furthermore, almost in the identical conditions, on 8 April 2009, the Court issued a decision granting protective measures to one witness by awarding him the pseudonym C and declaring his personal details confidential. At the hearing held on 9 April 2009, the same measures were granted to two witnesses, namely they were given the pseudonyms D and E.
88. At the main trial held on 18 June 2009, the identical protective measures were granted to one witness, namely he was given the pseudonym F, and at the same time all his personal details were declared confidential.
89. During the foregoing hearings, the Court imposed additional measures to all the witnesses who were granted protective measures, which in addition to the pseudonym and the protection of personal details for the following 30 years included testifying in the courtroom in which the present persons were cautioned

that they must not disclose the identity of the witness who was granted the protective measures. Also, any disclosure of the witnesses' personal details and photos were banned.

90. In issuing such decision, the Court took into account that in case of usage of original personal details of these seven witnesses their safety and the safety of their families would be jeopardized.
91. Furthermore, in deciding to grant additional protective measures, the Panel particularly took into account the fact that the Defense did not object to granting these measures.

### **c) Refusal to Adduce Certain Evidence**

92. After the Prosecutor filed the specified Indictment, the Defense for the Accused Soniboj Škiljević addressed the Court with a proposal to supplement the evidentiary proceedings by hearing five witnesses (Momčilo Mandić, Neđo Pandurević, Vule Govedarica, Božo Radović and Đorđe Faladžić).
93. After considering the proposal of the Defense for the accused Soniboj Škiljević, on 28 April 2010 the Court informed<sup>8</sup> the Defense that no supplements to the evidentiary proceedings would be allowed.
94. On this occasion, the Court informed the Defense Counsel that the earlier Indictment was only specified in the part concerning the names of members of the joint criminal enterprise. The names of persons who performed the duty of SR BiH Minister of Justice and Administration and the names of certain guards at the KPD *Butmir* were stated in the specified Indictment.
95. Bearing in mind that during the proceedings, in responding to the question of the Panel President why the presence of Momčilo Mandić was relevant to the Prosecutor, the Prosecutor stated that during the relevant period Momčilo Mandić was the SR BiH Minister of Justice and Administration. The view of the Court was that the Defense had available the timely information regarding this issue, and that pursuant to the available information the Defense should have proposed the hearing of Momčilo Mandić during the evidentiary proceedings.
96. Furthermore, the same applies to the hearing of the guards. To wit, it was stated in the original Indictment that the guards in the KPD *Butmir* constituted the joint criminal enterprise in concert with the accused Radoje Lalović and Soniboj Škiljević.
97. Pursuant to the above described arguments, the Court concluded that the Defense teams were timely informed about all important facts in this case, that is, the

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<sup>8</sup> Official Letter of the Court number X-KR-05/59 dated 28 April 2010 sent to the Defense Counsel for the Accused Soniboj Škiljević, Attorney Milorad Rašević.

Indictment, and did not propose those witnesses at the time. For these reasons, the proposal of the Defense for the accused Soniboj Škiljević to supplement the evidentiary proceedings was not granted.

#### (4) Applicable Law

98. In relation to the applicable substantive law, the Defense objected to the application of the Criminal Code of BiH. The Defense stated that the Criminal Code of SFRY that was in effect at the time of the events concerned should have been applied. The view of the Defense was that the application of any other law instead of the CC SFRY that was in force at the time relevant for this case constitutes a violation of the principle of legality. In this context, the Defense referred to Article 7(1) of the European Convention and Article 15(1) of the International Covenant on Civil and Political Rights.
99. Article 3 of the CC BiH prescribes the principle of legality, namely that the criminal offenses and the 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, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. Furthermore, Article 4 of the Criminal Code of BiH prescribes 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.
100. Article 7(1) of the European Convention also prescribes the principle of legality. Pursuant to Article 2.2 of the Constitution of BiH, the European Convention for the Protection of Human Rights has primacy over all laws in BiH. Furthermore, this provision of the European Convention prescribes the general principle that prohibits the imposing of a sentence more severe than the one that was prescribed at the time of commission of the criminal offence, but it does not prescribe the application of the most lenient law.
101. Article 4a. of the CC BiH prescribes that Article 3 and Article 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed “*was criminal according to the general principles of international law.*”
102. Article 7(2) of the European Convention prescribes the same exemption by determining that Paragraph 1 of the same Article “*...shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.*” (Also see Article 15(1) and (2) of the International Covenant on Civil and Political Rights that contains similar provisions. The State of Bosnia and Herzegovina, as a successor of Yugoslavia, has ratified this Covenant).

103. This provides a possibility in the described circumstances to depart from the principle referenced in Articles 3 and 4 of the CC BiH (and Article 7(1) of the European Convention) and from the application of the Criminal Code that was applicable at the time of commission of the criminal offense.
104. In considering the Defense objections, it should be noted that no provision in the CC SFRY that was applicable at the relevant period exclusively addressed crimes against humanity in the manner as prescribed in Article 172 of the CC BiH. However, taking into account other provisions of the applicable substantive law and the general principles of international law, this objection of the Defense could not be accepted as well-founded.
105. The Court noted that the criminal offenses of which the Accused were found guilty constituted the criminal offenses pursuant to customary international law and are therefore categorized as the “*general principles of international law*” prescribed in Article 4a of the Law on Changes and Amendments to the CC BiH, and the “*general principles of law recognized by civilized nations*” prescribed in Article 7(2) of the European Convention. Pursuant to the foregoing reasons, the CC BiH may be applied in this case.
106. It is particularly necessary to emphasize that the status of crimes against humanity in customary international law, and attributing individual criminal responsibility during the period relevant to the Indictment, was *inter alia* mentioned in the Report of the UN Secretary General pursuant to Paragraph 2 of the Resolution 808 of the Security Council dated 3 May 1993, International Law Commission, Commentaries on the Draft Code on Crimes against Peace and Security of Humanity (1996) and the case law of the ICTY and the ICTR. The view of these institutions is that the punishment of crimes against humanity constitutes an imperative among the standards of international law or *jus cogens* (International Law Commission, Commentary of the Draft articles on state responsibility for international unlawful offenses (2001, Article 26.). Therefore it follows from the foregoing that crimes against humanity in 1992 irrefutably constituted a part of customary international law.
107. Finally, the application of the CC BiH is additionally justified with the fact that the imposed sentence is in any case more lenient than the death penalty that was in effect at the time of commission of the criminal offense. Thereby, the principle related to the time constraints regarding the applicability of the criminal law, that is, the application of the law more lenient to the perpetrator, was satisfied.
108. The foregoing is in accordance with the view of Section I of the Appellate Division of the Court of BiH in the Verdict against Abduladhim Maktouf number KPŽ 32/05 dated 4 April 2006 and the Verdict against Dragoje Paunović number KPŽ 05/16 dated 27 October 2006. The Constitutional Court of Bosnia and Herzegovina addressed this issue in the Appeal of A. Maktouf (AP 1785/06). In the decision

dated 30 March 2007, the Court stated: „68. *In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of Krstic, Galic, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime or a 15 year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law*”. With regard to this, the view of the Constitutional Court is that it is not possible to simply „remove“ the sanction and apply other, more lenient sanctions and thereby practically leave the gravest criminal offenses inadequately sanctioned.”

109. In this particular case, the Court finds it established that the Accused had to know that during the state of war the application of international rules has primacy and that violations of internationally protected values result in severe consequences. If Article 172 of the CC BiH is analyzed, it is obvious that the essential element of this criminal offense includes, *inter alia*, the elements of violations of international rules. This makes this group of criminal offenses special since it is not sufficient only to commit such criminal offenses by a physical action. It is also necessary that the awareness exists that international rules are being violated by such commission, and also the presumption that the accused must be aware that the states of war, or a conflict, or hostilities are particularly sensitive and especially protected by the commonly accepted rules of international law, and that as such, the criminal offense concerned assumes an even greater importance, while its commission implies even graver consequences than it would be the case with the criminal offense committed at the time of peace.
110. Also, at the time of commission of the criminal offenses, as a successor state of the SFRY, Bosnia and Herzegovina was a signatory party to all relevant international conventions on human rights and international humanitarian law protecting the human rights at the times of war and peace.<sup>9</sup>
111. Likewise, the customary status of the criminal responsibility for crimes against humanity and war crimes against civilians and individual responsibility for war

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<sup>9</sup> This particularly includes: *Convention on Genocide (1948); Geneva Conventions (1949) and their Additional Protocols (1977); Convention on Slavery amended in 1956; Convention on Racial Discrimination (1966); International Covenant on Civil and Political Rights (1966); Convention on Non-Applicability of Statutory Limitations of War Crimes and Crimes against Humanity (1968); Convention on Apartheid (1973); Convention on the Elimination of All Forms of Discrimination against Women (1979), UN Convention on Torture (1984)*

crimes committed in 1992 was also confirmed by the UN Secretary General<sup>10</sup>, the International Law Commission<sup>11</sup>, and also the ICTY case law and the jurisprudence of the International Criminal Tribunal for Rwanda (ICTR)<sup>12</sup>. These institutions established that the criminal responsibility for crimes against humanity and war crimes against civilians constituted an imperative standard of international law, that is, *jus cogens*.<sup>13</sup> Therefore, it appears indisputable that in 1992 crimes against humanity and war crimes against civilians constituted a part of customary international law. This conclusion was also confirmed by the Study on Customary International Humanitarian Law<sup>14</sup> made by the International Committee of the Red Cross. According to this Study, „Serious violations of international humanitarian law constitute war crimes“ (Rule 156), „Individuals are criminally responsible for war crimes they commit“ (Rule 151) and „States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.“ (Rule 158).

112. Pursuant to the principle of universal responsibility, customary international humanitarian law obliges any state in the world, regardless of whether it has ratified the appropriate international legal instruments. Each country is obliged to prosecute or extradite (*aut dedere aut judicare*) all persons suspected of having committed a violation of customary international humanitarian law.
113. The principles of international law recognized by Resolution 95 (I) of the UN General Assembly (1946) and the International Law Commission (1950) refer to „The Charter of the Nuremberg Tribunal and the Judgment of the Tribunal“, and therefore to war crimes in general. „Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal“, adopted by the International Law Commission 1950 and delivered to the General Assembly prescribe in Principle No. 1: „*Any person who commits an act which constitutes a crime under international law is responsible and liable to punishment*“. Principle II also prescribes: „*The fact that national law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act of responsibility under international law.*“
114. Therefore, the criminal offense of crimes against humanity and war crimes against civilians should in any case be categorized as „general principles of international law“ set forth in Articles 3 and 4 (a) of the CC BiH. Therefore, regardless of

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<sup>10</sup> Report of the UN Secretary General pursuant to Paragraph 2 of the Resolution 808 of the Security Council dated 3 May 1993, sections 34-35 and 47-48.

<sup>11</sup> International Law Commission, Commentary of the Draft Code of Crimes against the Peace and Security of Mankind (1996)

<sup>12</sup> ICTY, Appeals Chamber, Tadić case, Decision on the Defence Motion for Interlocutory Jurisdiction, 2 October 1995, par. 151.; ICTY, Trial Chamber, Judgment in the Tadić case dated 7 May 1997; par. 618-623;

<sup>13</sup> International Law Commission, Commentary of the Draft Articles on the Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

<sup>14</sup> Jean-Marie Henchaerts and Luise Doswald-Beck; Customary International Humanitarian Law; ICRC, Cambridge University Press, 2005., p. 568 onwards.

whether it is viewed from the aspect of customary international law, international contractual law or „the principles of international law”, it is indisputable that crimes against humanity and war crimes against civilians constituted criminal offenses at the critical period, namely that the principle of lawfulness was also satisfied in terms of *nullum crimen sine lege* and *nulla poena sine lege*.

115. Accordingly, pursuant to the Common Article 3(1)(a) and (c) of the Geneva Conventions and Article 27(2) of the Geneva Convention on the Protection of Civilian Persons in Time of War dated 12 August 1949, the criminal offense of crimes against humanity should in any case be categorized as „international law”, that is „general principles of international law” set forth in Articles 3 and 4(a) of the CC BiH. Therefore, it is indisputable that crimes against humanity and war crimes against civilians constituted criminal offenses in the relevant period.

#### **(5) The Standards Applied Regarding the Evaluation of Evidence**

116. The task of any court is to evaluate evidence in accordance with the applicable procedural law, that is, the Criminal Procedure Code of Bosnia and Herzegovina. Also, in analyzing each piece of evidence separately, the Court must apply to the Accused the presumption of innocence which is prescribed by Article 3 of the CPC BiH. At the same time, this constitutes the basic principle of the contemporary criminal legislation. Therefore, the burden of proof lay with the Prosecution.
117. Furthermore, in evaluating the testimonies of the witnesses, the Court took into account their behavior, the conduct, the character to the extent to which it was possible, as well as the logic and the consistency of their testimonies. Regarding all the witnesses, the Court was also mindful of the probability, the consistency, the other evidence, the circumstances of the case and the personal interest of certain witnesses related to these proceedings.
118. During the entire proceedings, the Court was mindful of the fact that the witness credibility depended on their knowledge of the facts they testified about, their ability to perceive adequately the circumstances they testified about, their sincerity and the circumstance that they undertook to tell the truth in terms of the given oaths.
119. If and when the Court evaluates that the witness testified sincerely, the key issue is whether such testimony is reliable and whether it reflected all relevant circumstances. In this context, the Panel particularly considered the arguments of the witnesses concerning the inadequate or untimely medical care. To wit, many witnesses testified that they did not have adequate medical care, that the medical staff member who was at their disposal was in fact a veterinarian, and that the detainees were only provoked when they were taken to the hospital.
120. Without questioning the sincerity of these witnesses and their intention to tell the truth, the Panel interpreted their testimonies within the context of the other

evidence adduced, particularly in relation to the circumstances unknown to them. Thus it was concluded that there were numerous deficiencies in the medical care system, but that no charges could be pressed against the Accused with regard to the medical care because they had taken significant steps to ensure minimum conditions. Therefore, the fact that certain diagnoses were incorrect or deficient cannot constitute a basis for the establishment of criminal responsibility of the Accused.

121. During the entire course of the proceedings, the Court was aware that in the testimonies on the events that had taken place some (many) years prior to their testifying, the uncertainty was present due to the variability of the human perception of traumatic events and the memories thereof. However, in cases like this, it should be emphasized that essentially it should have been primarily established that certain events were only a constituent part of a usual practice. Therefore, it was relevant in this case to determine that certain events constituted a common and regular practice, without any especially expressed need to establish even the smallest details regarding each incident.
122. The testimonies of the witnesses who had been exposed to severe stress and trauma while they witnessed the events about which they testified were particularly taken into account. According to the Court, certain discrepancies related to the sequence of the events and their duration do not affect the credibility of their testimonies regarding the assertions that certain incidents took place or not. To wit, as already mentioned, in situations when certain persons are detained for a longer period of time in inadequate rooms and when the practice is that certain incidents are regularly repeated, it is quite logical that the witnesses err in stating their sequence or their duration. Also, the Panel was aware that a possibility existed that such witnesses made mistakes in describing the presence and the behavior of certain persons.
123. However, in cases when other evidence confirms the presence of a certain person, the Court gave full credence to the descriptions and the details stated by such witness.
124. In relation to the hearsay evidence, it should be noted that there is a rather common view in the case law according to which the hearsay evidence is acceptable. However, in terms of Article 15 of the CPC BiH, the Court is free to evaluate such evidence. This evidence must be reliable, that is, in case of the testimonies of the witnesses, this evidence must be given voluntarily, must be true and obtained in a lawful manner. Specifically, the probative value of hearsay evidence depends on the context and the character of the testimony concerned and/or on whether this testimony is supported with other relevant evidence.
125. Circumstantial evidence essentially constitutes evidence on facts, that is, on certain events or criminal offense, from which a relevant fact logically ensues. Since some critical events appear to have taken place at the time when not many eye-witnesses

were present at the crime scene, and since a possibility to establish relevant facts through the testimonies of the witnesses and the documentary evidence directly confirming this fact was problematic or more difficult, the circumstantial evidence became the key element not only for the Prosecution, but also for the Accused.

126. If taken separately, such pieces of evidence may be insufficient *per se*. However, if viewed in its entirety, the collective and the cumulative character of the evidence can be disclosing and sometimes crucial.
127. The sequence of the events that were included in the Indictment and their connection in terms of time, and also the identical manner in which they took place were particularly important for the Court.
128. In this specific case, the documentary evidence was abundant and particularly important for gaining a realistic and complete picture of the relevant events.
129. During the proceedings, the Defense insisted and pointed to the fact that the military authorities considered the civilians that were detained in the KPD *Butmir* as their detainees, particularly when they were taken out to perform work. The Defense also submitted that the SRC Security Department had a key role in the treatment and organization of the persons detained in the KPD *Butmir*. Also, the Defense particularly pointed to the fact that the military authorities and the police determined which persons had the status of war prisoners. However, of a decisive importance for the Court was the fact whether the Accused knew that the persons detained by the military authorities and the police in the KPD *Butmir*, with an explanation that they were prisoners of war, did not satisfy the requirements for such status, namely that essentially they were civilians.
130. Furthermore, the fact that a certain document is not signed or sealed does not necessarily mean that it is not authentic (particularly when it comes to different records and diaries). The Court did not find that the documents without signatures or seals were *a priori* not authentic. Bearing in mind at all times the principle according to which the burden of proving the authenticity remains on the Prosecution, the Court reviewed all the documents presented, one by one, and concluded that the Prosecution proved their authenticity beyond a reasonable doubt.
131. In evaluating the documents authenticity, the Court considered these documents in the light of all other evidence adduced, such as the other documentary evidence and the testimonies of the witnesses. In addition, even when the Court was satisfied that the considered document was authentic, it was not automatically accepted that the statements from those documents constituted a correct presentation of the facts, but the authenticity of the contents was evaluated in each specific case.
132. The Prosecution Exhibits T-100 and T-101 can be taken as an example on this occasion. These Exhibits concern the lists found in the KPD *Butmir*. They contained no date. However, given the fact that they are essentially the lists of the

names of the persons who were detained on certain premises in the KPD *Butmir* (the persons who were questioned as the witnesses who stated that they had spent a certain period of time in the KPD *Butmir*, including among others: Šučro Džihanić, Ahmo Fako, Avdo Pizović, Almin Dželilović, Junuz Harbaš and Hasib Dželilović). Therefore, the Court accepted such lists as evidence which was, of course, evaluated in the context of all other evidence and the testimonies of the witnesses.

133. Also, Article 15 of the CPC BiH prescribes the principle of free evaluation of evidence that authorizes the Court to freely evaluate the existence or non-existence of facts. An evaluation of the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules. The value of evidence is not determined in advance, neither in qualitative nor quantitative terms. Therefore, even when appropriate certificates and decisions on status or certain relevant facts exist, the Court had a possibility to review their existence again.
134. With regard to the free evaluation of evidence, the Court is entitled and must also consciously evaluate each piece of evidence separately and in correlation with the other evidence, and based on such evaluation draw a conclusion on whether a certain fact has been proven, in the process of which the evaluation of evidence includes its logical and psychological evaluation.
135. In other words, a free evaluation of evidence is limited with the principle of lawfulness of evidence and nothing else.
136. Furthermore, it is important to emphasize that Article 10 of the CPC BiH defines the term of unlawful evidence in the way that the sources of information obtained or adduced in a manner prohibited by law constitute legally invalid evidence. The evidence obtained by violations of fundamental human rights and freedoms, and essential violations of the procedural law is categorized as unlawfully obtained evidence. This evidence constitutes legally invalid evidence and it is impossible to base a court's decision on such evidence.
137. Also, the issue of authenticity or a copy of the document whose contents is important for the evidentiary procedure constitutes a frequently raised issue. Although a view principally exists on the necessity to submit original documents to the Court, this view *per se* does not exclude a possibility to use a copy of a certain document as lawful evidence. The same view is shared among the courts in other states in the region. Thus the Supreme Court of the Republic of Croatia stated in the Decision number I Kž-645/01 the following:

*"The Accused are right when they are stating that all official letters that have the importance of evidence should be submitted in original. In this specific case, this was not done with the Record on questioning suspect N. Š. dated 8 May 1999 (sheet 72-74 of the record). In spite of its attempts, the First Instance Court did not manage to obtain the original during the proceedings either. However, contrary to the appellate complaints, it cannot be accepted that this evidence is unlawful in*

*terms of Article 9(2) of the CPC due only to a formal omission since the Accused Š. did not contest the authenticity of the Record, the Record was not obtained by violations of the Constitution, the rights of the Defense guaranteed by the law or international law, while during the main trial, in presenting his defense, the Accused himself stated that he maintained such defense of his. The record was thereupon read out and the Accused stated that it was exactly what he had stated before the police authorities. In addition, given that the Accused Š. entirely denies the commission of the offense, it is not acceptable that the contested Judgment is based on this evidence. Therefore, even if it were accepted that it was the evidence set forth in Article 9(2) of the CPC, the appellate ground of unlawful violation set forth in Article 367(2) of the CPC was still not satisfied."*

138. When speaking about the view of the European Court of Human Rights (hereinafter: ECtHR) regarding the evaluation of evidence, it should be indicated that the general rule was established according to which national courts are the ones evaluating the evidence. Since the Convention does not prescribe this explicitly, the ECtHR did not address the establishment of the rules on evidence, having firmly maintained its view that the task of the Court was not to adjudicate on whether this evidence was accepted in an appropriate manner at the trial, which is principally an issue that is regulated pursuant to the national law. The task of the Court is to establish if the judicial proceedings were fair in their entirety.
139. Therefore, the view of the ECtHR and the judicial systems of the neighboring countries was that the main goal of the criminal proceedings was to establish the material truth<sup>15</sup>, pursuant to which they established the fairness of the criminal proceedings in their entirety as the lowermost threshold related to the lawfulness of evidence, without being limited to certain aspects thereof.

### **General Elements of Crimes against Humanity**

140. The Accused Radoje Lalović and Soniboj Škiljević were charged with the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with Sub-paragraphs e), k), a), f) and c) of the CC BiH.
141. To qualify a criminal offense as crimes against humanity, the law prescribes that in addition to concrete elements of individual criminal offenses, the Prosecutor must also prove the general elements of crimes against humanity, namely:
1. the existence of a widespread and systematic attack directed against any group of civilians;
  2. awareness of the Accused of the existence of such an attack;

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<sup>15</sup> Possible departures from this principle could be discussed only when the instruments of plea agreement and the Accused's pleading not guilty are in question.

3. the knowledge of the Accused that their actions constituted or could constitute a part of the attack.

## Legal Standards Applied to the Established State of Facts

142. The Prosecution charged Radoje Lalović and Soniboj Škiljević with the commission of persecution by unlawful detention, inhumane acts committed with the intention to cause great sufferings or serious physical or mental injuries, killings, torturing and enslavement.
143. A definition/explanation of the meaning of certain terms and a brief commentary concerning the established state of facts will be given in the text below.
144. – **Unlawful detention** should be construed as an arbitrary detention, namely it should be defined as “depriving a certain individual of liberty without any regular legal procedure”. Accordingly, the view of the Court was that the detention of civilians was unlawful when (1) the civilians were detained in violation of Article 42 of the IV Geneva Convention, namely when no reasonable grounds existed to believe that their detention was absolutely necessary for the reasons of security of the power which kept them in detention; (2) when the guaranteed procedural protective mechanisms required by Article 43 of the IV Geneva Convention are not complied with regarding the detained civilians, even when the initial detention was perhaps justified; and (3) when the detention appeared as part of a widespread or systematic attack directed against the civilian population.
145. In relation to the issue of unlawful detention, it should be noted that the views of the Defense that the persons detained in the KPD *Butmir* were prisoners of war and that pursuant to such belief it could have been concluded that their detention was lawful, could not be accepted. According to the Court, given the fact that the persons had been unlawfully detained in the KPD *Butmir* even before the KPD *Butmir* was transferred under the responsibility of the Ministry of Justice and Administration of SRBiH, and that during the KPD takeover the Accused themselves were obliged to check the situation and the lawfulness of the detention (particularly because the Accused were persons with long experience in the work of penal and correctional institutions and knew the procedure of lawful detention), a conclusion is inevitably drawn that it was clear to the Accused since the very beginning that civilians, not prisoners of war, were detained in the KPD *Butmir*.
146. The foregoing criteria must have been satisfied for a lawful detention of civilians. This was not done in the case before the Panel.
147. - **Torture** contains the following elements:
1. infliction of severe pains or sufferings, whether physical or mental, by an act or omission to act,
  2. act or omission to act must be intentionally inflicted,
  3. act or omission to act must be committed in order to obtain information or confession, or for punishment, or forcing upon a victim or a third person, or for discrimination against a victim or a third person on any grounds.

148. Torture essentially constitutes one of the severest attacks against the mental and physical integrity of person. It differs from other forms of ill-treatment by the purpose and the gravity of the attack on the victim. Torture as a criminal offense is not an act of violence with no reason whatsoever: its goal is to achieve a certain result or a purpose by inflicting severe mental or physical pains. Accordingly, if such purpose or goal does not exist, even a very severe infliction of pains cannot be qualified as torture.
149. After analyzing the evidence adduced in this case, the Court concluded that the Accused had to know and were aware of periodical abuse, that is, the beatings of the detainees. However, starting from the nature of the sources of information that were available to the Accused, the Court could not conclude that it was proven beyond a reasonable doubt that the Accused knew that the beating and the abuse were perpetrated with a prohibited purpose (this topic will be particularly addressed in the text below). Accordingly, in relation to Counts 1c and 2c of the Indictment, the Accused Radoje Lalović and Soniboj Škiljević were found guilty of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with sub-paragraph k) of the CC BiH.
150. - **Other inhumane acts** of a similar character constitute the acts committed intentionally to cause great suffering, or serious injury to body or to physical or mental health and the acts for which it is necessary to prove the existence of acts or omissions to act of a similar gravity as for other crimes listed in Article 172(1) of the CC BiH;
1. An act or omission to act by which mental or physical suffering or injury was inflicted, or that constitutes a serious attack on human dignity;
  2. An act or omission to act intentionally committed by the Accused and a person or persons for whose acts or omissions to act the Accused bears criminal responsibility.
151. An evaluation of gravity of such an act or omission to act is of a relative nature. All factual circumstances must be taken into account, including the character of the act or omission to act, the context in which they took place, their duration and/or repetition, physical, mental or moral effect of the action on the victim and the victim's personal situation, including the age, sex and health condition. The sufferings inflicted on the victim by the action concerned do not have to be permanent, it is sufficient that they are real and serious.
152. The required *mens rea* element is present if at the time of commission of the act or omission to act the principal perpetrator had the intent to inflict severe physical or mental suffering, or to commit a serious attack against the victim's human dignity, or if he knew that his act or omission to act would probably result in causing severe bodily or mental sufferings, or serious attack on human dignity, while he chose to

ignore a possibility that such suffering or attack would appear as a result of his act or omission to act.

153. - **Murder** implies depriving other person of his life. It is characterized by the following elements:
- a) the death of victim;
  - b) the death which is a result of the act or omission to act on the part of the Accused or his subordinate;
  - c) in doing so, the Accused or his subordinate had an intent to deprive the victim of his life or inflict a severe injury on his bodily integrity, which he could have reasonably assumed would result in his death.
154. The required *mens rea* of murder implies the intent to commit a murder or inflict a severe bodily injury with a deliberate lack of care for a human life. The required *mens rea* standard requires willful killing with the intent.
155. The consequence is a result of the intent when the perpetrator formulated his intent having given it a reasonable thought. The consequence is intended when it constitutes the goal of the perpetrator or when the perpetrator is aware that it will occur following the usual sequence of events.
156. On this occasion, attention should be paid to the peculiarity of the case conducted against the Accused Radoje Lalović and Soniboj Škiljević. To wit, when it comes to the killings referenced in Count 1b of the Indictment, the Panel could not establish beyond a reasonable doubt that the Accused had had any role in the KPD *Butmir* management. Therefore, the Panel did not separately address the elements *per se* of the criminal offense of murder because the incidents charged against the Accused had taken place prior to their arrival at the KPD *Butmir*.
157. On the other hand, when it comes to the killings referenced in Count 2b of the Indictment, the Panel could not find the cause-and-effect nexus between the act/omission to act of the Accused Soniboj Škiljević and the resulted consequences. To wit, the Panel did not find that the Accused was aware that two persons had been taken out from the KPD *Butmir* to be killed or that following the *usual sequence of events* a murder could be perpetrated. To wit, the two persons that were taken out from the KPD *Butmir* to perform forced labor were thereupon killed. These are the only two incidents of the kind during the entire relevant period (three and a half years). It is important to emphasize here that one person was killed when he performed forced labor, while the other was killed upon his attempt to escape.
158. – **Forced labor** implies violations of a series of standards of international human rights and international humanitarian law. At the times of peace, international and regional agreements on human rights regulate certain bans on forced labor or compulsory work. In this manner, in their cases so far, the Trial Chambers of the International Criminal Tribunal for the Former Yugoslavia had a view that the

charges of “forced labor” can lay in the basis of the criminal offense of enslavement as crimes against humanity set forth in Article 5(c) of the Statute, or Article 172(1)(c) of the CC BiH, and that as such, this criminal offense had sufficient gravity to support the charges for persecution.

159. In each specific situation, it should be decided based on the evidence available whether a forced labor was in question. This case concerns a large number of unlawfully detained civilians who were taken to work, specifically to fortify positions, on which occasion a large number of them were wounded or killed.
160. The reason for which many detainees volunteered to go to work (if volunteers were at all requested) lies in the fact that on such occasions the detainees would be given the same meals as the soldiers. Therefore, such a situation cannot be construed to imply consent, but it was the only possible way to ensure food that was at least somewhat better than the one which they were regularly given and due to which they all lost weight.
161. - **Persecution** means intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity.
162. The essence of the criminal offense of persecution is reflected in the fact that certain persons are being deprived of certain rights solely because they are members of a certain group. Therefore, for the purpose of persecution, a selective approach, that is, a discriminatory intention should be proved. In this case, a specific circumstance exists, namely the existence of tacit agreement of all participants to treat non-Serb men, mostly civilians, as prisoners of war, and to accordingly keep them in inhuman conditions, beat them periodically, abuse and take them to forced labor. This will be addressed in more detail in the text below.

### **Individual Criminal Responsibility pursuant to Article 180(1) of the CC BiH**

163. Article 180(1) of the CC BiH defines individual criminal responsibility in the war crimes cases and concerns the following: planning, ordering, perpetrating, instigating (inciting), and aiding and abetting criminal offenses. Starting from the fact that the Prosecution charged both Accused with planning, ordering, instigating and aiding and abetting, these terms will be reasoned in the text below:

#### **Planning**

164. “Planning implies that one or several persons contemplate designing the commission of a crime at both the preparatory and execution phases.”<sup>16</sup>

#### **Instigating**

165. “Instigating entails prompting another to commit an offence”<sup>17</sup>

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<sup>16</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Blaškić* case, par. 279.

166. Unlike planning that implies the activities of one person or a number of persons towards the commission of a criminal offense, instigating implies prompting another person to commit a criminal offense. Therefore, it is necessary to prove that the behavior of the Accused constituted a factor that clearly contributed to the behavior of another person. It is not necessary to prove that the criminal offense would not have been committed if the Accused had not participated.
167. When it comes to the *actus reus* of instigation *per se*, it should be indicated that it includes both acts and omissions<sup>18</sup>. By this characteristic, the act of instigating differs from the act of inciting that pursuant to most laws can be perpetrated only by active acts.
168. When it comes to the mental state of the Accused, it is required to prove instigation by proving that the accused intended to provoke or induce the commission of the crime, or was aware of the substantial likelihood that the commission of a crime would be a probable consequence of his acts.<sup>19</sup>

### Ordering

169. Ordering implies a person in a position of authority using that position to convince another to commit an offence.<sup>20</sup>
170. Basic characteristics of ordering are that it can be explicit or implicit, that an order does not need to be given directly to the person who commits the offense, and it is not necessary that a formal superior-subordinate relationship exists<sup>21</sup>.

### Perpetrating

171. Perpetrating includes physically perpetrating a crime or engendering a culpable omission in violation of criminal law.<sup>22</sup>
172. The *actus reus* required for perpetrating a crime is that the accused participated, physically or otherwise directly, in the material elements of a crime.<sup>23</sup> An individual can be said to have “committed” a crime when he or she physically perpetrates the relevant criminal act or engenders a culpable omission in violation of a rule of criminal law.<sup>24</sup>

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<sup>17</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Krstić* case, par. 601.

<sup>18</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Blaškić* case, par 280.

<sup>19</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Naletelić and Martinović* case, par. 60.

<sup>20</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Krstić* case, par. 601

<sup>21</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Kordić and Čerkez* case, par. 388. and Judgment of the ICTY Trial Chamber in the *Prosecutor v. Blaškić* case, par. 282.

<sup>22</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Krstić* case, par. 601.

<sup>23</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Kvočka* case, par. 251.

<sup>24</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Kunarac, Kvočak and Vuković* case, par. 390.

173. The required *mens rea*, like in other forms of criminal participation pursuant to Article 180(1), lies in the fact that the Accused acted with the awareness of a significant probability that a criminal act or omission would result from his behavior.

### **Aiding and Abetting**

174. “Aiding and abetting, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto.”<sup>25</sup>
175. “The *actus reus* of aiding and abetting in international criminal law requires practical assistance, encouragement, or moral support which has a substantial effect on the perpetration of the crime”<sup>26</sup>
176. “In addition to the knowledge that his acts will contribute to the commission of the crime, the aider and abettor needs to have intended to provide assistance, or as a minimum, accepted that such assistance would be a possible and foreseeable consequence of his conduct.”<sup>27</sup>

### **Joint Criminal Enterprise**

177. It clearly follows from the case law that attributing the guilt for the crime committed within a JCE does not require that the accused had any participation in the *actus reus* of the committed crime. It equally and clearly sets up as a requirement the participation of the accused in the realization of a common goal within the JPC.
178. Not each type of the acts reaches the level of significant contribution to the crime from which the criminal responsibility of the accused would ensue.
179. A JCP is not a flexible term that would enable the rendering of convicting verdicts based on the guilt of joining the enterprise. On the contrary, a convicting verdict based on the doctrine of JCE can be rendered only if the Court determined beyond a reasonable doubt that all necessary elements were satisfied.
180. The required elements at issue are the following:
- firstly, as already explained, the accused must have the required intent;
  - the Court can determine that the Accused indeed has the required intent only if it is the only reasonable conclusion that can be drawn based on evidence.

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<sup>25</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Kvočka* case, par. 254.

<sup>26</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Furundžija* case, par. 235. and 249.

<sup>27</sup> Judgment of the ICTY Trial Chamber in the *Prosecutor v. Blaškić* case, par. 286.

181. Other requirements to render a convicting verdict based on the JCE doctrine are equally strict:
- a trier of facts must determine beyond a reasonable doubt that a number of persons shared a joint criminal goal;
  - that the accused contributed to the realization of the joint criminal goal;
  - that the jointly intended crime (that is, a predictable crime for rendering a convicting verdict based on the third category of JCE) actually occurred.
182. In case when it is not proved that the direct perpetrator of the criminal offense was a member of joint criminal enterprise, it should be determined that a certain crime can be attributed to at least one participant in the joint criminal enterprise, and that this participant, having used the direct perpetrator, acted in accordance with a joint enterprise. In confirming these elements, among other things, the Court must:
- determine that a number of persons were members of the JCE (although it is not necessary to identify each person individually);
  - precisely define a joint criminal goal both in terms of the intended punishable goal and its range (for example, determine the limitations of the goal in terms of time and geographic position;
  - general identity of intended victims);
  - that this criminal goal is not only unique, but also common for all persons who jointly acted within a joint criminal enterprise;
  - precisely qualify the contribution of the accused to this joint plan.
183. As to this last element, it should be noted that this contribution, although it does not have to be necessary or significant, must at least constitute an important contribution to the crimes the responsibility for which is attributed to the Accused.
184. If all these requirements for attributing the responsibility based on the JCE were realized beyond a reasonable doubt, this means that the accused is guilty of much more than a mere joining with criminals. He had the intent to commit the crime, joined the others in order to realize the goal and he gave a significant contribution to the commission of the crime.
185. Pursuant to the jurisprudence – that reflects the standards adopted in the customary international law for establishing general frames of joint criminal enterprise – the accused can be reasonably found guilty not only of his own contribution, but also of the acts of other participants in the JCE who acted in the realization of the crime at issue (the first category of the JCE), that is, of the acts that were a predictable consequence of the commission of this crime if his state of awareness may be qualified as *dolus eventualis* (the third category of the JCE).

186. Finally, the so called JCE type two is relevant to this specific case, that is, the *mens rea* that should be proved and that establishes the standard: **whether the accused had knowledge of the system and whether they agreed to it**<sup>28</sup>.
187. It is not decisive whether those other participants in the JCE personally realized the *actus reus* of the crime or in order to do so they used the principal perpetrators who did not share the common goal.
188. In practice, this approach may result in certain discrepancies inasmuch as it does not define any formal distinction between the JCE participants whose contribution is prevailing and the JCE participants whose contribution, although important, is not so great. However, it should be recalled that any such discrepancy is resolved in an appropriate manner in the phase of meting out the sentence.

### **Discrepancies in the operative part of the Verdict from the allegations in the Indictment concerning the joint criminal enterprise**

189. In several places, the operative part of the Verdict differs from the Indictment. This requires a separate explanation. To wit, in the operative part of the Indictment, in addition to the accused Radoje Lalović and Soniboj Škiljević, the Prosecutor stated the names of a number of persons who were, according to him, members of the same joint criminal enterprise.
190. Bearing in mind a need to establish that a number of persons were involved in the joint criminal enterprise, the Court analyzed all the evidence adduced within the mentioned context and concluded that the said requirement was satisfied. Also, regardless of the fact that the Court was satisfied that a large number of participants were involved in this joint criminal enterprise, among whom, judging from all, were the other persons referenced in the operative part of the Indictment, the view of the Court was that stating their names in the operative part of the Indictment would be inappropriate. To wit, stating certain persons who were not indicted but were stated in the operative part of the Indictment and characterized as members of a joint criminal enterprise, would result in a situation of implying the criminal responsibility of the persons who were not in a position to present their defense.
191. Pursuant to the described state of facts, the Court found it most appropriate to state in the operative part of the Verdict the group of persons from which other members of the joint criminal enterprises originated. Thus for example, the names of certain guards that were indicated in the Indictment (Neđo Pandurević, Vule Govedarica and Božo Radović) were omitted from the operative part of the Verdict, while only the group of persons from which the members of the joint criminal enterprise originated was stated (for example: „sharing the objective with the personnel performing guard duties in that penal and correctional organization).

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<sup>28</sup> Judgment of the ICTY Appellate Chamber in the *Krnjelac* case, par. 97.

192. Furthermore, „the Ministry of Justice of the so called Serb Republic of Bosnia and Herzegovina” was also omitted from the operative part of the Verdict. This is so because in these proceedings the Court did not primarily address the determination of the criminal liability of Momčilo Mandić and Jovo Rosić. To wit, in the severed proceedings conducted exactly against the former Minister Momčilo Mandić a Verdict was rendered acquitting him of the charges. Since this Verdict became final, and since the First Instance Verdict and the Second Instance Verdict in the referenced case were adduced as the Defense evidence, the Panel could not determine beyond any reasonable doubt that the responsible persons from the Ministry of Justice of the Serb Republic of Bosnia and Herzegovina, primarily Ministers Momčilo Mandić and Jovo Rosić, were members of the same joint criminal enterprise in concert with the accused Radoje Lalović and Soniboj Škiljević.

### **Attack against the civilian population of Sarajevo**

#### **Facts in support of the existence of the attack**

193. One of the general elements of the criminal offence of Crimes against Humanity is a widespread or systematic attack against civilians.
194. The attack does not necessarily have to be linked to combat activities, it can be carried out concurrently with the combat activities (e.g. attack on specific military targets). Also, the attack against civilians can be underway even after the cessation of shooting at military targets.
195. Since the accused are charged with the perpetration of the criminal offence of Crimes against Humanity, it is important to prove that there was a widespread or systematic attack in the area of Sarajevo during the relevant period.
196. In this specific case, when the attack on the city of Sarajevo is concerned, it can be said that during the whole time relevant to the Indictment there was an attack against civilians, which was at times carried out simultaneously with combat activities and with attacks on military targets.
197. Deciding on the Prosecution Motion, the Trial Panel issued the Decision on 30 August 2010 to accept the established facts, thereby securing an efficient and cost-effective conduct of the proceedings, but without any intention to deprive the accused of the rights guaranteed to him.
198. Having rendered such Decision (reasoned in more detail further in the Verdict - procedural decisions), the Panel took judicial notice of certain facts, which can considerably prove the existence of the widespread and systematic attack on civilians.

199. In order to create a clear picture and/or properly interpret the sequence of events, the Panel has accepted as established several facts about political affairs and their impact on certain relevant facts, including the one that in September 1991 the SDS Main Board proposed the creation of Serb autonomous regions, which had a significant effect on the future events.
200. The Serb Republic of Bosnia and Herzegovina (SR BiH) was declared already on 9 January 1992, and ethnic conflicts broke out in early March 1992 in different parts of BiH.
201. Following the recognition of BiH as a sovereign state on 6 April 1992 by the European Union, the conflicts escalated and a major attack on Sarajevo was launched on 2 May 1992.

### **The existence of a widespread attack**

202. It follows from the established facts that the town was kept under fire throughout the period relevant to the Indictment and that the attack was targeted against civilians. This finding is corroborated by the facts 8-17, which prove that the attack was targeted precisely against the civilians, resulting in hundreds of dead and thousands of wounded civilians.
203. In addition, it arises from the established facts and from the testimony of almost all witnesses that nearly all parts of the city of Sarajevo were under attack during the relevant period, including its suburbs (Hadžići, Semizovac, Ilidža, Kotorac).
204. The foregoing clearly shows that there was a widespread attack during the relevant period and that it was targeted against the civilian population of the city of Sarajevo.

### **The existence of a systematic attack**

205. Fact No. 32 proves that this was a systematic attack, whose launching on some parts of the town was prepared far in advance.
206. Also, the same conclusion can be derived from the fact that all parts of the town were attacked in the same manner. Almost as a rule, an ultimatum would be given first, an artillery attack followed and infantry would eventually enter the area.
207. In their testimony given at the main trial, a number of witnesses confirmed that the attacks were carried out precisely in the described manner. According to witness Aldin Badžić, he was asleep when the attack on his part of the town started and that his sister woke him up. He hid in a cellar with his neighbours, but some individuals unknown to him threw tear gas inside and threatened to throw a bomb if they refused to open the door. Aldin Badžić said that all of them were civilians and that

there were no military targets either in their building or in the surroundings. It follows from his testimony that it was an attack on the residential area.

208. Witness Junuz Harbaš testified to have been at home with his family when unknown individuals broke in at 7 o'clock, forced them all out of the building, then pushed them in a van and drove them to the municipality building in Hadžići.
209. Same as the previously mentioned witnesses, Salko Zolj said that he was captured in his flat, taken for interrogation and then imprisoned.<sup>29</sup>
210. Witness Alisa Muratčauš was in her flat when her part of the town was attacked, she described how soldiers entered the buildings, broke into the flats and asked about the names of residents. Later on, she was also taken away and incarcerated in the Butmir KPD.
211. Finally, same as the other witnesses, witness A was in his flat when his part of town came under fire. He hid in a cellar together with his neighbours, when a soldier came threatening to throw a bomb inside if they refused to get out. They went out and were taken to the Butmir KPD, where they were incarcerated. Women and children were released before that.
212. Therefore, it follows from all these facts that there was a widespread and systematic attack on the city of Sarajevo during the relevant period, which was targeted against the civilian population.

**The attack was targeted against the entire population of the city of Sarajevo, not only against non-Serbs, as it is argued in the Indictment**

213. The Court has examined the evidence relevant to the Prosecution averment that the attack was targeted against the non-Serb civilian population of the city of Sarajevo.
214. Based on the entire presented evidence, it can be concluded that the attack was targeted against civilians. Ample evidence was presented in support of this finding, which also follows from the established facts, that civilian targets were attacked. However, the Prosecution failed to present sufficient evidence to prove beyond any reasonable doubt that it was a discriminatory attack targeted against non-Serbs. It is true that some witnesses stated to have been asked about their names when they were deprived of liberty (alluding to their ethnicity), but this fact alone does not suffice to support the allegations of the Indictment.
215. Thus, having in mind that the attacks were primarily aimed at civilian targets and no specific targets were selected to suggest that the attack was intended against the non-Serb population of Sarajevo, the Court has applied the *in dubio pro reo* principle and found that the entire civilian population of Sarajevo was under attack.

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<sup>29</sup> As stated earlier, the attack within the meaning of Article 172 of the CC of BiH may involve mass deprivation of liberty of civilians.

216. To that end, the word “non-Serb” was excluded from the Account of Facts of the Enacting Clause of the Verdict, in relation to the wording of the Indictment..

**Mens rea for the existence of a widespread and/or systematic attack**

217. In addition to the widespread and systematic attack targeted against civilians, it had to be established whether the accused were aware of its existence, if they knew that their actions constituted part of that attack or if they were at least aware that there was an attack on the civilian population, that their acts comprised part of that attack and of the risk that their actions were part of the attack.<sup>30</sup>

218. When examining whether the accused were aware of the attack and of the fact that their acts comprised part of that attack, we should get back to the unlawfully incarcerated civilians. Another important thing is how the accused left Sarajevo. When examined, the accused defended themselves, among other things, also by providing a detailed account of the situation and atmosphere in Sarajevo in spring 1992.

219. It follows from their testimony that they were aware that the situation in the town was not safe. The accused Radoje Lalović testified at the main trial that the security situation was very bad, but that he believed it would improve. Later on, he proved to be wrong, the conflict had already started.

220. Testifying in his own defence, the accused Lalović stated among other things that he was in his cottage house in Tvrdimići in early April 1992, when he heard from two soldiers that the *war* had started.

221. Same as the accused Radoje Lalović, the accused Soniboj Škiljević described how he managed to leave Sarajevo after fairly long preparations.

222. Testifying about the events that followed, the accused Radoje Lalović said he knew that Kula was an important location at the relevant period since Serb officials assembled there and it was there where Momčilo Mandić (Minister of Justice and Administration of SRBiH) told him that a Penal Correctional Institution would be set up should the unrest continue.

223. The accused Radoje Lalović communicated with inmates and he had some information about their status (explained in detail further in the Verdict). He testified he knew that the incarcerated people were actually civilians and that they were being brought in huge numbers, including women and children.

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<sup>30</sup> ICTY Appeals Judgment in the Kunarac case, para 102 and ICTY Trial Judgment in the Kunarac case, para 434.

224. Since the combat activities had already started and civilians were being incarcerated *en mass* at the same time, it is clear that the incarceration of civilians was one element of the attack on the civilian population.
225. Therefore, the accused Lalović was aware that there was an attack against the civilian population ongoing together with the combat activities and that the unlawful incarceration of people, in which he wilfully participated, represented only one segment of the attack.
226. It should be said once again that the accused Lalović for years belonged to the senior staff of the penal and correctional institutions.
227. When examining if the accused Soniboj Škiljević was aware of the existence of a widespread and systematic attack, first of all it should be noted that he actively participated in the operation of the Butmir KPD ever since it was established in June 1992, furthermore, he became a warden in December the same year. Therefore, he had almost identical information as the accused Radoje Lalović.
228. It is important to note that when the accused Soniboj Škiljević explained how he had left the town of Sarajevo due to the deteriorated security situation, he gave the precise sniper locations. In other words, the accused Soniboj Škiljević was obviously aware of the existing state of affairs, primarily because he too was in way a victim of such a situation.

### **Findings**

229. It follows from the foregoing that the accused were aware of the existence of the attack on civilians and knew at the same time that the people incarcerated in the Butmir KPD were also civilians. Therefore, the only possible conclusion is that they were aware that the unlawful deprivation of civilians of their liberty was only one segment of the attack, namely, that their actions constituted part of the attack. Having in mind that all other offences the accused are charged with arose from the unlawful incarceration of civilians, it is clear that the enslavement and other inhuman acts were intended to cause great suffering or serious physical or mental pain.
230. To that end, the Panel has found that the general elements of the criminal offence of Crimes against Humanity in violation of Article 172(1) of the CC of BiH have been satisfied.

### **Discriminatory intent/persecution**

231. The accused Radoje Lalović and Soniboj Škiljević are charged under the Indictment with perpetrating all the offences with the discriminatory intent against victims who belonged to a specific political, racial, national, ethnic, cultural and religious group.

232. It follows from the abundant evidence presented during the trial, either witness testimony or physical evidence, that the entire system of unlawful incarceration of civilians in the Butmir KPD was based on discriminatory principles or on one of the prohibited grounds.
233. A number of pieces of evidence presented both by the Prosecution and the Defence clearly show that the ethnicity was a key factor in this matter.
234. Among the evidence adduced by the Prosecution, the video recording of the first international observer Paddy Ashdown's visit to the Butmir KPD (T-156) is particularly interesting. The first sentence reads: "The day we visited the Serb prison, there were 157 imprisoned Muslims, majority of them between 20 and 60 years old"; therefore it is completely clear that those people were incarcerated only on the grounds of their age and ethnicity. This conclusion is substantiated further in the record, when 10 people who were older than 60 or in poor health were released and Radovan Karadžić said that only those not likely to be mobilised would be released, while all others could be only exchanged, meaning that they would not be just unilaterally released. This proves that there was no intention to release able bodied Muslim men, to prevent them from fighting in the ongoing conflicts.
235. The testimony of witness Suvad Korjenić should be mentioned here in the given context, as he explained to have been in a group of 30 men comprising Muslims, Serbs and Croats, they were lined up to enter the KPD and then Vlatko Knežević, a Serb, was singled out together with several other men, while all others were imprisoned.
236. Therefore, in this specific case, people were not selected in accordance with Article 4 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 which sets the criteria for a prisoner of war status, but the selection was made on the grounds of their ethnicity.
237. The video record shows several people who denied to have participated in the fighting, but they were, nevertheless, unlawfully incarcerated, same as one blind man who was obviously not fit for military service. Nonetheless, the people were unlawfully imprisoned on ethnic grounds.
238. In their testimony, almost all examined Prosecution witnesses stated to have been brought in from the predominantly Muslim areas and selected on ethnic grounds.
239. It follows from many exhibits that there was a discriminatory intent (discrimination on ethnic grounds), for instance: Exhibit T-59 (List of able-bodied **Muslims**); T-65 (Document certifying that five **Muslims** would be sent for work detail at the Igman Quarry work site, 22 June 1994), (Document certifying that six **Muslims** would be sent for work detail to Hreša, 30 November 1993); (Document certifying that **Muslims** would be sent for work detail to Čolina Kapa, 31 January 1994); T-66

(KPD *Butmir* duty officer's report for 21/22 March 1993, referring to people only as Serbs and **Muslims**) and T-150 (Transcript of the conversation between Momčilo Mandić, Minister of Justice and Administration, and Radivoje Grković, Commander of the Neđarići Battalion, referring to the KPD Butmir inmates as "*Turks*").

240. Defence Exhibit O2-17 (Order issued by the Sarajevo-Romanija Corps) shows that the discrimination of the specific ethnic and religious group escalated at the relevant period and that there was a guiding principle to treat all able-bodied men, members of the discriminated group, as prisoners of war, no matter if they indeed were soldiers and participated in the combat activities.
241. Nevertheless, there were instances when the entire population, including Serbs, was moved out, as it happened at Dobrinja 4, but then several Serbs were separated from other people in the Butmir KPD yard.
242. It arises from the admitted Prosecution Exhibit T-202 (Official letter from the 1<sup>st</sup> Sarajevo Mechanized Brigade, Security Office, number 04/74, dated 19 May 1995), that only Muslims were taken for work detail, which shows the discriminatory intent and/or strategy.
243. There is another piece of evidence which proves the discriminatory intent – Prosecution Exhibit T-201 (Official letter from the 1<sup>st</sup> Sarajevo Mechanized Brigade, Security Office), named "Handover of Muslims", which shows that the only grounds for holding those people at the Kula KPD was their ethnicity and/or religion.
244. The foregoing is substantiated by Exhibits T-198 (Official letter from the Military Post 7512 Lukavica, number 05/24, dated 27 January 1994) and T-93 (List of the identified civilians who were unlawfully detained in the *Kula* concentration camp near Sarajevo), which show that Safet Kojić and Šeća Kojić were captured when they attempted to cross over and incarcerated in the Kula KPD, with a special note that both individuals were Muslims.
245. Therefore, it clearly follows from the presented evidence that the imprisoned people were non-Serbs, predominantly Muslims, and the entire system of unlawful imprisonment and the treatment of the so called "prisoners of war" in the Butmir KPD was based exclusively on that fact.
246. In order to determine whether the accused Radoje Lalović and Soniboj Škiljević had clear information about the criteria for incarcerating people and whether they sheared the discriminatory intent, we should get back to the very beginning of the armed conflict in Bosnia and Herzegovina and the events which preceded the conflict.

247. Already in spring 1992, different state institutions were divided ethnically, which principally affected the Police. Those developments gave rise to inter-ethnic tensions and led to periodic clashes the accused had to be aware of, since such incidents happened in BiH on a daily basis. In other words, it was a common knowledge.
248. Everything that followed should be viewed in the context of the foregoing.
249. When the Butmir KPD was taken over by the Administration appointed by the SR BiH Ministry of Justice and Administration, people who had already been unlawfully incarcerated there were retained.
250. Also, there is ample evidence proving that the accused had a frequent, very often benevolent communication, so that the accused Ratko Lalović used to say that better times would have to come once and that people should show their human side. Notwithstanding the generally appropriate conduct of the accused, the fact remains that they knew and were aware that the only criterion to differentiate among the unlawfully incarcerated people was their ethnicity.
251. In addition to the foregoing, the documents referred to in the previous paragraphs in which people's ethnicity is the guiding principle, were addressed to the warden or KPD Butmir Administration, meaning that the majority of those documents were delivered directly to the accused, which implies that the accused knew and were aware of the discrimination against the people incarcerated in the KPD.
252. On top of that, there were instances when the guards insulted the unlawfully imprisoned people using abusive language (*Balijas*). Also, Radovan Karadžić addressed the unlawfully imprisoned Muslims in the perimeter of the Butmir KPD in the presence of the accused Soniboj Škiljević and the event was given great publicity. Therefore, it can be indisputably concluded that the accused were aware and knew that they were part of a discriminatory system of the unlawful imprisonment of civilians.
253. Finally, the people unlawfully imprisoned in the Butmir KPD were very often referred to as Muslim prisoners, but it was never mentioned that they were prisoners of war. (KPD *Butmir* duty officer's report for 29 April 1993, KPD *Butmir* duty officer's report for 23 June 1993, KPD *Butmir* duty officer's report for 26 June 1993, KPD *Butmir* duty officer's report for 20 August 1993).

## Findings

254. In view of the fact that both accused knew and were aware of the discriminatory based system of unlawful imprisonment and were wardens over fairly long periods, the Panel is satisfied beyond any reasonable doubt that the accused Radoje Lalović and Soniboj Škiljević shared the discriminatory intent, so that they have been found guilty of persecution.

### **Commencement of the armed conflict and disbanding of the Butmir KPD**

255. The period May-June 1992 is one of the key elements of the case and charges against Radoje Lalović and Soniboj Škiljević.
256. To be able to get a clear picture of the events during the relevant period, incidents which preceded have to be thoroughly examined, particularly those relevant to establishing if there were interruptions in the operation of the Butmir KPD.
257. The Prosecution argues that there was no discontinuity in the operation of the KPD, while the Defence claims that it the Butmir KPD did not exist as an institution in May-June 1992, the period relevant to some crimes charged in the Indictment.
258. The Court has carefully examined the presented pieces of evidence, evaluated them individually and in their correlation and, having established logic connections among them, found that from May up to late June 1992, the Butmir KPD did not operate as a Penal Correctional Institution (KPD) under the authority of the Ministry of Justice and Administration of the Serb Republic of Bosnia and Herzegovina, but that it was the Ministry of Internal Affairs of the Serb Republic of Bosnia and Herzegovina that had a *de facto* control.
259. This finding follows from abundant evidence, so that all relevant aspects will be explained further in the Verdict and corroborated by individual pieces of evidence.
260. The Court has found entirely credible the testimony of Fadil Kreho, Defence witness for the first accused, since it was clear, convincing, reliable and logical, as this individual was best suited to testify about the operation of the Butmir KPD. The witness was the last pre-war warden of the KPD, who exercised that duty until 4 April 1992. He could remember the precise date because it was a week-end, he tried to get back to work the following week, but unsuccessfully, since the MZ Kotorac took over the KPD.
261. The conclusion about the interruption of the operation of the Butmir KPD is substantiated by Prosecution Exhibit T-157 (Report on the work of the Ministry of Justice and Administration of Republika Srpska for May – October 1992), among other pieces of evidence, since it implies that the Butmir KPD was established in the referenced period.
262. This conclusion is corroborated by the Prosecution Exhibit T-79 and the Defence Exhibit O2-15 (Decision on the establishment of the KPD *Butmir* – Ilidža), confirming that the Presidency of the Serb Republic of Bosnia and Herzegovina issued a decision on 16 June 1992 to establish the Butmir KPD. The Decision was published in the Official Gazette of the Serb People in BiH, dated 30 June 1992.

263. The remaining portion of witness Fadil Kreho's testimony entirely corresponds with the other presented evidence. The witness confirmed to have been informed by phone about the take-over of the Butmir KPD by MZ Kotorac, by the commander. However, since witness Fadil Kreho was a warden of the Butmir KPD, he did not think that the phone call was sufficient and he decided some time in April to go to work to the KPD together with several other former employees in order to attempt to save the KPD property and/or organise the work of the prison production unit.
264. When witness Fadil Kreho arrived there, he found Ranko Tešanović at the reception of the Butmir KPD. The witness knew him, he worked as a guard, but he did not know what his assignment was on that specific occasion.
265. Responding to a question about the authority he was assigned to when he was at the Butmir KPD reception, witness Ranko Tešanović answered that he had been assigned to the Police Station situated in the Butmir KPD. In his testimony, the witness gave a detailed account of the entrance policy applied in the previous Butmir KPD. This witness entirely substantiated the testimony of Fadil Kreho, saying that in early April 1992 the Butmir KPD was taken-over by the Crisis Staff from Kasindo and the witness himself was assigned to the entrance gate several days after the take-over. He exercised this duty within the Police Station which was established at Kula.
266. The witness stated that the Chief of the newly created Police Station at Kula was Milenko Tepavčević, while Radenko Vujičić was its commander.
267. The witness further stated that while he was assigned to the entrance gate, both Serbs and Muslims were usually brought in and incarcerated in the Butmir KPD.
268. The Defence Exhibit O2-4 (Certificate No. 21/92 dated 4 June 1992, issued by the SR BiH Ministry of Internal Affairs, Ilidža PSS – Kula PS) shows that Ranko Tešanović was a member of the Kula PS at the relevant period.<sup>31</sup>
269. This exhibit substantiates the part of testimony given by witness Ranko Tešanović relevant to the Chief of the Kula PS, since this is the same individual who signed the Certificate and to whom witness Ranko Tešanović referred as the Chief – it is Milenko Tepavčević's signature.
270. Finally, the Prosecution Exhibit T-25 (Proposal to resolve further status of 38 imprisoned people, dated 25 May 1992, sent by the Ilidža Public Security Station, Police Station Kula to the Ministry of the Interior and the Ministry of Justice states "further status of 38 people captured directly by the Ilidža TD (Kasindolska Street) should be adequately resolved". It shows that it was the Ministry of Internal Affairs of the Serb Republic of BiH, Novi Grad PSS – Ilidža PSS, Kula PS, that was in charge and had a *de facto* authority over the people imprisoned in the Butmir KPD

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<sup>31</sup> It is specifically noted on the Certificate that it is a temporary document which can be used with Personal ID Card to exercise official duty. The certificate was signed by the Chief, Milenko Tepavčević.

from May to June 1992, and not the Butmir KPD Administration within the Ministry of Justice and Administration of the Serb Republic of Bosnia and Herzegovina (SRBiH).

271. Examining the presented evidence relevant to the establishment of a new penal-correctional institution at the same location, the Panel has taken into account the testimony of witness Milenko Tepavčević. In view of the entire presented evidence and the imprecise and inconsistent testimony of Milenko Tepavčević, the Panel could not give credence to this witness.
272. The testimony of this witness is riddled with inconsistencies and vagueness. He testified to have held senior positions during his career in the Police and because of that he was considered to be a Chief, although he was not. In addition, Milenko Tepavčević testified to have given advice and recommendations to his colleagues, but he did not want to enter into discussion as to whether those recommendations were observed.
273. Moreover, the witness was not sure if he spent one or two months at the Kula PS and could not give the precise time-frame (he mentioned May, June and July). He was also inconsistent about the names of senior officers at the Kula PS.
274. In addition, the witness could not be specific about whether there were imprisoned people at the Butmir KPD in the relevant period (May, June and July 1992) and if so, who guarded them. The fact that witness Milenko Tepavčević gave a much more convincing account of the events which took place in May, than those in June and July, although he himself testified to have been at the Butmir KPD precisely in June and July and not in May, makes this inconsistency even more notable.
275. The Panel concluded that the entire testimony of this witness was obviously aimed at avoiding his own responsibility at the relevant period, therefore, the testimony could not be accepted as credible.
276. With regard to the interruption of the Butmir KPD operation, the Panel has concluded that it follows from the other relevant pieces of evidence (testimony of witness G, Milenko Todorović, Branko Mandić, Radomir Divljanović and Velimir Kenjić) that since early April up to late June, the Butmir KPD Administration did not have a *de facto* control over the Butmir KPD and over the people incarcerated in there (explained further in the Verdict), but a newly created Police Station Kula, whose HQ was on the Butmir KPD premises.

### **Bringing in and imprisonment of civilians in the Butmir KPD from April to mid-June 1992**

277. The vast majority of witnesses examined during the proceedings were people who were imprisoned in the Butmir KPD at different periods between 1992 and 1995.

278. Civilians from Dobrinja were among the first people brought to the Butmir KPD, including witness Suvad Korjenić.
279. The Panel has given credence to this witness. In his testimony he stated he was deprived of liberty on 10 or 11 May (as a civilian), together with a group of his neighbours, including women and children, and then taken to the Butmir KPD. According to him, women and children were separated from the men and then 30 of them were brought to Kula. The group of 30 men comprised Muslims, Serbs and Croats. However, when they were lined up before entering the KPD, Vlatko Knežević, a Serb, and other several individuals were singled out, while all other people were incarcerated. Obviously, the people were not selected pursuant to Article 4 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949, which sets the criteria for the prisoner of war status, but they were selected on the grounds of their ethnicity.
280. Describing the situation in the Butmir KPD, the witness said that all of them were locked in one room and that they had found people from Kotorac and Dobrinja 4 already imprisoned there.
281. Finally, the witness stated that the people were beaten up, Dubravko Smolčić much more than the others, so that on one occasion he was beaten so severely that he had a protruded bone in his back.
282. According to the witness, the sanitary conditions and food were very poor and they did not have the necessary medical aid. The witness left the Butmir KPD after ten days, in May, therefore at the time when the Butmir KPD was not under the authority of the SR BiH Ministry of Justice and Administration.
283. Witness Salko Zolj testified it was a common practice to imprison Muslims in the Butmir KPD, regardless of their military or civilian status. He corroborated Suvad Korjenić's testimony by stating that he was also deprived of liberty and handed over to some individuals in olive-drab uniforms at the Butmir KPD. According to Salko Zolj (incarcerated in the Butmir KPD from 12 to 21 or 22 May 1992), inmates were usually beaten up and he described how he himself was beaten up.
284. Out of the first 38 men captured in the Kasindolska Street and brought to the Butmir KPD, witness Rešad Brdarić is the only one who survived. According to him, there were some men in the group of 38 who were armed, but no one took part in the combat. Nevertheless, Exhibit T-25 shows that there was no intention whatsoever to separate civilians from people who could have a POW status. Therefore, it is clear that people who were rounded up in their houses were divided in two groups – able bodied man (no matter if they were military engaged) and others (women, children and elderly people).
285. When examining the testimony of this witness, in correlation with all other presented evidence, the Panel has taken into account that witness Rešad Brdarić

was imprisoned in the Butmir KPD from 14 to 21 May, therefore, in the period when Kula PS was in charge of the KPD. The Panel has reached this conclusion on the basis of the presented evidence. The finding is substantiated precisely by the testimony of Rešad Brdarić, in correlation with prosecution Exhibit T-247. Responding to a question asked by the Defence Counsel for the second accused, witness Rešad Brdarić confirmed to remember that there were roll calls during their imprisonment and they were done by certain Forcan.

286. It follows from Exhibit T-247 (List of TPS Kula employees of 20 May 1992) that one of the employees was Sreten Forcan listed under number 3.
287. Prosecution Exhibit T-247 C (List of active police officers assigned to the Kula PS in August 1992) leads to the same conclusion.
288. Witness Edina Ceribašić's testimony supported the fact that the unlawful imprisonment escalated in the period to follow and that more and more people were being captured. She was taken out of her flat with her family on 18 June, then brought to the barracks and after that to the Butmir KPD, where she stayed for several days.
289. According to this witness, a number of women and children were imprisoned there, but they were released after several days. However, men from this group were detained, no matter if they participated in the combat or were members of some military formations.
290. Witness Šućro Džihanić was one of the many witnesses who testified about how he was taken out of his building on 17 June 1992 and together with a group of 37 people imprisoned in the Butmir KPD, where they had but two mattresses.

**Unlawful imprisonment and take-over of the Butmir KPD by the Administration created by the SR BiH Ministry of Justice and Administration (Count 1 of the Indictment)**

291. The unlawful imprisonment of civilians in the Butmir KPD throughout the period relevant to the Indictment has already been examined. However, the position taken by Court is that the accused Radoje Lalović and Soniboj Škiljević can be charged only with unlawful imprisonment at the time when they were wardens. Therefore, it had to be established whether there were unlawful imprisonments from end-June to mid-December 1992 (relevant to the accused Radoje Lalović).
292. A number of witnesses were heard about this fact, including: Šućro Džihanić, witness E, witness C, Delka Jamaković, Almin Dželilović, Avdo Pizović, Hasan Šunj, Hasib Dželilović, Junuz Harbaš and Mujo Kalkan.
293. Testimony given by witness Šućro Džihanić is particularly relevant to the issue of unlawful imprisonment, primarily because the Administration created by the SR

BiH Ministry of Justice and Administration took over the control over the PC Institution during his fairly short stay in the Butmir KPD (17-30 June 1992).

294. Witness Šučro Džihanić confirmed in his testimony that certain Lalović came to the rooms in which they stayed on several occasions and made some inquiries.
295. According to the witness, they were placed in crowded rooms at that time, they had to use a bucket instead of a toilette, the guards would usually hit them should they be late after using the toilette and they were given one meal a day only.
296. It clearly arises from the testimony of witness E that civilians were imprisoned, more precisely, no difference was made between civilians and people who could have a prisoner of war status. The witness corroborated the entire presented evidence and what all other witnesses said. On 7 July 1992, he was imprisoned with his whole family in the Butmir KPD, which was overcrowded for some time; he stayed there until 28 August 1992.
297. Speaking about the unlawful imprisonment, witness E testified that his wife and children were incarcerated with him in the Butmir KPD and stayed there the whole time until 2 August 1992.
298. Also, witness E saw the accused Radoje Lalović and Soniboj Škiljević at the Butmir KPD.
299. Witness C, who lived at Ilidža (he was brought to Kula in early July 1992, where he stayed up to 8 August 1992) supported the testimony of witness E about the separation of adult men from women and explained that an order was issued to separate women and children from men, who were sent in the opposite direction.
300. It undoubtedly arises from the testimony of this witness and from a number of other pieces of evidence that the unlawful imprisonment of civilians continued at that time as well (since end June 1992), therefore, at the time when both accused were at the Butmir KPD and when the accused Radoje Lalović was its warden.
301. None of these witnesses received anything in writing that would explain why they were imprisoned, nor were they otherwise informed about the reasons for their imprisonment.
302. Witness Delka Jamaković was among the people imprisoned in the Butmir KPD. She testified to have been assigned a work detail, but when the Serb authorities realised that she was not of Serb ethnicity, she was transferred to the barracks in Lukavica and from there to the Butmir KPD.
303. The witness was brought to the Butmir KPD in July 1992, where she spent some 15 days. She confirmed a very important fact which follows from the other presented

evidence, that the accused Radoje Lalović and Soniboj Škiljević were aware that there were people imprisoned in the Butmir KPD on no valid grounds.

304. In her testimony, witness Delka Jamaković stated that her group was admitted in the Butmir KPD precisely by the accused Radoje Lalović and Soniboj Škiljević. She added that Soniboj Škiljević brought them some cigarettes.
305. Chronologically, the following large group brought to the Butmir KPD were people from the sports hall in Hadžići.
306. A number of witnesses from Hadžići were heard during the trial, including: Almin Dželilović, Avdo Pizović, Hasan Šunj, Hasib Dželilović, Junuz Harbaš, Mujo Kalkan and many others.
307. Prosecution Exhibit T-100 proves that those people were indeed from Hadžići, since it shows that Almin Dželilović, Avdo Pizović and Hasib Dželilović were among the imprisoned people from Hadžići in room 1, while Junuz Harbaš and Hasan Šunj were in rooms 4 and 6.
308. Virtually all the witnesses imprisoned in the Butmir KPD were unison in stating that some time in late June 1992 they were bused from the sports hall in Hadžići to Lukavica, then 2-3 days after that they were bused from the barracks in Lukavica to the Butmir KPD.
309. All earlier mentioned witnesses confirmed that women and children too were imprisoned in the hall, but on or around 22 June men were separated from women and transferred to the *Slaviša Vajner Čiča* barracks in Lukavica, and then 2-3 days after that they were eventually transferred to the Butmir KPD.
310. The key fact here is that the imprisoned people were obviously civilians and there was never any doubt about that. Another significant fact is that there were no Serbs among the people who were classified as 'prisoners of war', they were predominantly Muslims and Croats.<sup>32</sup>
311. Ample physical evidence proves that there was a discriminatory intent to unlawfully imprison the people. Notwithstanding that these pieces of evidence have already been mentioned, they will be repeated here once again: Exhibit T-59 (List of able-bodied **Muslims**); T-65 (Document certifying that five **Muslims** would be sent for work detail at the *Igman* Quarry work site, 22 June 1994), (Document certifying that six **Muslims** would be sent for work detail to *Hreša*, 30 November 1993); (Document certifying that **Muslims** would be sent for work detail to *Čolina Kapa*, 31 January 1994); T-66 (KPD *Butmir* duty officer's report for 21/22 March 1993, referring to people only as Serbs and **Muslims**).

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<sup>32</sup> This segment is explained in more detail in the part of the Verdict relevant to persecution.

**Unlawful imprisonment in the Butmir KPD from December 1992 to December 1995  
(Count 2 of the Indictment)**

312. To be able to decide about the criminal responsibility of the accused Soniboj Škiljević, first it had to be established whether the unlawfully imprisonment of civilians continued at the time when he was the warden (from mid-December 1992 to mid-December 1995).
313. A number of witnesses testified about this fact, including: Edin Hidić, Izudin Husaković, Mevlid Hadžić and Muhamed Hurtić, Šaban Zahiragić, Azra Zahiragić, Nusret Kepeš and Miodrag Lalović.
314. A group of prisoners from Grapska near Doboj (previously imprisoned in the Manjača camp) was brought there during the relevant period (December 1992).
315. Those prisoners included Edin Hidić, Izudin Husaković, Mevlid Hadžić and Muhamed Hurtić.
316. The Court has found credible the testimony of witness Edin Hidić since it was logical, reliable and consistent with the other presented evidence. He was in the group of men from Grapska who were deprived of liberty on 10 May 1992, no matter if they participated in the combat and/or if they were individually armed.
317. It follows from the testimony of this witness that he was imprisoned in the Butmir KPD up to 20 August 1993, and that Soniboj Škiljević was a warden during his stay there.
318. Witness Izudin Husaković was examined about the imprisonment of the group of people originally from Grapska. He supported the testimony of witness Edin Hidić and confirmed that he came to the Butmir KPD some time in December 1992. Witness Izudin Husaković described how he was deprived of liberty and imprisoned. His account was entirely consistent with the testimony of witness Edin Hidić. According to Husaković, the village of Grapska was attacked on 10 May 1992. After the village was captured, the women and children were transferred to the neighbouring Muslim villages, while the men were taken to camps. Thus, it also follows from the testimony of this witness that there was never any intention to separate potential prisoners of war from civilians. The only ground for selection was their male gender.
319. Witness Izudin Husaković stayed in the Butmir KPD until 17 July 1994, which is when he was exchanged.
320. Witness Mevlid Hadžić gave the same account about how Grapska (the village where he lived) was attacked on 10 May 1992 and how men were separated from women after the village was captured. Therefore, this witness too confirmed that there was no intention to separate prisoners of war from other people, quite the

opposite, all the men were imprisoned, regardless of their military or civilian status. His account of how they were brought from Manjača to the Butmir KPD on 15 December 1992 was entirely consistent with the testimony given by witnesses Edin Hidić and Izudin Husaković.

321. Speaking about the unlawful imprisonment, witness Mevlid Hadžić stated that the accused Soniboj Škiljević was the warden during his imprisonment in the Butmir KPD.
322. Finally, witness Muhamed Hurtić was examined about the group of people from Grapska who were brought from Manjača. He provided an identical account of the circumstances surrounding the attack on the village of Grapska of 10 May 1992 and the incidents that followed.
323. Describing the attack, witness Muhamed Hurtić said that it started on 10 May 1992, when an artillery attack was launched on the village. It was followed by an infantry attack and then women and children were separated from men. The men were after that taken to a number of different locations and, eventually, in late December, they were transferred with a group of other prisoners from Grapska to the Butmir KPD, where they stayed until the spring of 1994.
324. In late 1994, a group of civilians from the area of Sokolac was also brought to the Butmir KPD. Witnesses Šaban Zahiragić and Azra Zahiragić testified about that. Both these witnesses were consistent in stating that some time in autumn (September or October), all people from their village were bused to the Butmir KPD, where they stayed until early January 1995.
325. Speaking about their imprisonment in Kula, both witnesses testified to have been rounded up in autumn 1994 and transferred to the Butmir KPD. According to them, only the people from their village were in the group and all of them were civilians. Even though they were civilians, they were all brought in and imprisoned in the Butmir KPD, where they stayed for about three months.
326. Like all other witnesses, Nusret Kepeš also described how he and his family were imprisoned in November 1992. He was at several different locations and, eventually, on 30 April 1994, he was imprisoned in the Butmir KPD with his wife, son and a 90-years-old mother-in-law, where he stayed until 6 October 1994.
327. An important thing is that this witness too confirmed that the people who could not be considered prisoners of war were in the Butmir KPD. This witness was in agreement with all the witnesses before him – the prisoners were civilians who were incarcerated in the Butmir KPD for some time solely because they were not of Serb ethnicity.
328. It follows from all these accounts that the accused was aware of the imprisonment of men, women and children in the Butmir KPD, although there was no legitimate

ground for their detention. In spite of this, the accused Radoje Lalović and Soniboj Škiljević, at the time they were wardens, failed to do anything to stop the unlawful imprisonment, to say no to such practice, either by refusing to admit those people or by relinquishing their duty of a warden.

329. Witness Miodrag Lalović, a shift commander at the relevant period, confirmed that the unlawful imprisonment of Muslims continued until the end of 1995. When asked to define the presence of Muslims in the Butmir KPD, he stated to have known that those people were imprisoned in the KPD. He further explained that it was a common practice that all Muslims who were brought by soldiers to the Butmir KPD at the relevant period would be detained here. He also confirmed that they did not consider whether there was a legitimate ground to imprison the people there.
330. In addition, when the accused Soniboj Škiljević personally testified in his defence about the imprisonment of non-Serbs in the Butmir KPD, he said the people who were brought there by soldiers stayed imprisoned throughout the time relevant to the Indictment (end of 1995).
331. The people imprisoned in the Butmir KPD were referred to as “prisoners of Muslim ethnicity”, therefore the expression does not mention “prisoners of war” (KPD *Butmir* duty officer’s report for 29 April 1993, KPD *Butmir* duty officer’s report for 23 June 1993, KPD *Butmir* duty officer’s report for 26 June 1993, KPD *Butmir* duty officer’s report for 20 August 1993).
332. The last issue to be addressed with regard to Count 2 of the Indictment/Verdict is whether the accused Soniboj Škiljević indeed exercised the duty of the Butmir KPD warden from mid-December 1992 to mid-December 1995.
333. This fact was supported by abundant physical evidence, practically all the heard witnesses, and even by the accused Soniboj Škiljević personally when he testified in his own defence.
334. Prosecution Exhibit T-80 (Information from the Ministry of Justice of Republika Srpska) is one of the strongest pieces of evidence which shows that the accused Soniboj Škiljević exercised the duty of the Butmir KPD warden from 16 December 1992 to 25 December 1995. Attached to this document is a certified copy of the Decision appointing Soniboj Škiljević as acting Butmir KPD warden, issued by the Ministry of Justice and Administration of the Republika Srpska on 16 December 1992, effective on the day of its issuance.

335. It follows from the Information No. 01-017-677/06 of 25 December 2006 drafted by the Istočno Sarajevo KPZ and attached to the Exhibit T-80, that Soniboj Škiljević exercised the duty of the Butmir KPD warden until 25 December 1995.<sup>33</sup>
336. Finally, responding to some questions, the accused Soniboj Škiljević himself stated to have taken over the duty of the warden on 16 December 1992, which he exercised the whole time until the end of the war.
337. Therefore, the Panel is satisfied that the accused Soniboj Škiljević exercised the duty of the Butmir KPD warden during the relevant period, that is, from 16 December 1992 to 25 December 1995.

### **Defence case regarding the unlawful imprisonment**

338. The Defence argued during the evidentiary procedure that the Butmir KPD Administration was not in the position to make decisions and could not select people to be imprisoned. The Defence intended to prove that soldiers would simply bring in “prisoners of war” and the Administration had to take them in.
339. Furthermore, the Defence case was that the Butmir KPD Administration was simply a service for the army, since they only kept people who were brought there, but those alleged prisoners of war were still under the authority of the army. They also wanted to prove that the army took care about the food for the *prisoners of war* and that the army decided who among those alleged *prisoners of war* would be exchanged or released.
340. Importantly, the Court agreed that the accused Radoje Lalović and Soniboj Škiljević could not refuse to admit people brought by the army and the Police and they could not release them on their own will.
341. With regard to the criminal responsibility of the accused Radoje Lalović and Soniboj Škiljević, the Court has not found these circumstances to be a *conditio sine qua non*,<sup>34</sup> but those circumstances were nevertheless taken into consideration while meting out the sentence. The concept of joint criminal enterprise could be applied only if the accused knew that the people imprisoned in the Butmir KPD did not satisfy the requirements to be considered as prisoners of war, that the accused approved of such a situation and significantly contributed to the maintenance of such system.
342. These issues will be addressed further in the Verdict.

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<sup>33</sup> Exhibit T-80 shows that the Prosecution requested the information for the period from 1 April 1992 to 25 December 1995, which to a certain extent clarifies other pieces of evidence and indicates that the accused Soniboj Škiljević exercised the duty of the Butmir KPD warden even after 1995.

<sup>34</sup> ICTY Appeals Judgment in the Krnojelac case, para 103-104.

## **Treatment of the unlawfully imprisoned non-Serbs in the Butmir KPD by the accused Radoje Lalović and Soniboj Škiljević**

343. In order to establish the criminal responsibility of the accused Radoje Lalović and Soniboj Škiljević under Counts 1 and 2 of the Indictment, the Court has had to determine if there were unlawful imprisonments in the Butmir KPD (as earlier explained), if the accused were aware that the system was in place and if they contributed to its enforcement. The last two issues are explained further in the Verdict.
344. As it clearly follows from the evidence presented by the Prosecution, but also by the Defence, the Court has established beyond a reasonable doubt that non-Serbs were routinely unlawfully imprisoned in the Butmir KPD – the army would bring them to the Butmir KPD, where they were registered by the guards and the Butmir KPD Administration and then detained in the KPD.
345. The imprisonment was not disputed, but it was submitted throughout the proceedings that it was only the army that decided that certain people should be imprisoned in the Butmir KPD. Thus, the Defence argued that the Butmir KPD Administration did not need or was not responsible to check or control the lawfulness of their deprivation of liberty. In other words, the Defence claimed that any individual brought in the Butmir KPD by the army as a prisoner of war, was kept there without any further checking or re-examining their status.
346. Throughout the proceedings, the Defence argued that there was no obligation to establish the status of the imprisoned people. This assertion was substantiated by a number of documents originating from that period, primarily by the Instruction for Treatment of Prisoners of War issued by the SR BiH Ministry of Defence on 13 June 1992. When testifying in his own defence, the accused Lalović personally stated they did not check if people brought by the army indeed satisfied the requirements to be considered as prisoners of war.
347. In his testimony, Ratko Lalović spoke about the relations between the Butmir KPD and the army and claimed that the provisions of Article 2 of the Instruction<sup>35</sup> did not apply to the majority of people brought by the army, but they were nevertheless imprisoned.
348. Speaking further about the prisoners of war incarcerated in the Butmir KPD, Radoje Lalović was of the opinion that the only prisoner was Ismet Jalak.
349. Testifying in his defence, the accused Soniboj Škiljević gave a similar explanation of the relationships between the Butmir KPD Administration and the army.

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<sup>35</sup> Article 2 of the Instruction for Treatment of Prisoners of War: “Prisoners of war are understood to be the members of enemy armed forces as soon as they surrender and lay down their weapons, that is after they are defeated in battle or out of it.”

According to him, all so called prisoners of war were under the authority of the army. The army had full authority over the prisoners, while the Butmir KPD Administration was responsible for the accommodation and confinement of those prisoners. Therefore, Soniboj Škiljević argued that the Administration had to guard the people entrusted to them by the army, to prevent their escape and to distribute the food provided by the army.

350. It follows from the testimony of Soniboj Škiljević that it was not up to them to decide about the legal grounds for the imprisonment, since the people who were to be imprisoned were brought by the army and they only had to adhere to the Instruction for the Treatment of Prisoners.

### **Findings**

351. Non-Serbs were routinely imprisoned in the KPD Butmir throughout the relevant period. In brief, different people, mostly Muslims, were usually brought by the army, but sometimes also by the Police, to the Butmir KPD, where they were kept until exchanged or otherwise transferred to the enemy side.
352. Having examined all the stated evidence and allegations that those people were imprisoned civilians classified as prisoners, the Court has found that the majority of non-Serbs (mostly Muslims) were unlawfully imprisoned in the Butmir KPD.
353. This finding is substantiated by the testimony of the accused Lalović himself, in whose opinion there was only one real prisoner of war in the Butmir KPD while he was its warden.
354. Both accused had held different senior positions in penal-correctional institutions for years and they were familiar with the lawful procedure of depriving civilians of liberty, more precisely, they were aware that either a decision ordering custody or a judgment sentencing such an individual to imprisonment had to be issued.
355. Notwithstanding that the accused were aware of the unlawful imprisonment of civilians, they still failed to take a single action to resolve their status, or there is at least not a single document to suggest that the accused raised the issue with the army.
356. The Panel has found that the entire body of evidence presented both by the Prosecution and the Defence shows that Soniboj Škiljević knew that the people brought to the Butmir KPD by the army and the police as prisoners of war did not satisfy the requirements prescribed by Article 2 of the Instruction for the Treatment of Prisoners of War.
357. This finding is substantiated by abundant evidence which shows that all the records of the Butmir KPD were kept up to date and accurate, as was confirmed by Soniboj Škiljević himself. In addition, the fact that Soniboj Škiljević was the warden for

three years and that he had been employed with the Butmir KPD before that – from end June to mid-December 1992 – therefore at the period when the majority of civilians were brought to the KPD, clearly suggests that he was aware of the status of those imprisoned there.

358. Thus, it is indisputable that there was a pattern of unlawful imprisonment of civilians in the Butmir KPD from June 1992 up to mid-December 1995 and that the accused Lalović and Škiljević were aware of that.
359. The accused clearly failed to take a single action during the relevant period to resolve the legal status of the civilians imprisoned in the Butmir KPD, or at least to transfer them from the institution led by them. The mentioned facts undoubtedly show that the accused Radoje Lalović and Soniboj Škiljević were aware of and agreed to the unlawful imprisonment of civilians in the Butmir KPD.
360. The accused at least significantly contributed<sup>36</sup> to maintaining the system of unlawful imprisonment of non-Serbs (predominantly Muslims) in the Butmir KPD. This finding follows from the fact that they were aware of the imprisonments and agreed to it, from the fact that both of the accused were wardens at the relevant period (proved by abundant evidence, including the testimony of the accused themselves), that they controlled and supervised the admission of new prisoners in the Butmir KPD, they assigned prison guards to secure the unlawfully imprisoned people in the Butmir KPD and they determined the detainees' daily regime throughout the relevant period.
361. Relying on all the earlier presented key facts, the Panel has found Radoje Lalović guilty under Count 1 of the Indictment and Soniboj Škiljević guilty under Count 2 of the Indictment for the perpetration of the criminal offence of Persecution in violation of Article 172(1)(h), in conjunction with sub-paragraph (e) of the CC of BiH.

#### **Other participants in the Joint Criminal Enterprise mentioned, but not charged in the Indictment**

362. Although the participation of the army and the police was not specifically addressed, they were obviously much more directly involved in the unlawful imprisonment of civilians, since they were the ones who actually deprived the people of liberty. Members of the army and the police were most directly responsible to check if the requirements were satisfied to deprive people of liberty and/or to incarcerate the so called prisoners of war. Nevertheless, a large number of civilians were deprived of liberty precisely by the army and the police and brought to the Butmir KPD for further imprisonment.

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<sup>36</sup> To convict an accused of participation in the Joint Criminal Enterprise, he should at least give a significant contribution to the common purpose. (Appeals Judgment in the Brđanin case, para 430).

363. As for the guards - participants in the Joint Criminal Enterprise, it is clear that they spent most of the time with the imprisoned people, therefore, they were definitely best informed about their status, clothes/uniforms, equipment and other characteristics, based on which they could infer if they were prisoners of war pursuant to Article 2 of the referenced Instruction or Article 4 of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949.<sup>37</sup>
364. It is clear that the system of unlawful imprisonment relied on the very strong partnership between the army, police, Butmir KPD guards and the wardens, Radoje Lalović and Soniboj Škiljević, who either witnessed or were informed about the daily bringing of civilians in the Butmir KPD.
365. The fairly long period over which people were being imprisoned clearly shows that there was a system in place. From May 1992 until mid-December 1995, so called prisoners of war were routinely incarcerated in the Butmir KPD, although it was a common knowledge that those people did not satisfy the requirements to be considered prisoners of war. The civilians were subjected to a twofold selection process – Serbs were selected first and separated, then men were selected among those who remained (this did not always happen, as it has been already explained) and imprisoned in the Butmir KPD. A number of heard witnesses testified that women and children were previously separated from the men and kept over a short period in the Butmir KPD.
366. Each of the participants in the process had a clearly defined assignment – the army and the police brought people, the accused Radoje Lalović and Soniboj Škiljević admitted the people unlawfully deprived of liberty, while the guards eventually directly guarded them to prevent their escape.
367. Based on all earlier presented arguments and findings, the Panel is satisfied that there was a Joint Criminal Enterprise implemented from end June 1992 to mid-December 1995, involving members of the military and police structures, Butmir KPD guards and the accused Radoje Lalović and Soniboj Škiljević (when they were wardens). The JCE was intended to establish and maintain the system of unlawful imprisonment of non-Serbs and commit crimes against them (to be explained in detail). The accused Radoje Lalović and Soniboj Škiljević were aware that the system was in place and by their actions they wilfully contributed to its furtherance and functioning.
368. The accused Lalović and Škiljević are not found guilty of the offences committed in April and May 1992, since the Butmir KPD was not incorporated in the SR BiH Ministry of Justice and Administration at that time and since the police had full authority over the people imprisoned in the Butmir KPD (explained in more detail in the acquitting part of the Verdict).

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<sup>37</sup> President of the Presidency of the SR BiH issued the Order on Application of the International Law of War in the SR BiH army.

**Conditions in the prison (civilians were imprisoned in inadequate space) – Counts 1a) and 2a) of the Indictment/Verdict**

369. Under Counts 1a) and 2a) of the Indictment, the Prosecution charges the accused with committing the offence in violation of Article 172(1)(h), in conjunction with sub-paragraph k) of the CC of BiH. To that end, the living conditions have had to be examined in order to decide if they cumulatively satisfy the requirements set forth in that Article.
370. The Prosecution attempted to prove during the trial that the civilians unlawfully imprisoned in the Butmir KPD had inadequate accommodation (including food and sanitary conditions) and that those cumulative conditions amount to the criminal offence in violation of Article 172 (1)(h), in conjunction with sub-paragraph k) of the CC of BiH.
371. The Prosecution examined a number of witnesses about this fact and presented a lot of exhibits which have been inspected by the Court.
372. The Defence, on the other hand, tended to present their accommodation in a different light, they also examined a number of witnesses, mainly the then Butmir KPD employees, according to whom it was the army that was responsible to provide food to so called prisoners of war, while the Butmir KPD Administration made efforts to provide the best possible conditions.
373. The issue of overcrowded rooms is one of the issues that had to be examined to be able to reach a final conclusion about the adequate conditions of accommodation.
374. As already mentioned, a number of witnesses were heard during the trial who had been unlawfully imprisoned in the Butmir KPD at the relevant period.
375. Almin Dželilović was one of the witnesses who testified about the living conditions and/or about the overcrowded rooms in which they were imprisoned. According to the witness, there were between 40 and 50 people in the dormitory and they slept on the floor.
376. When asked if the number of prisoners varied from one room to another, he said that elderly prisoners were released on 30 June 1992 (six days after their imprisonment in the Butmir KPD), so that around 30 of them stayed in the room. They had several beds, but no mattresses.
377. Witness Almin Dželilović stated that the living conditions he described remained the same throughout his imprisonment (24 June - 22 November 1992, the period relevant to Count 1a).

378. It also follows from the testimony of witness Hajrudin Karić that they were kept in inadequate rooms and that the 34 of them who were transferred to the Butmir KPD on 11 July 1992 were accommodated in the same room.
379. According to Karić, there were not enough beds in his room, so that two men had to share one bed, while others had to sleep on the floor. These conditions did not change the whole time of his imprisonment, that is, until 28 August 1992.
380. The testimony of this witness was corroborated by witness B, who was in the Butmir KPD at the same time as witness Hajrudin Karić. He said that around 40 of them were crammed into the room which measured 40 m<sup>2</sup>, possibly 50 m<sup>2</sup>, where they stayed until end August or early September.
381. Witness B entirely substantiated the testimony of witness Hajrudin Karić, saying that they did not have enough beds and that two men had to share one bed.
382. Junuz Harbaš was among the people who were brought to the Butmir KPD from the sports hall in Hadžići. He was brought to the Butmir KPD in end June or early July and he stayed there until end November or early December 1992 (including the time spent in the hospital in Kasindo), when he was transferred to Svrake in Semizovac.
383. It follows from his testimony that the rooms were overcrowded, they had to sleep on the floor tiles and there were more than 50 of them. The Defence commented that there were no tiles, but parquet on the floor in the rooms used for accommodation of imprisoned people. In that respect, the Court has taken into account the relevant portions of this witness' statement given during the investigation, when he said that upon his arrival at the KPD Butmir he was originally placed in a room that was most probably used as a dining room, since it had tiles on the floor and on the walls. According to him, they were later on billeted, but those rooms were still crowded, since there were more than 20 of them in every room. At a later stage, there were some mattresses in their rooms and there was one room with some beds.
384. Witness Avdo Pizović was brought to the Butmir KPD together with all other people from Hadžići. There were 51 prisoners in his room, they had only 8 beds, so that he had to sleep on the floor, they did not have any blankets or mattresses, there was only soft wood flooring.
385. Witness Hasan Šunj gave an almost identical account of the accommodation. He was also brought in with a group of men transferred from the sports hall in Hadžići to the Butmir KPD in end June 1992. There were 26 people in his room, which had a parquet floor. The following day, they got some gym mats they used for sleeping, however, there were not enough mats, so that four of them had to share one mat.

386. Having described the accommodation, the witness said that nothing changed in that respect until his release from the Butmir KPD on 8 September 1992.
387. Another witness, Mušan Šunj, confirmed that the accommodation was inadequate over the period June to end 1992. Same as all the earlier mentioned witnesses, he also came to the Butmir KPD from Hadžići, his room was overcrowded and the conditions improved some ten days thereafter, when the elderly and sick people were released, but still there were 50 people in one room.
388. Finally, although they bear no date, it follows from the Prosecution Exhibits T-100 and T-101 (Lists of imprisoned civilians per certain rooms) that they cover the relevant period since they include the names of the witnesses who testified that there were between 20 and 30 civilians in the rooms at the relevant time.
389. The Defence persisted in resolving the issue of flooring – whether there were tiles or parquet. The Court has accepted that there was parquet on the floors in the rooms used to imprison the civilians, but the mere fact that there were more than 50 people in some rooms and that there were no beds there, clearly shows that the civilians were imprisoned in inadequate rooms.
390. Exhibit 101 leads to the same conclusion, since it shows there were more than 20 civilians in the majority of the rooms.

#### **Overcrowded rooms after 16 December 1992 (Count 2a)**

391. Since the accused Soniboj Škiljević is charged under Count 2a) of the Indictment with having committed Crimes against Humanity in violation of Article 172(1)(h), in conjunction with sub-paragraph k), the living conditions from 16 December 1992 up to end 1995 needed to be examined.
392. Over the period relevant to Count 2a) of the Indictment/Verdict, the majority of the imprisoned people were civilians, inhabitants of Grapska who were brought there from Manjača, after having been originally incarcerated in the Doboje surroundings in early May 1992.
393. In addition to the mentioned group, civilians brought from the area of Sokolac and Pale were imprisoned in the Butmir KPD at the same period, together with a number of other individuals from different locations.
394. It follows from the testimony of Prosecution witness Edin Hidić given at the main trial that he arrived in the Butmir KPD some time in December 1992. Before that, he spent some time in Manjača and, prior to that, he was shortly incarcerated in Batkovići. The witness stayed in the Butmir KPD until 20 August 1993.
395. According to the witness, they were brought to the Butmir KPD in two buses and he was billeted in a small room. He described the living conditions as tolerable.

396. Witness Izudin Husaković also testified about the living conditions. He belonged to the group of people originally imprisoned in the area of Doboj (inhabitants of Grapska), then transferred to the Butmir KPD some time in December 1992 and eventually exchanged on 17 July 1994.
397. Witness Izudin Husaković spent 17,5 months in the Butmir KPD, where he was brought in December 1992 with the group of people from Grapska. He said that more than 20 people were packed in his room, they slept on the floor and had some mats and blankets. At a later stage, they were transferred to the rooms which had beds.
398. The witness gave another important information – the rooms where they originally stayed were locked. Later on, he noticed that the prisoners in other rooms and in his own room got beds.
399. This suggests that the accommodation gradually improved. This issue will be addressed in more detail.
400. Same as the two previous witnesses, Prosecution witness Mevlid Hadžić was from Grapska and belonged to the group of civilians imprisoned in the area of Doboj in early May 1992. He was transferred from Manjača to Batkovići on 15 December 1992 and from there to the Butmir KPD, where he stayed until 1 April 1994.
401. This witness gave exactly the same account of the living conditions, stating there were between 20 and 30 people in his room, they slept on mattresses and got beds at a later stage.
402. Finally, the majority of other witnesses whose testimony was relevant to the period 1993-1995, including Muharem Hurić, Fadil Vlačić, Fikret Sirčo, Hazim Hadžihanović, witness F, Mehmed Agić, Almir Garaplija and Marijan Malešić, said they mostly had mattresses and beds, they had one blanket each. In general, the rooms were overcrowded, with 20-30 people packed inside.

### **Basic hygiene, food and heating in the rooms after late June 1992**

403. In addition to the overcrowded rooms, relevant to the criminal accountability of the accused Lalović and Škiljević under Counts 1a) and 2a) of the Indictment are hygiene, food and heating conditions in the Butmir KPD. The Court has had to establish whether the prisoners in the Butmir KPD could maintain their personal hygiene, if the food was adequate and if the rooms where the civilians stayed had heating in winter.
404. As it has already been mentioned several times, the conclusion about the living conditions in the Butmir KPD from end June to mid-December 1992 can be reached after examining the testimony of the witnesses who were imprisoned in the

Butmir KPD in the mentioned period and who were mainly brought to the Butmir KPD from Hadžići on or around 26 June 1992.

405. It arises from the testimony of witness Almin Dželilović, who was in the group of people from Hadžići, that they could hardly maintain their personal hygiene. In the first three months, they had to use a bucket as a toilette and were allowed only occasionally to go to the toilette. There was no heating in their rooms and throughout his stay in the Butmir KPD the witness could not have a bath.
406. Speaking about food, the witness said they were given two meals a day, first meal was a cup of water and a slice of bread, second meal was a cup of soup and a slice of bread. As a consequence, Almin Dželilović lost about 30 kg (he weighed 96 kg before his imprisonment and 63 kg when he was released).
407. Witness Avdo Pizović gave a similar account of the living conditions in the Butmir KPD. He was brought there in the group of people from Hadžići on 26 or 27 June 1992 and stayed in the Butmir KPD until 11 December 1992. It was difficult to maintain personal hygiene, among other things, they had to use some big bucket as a toilette. The witness was consistent with Almin Dželilović regarding the food, stating they had two meals a day, a cup of tea and a slice of bread in the morning and some soup and a slice of bread in the evening. They were often given food which was even three days old and turned sour, which caused them additional stomach problems.
408. According to this witness, the rooms did not have any heating, but he had a warm jacket, so that he was not that cold. Due to poor food, he lost approximately 40 kg. Before his imprisonment in the Butmir KPD, he spent 40 days incarcerated elsewhere. He concluded by saying that the poor living conditions in the prison caused Izet Ramić's death.
409. The Defence argued that the rooms in which the prisoners stayed were heated, but the Court could not agree with that. A number of prosecution witnesses explained that the corridors and communal area were heated, unlike the dormitories, which did not even have any heaters.
410. Witness Mujo Kalkan, who belonged to the group of people from Hadžići imprisoned in the Butmir KPD, gave a particularly convincing testimony. He said: "Good God, may it never happen again, it was terrible! When we went for work, we would find some clothes and put them on, we used cold water to wash."
411. Giving more details about the food, Mujo Kalkan said they were given two meals a day, something like pasta. He lost nearly 40 kg during his stay in the Butmir KPD.
412. Finally, witness Senaid Stupar corroborated all that other witnesses from Hadžići said about having two meals a day – tea and a piece of bread in the morning and

something like soup in the evening. The food was very poor, so that he lost between 20 and 25 kg during his stay in the Butmir KPD.

413. The witness also stated it was difficult to maintain personal hygiene since the guards did not allow them to go to the toilette even for 24 hours.

**Basic hygiene, food and heating in the rooms from mid-December 1992 until mid-December 1995 (Count 2a)**

414. In his testimony, witness Izudin Husaković, among others, confirmed that the accommodation was poor while the accused Soniboj Škiljević was the warden and they were given meagre meals, more precisely low calorie food. He was brought to the Butmir KPD when the accused Soniboj Škiljević was already its warden. They were given two meagre meals a day, and they were given better food only when the Red Cross (ICRC) representatives would visit them.
415. Speaking about the accommodation, witness Izudin Husaković<sup>38</sup> said that during his stay in the Butmir KPD they could not maintain personal hygiene properly, they had to use cold water to wash themselves, which was a big problem, so were cold rooms which were not heated in the winter (the witness spent two winters there).
416. Witness Mehmed Agić (imprisoned in the Butmir KPD from 20 August 1992 until 15 June 1993) substantiated the testimony of the witnesses brought to Butmir from Manjača. Like all other prisoners, he was also locked in and could go to the toilette only occasionally, when the guards allowed them, but there was no soap or other hygiene products.
417. Same as a number of examined witnesses (Mirsad Plećan, Josip Sogović, Marjan Malešić, Fadil Vlačić, Safet Gagula, Fikret Sirćo, Mevlid Hadžić, Muhamed Hurtić, Nusret Kepeš, Izudin Husaković), witness Mehmed Agić testified to have been given very meagre meals, mainly some soup and a loaf of bread, and the food got better only when members of the ICRC visited them. Witness Mehmed Agić provided a very important information that the Butmir KPD Administration ate in another room and that their food was much better.
418. The testimony of witness Mirsad Plećan about the living conditions in the prison was similar, he too stated they were given poor food, they were given one meal in the evening, sometimes it was rice, but those who had to go for work detail did not get breakfast in the Butmir KPD.
419. Witness Edin Hidić was yet another witness who testified about the accommodation and was consistent with all the earlier mentioned witnesses about the intolerable hygiene conditions in the Butmir KPD. They had only cold water and no soap or shampoo to wash themselves.

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<sup>38</sup> It has been already said that this witness spent 17,5 months in the Butmir KPD, where he was brought in December 1992 in the group of people from Grapska.

420. Finally, witness Šemso Jašarević was one of the many witnesses who said that the accommodation in the Butmir KPD was very bad, they were given very meagre food, so that he lost 17 kg during his 34-day-long imprisonment.
421. According to this witness, hygiene conditions were very poor, so that he could not wash himself even after he was beaten up on one occasion.
422. The death of Mirhudin Begović, Mirsad Zečević and Bahrudin Bećirović is yet another proof of the severe conditions in which the unlawfully imprisoned civilians had to live. This follows from the testimony of witnesses Mevlid Hadžić, Izudin Husaković and Muhamed Hurtić.

### **Medical care in the Butmir KPD**

423. The Prosecution argued during the proceedings that the prisoners did not have medical aid, or it was at least inadequate. This follows from the testimony of a number of witnesses, who confirmed not to have medical aid or that it was at least inadequate.
424. The Defence, on the other hand, particularly for the accused Soniboj Škiljević, presented lots of pieces of evidence proving that the Butmir KPD Administration made a lot of effort to provide a proper treatment.
425. The Court has evaluated the entire presented evidence and found that the Prosecution averment about inadequate medical aid was not proved beyond any reasonable doubt.
426. The Court has given special weight to the evidence presented by the Defence Counsel for the second accused: O2-44b, O2-44c, O2-44d (Records on the provided medical aid supplied by the Istočno Sarajevo Clinical Centre). The evidence shows that the people imprisoned in the Butmir KPD received medical aid on a number of occasions).
427. Even when the Court is satisfied that a witness has given an honest testimony, the key issue is if such a testimony is reliable and if it contained all relevant facts. To that end, the Panel has paid special attention to witness accounts relevant to the inadequate and/or delayed medical aid. A lot of witnesses claimed not to be given proper medical aid. According to them, the only available medic was in fact a veterinarian and they were harassed when they were taken to the hospital.
428. Casting no doubt on the honesty of those witnesses and their intention to tell the truth, the Panel has still evaluated their testimony in the context of the other presented evidence, particularly to the circumstances they did not know about. The Panel has found that the medical aid had numerous deficiencies, however, those charges do not apply, since the accused made significant efforts to provide a

minimum aid. Therefore, the fact that some diagnoses were wrong or deficient cannot be taken as a basis to hold the accused criminally responsible on this count.

## **Findings**

429. Therefore, the Panel is satisfied that it follows from all the mentioned witnesses' testimony given at the main trial, which were entirely consistent and supported each other, as well as from ample documentary evidence (T-94, T-96, T-97, T-99, T-100 and T-101), that the people were imprisoned in inadequate rooms, overcrowded and without proper accommodation (no beds, blankets and so on), food was poor and sanitary conditions were improper.
430. According to almost all defence witnesses, they all ate in the same room (both the prisoners and the staff), all of them had three meals a day, while diabetics were given special diet. Ever since July, the accused Škiljević used to go to the market at Ilidža on a daily basis to sell eggs, so that he got a nickname "*Jajar*" /*eggman*/, as the accused personally confirmed in his testimony.
431. Also, as said by both accused and some of the defence witnesses, the army provided food but it was insufficient. However, Exhibit T-152 (Request for funds allocation in the amount of 25,000,000 dinars and the attached information about the assistance the Butmir KPD provided to others) shows that the Butmir KPD helped out with food some other entities.
432. Based on the foregoing, the Court has found credible the testimony of the Prosecution witnesses, given that they were impartial, logical, consistent and reliable.
433. The Panel has concluded that the people were imprisoned in inadequate, overcrowded rooms, with no heating, prisoners could not maintain minimum personal hygiene, they were given meagre meals, so that their health deteriorated and several people died as a consequence.
434. All the heard witnesses who spent some time in the Butmir KPD were unison in stating that they still suffer the consequences of their imprisonment in inadequate rooms, deprived of any possibility to maintain minimum hygiene, so that they rapidly lost weight and had many other health problems, which consequences they suffer even at present. The Panel has, therefore, concluded that the acts/events satisfy the elements of the criminal offence of Crimes against Humanity in violation of Article 172(1)(k) of the CC of BiH and/or that keeping the civilians under such inadequate conditions was intended to cause great suffering, or serious injury to body or to physical or mental health.

## **The attitude of the accused toward the committed offences**

435. Having established the conditions in the Butmir KPD, the Panel has examined the attitude the accused had toward the maintenance of such system.
436. Primarily having in mind the fact that the accused Radoje Lalović and Soniboj Škiljević were wardens, that clear and precise records were kept of the number and billeting of the unlawfully imprisoned civilians (Exhibits: T-59 – List of able-bodied Muslims, T-60 – Duty roster by work-sites, T-67 – Guard roster for April 1994 drafted by Miodrag Lalović and forwarded to the warden, deputy warden and chief of guards, containing the list and categorization of people kept in the Butmir KPD on 2 September 1992, T-100 – List of detainees per rooms and T-101 – List of detainees per rooms) and that up-to-date records were kept which reflected all changes (Exhibits: T-57 – Number of persons, T-58 – List of work sites, T-66 – KPD Butmir Duty officer's report). Some of the duty officer's reports, for instance, state that the same information was supplied to the warden. Thus, it can be clearly concluded that, in addition to their awareness that the system of unlawful imprisonment was in place while they were wardens, both the accused knew that the unlawfully imprisoned civilians were kept under inhumane conditions.
437. Despite being informed about the current conditions, they still participated in the maintenance of the existing system, even though they could definitely improve, or at least attempt to improve the situation of the unlawfully imprisoned civilians, since they were wardens. The only piece of evidence that could prove such an intention is T-171 – the Request for assistance sent by the KPD *Butmir* to the Office of the High Commissioner for Refugees and Humanitarian Aid. On the other hand, the Butmir KPD assisted others with food in their hour of need (Exhibit T-152 – Request for funds allocation in the amount of 25,000,000 dinars sent by the Butmir KPD to the Ministry of Justice of the Serb Republic).
438. Taking the foregoing into account, the Panel is satisfied beyond any reasonable doubt that, while they were wardens, the accused Lalović and Škiljević were aware of the system of unlawful imprisonment of civilians in inadequate rooms (no heating, no minimum hygiene, meagre meals) and they considerably contributed to the maintenance of the system while they exercised their duty of wardens.
439. Also, having evaluated the entire presented evidence in support of the Prosecution averment that the accused did not use their authority to upgrade the living conditions of prisoners, the Panel has concluded that the allegation was not proved beyond any reasonable doubt. Obviously, the situation tended to improve during the relevant period and there were some, although only gradual improvements of the accommodation, meaning that the accused occasionally took some steps in that respect. On the other hand, having evaluated the presented evidence, the Panel is not satisfied that the accused used all the powers they had to improve the accommodation. This finding arises from the evidence which shows that the Butmir KPD provided assistance to other institutions, notwithstanding that the unlawfully imprisoned people in the Butmir KPD suffered a lot.

440. Based on the foregoing, the Court has concluded that the accused failed to sufficiently use their authority to secure adequate accommodation and, as a result, they have been found guilty of participation in the Joint Criminal Enterprise II (so called 'systemic' JCE) and/or of the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with sub-paragraph k) of the CC of BiH.

**Abuse of prisoners in the Butmir KPD – did it constitute integral part of the system from end June until mid-December 1992 (Count 1c).**

441. In order to decide about the criminal responsibility of the accused Radoje Lalović, the Panel has had to establish whether beatings and other forms of abuse were done as part of usual activities in the Butmir KPD and if so, whether the accused Lalović (and Soniboj Škiljević under Count 2c) was/were aware that such system was in place and if they undertook adequate steps in that regard.

**Beating up and abuse**

442. In addition to everyday activities in the Butmir KPD (unlawful imprisonments and keeping people under inhumane conditions), unlawfully imprisoned civilians were occasionally beaten up.

443. This finding follows from the testimony given by a number of witnesses, including: Rešad Brdarić, Salko Zolj, Suvad Korjenić, witness A, Nezir Huruz, Hasan Šunj, Munib Isić and Suno Dupovac.

444. First beatings took place when civilians were brought to the Butmir KPD. This conclusion follows from the testimony of witness Rešad Brdarić<sup>39</sup>, who stated that a number of people were beaten up during his imprisonment in the Butmir KPD (seven days) and that the person most responsible for such actions was Luka Majstorović, whose name he found out later on.

445. Witness Salko Zolj<sup>40</sup> was among the first people who were brought to the Butmir KPD and who was beaten up. He stated to have been taken out by two men and brought to a room that looked like a kitchen, where he was beaten up so severely that he came to only in his room, all covered in blood.

446. Finally, it also arises from the testimony of witness Suvad Korjenić that he was brought to the Butmir KPD in the first half of May 1992. He corroborated what the witnesses Rešad Brdarić and Salko Zolj said about the abuse and beating up of prisoners, and described how 2-3 prisoners were taken out on one occasion and brought back some 20 minutes later, severely beaten.

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<sup>39</sup> The witness was arrested as a civilian on 14 May in Kasindolska Street and together with a group of around 37 men, he was transferred to Kula, where he stayed for 7 days.

<sup>40</sup> The witness was arrested on 12 May in Kasindolska Street and taken to Kula, where he stayed 12-13 days.

447. In their testimony, witnesses Nezir Huruz, Hasan Šunj, Munib Isić and Suno Dupovac confirmed that the imprisoned people continued to be beaten up at the time when the accused Radoje Lalović took over as a Butmir KPD warden.
448. Nezir Huruz gave account of his usual assignments and living conditions. As the imprisoned people were routinely taken out for interrogation, he could remember that Zlata Čaušević was beaten up when she returned from questioning, her back was completely black, she sustained so serious injuries that she simply collapsed on the bed.
449. He could also remember that victim Zlata Čaušević's husband, Adil Čaušević, was brought back from questioning in a similar condition, he had visible consequences of beating.
450. It also follows from the testimony of witness Hasan Šunj that people were beaten up at the time the accused Radoje Lalović was the Butmir KPD warden. Responding to the question about how the guards treated the prisoners, he stated that he personally had no problems, but that he knew about one incident when a man was taken out of the dormitory, beaten up and brought back to the room. The witness did not say that man's name.
451. Avdo Pizović<sup>41</sup> was another witness who confirmed that prisoners were occasionally beaten up in the Butmir KPD. He did not have any problems with the guards, but he knew that guard Božo Radović hit one of the prisoners. The witness himself was beaten by Neđo Pandurević because he did not go for work detail. In a more detailed account, the witness explained his bad experience with having to pull out the body of Milovan Radović, when he believed that he would get killed, then Neđo Pandurević came and told him to go for labour. The witness said he could not because he was injured (the day before the witness fell while pulling out the body of Milovan Radović), Pandurević swore at him and kicked him three times.
452. The testimony of this witness is entirely consistent with the Prosecution Exhibits T-86 and T-83, which prove that Neđo Pandurević and Božo Radović were employed with the Butmir KPD at the relevant period.
453. Same as these witnesses, Munib Isić<sup>42</sup> also testified not to have any problems with guards, but he knew that there were other imprisoned people who were beaten up, but he explained that the information was scarce and limited.

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<sup>41</sup> Witness Avdo Pizović was brought to the Butmir KPD in a group of people from Hadžići on 26 or 27 June, where he stayed until 11 December 1992.

<sup>42</sup> Witness Munib Isić was brought to the Butmir KPD in a group of people from Hadžići on 24 or 25 June 1992, where he stayed until 8 February 1993.

454. Witness Suno Dupovac<sup>43</sup> was among those imprisoned in the Butmir KPD and he too testified about the beating up of the imprisoned people. Speaking about the food they were given in the Butmir KPD, he said that he brought an apple on the way back from labour and guard Pandurević slapped him in the face when he found it.

### **Beating and abuse of prisoners after 16 December 1992**

455. Since the accused Soniboj Škiljević was charged, among other things, with beating the unlawfully imprisoned civilians from mid-December 1992 to mid-December 1995, the Panel has had to establish if such incidents took place in the relevant period.

456. It follows from the testimony of a number of witnesses, including Josip Sogović, Marjan Malešić, Mirsad Plećan, Muhamed Hurtić and Šemso Jašarević, that the beating of imprisoned people continued at the time when Soniboj Škiljević was the warden.

457. All these witnesses stated that the beatings of prisoners in the Butmir KPD were not unusual. According to witness Muhamed Hurtić, the guards in the Butmir KPD did not always beat them, but that such incidents happened periodically.

458. This witness named Neđo Pandurević as the worst guard who abused the prisoners much more than the others. Whenever the prisoners would see Neđo Pandurević approaching their room, they could not expect anything good to happen. The witness proceeded by stating that they already got used to beatings, they were often hit in passing mainly by guard Gvozden Šarac and certain Milinković. So, Gvozden Šarac and Milinković came one night while prisoners were asleep, both of them were drunk and forced them all out of the rooms into the corridor in front of the rooms in which they slept, and beat all of them for around one hour, doing and telling them all sorts of things, beating them all the time.

459. It should be added to the testimony of witness Muhamed Hurtić that Neđo Pandurević was a commander at the relevant period, he actually belonged to the most senior staff of the Butmir KPD.

460. Witness Šemso Jašarević described the torture he experienced in the Butmir KPD, when he and the majority of people from his group were extremely severely beaten up. He was beaten up in the Butmir KPD by individuals unknown to him so severely that he did not know if he would survive at all. After that, they poured some water on him and he came to. According to this and the testimony given by Marjan Malešić, the incident took place between August and October 1994.

461. The witness was beaten all over his body, so that he sustained rib fractures and injuries to his head, arms and legs.

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<sup>43</sup> The witness was transferred from Hadžići to Kula in end June and he stayed there until 3 or 4 December 1992.

462. Witness Mirsad Plećan, who was not personally beaten up, testified that six Muslims were captured on the Igman mountain (he did not know their names), they were beaten up and he could hear their cries.
463. In their testimony, witnesses Josip Sogović and Marjan Malešić confirmed that prisoners were occasionally beaten up. Both of them stated to have been severely beaten up on several occasions, that those were not isolated incidents, but they were beaten up a number of times, and when that happened they were even taken to another room. Witness Josip Sogović testified to have been beaten up once by several drunk people, including one karateist, who was definitely sober in the opinion of the witness. Once he paid a heavy price for going to the toilette, since certain Govedarica beat him up. Knowing when Josip Sogović and Marjan Malešić were imprisoned in the Butmir KPD, it can be concluded that the incident took place between August and October 1994. Exhibit T-168 (Letter sent by the Butmir KPD to the Ministry of Finance regarding the meal allowance for January 1995) shows that Vule Govedarica was employed with the Butmir KPD.
464. The witness stated, *inter alia*, that Slavko Srdić was among the people who were beaten up in the Butmir KPD.
465. It follows from the testimony of witness Marjan Malešić that he too suffered severe beatings on a number of occasions. He knew they would be beaten every time they were questioned. Salko Jašarević was also beaten up.
466. Witness Halid Aruković testified to have been beaten up by Neđo Pandurević while he was in the Butmir KPD because he was unable to go for labour. He described Neđo Pandurević as the worst of all, as someone who used to hit prisoners for no reason at all.
467. His testimony was entirely corroborated by witness Mehmed Agić, who stated that Aruković was beaten up by guards when he said he was unable to go for labour. Witness Mehmed Agić also said that Islam Zulović tried to write a letter to his wife, but because he wrote something the guards did not like he ended up being beaten up by the guards.

**The awareness of, the attitude and contribution of the accused Radoje Lalović and Soniboj Škiljević to the beatings**

468. One of the first issues to be addressed is if the accused Lalović and Škiljević were aware of the committed offences and if they were at all aware of the occasional beatings of imprisoned non-Serbs (primarily Muslims), that is, if they had information about such incidents in the Butmir KPD.

469. We have described earlier in the Verdict the abuse and ill-treatment of prisoners which had happened before the Butmir KPD was taken over by the authority created by the SR BiH Ministry of Justice and Administration.
470. Therefore, the unlawfully imprisoned people had been systematically abused even before the Butmir KPD was taken over by the SR BiH Ministry of Justice and Administration.
471. After the take-over of the Butmir KPD by the SR BiH Ministry of Justice and Administration, a number of witnesses testified to have been visited by the accused Lalović and Škiljević and to have seen them often in the Butmir KPD compound. All this leads to the conclusion that both accused were informed in detail about the events in the Butmir KPD during the relevant period.
472. It should be noted here that both accused for years worked as senior officers in the penal institutions, so that they were aware of a risk that guards could abuse and ill-treat people deprived of liberty. In addition, their responsibility as senior officers was to oversee the actions and conduct of the staff/guards and to react accordingly.
473. This was all confirmed by the civilians brought to the Butmir KPD from the sports hall in Hadžići, including Almin Dželilović, Hasib Dželilović and Senaid Stupar, who testified to have been admitted to the Butmir KPD by the accused Lalović as the KPD warden. A number of other witnesses substantiated this averment. Witness Hasib Dželilović, for instance, testified that the accused Radoje Lalović introduced himself as the warden when they were admitted, and told them they were to maintain discipline and proper conduct. Witness Hasib Dželilović recognised the accused Lalović in the courtroom. Witnesses Munib Isić and Avdo Pizović also testified to have seen the accused Lalović and Škiljević on a daily basis and that Radoje Lalović gave cigarettes to imprisoned people on several occasions.
474. The Court has examined the circumstances surrounding the abuse of the imprisoned civilians and found that it was not a systematic torture which happened regularly in the Butmir KPD. The Panel has not found that all the elements of the criminal offence of Torture have been satisfied, primarily with regard to the prohibited intent, which implies any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person.

## **Findings**

475. Notwithstanding that the accused were all the time aware of the situation, they nevertheless maintained a passive approach towards the ill-treatment and abuse of the imprisoned people and their anguish. Therefore, the Court has found that the actions of the accused satisfy the elements of the criminal offence in violation of

Article 172(1)(h), in conjunction with sub-paragraph k) of the CC of BiH, and makes them accessories in the commission of the criminal offences.

476. Based on the presented evidence, the Court could not conclude beyond any reasonable doubt that the accused directly participated in the abuse of the unlawfully imprisoned civilians. However, their passive position and awareness of the prohibited actions (occasional beatings), led the Court to conclude that the Administration headed by the accused Lalović and Škiljević, specifically their passive position, contributed to maintaining the system of abuse and/or beating of the imprisoned civilians.
477. To be able to reach a conclusion about the criminal responsibility of the accused, the Court has had to establish whether the passive conduct of the accused has such weight so as to amount to the *actus reus* of crimes against humanity.
478. Both accused were wardens, therefore not only did they have the opportunity but it was their duty to provide security to the imprisoned people (through control of their subordinates/guards and third parties coming to the KPD). Thus, having failed to exercise the authority they had, they actually maintained the system of abuse. As a result, their passive conduct has to be considered as *actus reus* of the criminal offence of Crimes against Humanity.
479. More precisely, the Court has evaluated that such a passive conduct amounts to the accessory in the commission of the criminal offence of Crimes against Humanity.
480. Taking into account the position of the accused and their passive attitude to the perpetrated offences, the Panel has found the accused Radoje Lalović and Soniboj Škiljević guilty of the criminal offence of Crimes against Humanity in violation of Article 172(1)(h), in conjunction with sub-paragraph k) of the CC of BiH.
481. The Defence summoned a number of witnesses/the then Butmir KPD employees and examined them about this fact, including Ranko Tešanović, Neđo Pandurević, Slobodan Trifković and Milimir Gutić, who gave identical accounts and claimed that the people imprisoned in the Butmir KPD were not beaten up and abused by the guards during the relevant period. The testimony of the Prosecution witnesses was very convincing and they referred to one of the Defence witnesses as to the worst of all (Neđo Pandurević), the individual who played a prominent role in the abuse of witnesses. His testimony, on the other hand, has been found vague, since it was inconsistent and in contravention of all other presented evidence, so that the Court could not accept the averments made by the Defence.

#### **Forced labour (enslavement) Counts 1d) and 2d) of the Indictment**

482. In addition to the participation in the maintenance of the system of unlawful imprisonments, the Prosecution charged the accused with contributing to the maintenance of a system of continued forced labour the unlawfully imprisoned

civilians had to perform, both for the needs of the Butmir KPD and for some individuals.

483. The Panel has had to establish whether the unlawfully imprisoned civilians were used for labour, if it was forcible labour or they volunteered to work and if the labour was legitimate.
484. Having examined the testimony given by the Prosecution witnesses at the main trial and the ample Prosecution exhibits presented at the main trial, the Panel has irrefutably established that the people imprisoned in the Butmir KPD performed labour and there was never any doubt about that. Many witnesses testified to have gone for labour and a number of exhibits confirm this fact.
485. The Prosecution argued that the forced labour, as defined in the Indictment, is prohibited under international law. The Defence, on the other hand, classified the labour in two categories. The first category was labour the prisoners had to do for the army and on their orders, which cannot be charged against the accused, in the opinion of the Defence. The second category was labour performed in accordance with the Instruction for the Treatment of Prisoners of War issued by the SR BiH Presidency at a session held on 13 June 1992 and published on the same day.

#### **Evidence supporting the averment that the unlawfully imprisoned civilians performed labour**

486. According to more than 30 witnesses heard during the trial, the imprisoned people were regularly taken for labour over the period June 1992 – December 1995 and very few people claimed to go for labour of their own free will.
487. Almin Dželilović<sup>44</sup> was one of the witnesses who testified to have performed labour for the army and to have been wounded in the *FAMOS* compound while working. Witness Avdo Pizović<sup>45</sup> also went to various work-sites and he too was wounded on one occasion while he was working near the separation line, so he received medical assistance in Kasindo. Ramiz Smajić and Mehmed Isić got killed by a shell which impacted at a farm.
488. Same as the previously mentioned witnesses, Džemal Arnautović<sup>46</sup> also went for labour to the farm and he knew that some people were wounded and killed while working. It follows from his account that they would be lined up in the corridor in the morning hours, then military trucks would arrive, several soldiers would get out

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<sup>44</sup> Almin Dželilović was in a group of men brought to the Butmir KPD in late June 1992, where he stayed until 22 November 1992.

<sup>45</sup> Avdo Pizović was in a group of men brought to the Butmir KPD in late June 1992, where he stayed until 11 December 1992.

<sup>46</sup> Witness Džemal Arnautović was brought in the Butmir KPD in November 1992 and stayed there until 9 March 1993.

and tell their guards to give them 10, 15, 20 *Balijas*, they would record their names, separate them from the others and tell them to get on the truck.

489. Witness Edin Hidić<sup>47</sup> gave a similar account by stating that Neđo Pandurević called out the names of the people to be taken for labour. A guard took them out of the rooms and a truck arrived to pick them up. The witness had to dig trenches at Dobrinja 4, carry furniture at Grbavica out of Muslim apartments, dig trenches at Igman, clear the road in Trnovo during which they were shot at. Notwithstanding that their lives were threatened, they could not refuse to go for labour.
490. Witness Halid Aruković<sup>48</sup> also testified about the labour, stating that he was always taken for work – they would usually load them on a truck and take them for labour. The witness claimed they did not volunteer to go for labour and, to prove that, he said that certain Harbaš was wounded by a sniper while he performed labour and that certain Nebojša killed some of the prisoners while they were working.
491. In his testimony, Hasan Šunj<sup>49</sup> explained why some civilians volunteered to go for labour. He personally volunteered to go for labour, no one forced him to go. However, to be able to decide if that indeed was a voluntary work, it has to be examined what actually motivated individuals to volunteer. It clearly follows from the testimony of this witness that he was motivated by better conditions, more precisely by better food and fruits he could find while performing labour. Despite additional meals, Hasan Šunj lost 10 kg during his stay in the Butmir KPD, which justifies the conclusion of the Court as to the conditions in the Butmir KPD.
492. Witness Hasib Dželilović<sup>50</sup> entirely corroborated the testimony of witness Hasan Šunj and he explained the procedure that applied when there were not enough volunteers. According to the witness, it happened that prisoners volunteered to go for labour since they were motivated by better food they got while they performed labour. Whenever there were not enough volunteers, the guards would just select the required number of prisoners. They worked at quite dangerous sites, exposed to shelling and shooting.
493. Witness Izudin Husaković<sup>51</sup>, among others, testified that the imprisoned civilians were regularly taken for labour also when the accused Škiljević was the warden. It follows from his account that after around one month, they started to take prisoners for labour. At the beginning, a guard would do the selection, but at a later stage,

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<sup>47</sup> Witness Edin Hidić could not remember when precisely he arrived in the Butmir KPD, but it was some time in December, he stayed there until 20 August 1993.

<sup>48</sup> Witness Halid Aruković was transferred to the Butmir KPD most probably on 29 November 1992 and he stayed there until 8 February 1993.

<sup>49</sup> Witness Hasan Šunj was transferred to the Butmir KPD in a group of men from Hadžići on 24 or 25 June and he stayed there until 8 February 1992.

<sup>50</sup> Witness Hasan Šunj was in a group of men from Hadžići transferred to the Butmir KPD on or around 26 June 1992 and stayed there until early August.

<sup>51</sup> It has already been said that this witness was brought to the Butmir KPD in a group of men from Grapska in December 1992 and he spent 17,5 months in the Butmir KPD.

there were enough volunteers, so that the guards did not need to select prisoners to go for labour. Speaking about the labour itself, the witness said they were taken to the front lines to dig trenches and they had to work at night.

494. When asked why the imprisoned civilians volunteered to go for labour, the witness explained that they would get better food at work.
495. Like all other previous witnesses, Mehmed Agić also testified that the imprisoned civilians were taken for labour to various sites, that they found themselves in some very dangerous situations and that he was wounded on one occasion.
496. Like the majority of other witnesses, Mevlid Hadžić was in the group of people brought to the Butmir KPD in December 1992, where he stayed until 1 April 1994. Therefore, he stayed there while Soniboj Škiljević was the warden. He started performing labour some ten days after being brought to the Butmir KPD, at first he volunteered, but later on, they did not have any choice. When asked to explain the term of “volunteering for labour”, the witness said they got better food, more precisely, they got the same food as the soldiers.
497. Responding to a question about the selection of people for labour, the witness explained that the guards selected prisoners for labour and recorded their names on departure. Once, while he was digging trenches at Grbavica, the witness was wounded and spent 4 days at the hospital in Kasindo. When he returned to the Butmir KPD, he was exempted from duty for 10 days.
498. Finally, in his testimony, witness Nusret Kepeš also said that the unlawfully imprisoned civilians had to go for forced labour. He personally performed most of his labour at a transmission line, while other people worked at various sites, including the farm, the Igman Quarry or on the front lines. He supported the testimony of all other witnesses who said that the work was dangerous, that on a number of occasions prisoners were wounded and that the majority of prisoners who got killed were the people transferred from Manjača, who were originally from Grapska in the Doboj area.
499. In addition to the earlier mentioned testimony given by a number of witnesses about a common practice in the Butmir KPD to use the imprisoned civilians for different kinds of labour, the same conclusion follows from the ample physical evidence presented during the trial.
500. Work-site book for 1993 (Prosecution Exhibit T-55) is yet another exhibit which clearly shows that the imprisoned civilians went for labour and, what is particularly important, it corroborates the testimony of witnesses Almin Dželilović, Halid Aruković, Izudin Husaković and Mehmed Agić. The Work-site book contains *inter alia* the names of the stated witnesses, who testified to have gone for labour during their stay in the Butmir KPD.

501. The List of work-sites for 1994 (Prosecution Exhibit T-56) also supports this fact, since it shows that a number of non-Serbs went for labour. The name of Izudin Husaković is also on the list of people taken for labour and this witness testified to have performed labour while he was imprisoned in the Butmir KPD.
502. It clearly follows from the Prosecution Exhibit T-57 that a precise record was kept about the number of people and the work-sites where they performed labour. The list of sites includes Peradarnik /*chicken farm*/, Farm, Grbavica, Zlatište, Vojkovići, the Slaviša Vajner-Čiča barracks. Exhibit T-57 also shows that labour was performed on 21 April 1993 by night at the Grbavica site and Denis Ahmić got killed by a sniper bullet on his way to work at the Slaviša Vajner-Čiča barracks.
503. Muhamed Hurtić<sup>52</sup> was also heard during the main trial about this Count of the Indictment/Verdict. He was wounded by a mine in November, when Osmo Škiljan was also wounded. This account is entirely consistent with the Prosecution Exhibit T-57, which states that several people were wounded by a mine while performing labour, including Osmo Škiljan and Muhamed Hurtić.
504. In addition to these exhibits, work-site books and rosters were presented which indicate precisely how many and who of the imprisoned civilians went for labour and where. Particularly relevant is Prosecution Exhibit T-58 which shows that the people imprisoned in the Butmir KPD had to perform labour every day and there were no non-working days (week-ends, for instance).
505. That there was a system at the KPD Butmir of taking the unlawfully imprisoned civilians to perform labour is additionally corroborated by Prosecution Exhibits T-119, T-232 (Official Note regarding the killing of Alen Kure while fortifying lines at Dobrinja 1), T-233 (Official Note regarding the wounding of Seni Lajoš), T-211 (Request for taking two Muslim prisoners to perform labour for the army), T-210 (Request for taking 15 prisoners to perform labour by night for the army), T-208 (Request for taking 15 prisoners to fortify front lines addressed to the Kula-Butmir KPD Administration).
506. Therefore, in view of the foregoing, the Panel is satisfied beyond any reasonable doubt that the unlawfully imprisoned civilians had to perform labour, predominantly for the army and mostly on the front lines.
507. The Panel is also satisfied that the charges under Counts 1d) and 2d) of the Indictment/Verdict have been proven, since it follows from the presented evidence that a number of people got killed or wounded while performing labour.
508. It follows from the testimony given by: Junuz Harbaš, Munib Isić, Avdo Pizović, Mušan Šunj, Suno Dupovac, Senaid Stupar, Almin Dželilović, Hasib Dželilović, Hasan Šunj, Edin Hidić, Izudin Husaković, Muhamed Hurtić, Mevlid Hadžić and

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<sup>52</sup> The witness is from Grapska near Doboj. He stayed at several different locations and eventually transferred to the Butmir KPD in December 1992, where he stayed until spring 1994.

Halid Aruković that Vahid Gačanović, Zulfo Vatrić, Mehmed Isić, Ramiz Smajić, Hasib Šahović, Hasan Šabović, Ismet Hidić, Safet Bešić, Denis Ahmić, Suad Hasančević, Senad Hasančević, Izudin Hodžić, Samir Hidić, Mustafa Hurtić, Osmo Škiljan, Salih Hurtić, Rasim Čamdžić, Ševal Čamavdžić, Alen Kure, Šemsudin Smajić, Senji Lajoš, Fadil Osmanović, Kasim Hurtić and Munever Hidić were killed while performing forced labour. This arises also from the following exhibits: T-93 (List of unlawfully imprisoned people), T120 (Summary of events by AID), T131 (Decision of the Basic Court II in Sarajevo, dated 13 September 1994), T-94, T-98, T100, T-188 (Lists of prisoners/detainees), T-97 (List made by the Association of Camp Detainees of BiH), T-132 (Decision of the Cantonal Court in Sarajevo of 16 August 2000), T-234 (Document of the Federation Commission on Missing Persons), T-93 (List of unlawfully imprisoned people), T-138 (Excerpt from the Register of deaths issued by the Hadžići Municipality Registrar's Office), T-55 (Work-site logbook), T-119 (Work-site notebook), T-184 (List of prisoners), T-223 (Excerpt from the Register of Deaths), 239 (Work-site notebook for 1993), T-224 (Excerpt from the Register of Deaths), T-66 (KPD *Butmir* duty officer's report for 13/14 June 1993), T-225 (Excerpt from the Register of Deaths), T-235 (Data regarding the missing persons of the Central commission for the exchange of prisoners and civilians of the RS), T-232 (Official Note drafted by the Kasindo Battalion 2<sup>nd</sup> company commander), T-66 (KPD *Butmir* duty officer's report for 6 January 1994), T-58 (Work-site notebook for 1994), O2-35 (PSC photo documentation of 10 November 1995).

509. It also arises from the testimony given by: Mevlid Hadžić, Muhamed Hurtić, Elfid Husaković, Izudin Husaković, Munib Isić, Junuz Harbaš, Senaid Stupar, Almin Đelilović, Avdo Pizović, Mehmed Agić and Halid Aruković that Munib Isić, Nusret Šunj, Adem Balić, Nedžad Salihović, Dževad Smajić, Muharem Rešidović, Avdo Pizović, Junuz Harbaš, Mehmed Agić, Almin Dželilović, Husein Hurtić, Jasmin Husaković, Vahidin Hasančević, Hasan Hurtić, Sead-Sejo Škiljan, Muhamed Hurtić, Omer Hidić, Rifet Husaković, Osman Hurtić, Fadil Šabanović, Vehid Alić, Refik Hodžić, Sadmir Husaković, Mujo Škiljan, Haris Jesenković, Senad Hurtić, Mevlid Hadžić, Zenun Morina, Esad Klačar, Šaćir Čagalj, Nihad Mehmedović, Nedim Alić, Safić Čosić, Rasim Huskić, Ferid Hasančević, Asim Husaković and Rasim Selimović were wounded while they performed forced labour. This fact also follows from the following exhibits: T-119 (Work-site notebook), T-66 (KPD *Butmir* duty officer's report for 16 May 1993), T-236 (KPD *Butmir* records), T-57 (Number of persons in the KPD *Butmir*, December 1993), T-93 (List of detainees), T-120 (Overview of events by AID), T-239 (Work-site notebook for 1993), T-66 (KPD *Butmir* duty officer's report for 4 November 1993), T-66 (KPD *Butmir* duty officer's report for 6 January 1994), T-66 (KPD *Butmir* duty officer's report for 6 February 1994), T-66 (KPD *Butmir* duty officer's report for 20 August 1993), T-66 (KPD *Butmir* duty officer's report for 4/5 July 1993), T-66 (KPD *Butmir* duty officer's report for 30 May 1993), T-66 (KPD *Butmir* duty officer's report for 18 May 1993), T-66 (KPD *Butmir* duty officer's report for 9 April 1993), T-66 (KPD *Butmir* duty officer's report for 17 April 1993), T-66 (KPD *Butmir* duty officer's report for 4 November 1993), T-66 (KPD *Butmir* duty

officer's report for 21 April 1993), T-36 (Discharge Letter of the Town Hospital of 21 March 1993 /as in the original/), T-57 (Number of persons in the KPD Butmir on 4 November 1993), T-66 (KPD *Butmir* duty officer's report of 22 May 1993), T-66 (KPD *Butmir* duty officer's report of 25/26 July 1993).

510. Finally, when the forced labour is concerned, the Prosecution charges the accused Lalović and Škiljević under Counts 1d) and 2d) of the Indictment with the participation in the Joint Criminal Enterprise which was aimed at enslavement. In other words, the accused are not charged under this Count of the Indictment with the killing and wounding of the unlawfully imprisoned civilians, such incidents are used to prove that the labour was dangerous (including the labour on the front lines), therefore it was in violation of the Geneva Convention relative to the Treatment of Prisoners of War.
511. Articles 49 and 52 of the Convention prohibit compelling prisoners of war to work in metallurgical, machinery and chemical industries, or construction work which have a military character or purpose. The same Articles prescribe that no prisoner of war may be employed on labour which is of an unhealthy or dangerous nature.
512. A number of casualties among the unlawfully imprisoned civilians, who had to perform labour which had a military character or purpose, including the erection of military fortifications, clearly shows that the unlawfully imprisoned civilians were employed to perform labour which, according to the provisions of the Geneva Convention relative to the Treatment of Prisoners of War of 1949, no prisoner of war may perform.
513. On the other hand, the fact that prisoners got killed and wounded was used to prove that the labour was of a prohibited nature, but given that the accused were not charged with these specific offences, the Court could only note that the prisoners indeed got killed and wounded, but no decision about the criminal accountability of the accused of these offences could be made.

**The awareness of and contribution of the accused Radoje Lalović and Soniboj Škiljević to the maintenance of the forced labour system**

514. Abundant evidence was admitted during the proceedings which proved that the unlawfully imprisoned people in the Butmir KPD performed various work for the army, but also for the Butmir KPD and for some individuals.
515. The Defence did not present any specific counter-argumentation with regard to the forced labour, they rather attempted to prove that the labour performed for the army was a completely separate issue and the Butmir KPD Administration did not have anything to do with that. On the other hand, the labour performed for the Butmir KPD was legitimate since it was in line with the Instruction for the Treatment of Prisoners of War.

516. It follows from the mentioned Instruction that, in addition to the maintenance of the camp, captured people could be used to work in farming, industry, mining, skilled labourer's work, traffic, trade and other work, provided that it was not directly associated with the war.
517. The Court could not accept such a division of responsibilities. In this specific case, the issue relevant to the Court is whether the Butmir KPD Administration headed by the accused Lalović and Škiljević was aware of the nature of work the unlawfully imprisoned civilians had to perform, if they had any cooperation with the army and, if they did, was its scope such to allow a conclusion that the accused Lalović and Škiljević significantly contributed to the maintenance of the system of forced and unlawful labour.
518. Obviously, the most important issue is if the prisoners voluntarily performed the labour.
519. The Defence and some of the witnesses emphasised the fact that the imprisoned civilians volunteered to go for labour, but they disregarded their motive.
520. The Court could not agree with this position and has had to establish what motivated the prisoners to volunteer for labour and consequently if that was a voluntary or forced labour.
521. With the exception of one witness, who volunteered to go for labour because he believed that he would thus get killed and save himself from further suffering and agony, all other witnesses testified to have volunteered for labour in order to get additional and/or better meals. Even though they got better meals, they nonetheless lost weight. Hasan Šunj, for instance, lost 10 kg during his stay in the Butmir KPD. Therefore, the Panel has found that those better meals cannot be considered as luxury, but as the way to satisfy a minimum need for food, particularly in view of the fact that a number of prisoners lost several dozen kilograms. Thus, the Panel is satisfied that volunteering for labour to get additional food may not be considered as voluntary work, quite the opposite, it is a forced labour. The fact that the prisoners volunteered for labour to get better food only additionally substantiates the previous findings of the Panel with regard to the conditions in which the civilians were unlawfully imprisoned in the Butmir KPD.
522. This finding is additionally strengthened by the already stated pieces of evidence (Lists of work-sites), which show that people went for labour almost daily. Also, the fact that labour squads were created leads to the conclusion that it was forced labour.
523. As to the issue of using the imprisoned people for work in accordance with the earlier mentioned Instruction, it has to be noted that the Instruction is in contravention of the Geneva Conventions provisions, which is to be examined as a separate matter.

524. It is precisely the work for the army that was in contravention of Article 10 of the Instruction for the Treatment of Prisoners of War, which prescribes that the imprisoned persons may not be used to perform work directly associated with the war activities. Many witnesses testified to have gone to perform labour on the front lines and this also follows from the abundant physical evidence, primarily Prosecution Exhibit T-209, which shows that the “prisoners” would dig trenches; Prosecution Exhibit T-208 which shows that the “prisoners” would fortify combat positions and/or dig trenches; Prosecution Exhibit T-207 indicating that the “prisoners” would additionally reinforce fortifications for combat and defence; Prosecution Exhibit T-206 indicating that the prisoners would fortify defence lines in the area of Krtelj; Prosecution Exhibit T-232 showing that “prisoner” Alen Kure was wounded at work while he was fortifying defence lines in the area of Dobrinja 1 and Prosecution Exhibit T-233 which shows that Senji Lajoš, imprisoned in the Butmir KPD, was wounded while working around 100 m far from the enemy lines.
525. Based on the entire stated evidence, the Panel is satisfied beyond any reasonable doubt that the people who were unlawfully imprisoned in the Butmir KPD were used for work contrary to the Instruction for the Treatment of Prisoners of War and that the accused Lalović and Škiljević were aware of that practice. Furthermore, even if such work was permitted under Article 54 of the Geneva Convention relative to the Treatment of Prisoners of War, the prisoners would still have to be paid for it, but that was never done.
526. With regard to the involvement of the accused Lalović and Škiljević, it has to be said again that they were wardens, therefore, they supervised and had control over all important matters in the Butmir KPD, as they themselves said in their testimony. This findings implies that the accused definitely had communication with the army and provided to them the required number of the unlawfully imprisoned civilians to perform labour.
527. Thus, the accused continued their cooperation with the army, so that not only did they secure the unlawfully imprisoned civilians, but they handed them over to the army to perform labour, contrary to the Instruction for the Treatment of Prisoners of War, thereby giving significant contribution to the functioning of the system of forced labour/enslavement of the unlawfully imprisoned civilians. In so doing, neither of the accused ever sent a single letter to the army regarding their protection.
528. As regards the labour the unlawfully imprisoned civilians had to perform, it has to be noted that those people were civilians, so that they should have been used exclusively for work under the conditions set forth in Article 40 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 and, consequently, no provisions of Section III of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949 may have been applied to them.

529. Actually, this means that even if the accused Lalović and Škiljević succeeded in proving that the “prisoners of war” were used to perform labour in accordance with the Instruction for the Treatment of Prisoners of War and the Geneva Convention relative to the Treatment of Prisoners of War, it would still not suffice, given that the accused were aware that those people were not prisoners of war, but unlawfully imprisoned civilians protected by the provisions of Article 40 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949.
530. Therefore, the unlawfully imprisoned civilians could be used for forced labour exclusively for the activities and under the conditions applied to all other people (thus, not other convicts/detainees, military and civilian imprisoned in the Butmir KPD), from the specific area, but it was obviously not the case here.
531. In other words, since Article 40 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 stipulates that protected persons may be compelled to work only to the same extent as the nationals of the Party to the conflict in whose territory they are, all the labour the unlawfully imprisoned civilians had to perform, including that within the Butmir KPD and its production units, was prohibited.

## **Findings**

532. Based on the foregoing, the Court is satisfied beyond any reasonable doubt that there was a system in place in the Butmir KPD to use people to perform prohibited work and/or that the unlawfully imprisoned civilians were compelled to work and enslaved. The accused Lalović and Škiljević cooperated with the army and other authorities, created labour squads and determined the unlawfully imprisoned civilians’ daily regime, thereby significantly contributing to the maintenance of such system. The accused Radoje Lalović and Soniboj Škiljević have been found guilty of participation in the Joint Criminal Enterprise, which was *inter alia* aimed at enslavement in violation of Article 172(1)(h), in conjunction with sub-paragraph c) of the CC of BiH.

### **Why have Radoje Lalović and Soniboj Škiljević been found guilty of aiding in the commission of the Joint Criminal Enterprise, rather than planning, inciting, ordering, perpetrating and abetting**

533. When addressing certain categories of individual criminal responsibility, the Court has explained the requirements that have to be satisfied to find the accused guilty of planning, ordering, perpetration or aiding and abetting.
534. Based on the established account of facts, the Panel is not satisfied beyond any reasonable doubt that the accused Lalović and Škiljević planned the criminal

offences they are charged with, or at least the Prosecution failed to prove that. As it has been already explained in detail, the Butmir KPD actually started operating as a centre and/or as a place where non-Serbs were unlawfully imprisoned. It was not until late June 1992 that the Butmir KPD was created by the SR BiH Ministry of Justice and Administration, its administration was also appointed at that time and the take-over took place. Therefore, the chronology of events shows that the accused in fact took over the already established system, so that it cannot be concluded beyond any reasonable doubt that the accused planned the crimes they are charged with.

535. In addition, based on the Prosecution evidence, the Court could not conclude that the accused took any action which was aimed at inciting a third party to commit the offences they are charged with. As it has been noted earlier, following the take-over of the Butmir KPD, the accused continued to do the same work as before. Thus, they contributed to the upkeep of the established system, however, no evidence has been presented to prove that the accused incited third parties to perpetrate the offences they are charged with. As a result, the accused Lalović and Škiljević have not been found guilty of incitement.
536. Also, based on the presented evidence, the Court could not conclude that either of the accused issued any order or directly perpetrated any of the offences he is charged with. The Court has already mentioned several times that the accused only maintained the system they had taken over and they even took some steps to improve the situation of the unlawfully imprisoned civilians. Nevertheless, the Panel has not found that the steps they took to improve the situation suffice to release them from criminal responsibility. Quite the opposite, the Panel has concluded that by acting in the described manner both accused aided in the commission of the offences they are charged with.

### **Meting out the punishment**

The sanction has to be commensurate with the gravity of the offences of which Radoje Lalović and Soniboj Škiljević have been found guilty.

537. The Butmir KPD was used for the unlawful imprisonment of non-Serb civilians virtually throughout the war, more precisely from May 1992 through mid-December 1995.
538. During the month of May 1992, the Butmir KPD operated within the SR BiH MUP and following its take-over by the SR BiH Ministry of Justice and Administration in late June 1992, it continued operating within this Ministry through the relevant period.
539. Having been transitioned to the Ministry of Justice and Administration, the Butmir KPD partially resumed its original purpose of the institution for serving the sanctions and detention pursuant to decisions issued by regular and military courts.

540. Together with prisoners and detainees, so called prisoners of war - several hundreds of non-Serb civilians - were incarcerated in the Butmir KPD at the same time.
541. These people spent between 7 days and several years there in inadequate rooms, they were taken for labour, often very dangerous, and some civilians were beaten up on one or more occasions during their imprisonment.
542. Many of them sustained serious injuries or their health deteriorated, so that they suffer the consequences of the unlawful imprisonment even at present and they will suffer as long as they live.

### **Social condemnation of the prohibited conduct of the accused**

543. When meting out the sanctions for war crimes, the imposed punishment has to reflect social condemnation and must take into account that the committed crimes are codified in international law. Thus, the imposed sanction has to have two components with regard to the social condemnation.
544. The first component includes social values generally recognised in Bosnia and Herzegovina and a legal tradition which has developed in this region for years.
545. The second component is reflected in the fact that the offences are so grave and brutal that they resulted in a global definition of the set of prohibited conduct. Therefore, when meting out the punishment, it has to be taken into account that the entire International Community advocates the punishment of such behaviour, so that the pronounced sanction has to incorporate not only fundamental local values, but also those promoted globally.

### **Intention to deter the perpetrators and others from committing criminal offences in the future**

546. War crimes are by their nature complex criminal offences, particularly because we now have a situation that war crimes cases are prosecuted years after the cessation of the hostilities. In an ideal world, perpetrators of war crimes would be prosecuted immediately after the commission of the offence, preferably before the cessation of the hostilities.
547. Unfortunately, this case involves the perpetrators who have been prosecuted only after the cessation of the hostilities.
548. The Panel has taken into account that the accused Lalović and Škiljević were law-abiding citizens before the perpetration of the offences relevant to this case and that they had no prior convictions.

549. Also, taking into account the conduct of the accused when they perpetrated the criminal offence, the Panel has found that the imposed sanctions will eventually deter third parties from committing criminal offences.

### **Raising public awareness about the grave consequences of criminal offences and the necessity to punish the perpetrators**

550. The main characteristic of war crimes is reflected in the fact that there was a presumption or atmosphere of impunity at the time of their perpetration, so that it often happens that certain offences are repeatedly perpetrated over a fairly long period. However, when meting out a sentence in cases of such nature, it is particularly important to show that revenge and retribution are entirely contrary to international law and/or that the *tu quoque* argumentation is unacceptable.

551. Consequently, when meting out the sanction for the accused Radoje Lalović and Soniboj Škiljević, the Panel has given special weight to the fact that, when committing the offences they are charged with, they were not guided by the mentioned principle, quite the opposite, within the system they were incorporated in, they attempted to introduce certain minimum standards. Still, they agreed with the entire system of prohibited conduct and/or with the perpetration of the crimes.

### **Degree of liability**

552. Once the JCE doctrine has been accepted, the accused Radoje Lalović and Soniboj Škiljević are considered as the perpetrators in line with the applicable law. Nevertheless, in order to make the necessary and fair distinction, the term direct perpetrator was introduced to denote an individual who physically committed a crime. In this specific case, the accused Radoje Lalović and Soniboj Škiljević did not directly perpetrate a single offence of which they have been found guilty, but they had a passive approach toward the fact that the institution led by them was a distinct criminal system. Given that the accused were wardens, such a passive approach sufficiently contributed to the maintaining and functioning of the established criminal system, so that their contribution has been found considerable and they have been found guilty.

553. Notwithstanding that the accused Radoje Lalović and Soniboj Škiljević have been found guilty of the criminal offence they are charged with, the Panel is still satisfied that the degree of their liability is not such so as to require a severe punishment.

### **Motivation and circumstances surrounding the perpetration of the offence**

554. Throughout the proceedings, the Defence maintained their position that the accused Lalović and Škiljević happened to be wardens at the time when a series of unfortunate events took place in 1992.

555. The Panel has in essence accepted the fact that the accused, trying to find as peaceful and safe engagement as possible during the wartime, found refuge in the Butmir KPD, within the system in which they worked all their life, which was familiar and understandable to them.
556. Therefore, under the circumstances, the accused found themselves in the Butmir KPD, Radoje Lalović accepted the duty of a warden, believing that Momčilo Mandić, the then SR BiH Justice and Administration Minister, really intended to establish a more or less tolerable system of legal security.
557. Within the project, the penal-correctional institutions were established under the civilian authority.
558. Joining the initiative of Minister Momčilo Mandić, the accused Radoje Lalović became the Butmir KPD warden and, during the hand-over of the premises, Lalović took over a number of unlawfully imprisoned civilians.
559. Unlike Radoje Lalović, when Soniboj Škiljević assumed the duty of the warden, he was aware there were unlawfully imprisoned civilians in the Butmir KPD and that they would not stay there “only for a few days awaiting an exchange”. This to a certain extent brings him into a more unfavourable position than Radoje Lalović.
560. As for the circumstances surrounding the commission of the criminal offence they are charged with, the Panel has given weight to the testimony of a number of witnesses who stated to have been treated properly by the accused and to have felt safer when they were around.
561. According to the witnesses, the accused gave them cigarettes on several occasions and Radoje Lalović used to say that some day all those things would be behind us and that one should always remember to show his human side.
562. The Panel has also taken into account that the accused Soniboj Škiljević personally prevented soldiers who wanted to take revenge on the unlawfully imprisoned civilians from entering the Butmir KPD.

### **Personal situation of the accused and their behaviour during the proceedings**

563. The Panel has taken into account that the accused Radoje Lalović was 64 at the time of the pronouncement of the Verdict. Also, he had no prior convictions and spent all his life working in penal institutions.
564. Also, the accused Radoje Lalović behaved properly throughout the proceedings, thereby contributing to an efficient conduct of the proceedings. In addition, when he was released from custody and subjected to prohibitive measures, he entirely observed the measures and there were no complaints in this respect.

565. Personal circumstances of the accused Soniboj Škiljević are similar to those of the first accused Radoje Lalović. He too behaved properly throughout the proceedings and cooperation with his Defence Counsel and the Prosecution was very good. Soniboj Škiljević is somewhat younger than Radoje Lalović, but the Panel had to take into account that he has a seriously ill child.

### **Findings**

566. The Panel has found that it follows from the foregoing that there were particularly extenuating circumstances for Radoje Lalović and Soniboj Škiljević that justify rendering a prison sentence shorter than the statutory minimum.
567. In view of the personal situation, the circumstances surrounding the commission of the offence, the fact that Radoje Lalović exercised the duty of warden for 6 months and Soniboj Škiljević for 3 years, the Panel is satisfied that the prison sentence of 5 (five) years for Radoje Lalović and 8 (eight) years for Soniboj Škiljević is commensurate with the gravity of the committed offences, degree of liability and personal situation of the accused and that it will achieve the purpose of punishing.

### **Grounds for exonerating the accused Radoje Lalović and Soniboj Škiljević**

568. Under Count 1b) of the Indictment, Radoje Lalović and Soniboj Škiljević are held accountable for the killing of people who were deprived of liberty in the Kasindolska Street, incarcerated in the Butmir KPD, then taken out and executed at an unknown place.
569. It follows from the evaluated evidence that the original Butmir KPD was disbanded and subsequently re-established, but this time within the SR BiH Ministry of Justice and Administration.
570. Given that there was an interruption of the Butmir KPD operation within the Ministries of Justice (Socialist Republic of BiH Ministry of Justice and SR BiH Ministry of Justice and Administration) and/or that it was the SR BiH Ministry of Internal Affairs that had a *de facto* authority over the Butmir KPD for some time, it had to be determined when precisely the interruption took place and when the people from the Kasindolska Street were brought to the Butmir KPD.
571. Based on the testimony given by a number of witnesses, primarily by witness Fadil Kreho (pre-war warden of the Butmir KPD), the Panel has concluded that the Butmir KPD was disbanded in early April 1992.
572. The testimony of witness Fadil Kreho was corroborated by witness Nedo Kapuran, who stated to have arrived in the Butmir KPD in early May 1992, as a member of an armoured mechanised unit.

573. When asked whom he saw in the Butmir KPD, he responded that he saw the Police there, and when asked if he knew Milenko Tepavčević and Radenko Vujičić, the witness said he did not know them personally, but that he had heard of them. He stayed in the Butmir KPD until late August 1992, when he was re-assigned to the camp farm.
574. It follows from the testimony of defence witness Velimir Kenjić that he was assigned to maintain the boiler room in the Butmir KPD and that the army came in the evening hours of 5 April 1992 through the concrete plant and took over the KPD.
575. In addition to the testimony of a number of witnesses about the interruption in the Butmir KPD operation, the Prosecution Exhibit T-157 is also relevant (Report on the work of the Ministry of Justice and Administration of the Republika Srpska for the period May – October 1992), since it shows, among other things, that the Butmir KPD was established during the reporting period.
576. This finding is further substantiated by the admitted evidence - Prosecution Exhibit T-79 and the Defence Exhibit O2-15 (Decision on the establishment of the KPD *Butmir* – Ilidža). The Decision was issued by the Serb Republic of Bosnia and Herzegovina Presidency on 16 June 1992 and published in the Official Gazette of the Serb People in BiH on 30 June 1992.
577. As stated before, when reaching the conclusion about the interruption in the operation of the Butmir KPD, the Panel has paid special attention to the testimony of witness Fadil Kreho, which is entirely consistent with other presented evidence. According to the witness, the commander informed him by phone that the Butmir KPD was taken-over by the MZ Kotorac. He saw it for himself when he went to work in April with some of the earlier KPD employees and at the entrance gate found Ranko Tešanović, whom he previously knew as a guard.
578. Responding to a question about who assigned him to the Butmir KPD reception, witness Ranko Tešanović answered that he had been assigned to the Police Station situated in the Butmir KPD.
579. It should be noted here that none of the witnesses imprisoned in the Butmir KPD in May 1992 ever saw any of the accused in the Butmir KPD compound at that time.
580. Based on the foregoing, the Court is not satisfied beyond any reasonable doubt that there were no interruptions in the operation of the Butmir KPD.
581. The Panel is satisfied that the Butmir KPD did not start operating within the SR BiH Ministry of Justice and Administration until late June and it became fully operational no sooner than early August 1992. This finding follows from the testimony of witnesses Suvad Korjenić, Rešad Brdarić and Aldin Badžić, viewed in

connection with the testimony of the accused Lalović and Škiljević and from a number of Exhibits, primarily O1-12.

582. When reaching a decision about the criminal responsibility of Radoje Lalović and Soniboj Škiljević under Count 1b) of the Indictment, the Court has had to determine exactly when the people from Kasindolska Street were brought to the Butmir KPD.
583. As the only survivor of the group of people captured in the Kasindolska Street, witness Rešad Brdarić testified about the circumstances surrounding his imprisonment in the Butmir KPD. Explaining how he was captured, he stated to have heard heavy shooting in the early morning hours of 14 May 1992 coming from the direction of the old market place at Stup, his father-in-law came, they did not know what was going on. After some time, they heard mortars, then an APC arrived and called Muslims over a megaphone to surrender their weapons.
584. According to the witness, they surrendered a couple of hours later and they were transported in a TAM truck to the Butmir KPD.
585. Responding to a question, the witness stated to have stayed in the Butmir KPD until 21 May 1992.
586. Therefore, the testimony of witness Rešad Brdarić is obviously consistent with the conclusion of the Court as to the interruption of the Butmir KPD operation, since it clearly shows that the people captured in the Kasindolska Street were brought to the Butmir KPD when it was not under the authority of the Ministry of Justice.
587. When establishing how long the people from Kasindolska Street stayed in the Butmir KPD, the Court has paid special attention to the Exhibit tendered by the Defence Counsel for the accused Škiljević – O2-6 (*Dnevni Avaz* daily of 16 October 2009, page 77, obituary for people from the Kasindolska Street), since it shows that those people were killed on 25 May 1992.
588. The earlier findings are corroborated by Prosecution Exhibit T-104, which shows that the people from the Kasindolska Street were brought to the Butmir KPD on 14 May 1992 and stayed there for a short time only.
589. The Defence Exhibit O2-7 (Proposal to resolve the status of 38 detained people) and the testimony of the accused Soniboj Škiljević and Božidar Radović show that the people from the Kasindolska Street were taken away from the Butmir KPD in late May 1992.
590. It follows from the foregoing that the Butmir KPD did not operate within the Ministry of Justice during the months of April, May and June 1992, therefore, the accused Lalović and Škiljević did not have any authority in the Butmir KPD at that time. Since the people from the Kasindolska Street were taken from there in late

May 1992, the Court has found that the Prosecution failed to present sufficient evidence to prove that the accused Lalović and Škiljević were guilty as charged under Count 1b) of the Indictment.

591. With regard to the charges under Count 1), 1a), 1b), 1c) and 1d) of the Indictment, a number of witnesses stated that while Radoje Lalović was head of the Butmir KPD, Soniboj Škiljević was considered to be his deputy. The Panel has examined these allegations made by the Prosecution witnesses in the context of other presented evidence and found that the Butmir KPD warden did not have a deputy from June to December 1992. This finding is substantiated not only by the testimony of Radoje Lalović and Soniboj Škiljević, but also by abundant physical evidence (T-80, T-83, T-86), which shows that there was no position of deputy warden in the Butmir KPD throughout 1992.
592. The accused Soniboj Škiljević is charged under Count 1) (including 1a), 1b), 1c) and 1d) of the Indictment with participating in the Joint Criminal Enterprise as a deputy warden of the Butmir KPD. However, based on the presented evidence, the Court could not be satisfied beyond any reasonable doubt that Soniboj Škiljević exercised the duty of deputy warden in the relevant period and/or that there was such a position in the first place. Therefore, the Panel has applied the *in dubio pro reo* principle and found the accused Soniboj Škiljević not guilty as charged under Count 1 (including 1a), 1b), 1c) and 1d) of the Indictment.
593. With regard to the charges under Count 2b) of the Indictment, the Panel has concluded that it had to be proved, among other things, that Soniboj Škiljević at least knew that the unlawfully imprisoned civilians were being taken away from the Butmir KPD to be killed.
594. Several witnesses were examined during the proceedings about this Count of the Indictment, including Izudin Husaković, Mevlid Hadžić, Edin Hidić, Muhamed Hurtić and Mirsad Plećan.
595. As regards the death of Kasim Hurtić, it follows from the testimony of witnesses Izudin Husaković, Mevlid Hadžić, Edin Hidić and Muhamed Hurtić that Kasim Hurtić was imprisoned in the Butmir KPD for some time and that he got killed. The Panel has found the testimony of Muhamed Hurtić particularly relevant, since this witness stated that Kasim Hurtić was killed by a soldier while he performed labour at the *Slaviša Vajner-Čiča* barracks.
596. The Panel has examined the charges under Count 2b) of the Indictment precisely in this context and has found that victim Kasim Hurtić was not taken away from the Butmir KPD to be killed, but to perform labour. The fact is that he was killed on that occasion by a soldier, but the most important thing is that he was not taken away to be killed, so that the accused Škiljević could not have known that he was taken away to be killed. With this fact in mind, Soniboj Škiljević has been acquitted of the charges under this Count of the Indictment, while Kasim Hurtić was included

in the group of people who got killed while performing forced labour, as stated in Count 2d) of the Indictment/Verdict.

597. With regard to victim Munever Hidić, the entire body of evidence presented by the Prosecution during the main trial proves that Munever Hidić got killed while he was in the Butmir KPD. The Panel has again examined all relevant circumstances surrounding his death, in particular how he was taken away.
598. Witnesses Mirsad Plećan and Mevludin Hadžić were consistent regarding the circumstances surrounding his death. Both of them stated that Munever Hidić got killed at Mojmiilo, when he attempted to escape. Therefore, there is no doubt that Munever Hidić was not taken away to be killed, but to perform labour, and that he was killed when he attempted to flee.
599. Having established such account of facts, the Panel is not satisfied that the accused Škiljević knew or had reason to know that Munever Hidić was taken out of the Butmir KPD to be killed. Consequently, the Panel has acquitted the accused Škiljević of the charges under Count 2b) of the Indictment and included victim Munever Hidić, same as Kasim Hurtić, in the group of people who got killed while performing forced labour.

#### **Costs of the criminal proceedings**

600. Given the poor financial circumstances of both accused, whose only regular income is their pension, the Court has decided to relieve them of the duty to pay the costs of the criminal proceedings pursuant to Article 188(4) of the CPC of BiH, otherwise their subsistence would be put in question.

**Record-taker**

**Emil Pinkas**

*/signature affixed/*

**PRESIDING JUDGE**

**Minka Kreho**

*/signature and stamp affixed/*

**LEGAL REMEDY:** An appeal may be filed from this Verdict with the Appellate Panel of the Court of BiH within 15 /fifteen days/ from the day when a written copy of the Verdict is received.