



Case No.: X-KR-05/139

Date: 9 March 2011

The Panel of Judges: Judge Mirza Jusufović, Presiding of the Panel
Judge Tihomir Lukes
Judge Carol Peralta

THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

vs.

MARKO RADIĆ, DRAGAN ŠUNJIĆ, DAMIR BREKALO, MIRKO VRAČEVIĆ

SECOND-INSTANCE VERDICT

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

Defence Counsel for the Defendants:

Marko Radić, Atty. Ragib Hadžić and Dr. Almin Dautbegović
Dragan Šunjić, Atty. Midhat Kočo
Damir Brekalo, Atty. Slavko Aščerić and Petko Pavlović
Mirko Vračević, Atty. Rade Golić and Danilo Mrkaljević

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IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, in the Appellate Division Panel consisting of Judge Mirza Jusufović as the Presiding Judge, and Judge Tihomir Lukes and Judge Carol Peralta, as the Panel members, with the participation of the legal officer Tanja Curović as the record-keeper in the criminal case against the Accused Marko Radić et al., for the criminal offence of Crimes against Humanity in violation of Article 172(1)h), as read with sub-paragraphs a), e), f), g) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC of BiH), as read with Article 29 and Article 180(1) of the CC of BiH, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number KT-RZ-95/05 amended third time on 14 May 2008, following the oral, main and public trial, a part of which was held in camera, in the presence of the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, their Defence Counsel Dr. Almin Dautbegović, Ragib Hadžić, Midhat Kočo, Slavko Aščerić, Petko Pavlović, Rade Golić and Danilo Mrkaljević, and the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Jude Romano, handed down and on 9 March 2011 publicly announced the following:

VERDICT

THE ACCUSED:

1. **Marko Radić aka Maka**, son of Franjo, born in the settlement of Livać, Mostar Municipality, on 13 August 1959, Personal Identification Number 1308959150050, of Croat ethnicity, citizen of both Bosnia and Herzegovina and the Republic of Croatia, teacher by occupation, graduated from the Faculty for Physical Education, married, father of three underage children, no prior conviction, criminal proceedings for the criminal offence against Public Safety of Persons and Property pending before the Cantonal Court in Mostar, served military term in Obrenovac in 1981, currently held in custody at the KPZ /Correctional Establishment/ Kula under the Decision of the Appellate Panel of the Court of BiH Number X-KŽ-05/139 of 9 March 2011,
2. **Dragan Šunjić**, son of Boško, born in Bučići on 11 July 1971, Personal Identification Number 1107971150060, of Croat ethnicity, citizen of both Bosnia and Herzegovina and the Republic of Croatia, machinist by occupation, completed secondary school, married,

father of three children, no other known criminal proceedings are pending, convicted by the Cantonal Court of Mostar on 22 March 2005 of the offence of Murder in violation of Article 36, Paragraph 2, sub-paragraph 5, of the Criminal Code of the Republic of Bosnia and Herzegovina as read with Article 19 of the SFRY Criminal Code, served the sentence, served military term between 1992 and 1995; currently held in custody at the KPZ-Kula under the Decision of the Appellate Panel of the Court of BiH Number X-KŽ-05/139 of 9 March 2011,

3. **Damir Brekalo, whose previous name was Emir¹, aka Zingi**, son of Mehmed, born in the place of Livać, Mostar Municipality on 20 March 1964, Personal Identification Number 2003964150040, of Croat ethnicity, citizen of both Bosnia and Herzegovina and the Republic of Croatia, a welder by occupation, completed secondary school, married, father of five children, no other known criminal proceedings against him are pending, previously convicted by the Verdict of the Municipal Court in Mostar of 26 November 2001 to four months of imprisonment for the criminal offence against the security of persons and property in violation of Article 308(3) as read with Article 304 of the Criminal Code of the Federation of BiH, which was upheld by the Cantonal Court's Decision Number KŽ 23/20 of 6 February 2002; served military term in Derventa in 1982; currently held in custody at the KPZ-Kula under the Decision of the Appellate Panel of the Court of BiH Number X-KŽ-05/139 of 9 March 2011,

4. **Mirko Vračević aka Srbin**, son of Teodor, born in Donji Smrtići on 15 March 1945, Personal Identification Number 1503945150012, of Croat ethnicity, citizen of Bosnia and Herzegovina, currently retired, completed primary school, married, with no prior conviction, no other known criminal proceedings against him are pending, served military term, held in custody at the KPZ-Kula currently in effect against him under the Decision of the Appellate Panel of the Court of BiH Number X-KŽ-05/139 dated 9 March 2011.

are hereby found

GUILTY

¹ The official decision approving the change of name for Brekalo from Emir to Damir is dated 25 September 1993.

Of the following:

During the period from July 1993 until March 1994, Marko Radić, Dragan Šunjić, Damir (Emir) Brekalo and Mirko Vračević, as officers and members of the First Bijelo Polje Battalion of the Second Brigade HVO */translator's note: the Croat Defence Council/*, within the area of responsibility where the village of Vojno, Mostar Municipality, was located, as part of a widespread and systematic attack on the Bosnian Muslim civilian population of the Mostar Municipality by members of the army of Bosnian Croats (HVO) and its military police, which was carried out in the framework of an organizational policy to carry out such an attack aimed at abusing and persecuting the Bosniak population on political, national, ethnic and religious grounds, knowing of the attack, ordered, carried out, instigated, aided and abetted the attack on Bosniak civilians, during which more than seventy Bosniak Muslim women, children and the elderly were unlawfully arrested and detained in inhumane conditions in houses and other facilities in the Vojno village, Mostar Municipality, while Bosniak men from the Heliodrom Camp who were brought there for forced labour were unlawfully detained in the prison facility in the Vojno village, Mostar Municipality, where they were kept in brutal, degrading and inhumane conditions in a garage and a cellar of a house, where the detainees were exposed to physical and mental abuse and torture, subjected to daily beatings by guards and soldiers, which resulted in the death of a number of prisoners, and all of the accused participated in the following manner:

First Accused Marko Radić:

During the aforementioned period, in his capacity as Commander of the First Bijelo Polje Battalion of the Second Brigade HVO, as Commander of the Ivan Stanić Čičo Sabotage Unit, and later on as Commander of the Second Brigade HVO, Radić was responsible for a part of the Bijelo Polje area, including the village of Vojno, Mostar Municipality; he participated in the establishment of the prison facility in Vojno, ordered the unlawful arrest of dozens of Bosniak civilians, women, children and the elderly and their detention in facilities located in the Vojno settlement; he participated in the unlawful detention of men, detainees from the Heliodrom, who were brought to Vojno for forced labour, kept in brutal, degrading and inhumane conditions in a garage and a cellar of a house in Vojno; he was a superior and had responsibility over Commander Mario Mihalj (deceased), his Deputy Commander, Dragan Šunjić, Mirko Vračević and other prison guards and soldiers that worked in the prison, and he had control over the lives and limbs of prisoners; he contributed to and furthered the functioning of the Vojno prison system in ill-treating and persecuting the Bosnian Muslims by ordering, committing, or otherwise aiding and abetting the

commission of various forms of physical, mental and sexual violence, whereby the atmosphere of terror was created; considering his position, Radić had the authority and duty to improve conditions in the facility which were brutal, barbaric and degrading for the detainees who were kept there without basic necessities of life such as adequate food, clothing, shelter, drinking water, medical care, living in unhygienic conditions and in small space, subjected to daily beating, torture, harassment, humiliation and psychological and sexual abuse, and living in constant fear for their lives, which resulted in the death of a number of detainees, whereas many detainees suffered severe mental, emotional and physical injuries, and thus:

1. During the critical period, he participated in ordering the unlawful arrest and imprisonment of Bosniak civilians - women, children and the elderly - in the Vojno camp, Mostar Municipality; in that way, the following persons were unlawfully arrested and detained, and kept in degrading and inhumane conditions: Witnesses A, F, Sadeta Macić, Mustafa Macić, Witness E and her son Witness 153, Rahima Makaš with her daughter and two underage children Mediha and Sanela, Witness B, Zejna Mirica with her daughter, Emica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witness D with seventeen-month-old child, Witnesses R, AM, K and J together with 73-year old woman, Witness C, 15-year-old Witness X, 16-year-old Witness L, a 10-year child and an elderly woman, Witness 152, Dika Ćurić, Witness AG, Witness AI and other detainees from Mostar, whereas Bosniak men – detainees from the Heliodrom Camp - who were brought to Vojno for forced labour were unlawfully kept in brutal, humiliating and inhumane conditions in a garage and a cellar of a house.

2. During the same period and in the same capacity, he is responsible for the killings of detainees committed by persons over whom he had effective control and for the killings of detainees committed during the forced labour and the killings which were committed within his zone of responsibility; all of those were committed with the aim of furthering the system of abusing and persecuting the Bosniaks in which Radić willingly and knowingly participated, and thus:

2(a) On or about 28 August 1993, an unidentified HVO soldier shot dead Mesud Dedajić while he was performing forced labour on the front line in Bijelo Polje, Mostar Municipality; three detainees buried Mesud Dedajić's body near the place where he was killed; his body was exhumed somewhere between the Zalihići houses and the Convent, and was exchanged and identified on 5 July 1994.

2(b) On an undetermined date in September 1993, after an HVO soldier was shot and killed near the front line, unknown HVO soldiers ordered the detainees - Witness AB, Aris Začinović, Enver Kajtazi, Husnija Čorajević and Željko Čakalović to carry his body to the infirmary in the place of Vojno, which they did, but were accused of the HVO soldier's death, allegedly because they did not carry his body quickly enough; afterwards, the mentioned detainees were brought to a garage in Vojno, where they were beaten up by Jure Kordić and Mario Mihalj (deceased) and a third person, and after detainees Enver Kajtazi and Husnija Čorajević fell down, they were deprived of their lives with a knife; after that, the door of the garage opened and Mario Mihalj and the HVO soldiers went out; Witness AB and Aris Začinović, both of them detainees, tried to escape; Witness AB succeeded, but Aris Začinović was caught and deprived of his life in front of the garage in the presence of other detainees; thereafter, 4 dead bodies, including the body of Željko Čakalović, were seen in front of the garage; the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994.

2(c) On an undetermined date in September 1993, Dragan Šunjić, Mirko Vračević and Mario Mihalj (deceased), all members of the HVO, during the transportation of approximately 50 detainees who were tied to each other, from the Heliodrom Camp, Mostar Municipality, to the Vojno Camp, Mostar Municipality, for forced labour, on their way to the Vojno Camp, Mirko Vračević shot dead Asif Čakrama with an automatic rifle at point-blank range; the same bullet exited Asif Čakrama and hit another prisoner inflicting injuries in his chest; Čakrama's body was exchanged and identified on 25 April 1994.

During the same month, Mario Mihalj deprived the life of Salim Halilović, a detainee who was transferred from the Heliodrom Camp, because he could not work due to his heart problems; his body was exchanged and identified on 25 April 1994.

2(d) In late December 1993 or in early January 1994, Aziz Dautbegović, Džemal Sabitović and Witness 154 were carrying bricks to the Andora warehouse, near the front line, when a bullet hit Džemal Sabitović's head, which caused his death.

Also, on an undetermined date, in late December 1993, or in early January 1994, an unknown HVO soldier deprived detainee Hamdija Tabaković of life while he was performing forced labour on the front line in Bijelo Polje; the bodies of Džemal Sabitović and Hamdija Tabaković were exchanged and identified on 10 April 1994.

2.(e) On an undetermined date in December 1993, an unidentified HVO soldier deprived detainee Mustafa Kahvić of life while performing forced labour near the front line in Bijelo Polje; his body was exchanged and identified on 10 April 1994.

On an undetermined date in November 1993, detainee of the Vojno Camp Mensur Salman was killed while performing forced labour near the Zalihići house in Bijelo Polje.

3. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, he is responsible for the physical and psychological abuse, beating and torture of detainees in the Vojno prison facility, in the places where they performed forced labour and in other places, which were committed by persons over whom he had effective control, which are acts committed with the aim of furthering the system of abusing and persecuting the Bosniaks in which Radić willingly and knowingly participated; thus, detainees were tortured and abused by commanders, guards of the prison facility and other HVO soldiers who used police batons and tool handles; they were kicked by boots, hit with pistols, subjected to electric shocks, their heads were hit against a wall; among them there were: Zejna Tihak, Witness 153, Enver Tihak, Witness 152, Witness AA, Witness AI, Witness AB, Ramiz Mačković, Witness AF, Arif Omanović, Mustafa Čilić, Rasim Lulić, Avdo Jelin and other detainees, which resulted in severe physical and psychological injuries and temporary or permanent damage to their health; Avdo Jelin died soon after the beating, Arif Omanović died several days after the beating and Mustafa Čilić and Rasim Lulić were taken away the same night after the beating and have never returned and had not been seen thereafter until their bodies were exchanged and identified on 10 April 1994.

4. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, Radić personally participated in the rape and sexual abuse of female detainees in the Vojno Camp, including underage girls, and thus:

4(a) On or about 23 July 1993, Radić ordered soldiers to bring him the 15-year-old X to a house near the prison facility, and after she was brought to him, Radić ordered the present soldiers to come out of the house, keeping the Witness X and Ivica Kolobara with him; afterwards, he ordered her to take off her clothes and told her that he was going to give her a special pleasure; despite her crying and begging him not to do it, Radić only laughed at the Witness X, ripped off her clothes and ordered her, thus naked, to sit down between him and Ivica Kolobara; then he ordered Ivica Kolobara to leave and when Ivica Kolobara left, Radić told her that she could choose between having sexual intercourse with him or satisfying him orally; but, because of a telephone call which

he was to answer, Radić could not realize his intention and he said to X that she was lucky that time and that next time she would not be that lucky.

4(b) On or about 15 August 1993, female witnesses A and E were brought to Marko Radić's command post in Bijelo Polje, where the witnesses A and E were separated under the pretext that Witness A needed to clean the room on the first floor of the command post; Radić entered the same room shortly after the Witness A had entered it and ripped off a part of her T-shirt by force, raped her, thereafter he ordered a member of the HVO named Ivan to rape the Witness A and said to Ivan: "You can do with her whatever you like." Ivan entered the room where A was and told her that he would not rape her, but that he had to stay in the room so that Radić could think that he raped her; some time later, Ivan left the room and Witness A followed him down to the ground floor, but Radić saw her and ordered her to go back to the first floor where he raped her again.

Some 15 or 20 days later, Witness A was brought again to the command post of Mario Mihalj for the alleged hearing where the following persons were present: Branko Božić, Dario Sušac, Mario Mihalj, Dragan Šunjić and Marko Radić; on arrival, Marko Radić ordered her to go to the other room where he ordered Witness A to get undressed and imitate the behaviour of a woman in a porno movie which was played in that room, which Witness A refused, and Marko Radić raped her again.

4(c) On an undetermined date in September 1993, Witness D was brought during the night to the command post of Mario Mihalj and Dragan Šunjić in Bijelo Polje, where Witness D was humiliated; thereafter Damir (Emir) Brekalo and Dario Sušac took Witness D to the command post of Marko Radić, where Marko Radić abused Witness D, ignored her imploring, pulled her hair, unbuttoned his trousers, and put his sexual organ by force into her mouth and then forced her to sexual intercourse; afterwards he ordered an unidentified HVO soldier to rape her, but he did not do it.

5. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, he is responsible for the rapes and sexual abuse of female detainees in the Vojno prison facility, which were committed by soldiers over whom he had effective control, which are acts committed with the aim of furthering the system of abusing and persecuting the Bosniaks, in which Radić willingly and knowingly participated; thus, guards and soldiers raped and sexually abused the following female detainees: Witness AG was raped repeatedly by several soldiers, Witness L, who was only 16 years old at the time when Damir (Emir) Brekalo raped her twice; Witness X who was

15 years old at the time when Damir (Emir) Brekalo raped her; Witness E was raped by Mirko Bukara, Mario Mihalj (deceased) and other unidentified soldiers; Witness D was raped by Damir (Emir) Brekalo and a soldier named Dario Sušac; Witness J was raped by Dragan Škobić; Witness C was raped by Damir (Emir) Brekalo and a soldier named Marko; Witness B was raped by Tomo Aničić, Dario Mihalj and soldiers named Babo and Sergej, Witness AM was raped several times by Mirko Vračević; Witness F was sexually abused by Damir (Emir) Brekalo, Dario Sušac and a soldier who went by the nickname Žuti.

6. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, Radić is responsible, together with Mario Mihalj, Dragan Šunjić, Damir Brekalo, Mirko Vračević and other soldiers, for forcing female detainees to perform forced labour in the Vojno prison facility and in the surrounding areas, including the cooking of food, washing of clothes and dishes and cleaning of houses, whereas men were forced to perform labour outside of the prison facility, near the front line, where they were exposed to cross-fire: they had to dig up trenches, carry sandbags and ammunition, chop woods and do other works for the HVO needs, under the threat that they would otherwise be killed, in which way the detainees were exposed to severe physical and mental suffering; all of which was committed with the aim of strengthening the system for abusing and persecuting the Bosniaks, in which Radić participated willingly and knowingly.

Second Accused Dragan Šunjić:

During the period from August 1993 until March 1994, in his capacity as Deputy Commander of the Vojno prison facility, Mostar Municipality, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, the Ivan Stanić Čićo Sabotage Unit, and the HVO Military Police, Dragan Šunjić personally participated in the unlawful detention of several dozens of Bosniak civilians, women and children in the Vojno prison, and, as the Deputy Commander, he had the authority and control over the conditions which existed in the prison facility, and over other persons who worked in the prison facility; he was also responsible for the lives and limbs of all detainees; Dragan Šunjić contributed to and furthered the functioning of the prison facility's system of abusing and persecuting Bosnian Muslims by ordering, committing, or otherwise aiding and abetting the commission of various forms of physical, mental and sexual abuse, whereby he created the atmosphere of terror; considering his position, Dragan Šunjić had the authority and duty to improve the conditions in the facilities, which were brutal, barbaric and degrading, because detainees were devoid of the basic necessities of life such as adequate food, clothing, shelter, drinking water, medical care; they were kept in unhygienic conditions and in small space; they were subjected to

daily beatings, torture, harassment, humiliation, and psychological and sexual abuse; they lived in constant fear for their lives; that resulted in the death of a number of detainees and in severe mental, emotional and physical injuries of other detainees, and thus:

7. During the same period and in the same capacity he personally participated in the unlawful arrest and detention of several dozens of Bosniak civilians, women, children and the elderly in the Vojno prison facility, Mostar Municipality, including: Witness A, Witness F, Sadeta Macić, Mustafa Macić and two children, Rahima Makaš with her daughter, Witness B, Witness E and her son Witness 153, Zejna Mirica with her daughter, Emica Ćurić with her mother and daughter, Mersija with her daughter, Ramiza Zerdalić, Edita Pehilj, Witness D with a 17-month-old child, Witness K, Witness AM, Witness R, Witness J together with a 73-year-old woman, Zejna Tihak and her son, Saja Ćorić, Mirhunisa Ćorić, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI and other detainees from Mostar, whereas Bosniak men, detainees of the Heliodrom Camp, who were brought to perform forced labour, were unlawfully kept in brutal, humiliating and inhumane conditions in a garage and a cellar of a house.

8. During the same period and in the same capacity, he is responsible for the physical and mental abuse, beatings, torture and murders of detainees in the Vojno prison facility, in the places where they performed forced labour and also in other places, which were personally committed by him or by other persons, and those acts were committed with the aim of furthering the system of abusing and persecuting the Bosniaks and in which Šunjić willingly and knowingly participated, and thus:

8(a) On or about 28 August 1993, an unknown HVO member deprived detainee Mesud Dedajić of life while he was performing forced labour on the front line in Bijelo Polje, Mostar Municipality; three detainees buried the body of Mesud Dedajić near the place where he was killed; his body was exhumed somewhere between the Zalihići houses and the Convent, and was exchanged and identified on 5 July 1994.

8(b) On an undetermined date in September 1993, after one HVO member had been shot dead near the front line, unknown HVO soldiers ordered the detainees - Witness AB, Aris Začinović, Enver Kajtazi, Husnija Ćorajević and Željko Čakalović to carry his body to the infirmary in the place of Vojno, which they did, but were accused of the death of the HVO soldier allegedly because they did not carry his body quickly enough; thereafter, the referenced detainees were taken to the garage in Vojno where they were exposed to beatings by Jure Kordić and Mario Mihalj (deceased) and an unidentified HVO soldier, and after detainees Enver Kajtazi and Husnija Ćorajević fell down, they

were deprived of lives with a knife; afterwards, the garage door opened and Mario Mihalj and HVO soldiers came out; Witness AB and Arif Začinović, both of them detainees, climbed up to a small window and tried to run away; Witness AB managed to do so, but Aris Začinović was caught and eventually deprived of life in front of the garage in the presence of other detainees; afterwards, 4 dead bodies, including the body of Željko Čakalović, were seen in front of the garage; the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994.

8(c) On an undetermined date in September 1993, Dragan Šunjić, together with the guard Mirko Vračević and Commander Mario Mihalj (deceased), escorted approximately 50 detainees who were tied to each other, from the Heliodrom Camp, Mostar Municipality, to the Vojno prison facility, Mostar Municipality, for forced labour, when, on the way to Vojno, guard Mirko Vračević shot at Asif Čakrama from an automatic rifle at point-blank range and killed him, and the same bullet exited Asif Čakrama and hit another detainee inflicting injuries on his chest; Čakrama's body was exchanged and identified on 25 April 1994.

During the same month, Mario Mihalj deprived the life of Salim Halilović, the detainee who had been transferred from the Heliodrom Camp, because he could not work due to heart problems; his body was exchanged and identified on 25 April 1994.

8(d) In early January 1994, Aziz Dautbegović, Džemal Sabitović and Witness 154 were carrying bricks in the vicinity of the front line, near the Andora warehouse, when Džemal Sabitović was shot with a bullet in his head, which caused his death.

On an unidentified date in November 1993, an unknown HVO soldier deprived detainee Hamdija Tabaković of life while the latter was performing forced labour on the front line in Bijelo Polje; the bodies of Džemal Sabitović and Hamdija Tabaković were exchanged and identified on 10 April 1994.

8(e) During December 1993, an unidentified HVO soldier deprived Vojno Camp detainee Mustafa Kahvić of his life while the latter was performing forced labour near the front line in Bijelo Polje; his body was exchanged and identified on 10 April 1994;

On an unidentified date in November 1993, Vojno Camp detainee Mensur Salman was shot dead while performing forced labour near the Zalihići house in Bijelo Polje.

9. During the same period and in the same capacity, he personally participated in or otherwise aided and abetted the physical and mental abuse and torture of detainees in the Vojno prison facility, in the places where they performed forced labour and in other places, the acts of which were committed with the aim of furthering the system of abusing and persecuting the Bosniaks, in which Šunjić willingly and knowingly participated; detainees were beaten up with police batons and wooden handles, kicked with boots and guns, and were subjected to electric shocks, and their heads were hit against a wall, and were abused in other different ways; the following detainees were among them: Witness 152, Ramiz Mačković, Witness 153, Enver Tihak, Witness AI, Witness AA, Witness AB, Witness AF and other detainees, including Mustafa Čilić and Rasim Lulić who were taken away the same night after the beating and have never returned and had not been seen thereafter until their bodies were exchanged and identified on 10 April 1994.

Additionally, during August 1993 in the Vojno prison, Dragan Šunjić personally, Mario Mihalj (deceased) and other members of the HVO beat up prisoner Arif Omanović who died several days thereafter, while in late August or early September 1993 they beat prisoner Avdo Jelin who died soon thereafter.

10. During the same period of time and in the same capacity, Šunjić is responsible for the rapes and sexual violence against female detainees, which were committed by other persons in furtherance of the system of abusing and persecuting the Bosniaks, in which Šunjić willingly and knowingly participated; thus, the following female detainees were sexually abused and raped: Witness AG who was raped repeatedly by several soldiers; Witness A who was raped by Marko Radić; Witness D who was raped by Marko Radić and Damir (Emir) Brekalo; Witness B who was raped by Tomo Aničić, Dario Mihalj and soldiers nicknamed Babo and Sergej; Witness C who was raped by Damir (Emir) Brekalo and a soldier named Marko; Witness AM who was raped several times by Mirko Vračević; Witness J who was raped by Damir Škobić; Witness E who was raped by Mirko Bukara; Witness F who was sexually abused by Damir (Emir) Brekalo, Dario Sušac and a soldier who went by the nickname Žuti.

11. During the same period of time and in the same capacity, he personally participated, together with Mario Mihalj (deceased), Damir (Emir) Brekalo, Mirko Vračević and other soldiers, in making female detainees perform forced labour in the Vojno prison facility and in other places, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Šunjić willingly and knowingly participated; the forced labour included: cooking of food, cleaning of houses in the Vojno prison facility and the surrounding area, and washing of clothes; on the other

hand, men were made to do forced labour outside of the camp near the front line, where they were exposed to cross-fire, to dig trenches, to carry sandbags and ammunition, to chop woods and to do other works for the needs of the HVO, under the threat that they would otherwise be killed; thus, detainees experienced severe physical and mental suffering.

Third Accused Damir (Emir) Brekalo:

During the period from July 1993 to March 1994, in his capacity as a member of the First Bijelo Polje Battalion of the Second Brigade HVO and the Ivan Stanić Čičo Sabotage Unit, Damir (Emir) Brekalo personally participated in the arrest and unlawful detention of several dozens of Bosniak civilians, women, children and the elderly and Bosniak men, detainees from the Heliodrom, who were brought to Vojno for forced labour, and all of them were kept in brutal, humiliating and inhumane conditions; Brekalo derived his authority from his close relationship with Marko Radić and he personally gave a substantial contribution to the furtherance of the Vojno prison facility's system of abusing and persecuting the Bosniaks by committing or otherwise aiding and abetting the commission of various forms of physical abuses, beatings, torture, which resulted in the deaths of a number of detainees, rapes and sexual abuses, whereby an atmosphere of terror was created, while severe mental, emotional and physical injuries were inflicted on the detainees, as follows:

12. During the period from July 1993 to March 1994, Brekalo is responsible for aiding and abetting the killings of detainees in the Vojno prison facility and in the surrounding area, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Brekalo willingly and knowingly participated; the acts included: the killing of Enver Kajtazi, Husnija Čorajević, Željko Čakalović, Aris Začinović by Mario Mihalj (deceased) and Jure Kordić; the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994; the killing of Salim Halilović by Mario Mihalj - his body was exchanged and identified on 25 April 1994; the killing of Mensud Dedajić by unknown HVO soldiers - his body was identified and exchanged on 5 July 1994; the killing of Asif Čakrama by Mirko Vračević - his body was identified and exchanged on 25 April 1994; the killing of Mensur Salman by an unknown soldier; the killing of Džemal Sabitović by an unknown soldier - his body was identified and exchanged on 10 April 1994; the killing of Hamdija Tabaković by an unknown soldier - his body was identified and exchanged on 10 April 1994; and the killing of Mustafa Kahvić by an unknown soldier - his body was identified and exchanged on 10 April 1994.

13. During the same period of time and in the same capacity, Brekalo is responsible for personally committing or otherwise aiding and abetting the unlawful arrest of several dozens of Bosniak civilians, women, children and the elderly and their unlawful keeping in humiliating and inhumane conditions in the Vojno prison facility, which were committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Brekalo willingly and knowingly participated; they included the unlawful arrest and detention of the following detainees: Witness X, Witness L, Witness A, Witness F, Sadeta Macić, Mustafa Macić and two children, Rahima Makaš with her daughter and her two children, Witness B, Witness E and her son Witness 153, Mediha and her grand-daughter Sanela, Zejna Mirica with her daughter, Enica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witness D with her 17-month-old child, Witness R, Witness AM, Witness K, Witness J with a 73-year-old woman, Zejna Tihak and her son, Saja Ćorić, Mirhunisa Ćorić, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI and other detainees from Mostar, and Bosniak men, detainees from the Heliodrom Camp, who were brought to Vojno for forced labour and were unlawfully kept in the garage and the cellar of a house in brutal, humiliating and inhumane conditions; all of those detainees were ordered to perform forced labour in Vojno and surrounding areas and near the front line.

14. During the same period of time as mentioned in the introduction, Brekalo is responsible for personally committing or otherwise aiding or abetting the physical and mental abuse and torture of detainees in the Vojno prison facility, during forced labour and in other places, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Brekalo willingly and knowingly participated; the acts were committed in such a way that detainees were beaten up with police batons, wooden tool handles, kicked with boots and pistols, and were subjected to electric shocks; their heads were hit against a wall, and were also abused in other ways; among them there were the following detainees: Zejna Tihak, Witness 153, Enver Tihak, Witness 152, Witness AA, Witness AI, Witness AB, Ramiz Mačković, Arif Omanović, Avdo Jelin and other detainees; he personally abused and tortured Witness AF and beat up Mustafa Čilić and Rasim Lulić on an undetermined date in July 1993 while they carried out forced labour at the front-line.

15. During the same period of time and in the same capacity as mentioned in the introduction, he personally participated in the rape and sexual abuse of female detainees in Vojno and in the surrounding area, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Brekalo willingly and knowingly participated:

15.(a) On or about 23 July 1993, he raped the 16-year-old Witness L,

15.(b) On or about 24 July 1993, he raped the 15-year-old Witness X in Bijelo Polje,

15.(c) On an undetermined date in early September 1993, he forced Witness D to have sexual intercourse on two occasions; after that he passed her on to Dario Sušac to rape her, which he did,

15.(d) On an undetermined date in early September 1993, he and a soldier named Marko forced Witness C to put her finger in the vagina, while they were watching that and laughing, and then they forced her to have oral sex with them.

16. During the same period of time and in the same capacity, Brekalo participated or otherwise aided and abetted the sexual abuses and rapes of female detainees in the Vojno Camp which were committed by other soldiers and guards, the acts of which were committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Brekalo willingly and knowingly participated, so that guards and soldiers sexually abused the following female detainees: Witnesses A and D were raped by Marko Radić; Witness X was sexually abused by Marko Radić; Witness B was raped by Tomo Aničić, Dario Mihalj and soldiers nicknamed Babo and Sergej; Witnesses AG was raped by several soldiers; Witnesses AM was raped several times by Mirko Vračević; Witnesses J was raped by Dragan Škobić; Witnesses E was raped by Mirko Bukara; Witnesses F was sexually abused by Damir (Emir) Brekalo, Dario Sušac and a soldier who went by the nickname Žuti.

Fourth Accused Mirko Vračević

During the period from July 1993 to March 1994, during the armed conflict between the HVO and the Army of BiH, Mirko Vračević aka Srbin /Serb/, as a member of the First Bijelo Polje Battalion of the Second Brigade of the Croat Defence Council (HVO), whose zone of responsibility covered the place of Vojno, Mostar Municipality, and in his capacity as a guard at the Vojno prison facility, personally committed, aided and instigated the carrying out of an attack on the Bosniak civilian population, within a wide-spread and systematic attack on the Bosnian Muslim civilian population of the Mostar Municipality by members of the HVO military and police forces, knowing of such attack which was aimed at abusing and persecuting the Bosniak population, in which Mirko Vračević willingly and knowingly participated; during that attack several dozens of Bosnian Muslim women, children and the elderly were unlawfully arrested, detained and kept in inhumane conditions in houses and other facilities in the place of Vojno, Mostar Municipality, whereas

hundreds of Bosniak men, who were taken from the Heliodrom Camp for forced labour, were unlawfully detained in the prison facility in the place of Vojno, Mostar Municipality, where they were kept in brutal, humiliating and inhumane conditions in the garage and the cellar of a house, being exposed to physical and mental abuse, torture, being subjected to daily beatings by guards and soldiers, to which a number of detainees succumbed; as a guard, Mirko Vračević was responsible for the lives and limbs and security of all detainees; he had authority and control over detainees and duty to prevent anyone from harming them. Mirko Vračević personally contributed substantially to the functioning and furtherance of the system of abusing and persecuting the Bosnian Muslims of the Vojno prison facility, and he did so in such a way that he personally committed or otherwise assisted in the commission of different forms of physical, mental and sexual violence, whereby the atmosphere of terror was created; he contributed to enforcing such conditions in the Camp that were brutal, barbaric and degrading for detainees who were kept there without fundamental necessities of life, including adequate food, clothing, accommodation, drinking water, medical care, who were kept detained in unhygienic conditions and in small space, being subjected to daily beatings, tortures, abuse, humiliation and mental and sexual abuse, and thus:

17. On an undetermined date in September 1993, Mirko Vračević, together with Mario Mihalj (deceased) and Dragan Šunjić, in the place of Đubrani, Mostar Municipality, participated in the transportation of fifty (50) detainees from the Heliodrom, for forced labour in Bijelo Polje, when the group stopped to take a break, Mirko Vračević turned towards the detainees and asked them: “How do you, Muslims, say the tomb?”. Detainee Asif Čakrama, who was tied to Nuhan Makaš, replied: “Mezar“, whereafter Mirko Vračević turned and said: “That's right“, and he shot Asif Čakrama with an automatic rifle at point-blank range and killed him; the same bullet exited Asif Čakrama and hit the chest of another detainee, thus inflicting severe bodily injuries on him.

18. During the period from 7 September to the end of November 1993, in the Vojno Camp, on several occasions in the evening hours Mirko Vračević took the female Witness AM, detainee of the Camp, from the room in which she was detained and brought her to a house which was inside the Camp compound, and under the threat of force he forced her into sexual intercourse.

19. During the period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade of HVO, in his capacity as a guard at the Vojno prison facility, is responsible for committing, instigating or otherwise aiding and abetting the unlawful detention of Bosniak civilians - women, children and the elderly from the area of the Mostar

Municipality; those acts were committed in furtherance of the system of abusing and persecuting the Bosniaks in the Vojno prison facility, in which Mirko Vračević willingly and knowingly participated; thus the following persons were unlawfully arrested and detained: Rahima Makaš with her daughter and two children, Witnesses A and F; Sadeta Macić, Mustafa Macić and two children, Witness B, Witness E; Mediha and her grand-daughter Sanela, Zejna Mirica with her daughter, Enica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witnesses D with a 17-month-old child, Witnesses R, K, J together with a 73-year-old woman, Zejna Tihak and her son, Saja Ćorić, Mirhunisa Ćorić, Witness C, Witness 152, Witness 153, Dika Ćurić, Witnesses AG, AI, AM and others.

20. During the same period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, in his capacity as a guard at the Vojno prison facility, is responsible for committing, instigating or otherwise aiding the unlawful transfer of Bosniak men from the Heliodrom Camp, which was kept by the HVO, and their unlawful detention in the Vojno prison facilities, which are acts committed in furtherance of the functioning of the system of abusing and persecuting the Bosniaks in the Vojno Camp, in which Mirko Vračević willingly and knowingly participated.

21. During the same period and in the same capacity, he is responsible for instigating or otherwise aiding the murders of detainees in the Vojno Camp and in the surrounding area, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated; the acts included: the murder of Enver Kajtazi, Husnija Ćorajević, Željko Ćakalović, Aris Začinović by Mario Mihalj (deceased) and Jure Kordić - the bodies of Začinović, Ćakalović and Ćorajević were identified and exchanged on 25 April 1994; the murder of Salim Halilović by Mario Mihalj - his body was exchanged and identified on 25 April 1994; the murder of Mensud Dedajić by unknown HVO soldiers - his body was identified and exchanged on 5 July 1994; the murder of Salman Mensur by an unknown soldier; the murder of Džemal Sabitović by an unknown soldier; his body was exchanged and identified on 10 April 1994; the murder of Hamdija Tabaković by an unknown soldier - his body was exchanged and identified on 10 April 1994; and the murder of Mustafa Kahvić by an unknown soldier - his body was identified and exchanged on 10 April 1994.

22. During the same period and in the same capacity, he is responsible for committing, instigating or otherwise aiding the physical and mental abuse and torture of detainees in the Vojno prison facility, while they were performing forced labour, as well as in other places, which are acts

committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated; among other things, the detainees were beaten up, tortured and abused by commanders, guards of the prison and other HVO soldiers; specifically, they were beaten up with police batons and wooden axe handles; they were kicked with boots, hit with rifle butts; they were subjected to electric shocks, their heads were being hit against a wall; among them there were the following detainees: Zejna Tihak, Enver Tihak, Witness 152, Witness AA, Witness AB, Ramiz Mačković, Witness AF, Arif Omanović, Mustafa Čilić, Rasim Lulić, Avdo Jelin and other detainees, whereby severe physical and mental injuries were inflicted on them as was a temporary and lasting damage to their health.

22a) On an undetermined date in the first half of September 1993, in the corridor of Mario Mihalj's command post in the Vojno Camp, Mirko Vračević came up to the Witness J and put a knife to her throat, saying to her: "The fox is brought to the furrier ", which caused great fear and emotional disturbance in the female detainee.

22b) On an undetermined date in September 1993, while detainees were waiting for examination in a corridor of the command post of Mario Mihalj in the Vojno Camp, Mirko Vračević came up to a 17-month-old child of the Witness D, putting a bomb in her hands, asking: "Does your father have one like this at home?" The Witness D, mother of the little girl, whom she carried in her arms then, moved the child away in order to protect her, which caused a great fear and uneasiness among all of the detainees present.

22c) On an undetermined date in late October 1993, within the compound of the Vojno Camp, while detainees were cleaning the compound of the Camp, he came up to the minor Witness 152, saying to him that he would slit his throat as he had slit his aunt's throat, whereafter he hit him with a rifle butt repeatedly all over his body.

22d) On an undetermined date in late August or early September 1993, from the garage which was located in the compound of the Vojno Camp and in which Bosniaks were unlawfully detained, Vračević brought the Witness 153 to the command post of Mario Mihalj; Mirko Vračević handed over the Witness 153 to Mario Mihalj; thereafter, Mario Mihalj ordered the Witness 153 to get undressed to the waist, and after that he began striking the Witness all over his body with a police baton, wooden curtain rod and with some tools; because of those blows the Witness 153 was covered with blood and bruises, and due to the inflicted blows the Witness 153 fell down, and then Mario Mihalj ordered Mirko Vračević to take Witness 153 back to the garage.

22e) On an undetermined date in late August or early September 1993, Mirko Vračević took the Witness 153 out of the garage which was located in the compound of the Vojno Camp and in which Bosniaks were unlawfully detained and brought him to the command post of Mario Mihalj, handed him over to him, and then Mario Mihalj, holding an electric cable in his hand, twisted bare wires of the cable around the fingers of the Witness 153 and thus exposed him to electric shocks; during that time Dragan Šunjić was playing the guitar, whereas Mirko Vračević at the same time was bayoneting different parts of Witness 153's body, on which occasion Witness 153 was suffering intense physical pains.

22f) On an undetermined date in late August, Mirko Vračević took the detainee Arif Omanović out the garage which was located in the compound of the Vojno Camp and brought him to the command post of Mario Mihalj, where Arif Omanović was severely beaten up by Mario Mihalj, Dragan Šunjić and other HVO members, because of which Arif Omanović was covered with blood and bruises and his body was swollen up; then, Vračević dragged Omanović back to the garage as he was in such a bad condition that he was unable to walk.

22g) On an undetermined date in early September 1993, Mirko Vračević took the Witness AI out of the garage which was located in the compound of the Vojno Camp and brought him to a nearby house where Mario Mihalj and Dragan Šunjić were waiting for him; they put him on a chair and wound an electric wire around his fingers; the electric wire was connected to the telephone set; Mario Mihalj started turning the handle of the telephone, which caused the electric current to flow through the body of the Witness AI, which caused terrible pains and throes in the detainee; then they dragged him in a semiconscious condition back to the garage.

23. During the period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, in his capacity as a guard at the Vojno Camp, is responsible for instigating or otherwise aiding in the unlawful use of female detainees for performing forced labour in the Vojno prison facility and in the surrounding area, including the cooking of food, washing of clothes and dishes and cleaning of houses, whereas men were forced to dig up trenches, carry sandbags and ammunition, chop woods and do other works for the needs of the HVO; he exposed them to severe physical and mental suffering, all of which was committed with the aim of furthering the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated.

24. During the period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, in his capacity as a guard at the Vojno prison facility, is responsible for instigating or otherwise aiding in the rapes of and sexual violence against female detainees, which was committed with the aim of furthering the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated; among them there were: Witness A who was raped by Marko Radić; Witness D who was raped by Marko Radić and Damir (Emir) Brekalo, Witness B who was raped by Tomo Aničić, Dario Mihalj and soldiers nicknamed Babo and Sergej; Witness C who was raped by Damir (Emir) Brekalo and a soldier by name Marko; Witness AG who was raped by several soldiers; Witness J who was raped by Dragan Škobić; Witness F who was sexually abused by Damir (Emir) Brekalo, Dario Sušac and a soldier nicknamed Žuti.

25. On 27 August 1993, during the evening hours, from the house within the Vojno Camp complex, in which the Witness E was detained, he took out the referenced witness and brought her to the house in which there was a command and where Marko Radić ordered her to go with Mirko Vračević, saying to her that she should do everything she was told to do or else they would kill both her and her children; Witness E tried to resist by telling Marko Radić that her child was not feeling well, but he replied cynically: “So what, you’re not gonna be souring cabbage there, you must go because I told you”, whereafter Mirko Vračević took her over to HVO member Mirko Bukara, handed her over to him, saying: “Here she is!“, whereafter Mirko Bukara forced the Witness E to sexual intercourse.

Therefore, in the course of the armed conflict between the Army of Bosnia and Herzegovina and the Croat Defence Council (HVO), as part of a widespread and systematic attack aimed against the civilian population in the territory of Herzegovina, specifically in the territory of the Mostar Municipality, knowing about such an attack and knowing that they participated in that attack:

Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, by arrangement with Mario Mihalj (deceased), Ivek Kolobara, Jure Kordić, Nedžad Čorić aka Nečko, Amel Hadžiosmanović aka Doktor, Nedžad Tinjak aka Žuti, among others, participated in the joint criminal enterprise in the Vojno prison facility in order to abuse and persecute the Bosnian Muslims and other non-Croats whom they kept in prison, through different forms of physical, mental and sexual violence and, are therefore, responsible for the above described crimes, all of which had as natural and predictable consequences the commission of the joint criminal enterprise;

Whereby:

1. Marko Radić

by his acts under Sections 1 through 6 of this Verdict committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with

- sub-paragraph a) Depriving Another Person of His Life (Murder) by his acts in Sections 2, 2a), 2b), 2c), 2d), 2e) of this Verdict;
- sub-paragraph e) Imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law, by his acts under Section 1 of this Verdict;
- sub-paragraph f) Torture, by his acts under Section 3 of this Verdict;
- sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence) by his acts under Section 4, 4a), 4b), 4c), 5 of this Verdict;
- sub-paragraph k) Other Inhumane Acts by his acts under Section 1 and 6 of this Verdict.

all in conjunction with Article 29 and Article 180(1) of the CC of BiH,

2. Dragan Šunjić

By his acts under Sections 7 through 11 of this Verdict committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with

- sub-paragraph a) Depriving Another Person of His Life (Murder) by his acts under Sections 8, 8a), 8b), 8c), 8d), 8e) of this Verdict,
- sub-paragraph e) Imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law, by his acts under Section 7 of this Verdict,

- sub-paragraph f) Torture, by his acts under Sections 8 and 9 of this Verdict,
- sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence) by his acts under Section 10 of this Verdict,
- sub-paragraph k) Other Inhumane Acts by his acts under Sections 7 and 11 of this Verdict,

all in conjunction with Article 29 and Article 180(1) of the BiH CC,

3. Damir Brekalo

By his acts under Sections 12 through 16 of this Verdict committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with

- sub-paragraph a) Depriving Another Person of His Life (Murder), by his acts under Section 12 of this Verdict,
- sub-paragraph e) Imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law, by his acts under Section 13 of this Verdict,
- sub-paragraph f) Torture, by his acts under Section 14 of this Verdict,
- sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence) by his acts under Sections 15, 15a), 15b), 15c), 15d) and 16 of this Verdict,
- sub-paragraph k) Other Inhumane Acts by his acts under Section 13 of this Verdict,

all in conjunction with Article 29 and Article 180(1) of the BiH CC,

4. Mirko Vračević

By his acts under Sections 17 through 25 of this Verdict committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with

- sub-paragraph a) Depriving Another Person of His Life (Murder), By his acts under Sections 17 and 21 of this Verdict,
- sub-paragraph e) Imprisonment and other severe deprivation of physical liberty in violation of fundamental rules of international law by his acts under Sections 19 and 20 of this Verdict,
- sub-paragraph f) Torture by his acts under Sections 22, 22c), 22d), 22e), 22f), 22g) of this Verdict,
- sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence) by his acts under Sections 18, 24 and 25 of this Verdict,
- sub-paragraph k) Other Inhumane Acts by his acts under Sections 22a), 22b) and 23 of this Verdict

all in conjunction with Article 29 and Article 180(1) of the BiH CC,

and therefore, pursuant to Article 285 of the BiH CPC, applying the provisions set forth in Articles 39, 42, 42b) and 48 of the BiH CC, the Court

SENTENCES

- 1. THE ACCUSED MARKO RADIĆ TO 21-YEAR LONG-TERM IMPRISONMENT (TWENTY-ONE YEARS).**
- 2. THE ACCUSED DRAGAN ŠUNJIĆ TO 16-YEAR IMPRISONMENT (SIXTEEN YEARS).**
- 3. THE ACCUSED DAMIR BREKALO TO 20-YEAR IMPRISONMENT (TWENTY YEARS).**
- 4. THE ACCUSED MIRKO VRAČEVIĆ TO 12-YEAR IMPRISONMENT (TWELVE YEARS).**

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

The Accused, Marko Radić, is

ACQUITTED OF THE CHARGES

That:

He raped witness AG three times after she was unlawfully captured on 2 September 1993, and brought to the Vojno camp, where she spent three months.

The Accused, Dragan Šunjić, is

ACQUITTED OF THE CHARGES

That:

- 1) During the period from August 1993 until March 1994, in his capacity as Deputy Commander of the Vojno prison facility, in furtherance of the system aimed at abusing and persecuting Bosniaks, in which he wilfully and knowingly participated, he personally raped witness AG in the Vojno prison facility.
- 2) In the early part of January 1994, in the Vojno prison facility, Šunjić deprived the life of prisoner Enes Nurko by shooting him 3 times at close range using an automatic rifle hitting him once on the face and twice on the chest thereby killing him instantaneously.

The Accused Damir Brekalo is

ACQUITTED OF THE CHARGES

That:

On an unidentified date between 2 September 1993 to 2 December 1993, he raped Witness AG in the Vojno prison facility.

Pursuant to Article 56 of the BiH CC, the time spent in custody pending trial under decisions of this Court, starting on 2 June 2006 onwards, shall be credited towards the sentence of imprisonment of the accused Marko Radić, Dragan Šunjić and Damir Brekalo. The time during which he was deprived of liberty from 19 December 2006 to 22 December 2006 will be credited towards the sentence of imprisonment of the accused Mirko Vračević.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings and the scheduled amount, which shall be paid entirely from the Budget appropriations of the Court.

In terms of Article 198(2) of the CPC of BiH, the injured parties are instructed to pursue their claims under property law in a civil action.

R e a s o n i n g

I. PROCEDURAL HISTORY

1. Under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number: KT-RZ-95/05 of 29 November 2006, confirmed on 1 December 2006, Marko Radić, Dragan Šunjić and Damir Brekalo were charged that they, by the actions detailed in Counts 1, 2, 2a), 2b), 2c), 2d), 2e), 2f), 2g), 2h), 3, 4, 4a), 4b), 4c), 4d), 5, 6, 7, 8, 8a), 8b), 9, 9a), 9b), 9c), 9d), 9e), 10, 11, 12, 13, 14, 14a), 15, 16, 17, 18, 18a), 18b), 18c), 18d), 18e) and 19 of the Indictment, committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h) as read with sub-paragraphs a), e), f), g) and k) of the CC of BiH, as read with Article 29 of the CC of BiH, and all in conjunction with Article 180(1), (2) and (3) of the CC of BiH.

2. Under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number: KT-RZ-200/06 of 27 December 2006, confirmed on 3 January 2007, Mirko Vračević was charged that, by the actions detailed in Counts 1, 2, 3a), 3b), 4, 5, 6a), 6b), 7, 8, 9, 10, 11, 12, 13 and 14 of the Indictment, he committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h) as read with sub-paragraphs a), e), f), g) and k) of the BiH CC, as read with Article 29 of the BiH CC, and all in conjunction with Article 180(1) of the BiH CC.

3. On 15 May 2008, the Prosecutor submitted to the Court a single Indictment and gave a more specific account of facts for some Counts of the Indictment than in the original Indictment of 29 November 2011 and 27 December 2007. By their actions detailed in Counts: 1, 2, 2.a), 2.b), 2.c), 2.d), 2.e), 2.f), 2.g), 2.h), 3, 4, 4.a) 4.b), 4.c), 4.d), 5, 6, 7, 8, 8.a), 8.b), 9, 9.a), 9.b), 9.c), 9.d), 9.e), 10, 11,12,13, 14, 14.a), 15, 16, 17, 18, 18.a), 18.b), 18.c), 18.d), 18.e), 19, 20, 21, 21.a), 21.b), 22, 23, 23.a), 23.b), 24, 25, 26, 27, 28, 29, 30, 31, Marko Radić, Dragan Šunjić, Damir Brekalo and

Mirko Vračević committed the criminal offence of Crimes against Humanity in violation of Article 172(a) murder, (e) imprisonment, f) torture, g) sexual violence, k) other inhumane acts and (h) persecution, all in conjunction with Articles 29 and 180(1)(2) and (3) of the Criminal Code of BiH.

4. Under the Trial Verdict No. X-KR-05/139 rendered by the Court of Bosnia and Herzegovina on 20 February 2009, the Accused:

1) Marko Radić was found guilty of the criminal offence of Crimes against Humanity in violation of Article 172(1), sub-paragraph (h) persecution, as read with sub-paragraphs a) depriving another person of life (murder), sub-paragraph e) imprisonment (wilful and unlawful imprisonment in the camp), sub-paragraph f) torture, g) sexual violence (rape and other forms of sexual violence), sub-paragraph k) other inhumane acts (detention in inhuman conditions, ill-treatment, humiliation and other forms of mental abuse) all in conjunction with Articles 29 and 180(1) of the Criminal Code of BIH. The Accused committed the offences by the actions described in the Enacting Clause of the Trial Verdict: 1,2, 2(a), 2(b), 2(c), 2(d), 2(e), 2(f), 2(g), 2(h), 3, 4, 4(a), 4(b), 4(c), 4(d), 5 and 6,

2) Dragan Šunjić was found guilty of the criminal offence of Crimes against Humanity in violation of Article 172(1), sub-paragraph (h) persecution, as read with sub-paragraphs a) depriving another person of life (murder), sub-paragraph e) imprisonment (wilful and unlawful imprisonment in the camp), sub-paragraph f) torture, g) sexual violence (rape and other forms of sexual violence), sub-paragraph k) other inhumane acts (detention in inhuman conditions, ill-treatment, humiliation and other forms of mental abuse) all in conjunction with Articles 29 and 180(1) of the Criminal Code of BIH. The Accused committed the offences by the actions described in the Enacting Clause of the Trial Verdict: 7, 8, 8(a), 8(b), 8(c), 8(d), 8(e), 8(f), 8(g), 8(h), 9, 10, 11 and 12,

3) Damir Brekalo is found guilty of the criminal offence of Crimes against Humanity in violation of Article 172(1), sub-paragraph (h) Persecution, as read with sub-paragraphs a) Depriving another person of life (murder), sub-paragraph e) Imprisonment (wilful and unlawful imprisonment in the camp), sub-paragraph f) Torture, g) Sexual violence (rape and other forms of sexual violence), sub-paragraph k) Other inhumane acts (detention in inhuman conditions, ill-treatment, humiliation and other forms of mental abuse) all in conjunction with Articles 29 and 180(1) of the Criminal Code of BIH. The Accused committed the offences by the actions described in the Enacting Clause of the Trial Verdict: 13, 14, 15, 17, 17(a), 17(b), 17(c), 17(d), 17(e) and 18,

4) Mirko Vračević is found guilty of the criminal offence of Crimes against Humanity in violation of Article 172(1), sub-paragraph (h) persecution, as read with sub-paragraphs a) depriving another person of life (murder), sub-paragraph e) imprisonment (wilful and unlawful imprisonment in the camp), sub-paragraph f) torture, g) sexual violence (rape and other forms of sexual violence), sub-paragraph k) other inhumane acts (detention in inhuman conditions, ill-treatment, humiliation and other forms of mental abuse) all in conjunction with Articles 29 and 180(1) of the Criminal Code of BIH. The Accused committed the offences by

the actions described in the Enacting Clause of the Trial Verdict: 19, 20, 21, 22, 23, 24, 25 and 26.

5. Pursuant to Article 285 of the CPC of BiH and Articles 39, 42 and 48 of the CC of BiH, the Trial Panel sentenced the Accused:

- 1) Marko Radić to a long-term imprisonment of 25 years,
- 2) Dragan Šunjić to a long-term imprisonment of 21 years,
- 3) Damir Brekalo to a long-term imprisonment of twenty (21) years,
- 4) Mirko Vračević to imprisonment for a term of (14) years,

6. Pursuant to Article 56 of the CC of BiH, the time spent in custody, starting on 2 June 2006, was credited towards the sentence of imprisonment of the Accused Marko Radić, Dragan Šunjić and Damir Brekalo.

7. Pursuant to Article 188(4) of the CPC of BiH, the Accused were relieved of the duty to reimburse the costs of the criminal proceedings. Pursuant to Article 198(2) of the CPC of BiH, the parties were instructed to take civil action to pursue their claims under property law.

8. Having examined the Appeals by the Defence Counsel for the Accused Marko Radić, Damir Brekalo, Mirko Vračević and joint Appeal by the Accused Dragan Šunjić and his Defence Counsel Midhat Kočo, the Court of BiH issued a Decision on 15 March 2010 and revoked the Trial Verdict on the grounds of essential violations of the criminal procedure under Article 297(1) and (2) of the CPC of BiH and ordered a trial before the Appellate Division Panel.

9. During the trial before the Appellate Panel, the Prosecutor maintained the allegations of the Indictment, while the Defence maintained their arguments presented in the Appeals.

A. CLOSING ARGUMENTS

(a) Prosecution Closing Argument

10. At a hearing held on 16 February 2011, the Prosecution presented their Closing Argument and commented on the presented documentary evidence and testimony of all prosecution and defence witnesses heard, both during the first instance proceedings and before the Appellate Panel.

The Prosecutor argues that the presented evidence proved beyond any reasonable doubt that the Accused were part of a widespread and systematic attack on Bosniak civilians of the Mostar Municipality and directly involved in the planned and coordinated maltreatment of the detained Bosniak civilians in the Vojno Camp at the relevant time. They killed them, mentally and physically abused them, held them in inhumane conditions, took them to forced labour, raped the detained women. They did all these acts with an intent to cause great pain and suffering to the detainees because of their ethnic origin or religion. The Prosecution argues that the general elements of Crimes Against Humanity were proven by witness statements, the presented evidence and through the adjudicated facts from the ICTY cases. The acts of the Accused were placed in a broader context in which all the Accused had specific roles and by their actions they maintained the operation of the Vojno camp. In doing so, the Accused committed Crimes Against Humanity either directly or as members of the joint criminal enterprise. All the Accused were aware they were involved in the JCE. Also, command liability was additionally proven during the proceedings with regard to Marko Radić and Dragan Šunjić, in violation of Article 180(2) of the CC of BiH, for the Crimes against Humanity they knew about or had reason to know that they were committed by the subordinates under their effective control. All the Accused at least aided in the commission of the crimes. Furthermore, the Prosecution argues that by participating in the joint criminal enterprise the Accused mutually worked in coordination, cooperated and perpetrated systematic crimes with the elements of persecution. According to the Prosecution, every Accused committed different criminal offences, however the fact they were committed within the JCE does not limit their responsibility only to those offences; they are accountable for all other offences intended to further the JCE. Each of the Accused had a role in the establishment of the Vojno Camp and, following its establishment, the Accused committed the crimes with the aim of furthering the objectives and purpose of the JCE. The Vojno camp was established with the sole purpose to detain Bosniaks unlawfully arrested on the orders of Marko Radić. Bosniaks were arrested by members of the unit under Radić's command. Arrested civilians were imprisoned and kept under extreme conditions, in a narrow space with no food and toilettes. Men and women were taken to forced labour on a daily basis. All four of the Accused were aware and had knowledge of the conditions in the Camp, and did not do anything to improve the conditions. On the contrary, they participated in the killings, torture, persecution, rapes, beatings and other forms of inhumane treatment in the Camp, either personally in some instances, or by their knowledge and awareness of the committed crimes. Substantiating the argument that it was proven beyond any reasonable doubt that the Accused were guilty of the commission of the criminal offences as charged by the Indictment, the Prosecution paid significant attention to the witness statements, pointing to the essential elements of each statement and bringing them in connection with individual charges.

11. At the end of their Closing Argument, the Prosecution generally notes that many of the Defence witnesses were former HVO members, some of them even guards in the Vojno camp, therefore it could reasonably be expected that they would testify in favour of the Accused.

12. In conclusion, the Prosecution proposed to the Court to sentence the Accused Marko Radić to a prison sentence of not less than 30 years, Dragan Šunjić to 25 years, Damir Brekalo to 25 years and Mirko Vračević to a minimum of 14 years.

(b) Closing Argument of the first Accused Marko Radić.

13. The Defence Counsel for Marko Radić, attorney Ragib Hadžić, submits in his Closing Argument that the Indictment against his client is a bizarre combination of different modes of liability, primarily disputing the formal correctness of the Indictment. In his opinion the Indictment contains a factual description of the acts of perpetration of the criminal offences the Accused is charged with, but it is evident that those are alternative charges with elements of cumulative charges, which the national law strictly prohibits. The Counsel refers to specific Counts of the Indictment under which the Accused Marko Radić was charged with individual responsibility (direct and personal) on top of his command responsibility and accountability for the JCE.

14. In addition, the Defence pays special attention to the events of 9 May 1993 and 30 June 1993, submitting that the area of responsibility of the unit under Marko Radić's command was Bijelo Polje, west of Mostar, and it was outside of the area which was attacked by the HVO on 9 May 1993. Then, on 30 June 1993, the Army of BiH launched an attack, took over the major part of Bijelo Polje and the defence line collapsed. As of that date, the place of Vojno was no longer in the area of responsibility of the First Battalion whose commander was Marko Radić. Since the town and Camp of Vojno were deep in the Bijelo Polje area, that part was secured by the Military and Civilian Police, not by the HVO armed forces, specifically not by the First Battalion because armed forces do not designate areas of responsibility by depth, but by width.

15. As for the general elements of the criminal offence of Crimes against Humanity, the Defence for the First Accused considers that these general elements were not proven in the first instance proceedings, in particular the existence of the widespread and systematic attack directed against the Bosniak civilians. According to the Defence, the Prosecution did not prove beyond any reasonable doubt that Radić committed any of the acts that amount to the Crimes against Humanity

he is charged with. In addition, the Prosecution failed to prove beyond any reasonable doubt that Radić was the Commander of the *Ivan Stanić Čiće* Sabotage Unit, that he ordered arrests of civilians, which were in the opinion of the Defence done by indiscriminate groups, that he participated in the establishment of the Vojno prison, that is, that he participated in the unlawful imprisonment of men, the detainees of Heliodrom, who were brought to Vojno for forced labour.

16. The Defence further argues that the Prosecution did not prove that the Accused was a direct superior and had control over the Commander Mario Mihalj and his Deputy Dragan Šunjić, Mirko Vračević and other prison guards and soldiers who worked in the prison. In his Closing Argument, the Counsel entirely upheld the Closing Argument given in the first instance proceedings by the Counsel Dragan Barbarić and concluded by proposing to the Court to acquit the Accused Radić of all charges.

17. In his Closing Argument, the Accused Marko Radić stated that he supported the Closing Argument of his Defence Counsel.

(c) Closing Argument of the Defence for the Second Accused Dragan Šunjić

18. The Defence Counsel for the Second Accused Dragan Šunjić, attorney Midhat Kočo, states in his Closing Argument that the Prosecution during the main trial failed to prove even the indications that the Second Accused Šunjić committed the offences as charged by the Indictment. Furthermore, the Defence is of the opinion that the Prosecution acted in violation of the basic principles set forth under Article 1 and 2 of the CPC of BiH when it charged the Accused in the introductory part of the general incriminations with having committed, in three different capacities (Deputy Camp Commander, a member of a combat unit and a sabotage unit), the criminal offence which at *tempore criminis* did not exist, that is, from August 1993 to March 1994. Based on the aforementioned, the Defence contests the application of the 2003 CC of BiH because it believes that it violates the principle of legality.

19. As for the specific charges relevant to the Accused, the Defence argues that it undoubtedly ensues from the military record of the Accused that before 15 September 1993 he was a military policeman, that he served the army during the war, that on 30 September 1993 he was transferred to the reserve unit of the HZHB Armed Forces, and that the Accused held no rank. The Defence argues that the documents presented by the Prosecution, proving the opposite, were falsified. Also,

the Defence submits that in October, November and December 1993 the Accused was far from the front line and that he was a guard in the woods during the woodcutting. According to the Defence, the Prosecution did not manage to prove beyond a reasonable doubt that Dragan Šunjić was *de iure* and *de facto* the Deputy Camp Commander in the Vojno Prison and a member of the *Ivan Stanić Čičo* Sabotage Unit. Therefore, the Defence Counsel proposes that the Accused Šunjić should be fully acquitted of criminal responsibility.

20. In his Closing Argument, the Second Accused Dragan Šunjić states that the court proceeding was fabricated by witness Saja Ćorić and others. Having closely analyzed the statements of the heard witnesses and having brought them in connection with the specific charges, the Accused submits that the Prosecution did not prove beyond any reasonable doubt that he had participated in the establishment of the prison, or in any other act of perpetration as charged by the Indictment and that he was not in a position to decide who would be considered a military prisoner of war. According to the Accused Šunjić, it was only on one occasion that he brought prisoners to Vojno on the orders of Miro Andrić and Mario Mihalj. He also claims he did not belong to the unit which arrested people in Mostar at the relevant period of 1993 and that his Commander was not the Accused Marko Radić.

21. In general, the Accused objects to the reliability of all the prosecution witnesses and the body of physical evidence. He opposes the decision of the Court not to hear again the testimony of all the prosecution and defence witnesses given in the first instance proceedings. The Accused makes an objection to the Court that he was not provided with adequate defence during the examination of witness AI. In particular, he addresses the murder of Enes Nurko and the rape of witness AG, the offences he is directly charged with, and argues that the prosecution evidence presented to prove these offences was deficient, contradictory and untrue.

22. Furthermore, the Accused contests the application of the 2003 Criminal Code of BiH, explaining that, if convicted, he should be given a sanction foreseen under the law applicable at the time of perpetration of the criminal offence. Finally, the Second Accused concludes that he could not be charged with the given criminal offences, because at the time the offences he is charged with in the Indictment were perpetrated he was only a military police officer, and later on he was an ordinary soldier or a guard, and he was not at all a commander or a decision-maker. Therefore, he could not have prevented Mario Mihalj from any wrongdoing he might have committed. He concluded by proposing to the Court to acquit him of criminal liability.

(d) Closing Argument of the Defence for the Third Accused Damir Brekalo

23. At the beginning of their Closing Argument, the Defence for the Third Accused Damir Brekalo proposed that the Appeal from the Trial Verdict filed by the Defence for the Third Accused be annexed to the Closing Argument. Attorney Slavko Aščerić points out that in the course of the evidentiary proceedings the Prosecution failed to prove that the Accused committed the criminal offence he was charged with. The Defence submits that the attack of 9 May 1993, which the Prosecution referred to in the Closing Argument, is disputable because there was no clear link established between this attack and the incidents in Vojno, as a micro location. None of the Vojno inmates was arrested as a consequence of the attack of 9 May 1993, but of the attack launched on 30 June 1993, when Bosniak civilians were arrested but only to be exchanged for Croat civilians. The Defence argues that the Prosecution did not prove the general elements of the criminal offence of Crimes against Humanity or the existence of a widespread and systematic attack and specific actions that prove the Accused was part of that attack. The Defence also contests that any joint plan existed to launch the attack, and that the Accused knew of this attack, specifically that as an ordinary soldier he was a knowing participant in it. Furthermore, out of the 48 Prosecution witnesses, 32 of them did not see anything, nor did they know anything about the Accused Damir Brekalo, which only additionally substantiates his argument that there was no HVO attack, but that the Army of BiH launched the attack on 30 June 1993. The attorney argues that the testimony of witnesses relevant to Damir Brekalo was deficient, contradictory and conflicting.

24. The Defence for the Third Accused too believes that the application of the 2003 Criminal Code of BiH is unacceptable because the Criminal Code of SFRY in effect at the relevant time is more lenient to the Accused. According to the Defence, the Accused could not be found guilty of the attack against the Bosniak civilians because at the relevant time the Accused and his entire family were Bosniaks - Muslims. The Defence submits that the punishment proposed by the Prosecution is too harsh, when compared to the jurisprudence of the ICTY. As the Prosecution failed to prove beyond any reasonable doubt that the Accused Brekalo had committed the criminal offence as charged by the Amended Indictment, the Defence proposes that the Court acquit the Accused of criminal liability.

25. In his closing argument, the Accused Damir Brekalo fully accepted the Closing Argument of his Defence Counsel and stood by his own Closing Argument given in the first instance proceedings.

(e) Closing Argument of the Defence for the Fourth Accused Mirko Vračević

26. In his Closing Argument, the Defence Counsel for the Fourth Accused Mirko Vračević, attorney Danilo Mrkaljević, points out that in spite of the abundance of the presented evidence, the Prosecution did not prove in the course of the main trial the existence of the criminal offence the Accused were charged with, in particular those offences and actions the Accused Mirko Vračević was charged with. The Defence entirely maintains the arguments of the Appeal from the Trial Verdict and supports the submissions of the Defence Counsel for the other Accused with regard to the correctness of the Indictment and its contents, adding that the actions of the Accused were not specified and that the Accused Vračević as a guard could not commit the criminal offences which include planning and ordering.

27. The Defence did not contest that the Accused Vračević was an HVO member - the First Bijelo Polje Battalion - from 30 June 1993 onwards, and that he was a guard in Vojno during the relevant time. However, the Defence considers that this fact alone could not constitute a criminal offence since the Accused performed his legitimate duty as a guard. Furthermore, it could not be inferred that he was aware of some crimes that could have been committed, not to mention that he could know of the widespread and systematic attack. Based on this, the Defence denies the existence of the general elements of the criminal offence of Crimes against Humanity and disputes specific Counts of the Indictment and the adduced Prosecution evidence. The Accused Vračević did not have any significant role whatsoever in establishing the camp or the official system that was in place there. Finally, the Defence believes it was proved that the Accused Mirko Vračević, as a guard and a mentally ill person, could not and did not have any significant influence on the potential perpetrators of the criminal offences in the Vojno camp.

28. Since the Prosecution failed to provide specific facts about the JCE in the Indictment, the Defence was not able to infer whether the Prosecution viewed the joint criminal enterprise as a separate criminal offence or as a form of criminal liability. Therefore, the specific charges of the Indictment may be seen only as co-perpetratorship, and individual responsibility of each of the Accused has to be established.

29. Furthermore, with regard to the application of substantive law, the Defence submitted that the criminal offence in question should have been qualified in accordance with the criminal code of SFRY, which was effective at the time when the offence was committed. Finally, the Defence refers

to the decision issued by the Appellate Panel to dismiss the Defence motion to suspend the proceedings of the Accused Mirko Vračević and gives its opinion about medical expert reports relevant to the health of the Accused Vračević. The Defence argues that due to his mental illness the Accused Vračević could not have had an adequate defence, because he was not able to understand the significance of these proceedings, and proposes that the Accused be acquitted.

30. In his Closing Argument, attorney Rade Golić, the Defence Counsel for the Accused Mirko Vračević, presented the extenuating circumstances the Panel should take into account when meting out the sentence for the Accused Vračević in case of conviction.

31. The Accused Mirko Vračević claims that he never received a single order by the Accused Radić while he was a guard in the Vojno camp and that he did not commit any of the offences he was charged with under the Indictment; quite the opposite: he helped the inmates in the Vojno camp. According to him, Mario Mihalj had the most important role in the Vojno camp and everyone had to obey him and address him as “Mr. Commander”. The Accused occasionally secured women and children in the camp. He put a particular emphasis on his poor health.

32. The Accused Mirko Vračević fully supports the closing argument of his Defence Counsel and concludes by stating he was not guilty of the offence he was charged with.

(f) Closing Argument of the Witness „X“

33. The Appellate Panel took into account the closing argument given by Witness X on behalf of the victims. She states that the crimes committed by some people continue living thereafter, because she believes that most of the victims of the Vojno Camp are still suffering and feel the traumas and have the PTSD. The committed crimes have not been forgotten and cannot be forgotten. This was confirmed by the testimony of numerous victims. She asks why they did it, was it because she had a different name and surname, as other prisoners had, because they were different, of other ethnicity. That is the only answer which she is able to give. It is exactly the reason why Radić, Šunjić, Brekalo and Vračević should be held responsible. They are responsible for the planned, systematic and unlawful arrests of the Muslim civilians, including herself and her mother, and their taking to the already established camp in Vojno. They separated her from her mother, brother and sister, maltreated her, and then she was shot at and wounded. They took away her childhood, youth, but also her mother who got ill severely and continued to have serious health

problems. These people are responsible of the violation of basic human and humanitarian rights and brutal abuse of civilians. They held them locked on unsuitable premises in the settlement of Vojno, maltreating them, physically, mentally and sexually. The Accused disregarded the pain of their victims. She still feels the fear of what she went through and of what they did to her. Out of the obligation to the victims who did not survive, out of the moral obligation to all women, mothers, girls who went through the torture in the Vojno Camp, she wishes that their cries be heard. She stands there also because of the obligation toward the children who did not have a normal childhood because they had been detained in Vojno. She requests that a maximum punishment be imposed on the Accused as the only punishment which is adequate and commensurate with the crimes committed.

B. EVIDENCE ADDUCED

1. Prosecution evidence

34. Pursuant to Article 317 of the CPC of BiH, the Appellate Panel accepted and examined the entire Prosecution and Defence evidence presented during the first instance trial (a number of audio-recordings of evidence were listened to in the courtroom in the presence of the parties, while the others were listened to outside of the courtroom). In that manner, the Panel admitted the entire body of evidence presented in the first instance proceedings and rendered the Verdict on the basis of that evidence, as well as new, additional evidence presented directly before the Appellate Panel.

35. The Appellate Panel accepted the testimony of the following Prosecution witnesses: „AI“, Saja Ćorić, witness „152“, witness „A“, witness „J“, witness „C“, witness „F“, witness „E“, witness „D“, witness „R“, witness „AD“, witness „AK“, witness „AA“, witness Ramiz Mačković, Dika Ćurić, Azer Handžar, Ramiz Bebanić, witness „AL“, Semir Humačkić, witness „151“, Hasan Trtak, witness „K“, Ibrahim Šogolj, Slavko Kožul, Redžo Ibrahimović, Dragan Galić, witness „AF“, Zulfo Humačkić, Damir Lukić, witness „153“, Stanko Božić, Aziz Dautbegović, witness „AH“, witness „AE“, Huso Mehremić, witness „L“, witness „X“, witness „154“, witness „B“, witness Aziz Suljević, Hamza Leto, Arnel Šahurić, Ivica Rotim, Miralem Omanović.

36. The following expert witnesses' reports given in the first instance proceedings have been accepted: Dr. Haso Sefo (expert evaluation of the neurosurgical state of the Accused Brekalo), Alma Bravo-Mehmedbašić (expert evaluation of the Witness AG) and Senadin Ljubović (expert evaluation of the Accused Damir Brekalo).

37. The Panel accepted the Prosecution documentary evidence presented in the first instance proceedings: Record of examination of protected witness AI made in the Prosecutor's Office of BiH on 10 October 2006 under Number KT-RZ-95/05, with translation into the English language; Medical documentation – Finding and Opinion of a specialist for the patient AI made by the Regional Medical Centre, Dr Safet Mujić Mostar, under Number 3760 of 13 September 1996; Medical documentation – Finding and Opinion of a specialist for the patient AI made by the Regional Medical Centre Dr Safet Mujić Mostar, under Number 6216/06 of 16 November 2006; Medical documentation for the Witness AI – incomplete photocopies; List of persons exchanged from the Vojno Camp on 14 August 1993, under Number 1-5-10/96, made by the Initiatives Board of female prisoners of the Vojno Camp Bijelo Polje of 1 May 1996; Discharge Card from hospital bearing the name of Saja Ćorić, under number 562/97, issued by the General Surgery Hospital Mostar; Medical documentation – Radiological Finding and Opinion for Saja Ćorić, made by the Clinical Hospital Mostar (Radiology Service), under Number 4458 of 22 August 1997; Medical documentation - Radiological Finding and Opinion for Saja Ćorić made by the Clinical Hospital Mostar (Radiology Service), under Number 4458 of 22 August 1997; Medical documentation - Finding and Opinion of a specialist for patient Saja Ćorić, made by the Regional Medical Centre Mostar (Service for Surgical Treatment), under Number 65/97 of 25 August 1997; Medical documentation - Radiological Finding and Opinion for Saja Ćorić, made by the Clinical Hospital Mostar (Radiology Service), under Number 4606 of 19 September 1997; Discharge Card bearing the name of Saja Ćorić, under Number 585, issued by the Clinical Centre of the University in Sarajevo (Neurosurgery Clinic); Medical documentation - Finding and Opinion for Saja Ćorić, made by the Clinical Centre of the University in Sarajevo (Institute for Radiology) of 14 July 1998; Witness Examination Record - Saja Ćorić, made in the Prosecutor's Office of BiH of 15 May 2006, under Number KT-RZ-95/05, with translation in the English language; Witness Examination Record for Saja Ćorić, made in the Prosecutor's Office of BiH of 7 December 2006, under Number KT-RZ-200/06, with translation in the English language; Discharge Card from hospital bearing the name of the Witness under the pseudonym of 152, under Number 326/00, issued by the RMC Dr Safet Mujić, O.J. Hospital for Surgical Treatment, Service for Surgical Treatment; Discharge Card bearing the name of Witness 152, under Number 70, issued by the Clinical Centre of the University in Sarajevo; Medical documentation bearing the name of Witness 152, under Number 221/00 made by the RMC Dr Safet Mujić, Department for Pathology and Forensic Medicine; Medical documentation – Finding and Opinion of doctors, bearing the name of Witness 152, of 11 April 1996; Photo-documentation – taking photos of scars on Witness 152 in the Prosecutor's Office of BiH, under Number 17-13/1-7-19/06 made by the State Investigation and Protection Agency, of 25 May 2006 (date of making 9 March 2006); Record on Examination of Witness under the

pseudonym of 125, made in the Prosecutor's Office of BiH, of 25 May 2006, under Number KT-RZ-95/05, with translation in the English language; Record on Examination of Witness under the pseudonym A, made in the court in Mostar, in the office of Investigating Judge Reuf Zaimović, of 30 March 1996, under Number Ki 4/95, with translation in the English language; Statement by Witness A given to ICTY investigators, of 26 February 2001 and 6 March 2001; Witness Examination Record for A, made in the Prosecutor's Office of BiH, of 19 May 2006, under Number KT-RZ-95/05, with translation in the English language; Record on Examination of Witness under the pseudonym of J, made in the court in Mostar, in the office of Investigating Judge Halil Maksumić, of 29 March 1996, under Number Ki 4/96, with translation in the English language; Statement by Witness J given to ICTY investigators, of 28 April 1997; Witness Examination Record for J, made in the Prosecutor's Office of BiH, of 30 June 2006, under Number KT-RZ-95/05, with translation in the English language; Record on Examination of Witness under the pseudonym of C, made in the Prosecutor's Office of BiH, of 23 May 2006, under Number KT-RZ-95/05, with translation in the English language; Record on Examination of Witness under the pseudonym of F, made in the court in Mostar, in the office of Investigating Judge Halil Maksumić, of 9 April 1996, under Number Ki 4/96, with translation in the English language; Record on Examination of Witness F, made in the Prosecutor's Office of BiH, of 24 July 2006, under Number KT-RZ-95/05, with translation in the English language; Sketch of the Camp and terrain around the Vojno Camp, made by Witness under the pseudonym of E, of 24 September 2007; Record on Examination of Witness under the pseudonym of D, made in the Prosecutor's Office of BiH, of 24 May 2006, under Number KT-RZ-95/05, with translation in the English language; Statement by Witness under the pseudonym of R given to ICTY investigators, of 29 June 2002, with translation; Handwritten List of persons made by Witness under the pseudonym of AK; Statement by detainees who returned from the work and stay in the Vojno Camp, of 28 January 1994, in which Witness AK personally put his signature on page 8 of the Statement; English translation of statement of detainees who returned from the work and stay in the Vojno Camp, of 28 January 1994 (with ICTY electronic certification); Statement by detainees who returned from the work and stay in the Vojno Camp, of 28 January 1994, in which a signature of Witness Semir Humačkić was put on page 8 of the Statement; Medical documentation – Medical History and Discharge Card for Azer Handžar, under Number 430/0, made by the HVO Regional War Hospital Mostar; Medical documentation – Certificate confirming that Azer Handžar was admitted in hospital for treatment, under Number 30-17-3-682/93, issued by the MC Džemal Bijedić Zenica, Regional Hospital Zenica, of 14 September 1993; List made by Witness Ibrahim Šogolj, including the names of 75 persons; Log from Heliodrom – School and Gym – Mostar, kept from 16 September 1993 until 13 October 1993; Witness Examination Record for Slavko Kožul, made in the Prosecutor's Office of BiH, of 5

October 2006, under Number KT-RZ-95/05, with translation in the English language; Witness Examination Record for Damir Lukić, made in the Prosecutor's Office of BiH, of 21 November 2006, under Number KT-RZ-95/05, with translation in the English language; Sketch identified by Witness under the pseudonym of 153, with ICTY certification; Order approving the taking of 50 detainees from SVIZ /*Military Remand Prison Centre*/ Heliodrom Mostar, under Number 02-4/3-01/01-1153/93, issued by Croat Community of Herceg-Bosna, Croat Defence Council, OZ JIH, Defence Sector of Mostar, of 2 September 1993; Order approving the taking of 50 detainees of the SVIZ Heliodrom Mostar, under Number 02-4/3-04/2-933/93, issued by Croat Community of Herceg-Bosna, Croat Defence Council, OZ JIH, Defence Sector of Mostar, of 19 August 1993; Report under Number 02-12-13-37/94, made by Military Police Administration, POW shelter, of 31 January 1994, with attached Reports made by Commander of the Military Camp Mario Mihalj, of 30 October 1994; Statement by detainees who returned from the work and stay in the Vojno Camp of 28 January 1994; Report on inspection of prison, containing four statements by detainees as attachments, under Number 663/93, signed by Commander of the SVIZ Stanko Božić, Military Remand Prison Centre, of 10 September 1993; Report for September 1993, sent to chief of Military Police, under Number 735/93, signed by Commander of the SVZ Stanko Božić, Military Remand Prison Centre, of 2 October 1993; Report under Number 685/93, signed by commander of the SVIZ Stanko Božić, Military Remand Prison Centre, of 18 September 1993; Report under Number 698/93, signed by Commander of the SVZ-a Stanko Božić, Military Remand Prison Centre, of 22 September 1993; Report under Number 636/93, signed by Commander of the SVIZ-a Stanko Božić, Military Remand Prison Centre, of 3 September 1993; List of detainees brought in on 21 September 1993, under Number 703 (675 crossed out)/93, made by Military Remand Prison Centre, of 23 September 1993; Report under Number 698/93, signed by Commander of the SVIZ Stanko Božić, Military Remand Prison Centre, of 22 September 1993; List of detainees from Doljani and Sovići who are currently at work or in medical treatment, under Number 586/93, sent to the Office for Exchange of Prisoners, signed by Deputy Warden and SVIZ Commander Josip Praljak, Military Remand Prison Centre, of 25 August 1993; Photo-documentation – Exchange and identification of corpses from the Vojno Camp made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, from 11 April 1994 to 5 July 1994; Official Note on examination and identification of Hamdija Tabaković's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of Mustafa Čilić's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of Rasim Lulić's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of

Džemal Sabitović's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of NN 109's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of Nijaz Nurko's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of NN 112's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 113's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 115's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 116's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 119's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 120's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of Arif Omanović's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 27 April 1994; Official Note on examination and identification of Mesud Dedajić's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 5 July 1994; Black-and-white photograph of NN 120's body; Black-and-white photograph of NN 120's body; Black-and-white photograph of NN 120's body; Black-and-white photograph of NN 108's body; Black-and-white photograph of NN 108's body; List of detainees in the Vojno Detention Centre, under Number 01-306/94, made by the SIS /*Intelligence Security Sector*/, Second Brigade, HVO – Mostar Military District, of 13 January 1994; Request, under Number 02-4/2-2-526/93, signed by Head of SIS Centre Mostar Zoran Lasić, Ministry of Defence, SIS Centre Mostar, of 11 December 1993; List of detainees in Vojno, made on 11 December 1993; Report on situation in the 2nd Brigade, made by Ivica Rotim, of 24 August 1993; List of Muslims present in units of the Second Brigade HVO; Order under Number 02-2/1-01-1264/93 for establishing Bijelo Polje Battalion, issued by HVO Main Staff, of 3 July 1993; Witness Examination Record for Ivica Rotim, made in the Prosecutor's Office of BiH, of 25 October 2006, under Number KT-RZ-95/05, with translation in the English language; Witness Examination Record for Junuz Halilović, made in the Prosecutor's Office of BiH, of 18 May 2006, under Number KT-RZ-95/05, with translation in the English language; Witness Examination Record for Junuz Halilović, made in the court in Zenica, in the office of the Investigating Judge Reuf Zaimović, of 6 September 1996, under Number Ki-6/96; Certificate of

Hamdija Tabaković's death, under Number 18/02-1684/96, issued by Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 27 May 1996; Official Letter sent to the Higher Public Prosecutor's Office Mostar regarding the identification of Hamdija Tabaković, under Number KU 71/95, sent by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 27 May 1996; Death Certificate for a person under the name of Hamdija Tabaković, under Number 04/II-, issued by the Registry Office, Town area of Mostar – Stari Grad; Decision under Number 18/07-202-, approving of the subsequent entry of death into the Registry of Deaths for the person under the name of Hamdija Tabaković, made by the Ministry of the Interior, Security Services Centre Mostar, of 27 May 1996; Official Letter sent to the Prosecutor's Office of BiH, Special Department for War Crimes, under Number 04/II-15-1558/06, sent by the Registry Office, Town area of Mostar – Stari Grad, of 5 April 2006; Death Certificate for the person under the name of Avdo Jelin, under Number 04/II-15-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Certificate for a person under the name of Husnija Čorajević, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Husnija Čorajević, under Number 18/02-29-6/47-95, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 30 January 1995; Death Certificate for the person under the name of Džemal Sabitović, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Džemal Sabitović, under Number 18/02-29-6/85-95, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 11 September 1995; Death Certificate for the person under the name of Aris Začinović, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Aris Začinović, under Number 18/02-29-6/206-96, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 5 July 1996; Death Certificate for the person under the name of Arif Omanović, under Number 04/, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Arif Omanović, under Number 18/02-29-6/103-96, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 5 January 1996; Death Certificate for the person under the name of Asif Čakrama, under Number 04/, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Asif Čakrama, under Number 18/02-29-6/209-96, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 30 July 1996; Death Certificate for the person under the name of Mensud Dedajić, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Certificate for the person under the name of Mensud Dedajić, issued by the War Hospital Mostar, of 7 July 1994; Death Certificate for the person under the name of Željko Čakalović, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Cover Letter sent to the

Prosecutor's Office of BiH by the Registry Office – Service for General Administration, Social Activities, Protection of War Veterans and Invalids and Social Issues of the Jablanica Municipality, under Number 03-I/5-15-3-1081/06, of 25 April 2006; Death Certificate for the person under the name of Mustafa Čilić, under Number 03-I/5-15-3-1079/06, issued by the Registry Office of the Jablanica Municipality, of 25 April 2006; Request for entry into the Registry of Deaths for the person under the name of Mustafa Čilić, under Number 05/513-1-7/94, sent by the Command of the 44th Mountain Brigade Jablanica, Army of BiH, of 3 August 1994; Death Certificate for the person under the name of Rasim Lulić, under Number 03-I/5-15-3-1078/06, issued by the Registry Office of the Jablanica Municipality, of 25 April 2006; Request for entry into the Registry of Deaths for three persons, including the person under the name of Rasim Lulić, under Number 09/513-1-5/94, sent by the Command of the 44th Mountain Brigade Jablanica, Army of BiH, of 26 July 1994; Personal Record Card bearing the name of Marko Radić, under Number 1064190359; Unit Record bearing the name of Marko Radić, under Number 1064190359; Report on handover of duty of Commander of the 2nd Brigade HVO Mostar, under Number 03-1472/93, made by the Second Brigade of the Mostar Military District, of 22 December 1993; Personal Record Card bearing the name of Dragan Šunjić; Membership Application Form of Dragan Šunjić for the Homeland War Volunteers and Veterans Association HR H-B, of 28 May 1996; Military ID Card for Dragan Šunjić, under Number 0026514; Personal Record Card bearing the name of Damir Brekalo, under Number 1064010564; Minutes from the meeting between battalion commanders and Municipal Authorities representatives, of 20 March 1993, under Number 0-0013/93, made on 26 March 1993 by the Tihomir Mišić Battalion, 3rd Brigade HVO; List of soldiers of Convicts Battalion who are to be issued a decision for an apartment, made by HVO – OZ JIH /*Southeast Herzegovina Operations Zone*/, of 2 June 1993; List of members of the Ivan Stanić Čićo Convicts Battalion, signed by Commander of the Convicts Battalion of Marko Radić, of 27 June 1993; Payroll for November 1993, under Number 02-2/2-403-1144/93, made by Convicts Battalion I ATJ, of 2 December 1993; Order issued by the Second Brigade HVO – Mostar Military District, under Number 02-582/94, signed by Commander of the Brigade Marko Radić, of 27 January 1994; Order issued by the Second Brigade HVO – Mostar Military District, under Number 02-1351/94, signed by Commander of the Brigade Marko Radić, of 6 March 1994; Order approving of taking 8 prisoners of the SVIZ Heliodrom Mostar, under Number 02-4/3-01/01-1270/93, issued by the Croat Community of Herceg-Bosna, Croat Defence Council, OZ JIH, Mostar Defence Sector, of 6 September 1993; Order approving of taking 6 prisoners of the SVIZ Heliodrom Mostar, under Number 02-269/93, issued by the Croat Republic of Herceg-Bosna, Croat Defence Council, OZ JIH, Mostar Defence Sector, of 4 October 1993; Report under Number 676/93, made by the Military Remand Prison Centre, of 14 September 1993; List including 58 names of prisoners with personal information,

information about their arrest and stay in the Vojno Camp; List of war and civil prisoners who were killed at work by the MOS, under Number 02-4/3-12-15/94, sent to the Office for exchange by Military Police – POW shelter, of 6 January 1994; Information about situation in the POW shelter Heliodrom, under Number 02-4-1/94-112, Class 804-01/94-01 made by the Security Sector of the Ministry of Defence of the Croat Republic of Herceg-Bosna, of 3 February 1994; Request for the check of claims from the Report on the visit of ICRC to the POW shelter, under Number 02-4-1/94-104, Class 003-01/94-01, sent by the Security Sector of the Ministry of Defence of the Croat Republic of Herceg-Bosna, of 31 January 1994; Information “A“, under Number 02-4/2-2-477/93, in connection with the exchange of civilians which was carried out on 2 December 1993 in Vojno, made by the Ministry of Defence, SIS Centre Mostar, of 3 December 1993; Statement in connection with the Request Reg. No. 05.167/93 of 22 July 1993, made by the First Bijelo Polje Battalion, signed by Commander of the Battalion Marko Radić, of 31 July 1993; Decision, under Number 03-8/1-7-203-111, approving of the change of Emir Brekalo's personal name, issued by the Police Station Mostar, Police Department Mostar, Interior Affairs Unit, of 28 September 1993, with cover letter of the Service for administration and support of the MoI of the Hercegovina-Neretva Canton, under Number 02-03/1-5-09-2-1009/06, sent to the Prosecutor's Office of BiH, of 14 June 2006; Verdict by the Cantonal Court in Mostar, finding Dragan Šunjić guilty of the criminal offence of attempted murder, under Number K-2/05, of 22 March 2005; Verdict by the Supreme Court of the Federation of BiH whereby the Verdict by the Cantonal Court in Mostar Number K-2/05 of 22 March 2005 is revised in the decision on the punishment, of 7 July 2005, under Number Kž-258/05, with the cover letter of the Supreme Court of the Federation of BiH forwarded to the Prosecutor's Office of BiH, under Number 070-0-Su-00 1251, of 26 June 2006; Decision of the Commission for parole of the Government of the Federation of BiH by which Dragan Šunjić is released on parole, under Number 05-12-366/06, of 12 April 2006; Verdict by the Higher Court in Mostar confirming the Verdict by the Basic Court in Mostar, Number K.1/96 of 24 July 1996, under Number Kž. 14/96, of 22 April 1997; Verdict by the Municipal Court I Mostar, finding Damir Brekalo guilty of criminal offence of Seriously endangering the general safety of people and property, under Number K.30/98, of 26 November 2001; Verdict by the Cantonal Court in Mostar confirming the Verdict of the Municipal Court I Mostar, Number K.30/98 of 26 November 2001, under Number Kž 23/02, of 6 February 2002; Photo-documentation based on the search of the apartment and other premises owned by Marko Radić, conducted in Mostar on 2 June 2006, under Number 17-14/1-7-21/06, made on 26 July 2006, with cover letter of the State Investigation and Protection Agency sent to the Court of BiH, under Number 17-04/2-04-2-310-28/06, of 31 July 2006; Record of the Prosecutor's Office of BiH, Number Kt-RZ-95/05 of 19 July 2006 on the opening and inspection of the temporarily seized objects and documentation; Cover Letter by SIPA no. 17/04/2-04-2-310-20/06

of 6 July 2006 with Photo-documentation of SIPA no. 17-02/8-04-1-08/06 of 2 June 2006; Search of Dragan Šunjić's house; Official Letter by the Prosecutor's Office of BiH Number KT-RZ-95/05 of 7 June 2006 sent to the Court of BiH, containing the official report by the SIPA on the search of the premises and temporary seizure of objects; Cover Letter by SIPA no. 17-04/2-04-2-310-12/06 of 5 June 2006 with Official Report by SIPA no. 17-04/2-04-2-310-11/06 of 5 June 2006 on acting under the Order of the Court of BiH Number X-KRN-05/139 of 2 June 2006; Records by SIPA on the search of Marko Radić's apartment, other premises and movable property no. 17-04/2-04-2-7/06, no. 17-04/2-04-2-7-1/06 and no. 17-04/2-04-2-7-2/06- all of 2 June 2006; Receipts by SIPA of temporary seizure of objects no. 17-04/2-04-2-24/06, no. 17-04/2-04-2-27-1/06 and no. 17-04/2-04-2-24-2/06- all of 2 June 2006; Search Warrant by the Court of BiH no. X-KRN-05/139 of 2 June 2006; Record by SIPA on the search of Damir Brekalo's apartment, other premises and movable property no. 17-04/2-04-2-10/06 of 2 June 2006; Receipts by SIPA of temporary seizure of objects no. 17-04/2-04-2-25/06 of 2 June 2006; Record by SIPA on the search of Dragan Šunjić's apartment, other premises and movable property no. 17-04/2-04-2-8/06 of 2 June 2006; Receipt by SIPA of temporary seizure of objects no. 17-04/2-04-2-26/06 of 2 June 2006; Order by the Court of BiH no. X-KRN-05/139 of 2 June 2006; Record by SIPA on the search of Franjo Radić's apartment, other premises and movable property no. 17-04/2-04-2-9/06 of 2 June 2006; Receipt by SIPA of temporary seizure of objects no. 17-04/2-04-2-28/06 of 2 June 2006; Order by the Court of BiH no. X-KRN-05/139 of 2 June 2006 (2 copies of the Order); Cover Letter made by SIPA no. 17-04/2-04-2-310-30/06-BK of 6 September 2006 with On-site Investigation Report by SIPA no. 17-04/2-04-2-310-30/06 of 18 July 2006; Warrant for the search of premises issued by the Court of BiH under Number X-KRN-05/139 of 2 June 2006; Cover Letter made by SIPA officers under no. 17-02/8-04-1-921/06 of 25 August 2006 with photo-documentation of facilities in the town of Vojno no. 17-02/8-04-16/06 of 17 July 2006; Sketch of the site with drawing of the facility no.1 (house) in the town of Vojno made by SIPA officers no. 17-02/8-04-16.2/06 of 17 July 2006; Sketch of the site with drawing of the facility no. 2 (house) in the town of Vojno made by SIPA officers no. 17-02/8-04-16.1/06 of 17 July 2006; Sketch of the site with drawing of the facility no. 3 (garage) in the town of Vojno made by SIPA officers no. 17-02/8-04-16/06 of 17 July 2006; Record of examination of Mario Mihalj made by Military Police Administration, Crime Prevention Department of the Mostar Section no. 02-4/3-03-S1651/93 of 8 July 1993; Discharge Card bearing the name of the Witness under the pseudonym X, under Number 259/0, made by Regional War Hospital HVO Mostar with medical documentation bearing the name of the Witness X; Finding and Opinion by the team of doctors - expert witnesses in psychiatry of the KCU /*Clinical Centre of the University*/ Sarajevo in connection with psychical state of the Witness under the pseudonym AG, with the Order for psychical and psychiatric expert evaluation of the Prosecutor's Office of BiH, under Number KT-

RZ-95/05 of 14 February 2008, with attachments, and with cover letter of the Prosecutor's Office of BiH, under Number KT-RZ-95/05 of 22 February 2008; Certificate of resolving the housing issue of soldiers of the First Battalion Bijelo Polje of 24 May 1993, signed by Marko Radić; Statement given by Ivica Kolobara to Military Police Administration, Crime prevention department of Mostar Section on 8 July 1993 under Number 02-4/3-03-81657/93; Request for giving consent for relocation of soldiers from the First Battalion of 7 December 1993, Number 04-127/93 signed by B. Božić for Marko Radić as Commander of the First Battalion; Certified copy of one page from military records of conscripts which lists the name of Rudo Ravlić under Number 2080; Official Note made by SIS officer Ivica Leko on 23 November 1993 under Number 01-2424/93; Original cover letter Number 17-04/2-04-2-1155 of 25 January 2007 with Photo-documentation made by SIPA officers, referring to the search of Mirko Vračević's house; Original Military ID Number 0026494 of 4 November 1995, issued to the name of Mirko Vračević; Excerpt from the military records for Mirko Vračević of 1 February 2008, Number 07-03-88-2/07, issued by the Federation Ministry for War Veterans and Disabled Veterans of the Homeland War; Certified copy of one page from military records of conscripts which lists the name of Mirko Vračević under Number 1750; Official Letter of 8 February 2008, issued by MoI of HNK */translator's note: Herzegovina-Neretva Canton/* under Number 02-02/3-1-04-96-15/08 IZ, referring to Death Report for Mustafa Jelovac; Death Report for Mustafa Jelovac made in MoI Mostar on 8 November 1994 under Number 187/02-29-6/36-94; Official Letter of 21 January 2008, Number 04/5-13-274/08 made by Service for administration and social activity, referring to Death Report for Salim Halilović; Death Certificate for Salim Halilović, Number 04/6-13-2-587/08 of 21 January 2008, issued by Registry Office in Zavidovići; Decision on the proof of Salim Halilović's death, Number 31/96 of 28 April 1997 issued by Municipal Court in Zavidovići; Official Letter by Missing Persons Institute of BiH, Number 01-40-125/2008 of 28 January 2008, referring to the following persons: Ibrahim Hodžić, Mustafa Jelovac, Humija Omanović, Enes Nurko, Mensud Salman, Enver Kajtazi, Mustafa Kahrić and Salih Halilović; Official Letter made in Registry Office Mostar on 30 January 2008 under Number 04/1-II-15-184/08, referring to Enes Nurko, Mustafa Kahvić, Ibrahim Hodžić who are listed in the Register of Deaths, and confirmed record of entry in Register of Deaths for Mensud Salman and Mustafa Jelovac; Death Certificate for Mensud Salman, Number 04/1-II-15-3-192/2008 of 30 January 2008 issued by Registry Office in Mostar; Death Report for Mensud Salman made in MoI Mostar on 14 March 1996, under Number 187/02-29-6/116-96; Death Certificate for Mustafa Jelovac, Number 04/1-II-15-3-193/2008 of 30 January 2008, issued by Registry Office in Mostar; Certified copy of Personal Record Card on military records for Branko (Ivan) Božić of 11 March 1975, with the change of data of 2 November 1992, 1 January 1994 and 19 April 1994; Certified copy of Personal Record Card on military records for Nedžad Tinjak; Certified copy of Personal

Record Card on military records for Dario Sušac; Certified copy of Personal Record Card on military records for Amel Hadžiosmanović; Certified copy of Personal Record Card on military records for Nedžad Ćorić; Certified copy of one page from military records of conscripts which lists the name of Ivica (Stojan) Kolobara under Number 824; Certified copy of Personal Record Card on military records for Dragan Škrobić; Official Letter of 15 June 2006, Number 17-13/3-1-918, made by State Investigation and Protection Agency, referring to the excerpt from criminal and operative records for Dragan Šunjić, Marko Radić and Damir Brekalo; Record on Examination of Witness under the pseudonym of AG, made in Higher Court in Mostar, in the office of Investigating Judge Reuf Zaimović, of 12 April 1996, under Number Ki 4/96, with translation in the English language; Statement by Witness AG, given to ICTY investigators, of 28 June 2002; Record on Examination of Witness under the pseudonym AM, made in Prosecutor's Office of BiH, of 7 December 2006, under Number KT-RZ-200/06, with translation in the English language; Record on Examination of Witness under the pseudonym of AB, made in the Prosecutor's Office of BiH, of 10 August 2006, under Number KT-RZ-95/05, with translation in the English language; Record on Examination of Witness AB, made in Higher Court in Mostar, in the office of Investigating Judge Halil Maksumić, of 14 November 1996, under Number Ki 4/96, with translation in the English language; Witness Examination Record for Žarko Leko, made by SIPA officers, under Number 17-04/2-04-2-368/06 of 20 June 2006; Witness Examination Record for Žarko Leko, Number KT-RZ-95/05 of 25 September 2006, made in the Prosecutor's Office of BiH, with the sketch made by the Witness during the examination in the Prosecutor's Office including specific locations of lines of defence, command, a house in which there were women, a garage, a kitchen and Zadro's house; Witness Examination Record for Rude Ravlić, made by SIPA members on 26 June 2006, under Number 17-04/02-04-2-369/96; Witness Examination Record for Rudo Ravlić, made in the Prosecutor's Office of BiH on 26 September 2006, under Number KT-RZ-95/05; Report made by Command of the II Company of the V Battalion, Number 02-4/3-06/2-846/93 (handwriting added), for the date of 2 July 1993, with Tihomir Kožul's signature; Report made by Command of the II Company of the V Battalion, Number 02-4/3-06/2-871/93 (handwriting added), period from 8 July to 15 July 1993; Witness Examination Record for Niko Marušić, made in Prosecutor's Office of BiH, under Number KT-RZ-95/05, on 5 September 2008, with attachment including the names of the Fifth Battalion of Military Police HVO, as well as handwritten Report from a check-point in Salakovac made by Commander of the check-point Niko Marušić; Official Note including the List of names of witnesses of Prosecutor's Office who are to be called, and who are presented to Witness Šahorić; Personal Data Card for Officer Anđelko Zlatić, with Number 2388/60; Death Record for Mesud Dedajić, made and signed by Dragan Šunjić as Prison Deputy Commander, and signed by Mario Mihalj as Prison Commander, on 29 August 1993.

i. New Prosecution evidence

38. In the course of the trial before the Appellate Panel, witnesses AM and AB were examined as protected Prosecution witnesses, whose statements given during the investigation were read out under the first instance proceedings in accordance with Article 273(2) of the CPC of BiH. The Appellate Panel was not satisfied that the requirements to allow the application of this Article had been met, as noted in the decision to revoke the Trial Verdict. The Appellate Panel directly examined these witnesses and gave the opportunity to the Defence to cross examine them and in that manner rectified an essential violation properly raised in the Appeals with regard to the statements of these witnesses given during the investigation and their use in the proceedings.

2. Defence evidence

39. During the appellate proceedings, the Panel accepted as evidence the testimony of defence witnesses for all of the Accused that had been heard in the first instance, documentary evidence that they had tendered, as well as new evidence presented during the appellate proceedings upon their proposal: Testimony of witnesses Žarko Leko, Željko Zovko, Rudo Ravlić and Ivan Pole, heard during the first instance proceedings at a joint proposal of the Defence teams.

(a) Evidence of the Defence for the First Accused

40. Witnesses who testified for the Defence for the first accused: Karlo Marić, Vinko Jurišić, Nikola Mihalj, Štefica Zovko, Dr. Vajdana Tomić, Dr. Zoran Trninić, Vitomir Zlatić, Ivan Glemac, Dr. Ranko Gačić, Dr. Teo Tomić, Mirko Kožul, Goran Zovko, Marko Leko, Ilko Kožul, Niko Marušić, Slavko Kožul, Zdenko Sesar, Marijan Šunjić, Dražen Lovrić, Ivica Rotim, witness under the pseudonym 003, witness under the pseudonym AH who previously testified for the Prosecution, witness under the pseudonym 001 and witness Slavko Puljić.

41. The Court accepted and admitted in the case file the following documents as documentary evidence: Witness Examination Record for Saja Ćorić No. Ki 4/96 of 30 March 1996, made before Higher Court in Mostar, with translation in the English language; Record on Examination of Witness under the pseudonym of E, No. Ki 4/96 of 12 April 1996, made before Higher Court in Mostar, with translation in the English language; Statement by Witness E, given to ICTY investigators, of 24 June 2002, in the English language and translation in BHS languages; Record on Examination of Witness E, No. KT-RZ-95/05 of 24 May 2006, made in Prosecutor's Office of BiH, with translation in the English language; Record on Examination of Witness under the pseudonym of D, No. Ki 4/96 of 29 March 1996, made by Higher Court in Mostar, with translation in the English language; Statement by Witness D, given to ICTY investigators, of 2 April 2001; Statement by Witness D, given to ICTY investigators, of 2 April 2001, English version, Record on Examination of Witness under the pseudonym of R, No. KT-RZ-95/05 of 25 July 2006, made in Prosecutor's Office of BiH, with translation in the English language; Record on Examination of Witness under the pseudonym of K, No. KT-RZ-95/05 of 30 June 2006, made in Prosecutor's Office of BiH, with translation in the English language; Record on Examination of Witness under the pseudonym of K, of 3 February 1997, made by Higher Court in Mostar, with translation in the English language; Statement by Witness K, given to ICTY investigators, of 2 May 1997, English version, with translation in BHS languages; Record on Examination of Witness B, of 28 March 1996, made before Higher Court in Mostar, with translation in the English language, Record on Examination of Witness B, No. KT-RZ-95/05 of 22 May 2006, made in Prosecutor's Office of BiH, with translation in the English language; Record on Examination of Witness L, of 25 March 1996, made before Higher Court in Mostar, with translation in the English language; Record on Examination of Witness L, No. KT-RZ-95/05, of 27 June 2006, made in Prosecutor's Office of BiH, with translation in the English language; Record on Examination of Witness X, made before Higher Court in Mostar under Number Ki-5/96, on 25 March 1996, with translation in the English language; Statement by Witness X, given to ICTY investigators, of 31 January and 1 February 2001, in the English language and with translation in BHS languages; Record on Examination of Witness X, No. KT-RZ-95/05 of 27 June 2006, made before Prosecutor's Office of BiH, with translation in the English language; List of persons captured in Bijelo Polje area, of 30 June 1993 (original in handwriting made by witness Željka Zovko) and printed version with a stamp of Croat Association of Camp Detainees, filed on 10 April 2008; Report by Command of the II Company, V Battalion of Military Police, Number 02-4/3-06/2-855/93, for the period from 30 June to 5 July, signed by Commander of the II Company of VP /*translator's note: Military Police*/ Tihomir Kožul; Daily Report for 8 July 1993, Number 02-4/3-06/2-865/93, made by Command of the II Company of V Battalion of VP Mostar, and signed by Commander of the II Company of VP Tihomir Kožul;

List of soldiers of VP, made on 11 August 1993 by Command of the V Battalion of Military Police Mostar; emblem of Anti-sabotage Platoon Ivan Stanić Čičo, I Battalion Bijelo Polje; Order Number 02-441-/93 of 24 August 1993, issued by Commander of the North Sector Colonel Miro Andrić; Request Number 04-440/93 of 24 August 1993, submitted to Operations Zone of Southeast Herzegovina, by Commander of North Sector Colonel Miro Andrić; Proposal by Operations Zone of Southeast Herzegovina, Number 03-0575-2/93 of 23 August 1993, signed by Brigadier Ivan Nugulov and Major Nikica Burić; Order Number 03-0597-1 of 3 September 1993, issued by Operations Zone of Southeast Herzegovina, signed by Brigadier Miljenko Lasić; Order Number 01-5073/93 of 7 September 1993, issued by Operations Zone of Southeast Herzegovina, signed by Brigadier Miljenko Lasić and Assistant to Logistics Commander Ljubomir Čuljak; Schematic presentation of logistics support for units in OZ H-B; Order Number 02-814/93 of 18 November 1993, issued by Defence of Mostar Sector, signed by Commander Zlatan Mijo Jelić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to injuries of detainee Ismet Kero; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to infliction of injuries on Elvir Isić and injury of Mujo Lulić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the escape of two prisoners; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Džemal Sabitović and injury of Safet Puljić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Hamdija Tabaković; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Menso Salman; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Mustafa Kahvić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Suad Osmić; Record of 4 August 1993, made in Bijelo Polje Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Avdo Jelin; Record of 8 September 1993, made in Bijelo Polje Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of five prisoners; Record of 9 September 1993, on the release of two prisoners, made and signed by Prison Commander Mario Mihalj and Deputy Prison Commander Dragan Šunjić; Daily Report Number 02-4/3-06/I-2607/93 from 31 July to 4 August 1993, made by Command of the I Company of V Battalion of VP Mostar, and signed by Miroslav Šunjić, Platoon Commander; Summary Report Number 02-4/3-06/I-2607/93 from 31 July to 4 August 1993, made by Command of the I Company of V Battalion of VP Mostar; Report of 1 October 1993, Number 731/93, made by Warden of Military Remand Prison Centre Stanko Božić;

Monthly Report for September 1993, Number 02-4/3-13/2-111/93 of 30 September, made by Command of the II Company of V Battalion of VP Bijelo Polje; Daily Report for 10 September 1993, Number 02-4/3/2-1010/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Daily Report for 11 and 12 September 1993, Number 02-473-13/2-1018/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Report August 1993, Number 02-4/3-1372-952/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Report for 30 and 31 August 1993, Number 02-4/3-13/2-947/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Supplement to Report on Brigade Activities of 5 November 1993, made by Mostar Military District, Second Brigade, Brigade VP; Interim Report of 12 April 1993, Number 02-4/3 06/1-190 V/93, made by the I Company Tihomir Mišić, Mostar; Daily Report for 28 June 1993, Number 01-55/93, made by Brigade Military Police of the Second Brigade of Operations Zone of Southeast Herzegovina; Report on problems in carrying out combat operations and duties of a unit of the V Battalion, Number 02-1410/93 of 27 July 1993, made by Command of the V Battalion of Second Brigade of Operations Zone of Southeast Herzegovina; Report of 10 October 1993, made by Command of Defence of Mostar Sector; Topographic Map with marked responsibilities of the I, II, III and V Battalions which are parts of Mario Hrkač - Čikota Brigade, assigned in the locality of Bijelo Polje; Topographic Map with marked zones of responsibility of units which are parts of the II Brigade HVO; Interim Report of 19 August 1993, Number 01-691/93, made by the Second Brigade of Operations Zone of Southeast Herzegovina HVO; Statement of Reasons of 4 July 1993, made by Brigade Military Police; Daily Report for 8 July 1993, Number 02-413-06-1825/93, made by Command of the II Company of V Battalion of VP Mostar; Scheme of command of the II Company of V Battalion of VP, as well as entire duty service of the I Platoon of General VP, Daily Report for 25, 26 and 27 August 1993, Number 02-4/3-06/2-925/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Daily Report for 5 September 1993, Number 02-4/3-13/2-979/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Interim Report for 4 October 1993, Number 01-281/93, made by Defence of Mostar Sector.”

i. New evidence of the Defence for the First Accused

42. Testimony of witness Slavko Puljić of 9 February 2011 heard during the appellate proceedings before the Appellate Panel.

Documentary evidence: Topographic map 1:50 000 - Mostar 2.

(b) Evidence of the Defence for the Second Accused

43. The testimony of witnesses heard before the Trial Panel: Zdravko Šunjić, Jozo Prga, Ljubo Vukoja, Ljubo Škobić, Branimir Vidović, Veselko Pandža, Mladenko Šarić, Milan Sesar, Vlado Ramljak, Vladimir Zadro, Božidar Novak, Miroslav Šunjić, Tomislav Aničić, Mate Aničić, Valter Aničić, Mladen Mandić, Ilija Vrljić, Nikica Zovko and Zoran Lasić.

44. The Appellate Panel accepted and admitted in the case file the following documentary evidence presented in the first instance proceedings: Witness Examination Record for B, No. Ki 4/96 of 28 March 1996, made before Higher Court in Mostar, with translation in the English language; Witness Examination Record for B, No. KT-RZ-95/05 of 22 May 2006, made in the Prosecutor's Office of BiH, with translation in the English language; Medical documentation bearing the name of Marinko Šunjić (Discharge Card and Conclusion), issued by Regional War Hospital HVO Mostar; Report Number 496/93 of 21 July 1993, made by Military Remand Prison Centre Mostar, signed by Warden Stanko Božić; Report for 30 and 31 August 1993, under Number 02-4/3-13/2-947/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Monthly Report on activities of VP of the V Battalion for August 1993, made by Commander Ivan Aničić; Daily Report of Command of the II Company of V Battalion of VP Bijelo Polje, for 10 September 1993, under Number 02-4/3-13/2-1010/93, signed by Mate Aničić; Request for status termination in a unit of the First Battalion for soldier Dragan Šunjić, made by the II Brigade of HVO Mostar of 16 September 1992, under Number 04 /sic/, signed by Pero Jurica; Order Number 02-4/43-04/2-939/93, of 19 August 1993, issued by Military Police Administration Mostar, signed by Commander of Light Assault Battalion of VP Vladimir Primorac; Questionnaire on candidate Mario Mihalj, Number 02-13-04-95-02 of 17 June 1994 as well as Proposal for assignment by Military Post of 1 September 1994 to the name of Mario Mihalj and cover letter by Ministry of Defence of HR HB; Information with marking A, made by SIS /Security and Information Service/ Centre Mostar on 26 November 1993, under Number 02-4/2-2-434/93, signed by Head of the Centre Zoran Lasić; Daily Report Number 01-53/93 from 26 to 27 June 1993, made by Brigade Military Police of the II Brigade HVO, signed by Miroslav Šunjić; Official Gazette, official newspaper of Čapljina Municipality, Number 4, of 8 July 1993; Report by Military Remand Prison Centre Mostar, Number 731/93 of 1 October 1993, with signature of Stanko Božić; Military Record

with the name of Dragan Šunjić entered under number 6, including general particulars; Military Unit File bearing the name of Dragan Šunjić; Monthly Report for September 1993, made by Command of the II Company of V Battalion of VP Bijelo Polje under Number 02-4/3-13/2-1111/93 of 30 September 1993; Daily Report for 14 September 1993, made by Command of the II Company of V Battalion of VP Bijelo Polje, under Number 02-4/3-13/2- 793; Page number 225 of Escort Sheet of Military Police, Military Post 1711, where the name of Mario Mihalj was entered under Number 1733; Report for period from 29 August to 5 September 1993, made by Commander of Platoon of VP Valter Aničić; List of Platoon of General Military Police (I, II, III Platoons), with the name of Dragan Šunjić entered under Number 17; Report Number 698/93 of 22 September 1993, made by Military Remand Prison Centre, signed by Commander Stanko Božić, referring to taking over of 70 prisoners by Dragan Šunjić; Order by Military Police Administration, Military Post 1711, for release for work; List of prisoners Number 703/93, made by Military Remand Prison Centre, referring to prisoners brought on 21 September 1993 in Đubrani; Record of 15 September 1993, made by Prison Commander Dragan Šunjić and Deputy Commander Zdravko Šunjić, referring to murder of Salim Alilović; Report on ICRC visit to prisoners of war, made by Service for Exchange of Prisoners, Number 01-IP-64/94 of 29 January 1994; Request for giving consent for relocation of soldiers of the First Battalion, made by the Second Brigade – First Battalion under Number 04-127/93 of 7 December 1993, signed by Marko Radić; Interim Report Number 01-1338/93 of 15 December 1993 on disbandment of Brigade of VP; Report Number 02-4/3-06/2-883/93 of 19 July 1993, made by Command of the II Company of VP Mostar; Report made in handwriting by VP of the II Company of V Battalion HVO; Report of 7 July 1993, made by OZ JIH, referring to capturing the Elevation 224; Report Number 02-4/3-06/2-855/93 for period from 30 June to 5 July 1993, made by Command of the II Company of V Battalion of VP in Tihomir Mišić Barracks; List by Command of the II Brigade of I Battalion HVO, Number 01-021/92 of 1 December 1992; Witness Examination Record for Mehmed Obradović, Number 195/93 of 27 September 1993, made by MoI, Security Services Centre, Police Station in Blagaj; Order Number 02-2/1-01-2151/93 of 25 August 1993, issued by HVO Main Staff; Request Number 04-086/94 of 15 January 1994, sent by Command of the II Brigade, referring to making available of 30 prisoners from Heliodrom; Report Number 658/93 of 19 September 1993, made by Warden of Military Remand Prison Centre, referring to condition of prisoners who go from Heliodrom to Bijelo Polje to work; Certificate Number 02-4/3-13/1-026/93 of 31 August 1993, issued to the name of Zoran Čuljak, as member of the I Company of V Battalion of VP HVO Mostar; Consent Number 0058/93 of 19 September 1993, allowing the transfer of Zoran Čuljak from one to the other Company; Order Number 02-2627/93 of 22 September 1993, ordering the transfer of Zoran Čuljak to the V Battalion of VP HVO Mostar; Consent Number 06-1262 of 19 September 1993, based on which soldier

Zoran Čuljak is transferred from Unit of the I Battalion HVO to Unit of the I Company of V Battalion HVO; Report Number 02-12-13-37/94 of 31 January 1994, made by Military Police Administration, referring to ill-treatment and abuse of a group of prisoners by Mario Mihalj and Dragan Šunjić; Report on ICRC visit, Number 02-4-1/94-104 of 31 January 1994, made after the visit of POW shelter; Order Number 02-582794 of 27 January 1994, issued by Commander of the Second Brigade HVO Marko Radić; Official Note Number 12-139 of 13 December 1993, made by Security Services Centre Mostar, referring to exchange of 57 Muslim civilians from Vojno Camp; Certificate Number 02-03/1-5-9-1-550/07 of 24 May 2007 referring to registration of permanent residence of Dragan Šunjić; Agreement on accommodation and food for student Dragan Šunjić in Students' Centre Sarajevo, of 6 September 1988 */sic/*; Report Number 07-0497/93 of 20 October 1993, made by SED */translator's note: Electronic Operations Centre/* OZ JIH, signed by Edvard Babić; Request Number 02-4/2-2-526/93 of 11 December 1993, issued by Ministry of Defence, SIS Centre Mostar; Official Note Number 01-2424/93 of (illegible date), made by VP, referring to developments on the front line in Bijelo Polje; Information with marking A, Number 02-4/2-2-434/93 of 26 November 1993, made by Ministry of Defence, SIS Centre Mostar, referring to developments on the front line in Vojno; Interim Report Number 02-1789/93 of 30 June 1993, made by Operations Zone of JIH, the Second Brigade, referring to the incident in the zone of responsibility of the Second Brigade HVO; Report for 29 June 1993, made by the Second Brigade HVO; Information of 6 September 1993, Number 1-4-210/93, made by SIS Centre, referring to problems about manning the front line in the zone of responsibility of the Second Brigade; Information under marking A, Number 02-4/2-2-030/93 of 1 October 1993, referring to taking of Muslim persons from the settlement Centar II; Report Number 01-1073/93 of 10 September 1993, made by the Second Brigade of IZM Domazeti, signed by Commander of the Second Brigade Ilija Vrljić; Report Number 02-4/3-06/2-855/93 of 5 July 1993, made by Command of the II Company of V Battalion of VP, referring to situation of VP on terrain; Report made in handwriting by the II Company of V Battalion of Military Police, referring to attack by ABIH on the left bank of the Neretva; Handwritten text of 20 August 1993, referring to Zones of responsibility of the I, II, III and V Battalion of II Brigade HVO; Order Number 02-487/93 of 6 August 1993, issued by the Second Brigade of IZM Domazeti, signed by Commander Ilija Vrljić; Report on ICRC visit, Number 02-4-1/94 of 31 January 1994, made by Ministry of Defence of HR H-B, Security Sector; List of detainees in Vojno Centre, Number 01-306/94 of 13 January 1994, made by the Second Brigade, SIS Centre; Report by Commission for disbanding of collection centre Heliodrom Mostar, Number 02-4/2-2-538/93 of 13 December 1993, made by Ministry of Defence, SIS Centre Mostar; Interim Report Number 01-691/93 of 19 August 1993, made by the Second Brigade of IZM

Domazeti, referring to zone of responsibility of the Second Brigade HVO; Excerpts of a book by the author Ajša Zahirović.

i. New evidence of the Defence for the Second Accused

45. The testimony given by the Accused Dragan Šunjić at the hearing before the Appellate Panel on 10 February 2011.

46. The following new documentary evidence was presented before the Appellate Panel: List of members of the *Ivan Stanić Čičo* Sabotage Unit, Request by the HVO Main Staff Sector North No: 04-387/93 of 18.08.1993, Statement of witness 151 given at the ICTY on 1 October 1998, DVD footage of the exchange dated 2 December 1993 (4 minutes footage) and 8 photographs of Dragan Šunjić.

47. Expert evaluation report of 8 February 2011 by Prof. Esad Bilić, handwriting examiner: Record of 29 August 1993 and Record of 19 September 1993, testimony of expert witness Prof. Esad Bilić of 9 February 2011.

(c) Evidence of the Defence for the Third Accused

48. Testimony of witnesses heard before the Trial Panel: Goran Zovko, Zdenko Sesar, Božo Perić and Zlatko Perić.

49. Documentary evidence: Witness Examination Record for AD, No. KT-RZ-95/05 of 29 June 2006, made in the Prosecutor's Office of BiH, with a translation into the English language and with three Annexes on which there is a sketch drawn by hand, showing locations of the house, garage, Command and threshing floor in the place of Vojno; Sketch of important facilities in the Vojno Camp, and List of 19 names including Protected Witness AD; Witness Examination Record for AD of 17 July 1996, made before the Higher Court in Mostar, with a translation into English.

(d) Evidence of the Defence for the Fourth Accused

50. The testimony of witnesses: Marica Perić, expert witness Alma Bravo Mehmedbašić, expert witness Vesna Lozo and expert witness Žarko Savić.

51. Documentary evidence: Expert evaluation report by expert witness Prim. Dr. Žarko Savić, No. 55/08 of 5 January 2009, referring to the medical expert evaluation of the Accused Mirko Vračević.

i. New evidence of the Defence for the Fourth Accused

52. Expert evaluation reports by Doc. Dr. Alma Bravo Mehmedbašić, Doc. Dr. Vesna Lozo and Mr. Sci. Elvedina Dervović.

Testimony of expert witness Doc. Dr. Alma Bravo Mehmedbašić of 7 February 2011.

(e) Evidence of the Court

53. The Appellate Panel accepted the following evidence presented during the first instance proceedings on the order of the Court: Expert evaluation reports by expert witnesses Dr. Marija Kaučić Komšić, neuropsychiatrist and forensic psychiatrist, Dr. Radojka Golijan, specialist in internal medicine and Dr. Senad Pešto; expert evaluation reports by expert witnesses Dr. Alma Bravo-Mehmedbašić, neuropsychiatrist, Dr. Vesna Lozo, specialist in internal medicine, and Elvedina Dervović MSc., clinical psychologist, Dr. Haso Sejfo, neurosurgeon (the subject of the expert evaluation was Damir Brekalo and his fitness to stand trial and participate therein); a DVD footage and photo documentation No. 17-13/-7-04-1-11/08 of 23 November 2008 made by SIA during the visit of the Trial Panel to the crime scene in the area of the Mostar Municipality.

i. New evidence of the Court

54. Joint expert evaluation report of 29 July 2010 by expert witnesses Prim. Dr. Marija Kaučić Komšić, Dr. Đelil Korkut specialist in neurosurgery and Dr. Mirjana Musić specialist in medical psychology, relevant to the health condition of the Accused Damir Brekalo; Expert evaluation report by Doc. Dr. Alma Bravo Mehmedbašić of 14 February 2011 relevant to the forensic psychiatry expert evaluation of witness AG;

Testimony of Doc. Dr. Alma Bravo Mehmedbašić of 14 February 2011.

II. PROCEDURAL DECISIONS

A. WITNESS PROTECTION MEASURES AND EXCLUSION OF THE PUBLIC

55. The Appellate Panel accepted all protective measures granted to the witnesses in the first instance proceedings and maintained that they were necessary and justified for the reasons already presented in the Decisions under which they were ordered. The Appellate Panel upholds the referenced measures in their entirety, primarily bearing in mind the protection of the witnesses' identity, in particular the Prosecution witnesses who were granted the protective measures. Those witnesses are: AI, 152, A2, J, C, F, E, D, R, AD, AK, AA, AL, 151, K, AF, AJ, 153, AH, AE, B, L, X and 154, AM, AB, the Prosecution witness AG, whose testimony was read out and the Defence witnesses who were granted protective measures, namely the witnesses for the First-accused, 001 and 003. During the main trial and in the Verdict, the full names of these witnesses were not mentioned, but only the pseudonyms, while their full personal details are kept in the case records under special protection.

56. The Appellate Panel concludes that pursuant to Articles 12 and 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, the witnesses in this specific case are witnesses under threat and vulnerable witnesses. Given their status and the subject of testimony, justified reasons exist to keep in force the protective measures ordered in the first instance

proceedings, primarily with a view to protecting the personal safety of both the witnesses who were granted protective measures and their families.

57. During the main trial before the Panel of the Appellate Division the public was excluded from the hearings that were held on the following dates: 6 September 2010 when the protected witness AM was examined; 22 October 2010 while the testimony of the protected witness 152 was reproduced; 3 and 4 November 2010 when the testimony of the protected witness A was reproduced; 4, 8, and 9 November 2010 when the testimony of the protected witness J was reproduced, 10 and 11 November 2010 when the testimony of the protected witness C was reproduced, 11 and 18 November 2010 when the testimony of the protected witness F was reproduced, 24 and 30 November 2010 when the testimony of the protected witness E was reproduced, 7 and 8 December 2010, when the testimony of the protected witness D was reproduced, 9 December 2010 when the testimony of the protected witness R was reproduced, 14 December 2010 when the testimony of the protected witnesses AD and AK was reproduced; 14 December 2010 and 11 January 2011 when the testimony of the protected witnesses AK and AA was reproduced; 19, 20, 25 January 2011 when the testimony of the protected witness L, X and 154 was reproduced; 26 and 27 January 2011 when the testimony of the protected witness AH was reproduced.

58. During the examination of the protected witness AM, and the reproduction of the testimony of the foregoing witnesses pursuant to Article 235 of the CPC of BiH, the Appellate Panel decided to exclude the public from the main trial. While reproducing the testimony of each protected witness individually, the Appellate Panel concluded it was necessary and justified to exclude the public. In this respect, it should be noted that in deciding to exclude the public, the Panel primarily had in mind that in addition to the already granted protective measures, the interests of the witnesses, most of them being themselves victims of the critical incidents, should be additionally ensured and protected.

59. Finally, the Panel concludes that the rights of the Defence teams to a defence of the Accused were in no way deprived or violated by granting the protective measures and excluding the public from the main trial. This is so because the Defence Counsels and the Accused were given possibilities to cross-examine these witnesses during the first instance proceedings. Also, sufficient information was disclosed to the Defence teams prior to the examination to prepare themselves for cross-examination.

B. ADMITTING THE EVIDENCE ADDUCED DURING THE FIRST INSTANCE PROCEEDINGS

60. All the evidence adduced in the first instance proceedings, both the Prosecution and the Defence evidence, was accepted in the second instance proceedings. New evidence was also adduced, including direct hearing of the protected witnesses AM and AB. In this manner, the essential violations under Article 297(2) of the CPC of BiH, which were identified within the application of Article 273(3) of the CPC of BiH, were also remedied. These violations were one of the reasons to revoke the First Instance Verdict and schedule a main trial before the Panel of the Appellate Division.

61. After considering all evidentiary proposals of the Defence to reproduce the testimony of the witnesses, or hear directly the witnesses who had testified in the first instance proceedings, and being led by Article 317(2) of the CPC of BiH, its contents and goals, and the reasons to revoke the First Instance Verdict (for essential violations of the procedure concerning certain contradictions and the use of the testimony of several witnesses from the earlier stage of the proceedings), the Appellate Panel concluded that it was not necessary to present again the evidence already adduced in the first instance proceedings, to hear directly the witnesses already heard, or to reproduce the testimony of all the witnesses heard in the first instance proceedings.

62. After a detailed analysis of all pieces of the evidence adduced, both in isolation and in their mutual correlation, and by the application of Article 263(2) of the CPC of BiH, the Panel concluded that a repeated, direct examination of the witnesses already heard in the first instance proceedings was unnecessary and irrelevant. This is so because all these witnesses were already repeatedly examined in detail in relation to the circumstances relevant to adjudication pursuant to the Indictment. They were also already examined on a number of times and provided their explanations regarding the differences in their testimony due to which a new hearing of such repeatedly heard witnesses would not contribute to the clarification of the disputable issues relevant to adjudication. At the same time, this would only be a form of new mistreatment of such witnesses-victims that would expose them to new traumas.

63. The Panel also concluded that it was not necessary to reproduce in the courtroom, before the parties and the Defence Counsels, the testimony of absolutely all witnesses heard in the first instance proceedings. The testimony of the foregoing witnesses were all accepted and included in the evidentiary materials. However, despite the Defence teams' proposals that the testimony of absolutely all witnesses heard in the first instance be reproduced in the courtroom and in the

presence of the parties and the Defence Counsels, only the testimony of the witnesses most referred to by the appeals of the Defence teams, or most contested ones, were reproduced in the courtroom. According to the Appellate Panel, these witness statements were decisive for the clarification of certain relevant circumstances and the resolution of dilemmas arising from the Defence teams' appeals. The testimony of other witnesses was also reproduced, but only before the Appellate Panel, out of the courtroom, and without the presence of the parties, which resulted in saving significant time and improving the work efficiency. This was also in the interest of the Accused, particularly of those in custody. Since both the testimony of these witnesses and the testimony reproduced in the courtroom were accepted, and all together included in the evidentiary materials, and thereupon equally treated and evaluated, both in isolation and in their mutual correlation, the Panel concludes that by not reproducing all evidence in the courtroom before the parties no Accused was deprived of any of their rights in any way, including the right to a defence, nor were they brought into a less favourable position. This is so particularly because by mere replaying an already given testimony – reproduction of an audio-recording of the trial, whether in the courtroom or outside it, the contents of the already given testimony can in no way be influenced and nothing can be changed therein. This is so also because in the case at hand both the Accused and the Defence had an opportunity to refer in their closing arguments to the testimony of these witnesses (whose testimony was reproduced before the Panel, outside the courtroom), to address and analyze the testimony equally, just like the testimony that was reproduced in the courtroom, and to base their proposals on the referenced testimony, which they did.

64. Therefore, there was no consequence to the prejudice of the Accused for not reproducing the testimony of all witnesses in the courtroom, except only those which the Defence teams invoked most in the appeals, or those challenged by the appeals. This possibility also arises from Article 317(2) of the CPC of BiH. The reproduction of absolutely all evidence already presented in the first instance proceedings would result in the fact that the second instance proceedings would also last as long as the first instance proceedings. In the case at hand, it means that it would last for almost three years, which would be contrary to the principle of judicial efficiency, the spirit and the goals of the reform of the criminal and procedural legislation, whose aim was exactly to avoid the above and improve the efficiency of the proceedings.

65. Pursuant to the above conclusions and standards of the Panel, the testimony of the following Prosecution witnesses was reproduced again in the presence of the parties and Defence Counsels: 152, Ramiz Bebanić, Semir Humačkić, Saja Ćorić, A, J, C, F, E, D, R, AD, AK, AA, Ramiz Mačković, Dika Ćurić, Azer Handžar, AL, Hasan Trtak, 151, Ibrahim Šogolj, Slavko Kožul, Aziz

Dautbegović, X, L, Slavko Božić, 154, and the Defence witnesses: AH, Žarko Leko, Rudo Ravlić, Zdravko Šunjić.

C. DECISION ON NEW EVIDENTIARY PROPOSALS

66. In addition to the foregoing, and bearing in mind the relevance of the motions filed for the concrete criminal matter, the Panel accepted certain new pieces of evidence proposed by the Defence teams.

67. During the main trial, the Defence for the First-Accused proposed as new evidence that Colonel General Živko Budimir be heard regarding the zone of responsibility of the First Battalion of the Second Brigade HVO. The Prosecutor objected to the referenced proposal and argued that this piece of evidence could have been proposed earlier.

68. The Appellate Panel dismissed this proposal of the Defence and stated that this was not such evidence in terms of Article 295(4) of the CPC of BiH which despite due attention and cautiousness could not have been presented in the first instance proceedings. On the contrary, this evidence could have been proposed and presented at the main trial with no problems, but even the appeal failed to propose it although there was no obstacle to do so. However, the Appellate Panel did accept an alternative proposal of the Defence, which the Prosecutor also accepted, namely to hear General Slavko Puljić again at the main trial before the Appellate Panel regarding the same circumstances. The Panel accepted this proposal and concluded that this evidence might help in clarifying all the facts and removing vagueness related to the zone of responsibility of the First Battalion of the Second Brigade HVO and other units in the territory of Bijelo Polje and the wider area indicated by the appeals.

69. The Defence proposal to adduce a Topographic Map 1:50 000-Mostar 2 as documentary evidence was also accepted for the same reason.

70. In the entire course of the proceedings, and also in its submission dated 31 January 2011, the Defence for the Second-Accused proposed a large body of new evidence. The Defence for the Second-Accused specified these evidentiary proposals at the hearing on 11 February 2011 and proposed the following evidence: DVD video-recording of the exchange dated 2 December 1993 (4 minutes), photos of Dragan Šunjić, Witness 151 Statement given before the ICTY dated 1 October 1998, Certificate of the War Volunteers and Veterans Association, “A” clause document signed by

the Chief Prosecutor of The Hague Tribunal, Carla del Ponte, Request to take detainees dated 18 August 1993, Decree from the People's Gazette HZHB from September issued by Mate Boban, Red Cross Certificate, List of soldiers-members of the ATG "Ivan Stanić Čičo", a CD with the recorded statement of Esad Humo.

71. The Prosecutor objected to the motion for filing the referenced evidence in the case records and argued that this evidence could have been proposed with due attention during the main trial.

72. Having considered the referenced evidentiary proposals, the Panel decided to admit into the case record the following documents: List of soldiers-members of the ATG „Ivan Stanić Čičo“, Request of the HVO Main Staff, Sector North number: 04-387/93 dated 18 August 1993 to take detainees, Witness 151 Statement given before the ICTY on 1 October 1998, DVD recording of the exchange dated 2 December 1993 (4 minutes of the referenced recording) and 8 photos of Dragan Šunjić.

73. Even though the Defence had a possibility to obtain the referenced evidence in the first instance proceedings and present it earlier, the Appellate Panel admitted it into the case records. The Appellate Panel concluded that this evidence might help a more complete clarification of the challenged facts and the proper establishment of the state of facts. The Appellate Panel evaluated this evidence in its entirety together with the other evidence.

74. The Appellate Panel did not accept the remaining proposed evidence for a number of reasons.

75. First and foremost, the proposed evidence: Certificate of the War Volunteers and Veterans Association, the "A" clause document signed by the Chief Prosecutor of The Hague Tribunal, Carla del Ponte, Decree from the People's Gazette HZHB from September issued by Mate Boban, Red Cross Certificate, a CD with the recorded statement of Esad Humo, does not satisfy the requirements for new evidence in terms of Article 295(4) of the CPC of BiH. The Panel holds that the Defence had a possibility to present the referenced evidence earlier, that is, this evidence does not constitute such evidence which despite due attention and cautiousness could not have been presented at the main trial.

76. In addition, the Defence presented the Red Cross Certificate and the CD with the recorded statement of Esad Humo in a photo-copy in violation of Article 274(1) and (2) of the CPC of BiH. This Article prescribes that to prove the content of writing, recording or photograph, the original writing, recording or photograph is required, and that a certified copy of the original may be used as

evidence or a copy verified as unchanged with respect to the original. Notwithstanding that the copies of the Red Cross Certificate and statement of Esad Humo recorded on CD are not new evidence, they are also formally inadmissible, that is, they were not offered in the form of the original or a verified copy. Furthermore, the Decree from the People's Gazette HZHB from September issued by Mate Boban is a form of regulation and does not represent evidence in terms of the provisions of the CPC of BiH, except that the Court may review it if the Court finds it relevant to the clarification of the concrete criminal matter like any other statutory regulation.

77. The Appellate Panel also refused new evidentiary proposal of the Defence for the Accused Mirko Vračević to obtain the detainees' files with the statements of witnesses Aziz Suljević, Ramiz Mačković, Saja Ćorić, and the protected witnesses AM, J, K, D, 152 and 153 because it considered this evidence irrelevant and redundant. This is so because these are the files in possession of an association of citizens, with the statements given to this Association with a view to exercising certain rights and interests. These statements were not given to the Court, Prosecution or any other authorized person, under oath and pursuant to the provisions of the CPC of BiH. Therefore, such statements are irrelevant to the Court, particularly given the fact that all these persons, who had given their statements to the Association of Detainees, directly testified during the proceedings regarding the concrete circumstances of the critical events pursuant to the CPC of BiH.

D. ACCEPTANCE OF INVESTIGATION RECORDS

78. In acting pursuant to Article 273(2) of the CPC of BiH, the Appellate Panel accepted that the statements of witness Junuz Halilović and the protected witness AG, given for the record in the investigation, be read out and filed in the case record as Prosecution evidence.

79. Upon a review of the Register of Deaths of the Municipality Novo Sarajevo number 10780 dated 23 June 2010 concerning witness Junuz Halilović, the Court established that this witness died on 5 October 2009. A direct hearing of witness Halilović before the Court is therefore impossible. The Appellate Panel concludes that thereby the requirements set forth in Article 273(2) of the CPC of BiH, to read out and use the investigation records as evidence at the main trial, were undoubtedly satisfied and that there are no earlier-existing dilemmas as the appeals indicated. In this respect, the Appellate Panel accepted the statement of witness Junuz Halilović given in the BiH Prosecutor's Office number: KT-RZ-95/05 dated 18 May 2006, and the statement given before the Higher Court

in Zenica number Ki-6/96 dated 6 September 1996. These statements were used as evidence in the proceedings at issue.

80. In evaluating whether the requirements under Article 273(2) of the CPC of BiH to accept and read out the earlier given statements were satisfied in relation to the protected witness AG, the Appellate Panel was primarily led by the results of forensic analyses of her health condition that were carried out both in these proceedings and the first instance proceedings. The expert analyses show that the witness AG has been suffering from a post-traumatic stress syndrome and that due to her mental state she is not able to appear before the Court to testify. For the same reasons this witness was not heard before the Court in the first instance proceedings either, while her health condition is still unchanged.

81. In order to establish the current health condition of witness AG and her ability to testify before the Panel of the Appellate Division, expert witness Doc. Dr. Alma Bravo-Mehmedbašić carried out an expert evaluation of witness AG. It follows from the written Findings and Opinion delivered to the Court and filed in the case records that among other things in the meantime there was no positive improvement in the cognitive and emotional processing of the contents related to the mental trauma, and that in the future no significant rehabilitation can be expected concerning the ability of the witness AG to appear before the Court as a witness. In addition, further summonses to testify would only reactivate the existing psychopathology with this witness.

82. At the main trial held before the Panel of the Appellate Division on 14 February 2011, witness Doc. Dr. Alma Bravo Mehmedbašić explained orally the Finding and Opinion delivered in writing, which she stood by in its entirety. She also added that the witness AG was once even present in the courtroom as a visitor, but that she got sick. According to the expert witness, in addition to other symptoms, this indicates that when faced with traumatic contents, such as testifying before the Court about the repeated rapes that she was subjected to while she was in the Vojno camp, the witness AG becomes unable to attend the proceedings.

83. The expert witness was cross-examined by the Defence teams which attempted to challenge the referenced Findings and Opinion. They particularly suggested that the Findings were contradictory because the witness AG had been already present in the courtroom, while the expert witness spoke about her fear from the courtroom. In this respect, the expert witness explained that the situations where someone is present in the courtroom as a visitor and a passive observer and where this person is present as a witness who should testify about the concrete incidents that she had personally experienced are certainly not the same.

84. The Appellate Panel accepted the Findings and Opinion of Doc. Dr. Alma Bravo Mehmedbašić in its entirety. Being led by the referenced Findings, the Appellate Panel concluded that there could be no discussion about identical situations in comparing the status of a passive observer who is physically separated, and a witness who is supposed to testify as an active participant in the proceedings about the incidents by which she was traumatized, the memory of which aggravates her health condition and consequently her ability to testify before the Court. Therefore, the Appellate Panel concludes that the statutory requirements to apply Article 273(2) of the CPC BiH, providing a possibility of exemption from direct presentation of evidence, are still satisfied. For this reason, the Panel accepted as evidence the statements of the witness AG which were given before the Higher Court in Mostar on 12 April 1996 and to the investigators of the ICTY in The Hague on 28 June 2002. In addition, the Panel also took into account that Article 7 of the Law on Transfer of Cases prescribes a possibility that the witnesses' statements given to the ICTY officials during an investigation be read out in the proceedings conducted in Bosnia and Herzegovina.

E. ABILITY OF THE ACCUSED VRAČEVIĆ TO STAND TRIAL AND THE DECISION UPON THE MOTION TO ADJOURN THE PROCEEDINGS

85. During the proceedings, the Appellate Panel accepted a motion of the Defence for the Fourth-Accused and ordered that a forensic and psychiatric expert analysis of the accused Mirko Vračević be carried out. The goal of the expert evaluation was to establish the condition of the Accused's mental and physical health, his ability to stand trial, that is, whether he was able to understand the importance of the offences, his ability to control his acts, to follow the course of the proceedings and take active part therein.

86. A team of expert witnesses comprised of: Doc. Dr. Alma Bravo Mehmedbašić, neuropsychiatrist, Doc. Dr. Vesna Lozo, internist-cardiologist, and Elvedina Dervović MSc., clinical psychologist, carried out the analysis and on 12 July 2010 delivered their written Findings and Opinion. The expert team concluded that Mirko Vračević was mentally and physically fit to stand trial, to understand the importance of his offences, to control his acts, follow the trial and participate actively in the trial.

87. The referenced Findings further stated that the ability of accused Vračević to see and hear was diminished. It was accordingly suggested to the Panel to adjust the examination to his hearing

and sight abilities. In addition, the Findings also stated that the sphincter difficulties diagnosed by an urologist were not an obstacle to the procedural capacity of the accused.

88. At the main trial, Dr. Alma Bravo Mehmedbašić testified before the Appellate Panel also regarding the medical record subsequently delivered to her. The expert witness concluded that the referenced documentation did not show that the accused Mirko Vračević was unfit to stand trial, namely that the contents of the subsequently delivered medical documentation did not affect the Findings and Opinion of the team of expert witnesses dated 12 July 2010.

89. The Defence challenged the Findings and Opinion of the expert witness during cross-examination. The Defence submitted that the accused Mirko Vračević was an alcoholic, which affected his mental state and ability to stand trial. The Defence referred to the Findings and Opinion given in the first instance proceedings, particularly the Findings and Opinion of Dr. Žarko Savić. Expert witness Savić concluded that the accused Mirko Vračević had a diminished capacity to follow and stand trial, that the overall health condition of the Accused was characterized by several chronic diseases, but that they were not life-threatening and that the Accused was fit to be examined as a witness. Expert witness Savić related the mental disease of the Accused to the findings stating that he had been a chronic alcoholic, and in the opinion of this expert witness this type of addiction could not be completely cured.

90. Before the delivery of their Findings and Opinion of 12 July 2010, the multidisciplinary team of expert witnesses firstly reviewed the overall documentation related to the mental and physical condition of the accused Vračević, both the documentation that was considered in the first instance proceedings (also including the Findings and Opinion of Dr. Žarko Savić), and the documentation that the Accused obtained subsequently. The Accused was also subjected to adequate medical examinations, and a psychological-psychiatric analysis of his personality.

91. Doc. Dr. Alma Bravo Mehmedbašić explained orally the Findings and Opinion of 12 July 2010 before the Appellate Panel, and submitted that Mirko Vračević was accountable both at the time of the commission of the criminal offense and now. Thereupon, the Panel accepted the Findings and Opinion of the team of experts headed by expert witness, Doc. Dr. Alma Bravo-Mehmedbašić, MSc., in relation to his ability to stand trial. Even though the Defence denied these arguments, the Panel concluded that such a conclusion was not after all in collision with the earlier Findings and Opinion of expert witness Dr. Žarko Savić, as presented by the Defence. Although the Accused had a diminished ability to stand trial, according to expert witness Dr. Savić, he is nevertheless „fit to testify as a witness”. Exactly this suggests a conclusion that expert witness

Savić considers Vračević able to understand the importance of his acts and control his acts because someone's ability to testify implies exactly such abilities. On the other hand, it follows from the Findings of the referenced expert witness that when he speaks about Vračević's diminished ability to stand trial he in fact speaks about his health problems that limit his physical abilities. Therefore, expert witness Savić recommended that this should be taken into account and that breaks be made more frequently, and these recommendations were complied with.

92. Truly, contrary to the referenced conclusion, expert witness Savić also mentions a mental disease which he relates to the fact that Vračević used to be a chronic alcoholic, which is a condition that cannot be cured completely. In this respect, expert witness Bravo emphasized in explaining the Findings and Opinion of the team of experts headed by her that they could not infer from the presented medical documentation and the analyses carried out that the accused Vračević was an alcoholic. This was so because there were no realistic indicators pointing to such a conclusion like: abstinence crisis, dementia and epilepsy, brain damages and atrophy which might be caused by the excessive use of alcohol. The expert witness further submitted that the Accused showed no apparent signs of unrest which would be caused by the lack of alcohol.

93. For all the foregoing reasons, the Appellate Panel fully credited the Findings and Opinion of the multidisciplinary team of expert witnesses of 12 July 2010. The Appellate Panel considers it professional and objective, quite logical and convincing, all the more so because it was drafted after a comprehensive multidisciplinary analysis of the Accused and the review of the entire documentation.

94. Pursuant to the foregoing, the Appellate Panel dismissed as ungrounded the Defence proposal to adjourn the proceedings because the accused Vračević became affected by mental illness. According to the Panel, the requirements set forth under Article 388(1) of the CPC of BiH were not satisfied. This Article prescribes that if the accused becomes affected by a mental illness, or if the accused becomes affected by such mental illness after the commission of a criminal offense that he or she is unable to take part in the proceedings, the Court shall adjourn the proceedings. However, the foregoing was not ascertained in relation to the accused Mirko Vračević.

95. Therefore, the motion to adjourn the proceedings in relation to the accused Mirko Vračević was dismissed and the single proceedings were conducted against all the Accused throughout, while the health problems of the Fourth-Accused were maximally taken into account.

F. EXPERT EVALUATION OF THE HEALTH CONDITION OF THE ACCUSED DAMIR BREKALO

96. In order to ascertain the health condition of the accused Damir Brekalo, that is, his ability to stand trial, and to determine whether an operation on his head was urgent and necessary, on which the Accused had insisted during the entire course of the second instance proceedings, the Court hired a multidisciplinary team of expert witnesses composed of: Prim. Dr. Marija Kaučić Komšić, a specialized neuro-psychiatrist and forensic psychiatrist, Dr. Dželil Korkut, MSc., a specialized neurosurgeon and Dr. Mirjana Musić, a specialized medical psychologist. The subject of expert evaluation by the team of experts was to determine the ability of the accused Damir Brekalo to stand trial, to follow the course of the proceedings and participate in it, that is, to understand the importance of his offences and control his acts, as well as to establish if a surgery on the head of the accused was necessary and urgent.

97. After reviewing the medical documentation and upon examination of the Accused, the team of expert witnesses drafted their Findings and Opinion dated 29 July 2010. According to the Findings, the accused Damir Brekalo showed no elements of permanent or temporary mental illness, no elements of mental retardation, that he was fit to stand trial, that he understood his position in the ongoing proceedings, that he knew the charges against him, that the position of other participants in the proceedings was clear to him, that he could adequately communicate with his Defence Counsel and agree with him on the defence strategy, that he could freely decide upon and choose different ways of his defence (e.g. to remain silent), that he was able to control his acts and understand the importance of his offences.

98. A part of the Findings and Opinion of Dr. Dželil Korkut, MSc., dated 3 August 2010, which is an integral part of the joint Findings and Opinion of the expert witnesses team of 29 July 2010, stated that the „cranial defect that has existed for 15 years after the injury does not require any urgent or necessary surgical intervention”, that a surgery is indicated, but can be postponed until after the completion of the trial, and that it can be carried out at the Neurosurgery Clinic of the Clinical Centre in Sarajevo, Neurosurgery Clinic of the University Centre in Tuzla, and the Clinical Hospital in Mostar.

99. By referring to the opinions of Dr. Mira Jurinović, MSc., and Dr. Željko Vidaković, a specialized neurosurgeon, the Court accepted the Findings and Opinion of the team of experts in its entirety despite the Accused's objections to the part of the Findings related to the urgency of surgery. The Court concluded that it was objective and accurate, based on a very large volume of

documentation from the previous years, the information from the earlier Findings and Opinion issued by Dr. Haso Sefo, the information from the current health record, and also based on the direct examination of the Accused. In addition, the Findings and Opinion were drafted by forensic experts with a rich experience in professional and scientific work, and on the basis of a multidisciplinary approach. These expert witnesses had no interest whatsoever in speaking to the detriment of the Accused. The Panel also took into account the fact that expert witness Dr. Haso Sefo had the same opinion during the first instance proceedings. Accordingly, the Panel also concluded that the accused Brekalo was fit to stand trial, to understand the importance of his acts and control his actions.

G. TRIAL WITHOUT THE PRESENCE OF THE ACCUSED DAMIR BREKALO

100. The main trial resumed on 6, 15, 23 and 28 September, 22, 26, 27 and 28 October, 4, 9, 10, 11, 18, 24 and 30 November, 7, 8, 9, and 14 December 2010, 13, 19, 25, 26 and 27 January and 3 February 2011 without the presence of the accused Damir Brekalo who was duly summoned and cautioned of the consequences of his non-attendance.

101. Despite the referenced positive opinion of the team of expert witnesses about his fitness to stand trial, understand the importance of his offences and control his acts, the accused Damir Brekalo stated at the hearing held on 30 August 2010 that he was not mentally able to stand trial, that he could not be present in the courtroom and that he would not attend the hearings in the future at all until he was allowed to be operated on in the Mostar hospital.

102. The President of the Panel informed the Accused about the statutory provisions related to the required presence of each accused, the consequences of their non-attendance, and the positions of the ECtHR and this Court regarding this matter. The President of the Panel also cautioned the Accused that his decision was considered a voluntary waiver of the right to a trial; that in such case the proceedings might be continued even without the presence of the accused who refuses to appear before the court with no justified reasons, but in the presence of his Defence counsel; that his Defence counsel is obliged to keep him informed about the course of the proceedings, and to deliver to him CD recordings and transcripts of the trial. Despite such cautions repeated for several times, the Accused maintained his decision not to attend the trial until he was operated on. The Accused agreed that the proceedings be continued without him, but in the presence of his Defence Counsel.

103. Notwithstanding the referenced cautions, the Findings and Opinion of the team of forensic experts regarding the ability of the accused Brekalo to stand trial, and the fact that the indicated surgery could be postponed without causing any consequences to his health, namely until the completion of the second instance proceedings, the Accused's non-attendance of the trial before the Appellate Panel on 6, 15, 23, and 28 September 2010, 22, 26, 27, 28 October 2010, 4, 9, 10, 11, 18, 24, 30 November 2010, 7, 8, 9, 14 December 2010, and 13, 19, 25, 26, 27 January and 3 February 2011 (the Accused was present at the other hearings held during this period and at the presentation of the Closing Arguments), was evaluated as unjustified. Those hearings were held without the presence of the accused Brekalo. He was duly informed about all hearings, the Judicial Police were sent to take him from custody, but he kept refusing to appear. However, all hearings were held in the presence of his both Defence Counsels while the CD recordings of the hearings and transcripts were delivered to the Accused regularly. His Defence Counsels had to inform him personally of the contents of the activities they carried out, and to develop his defence actively with him.

104. The accused Brekalo and his Defence had no objections whatsoever to the decisions of the Panel to hold the referenced hearings without the presence of the accused Brekalo, with a note that the foregoing requirements were met. The Accused returned to the courtroom after these hearings, attended the presentation of the Closing Arguments and in the end submitted himself that he accepted the Closing Arguments of his Defence Counsels.

105. The non-appearance of the accused Damir Brekalo raised certain issues that were considered by the Panel prior to deciding to continue the main trial without the presence of the duly summoned Accused. The Accused was not objectively prevented from attending the trial, but his non-attendance was motivated exclusively by his personal or subjective reasons.

106. The Criminal Procedure Code prescribes no situation where an accused refuses to attend a scheduled trial, or special provisions preventing the Court from continuing the proceedings in such a situation, even without the presence of the accused. However, this procedural situation required that the fundamental rights and freedoms of the accused should be respected from the aspect of other national and international legal standards and case law.

107. Article 247 of the CPC of BiH prescribes that "*An accused shall not be tried in absentia*". An analysis of this Article shows that the expression "*in absentia*" is related to the cases of the total absence of the accused from the proceedings, whether because it is impossible to secure his presence at the proceedings, or he is unavailable to the law enforcement agencies for some other

reasons, e.g. he is on the run or hides, or his whereabouts are unknown, or other difficulties exist preventing him from being informed about the proceedings, or securing his presence.

108. A distinction should also be made between a trial *in absentia* and a trial without the presence of the accused. The trial *in absentia* implies a situation where the accused is prevented from being present for reasons that he cannot control, or that are beyond his control, while the trial without the accused' presence implies that the accused has a possibility to be present, but does not want to. In this specific case, the Accused was available and was present at the trial for most of the time, but in the end of the proceedings he decided to boycott the trial until he is provided with a possibility to be operated on, even though the expert witnesses were determined in their conclusion that the operation was not urgent and could wait until the trial was completed.

109. Therefore, in the case at hand, the Accused's free will and choice not to attend the trial was the only obstacle whose removal was exclusively under the control of the Accused himself.

110. It also had to be taken into account that in this case, which was in its final phase after several years of trial, three more persons in addition to Brekalo were charged with the same criminal offences. The first two of them have been in custody for a longer period of time already, while prohibiting measures have been imposed on the Fourth-Accused. Their actions are mutually related, and in terms of Article 6(1) of the ECHR they enjoy the right to a fair trial within a reasonable period of time, and they all duly attended the scheduled hearings.²

111. The Panel concludes that the failure of the accused Damir Brekalo to attend the scheduled hearings was arbitrary and unjustified for the following reasons:

112. The Accused submitted that his health condition, that is, his insisting that unpostponable operation on his head be carried out exclusively in the Clinical Centre in Mostar were the reasons for his not appearing before the Court. However, it should be noted that during the proceedings numerous medical examinations of the Accused's health condition and his ability to stand and follow trial were carried out. Since the beginning of the proceedings, the Panel had in mind the Accused's health problems and therefore took a series of actions to resolve them, and to have the requested operation carried out. Under the Decision number X-KRŽ-05/139 dated 28 June 2010 the Court ordered that the accused Damir Brekalo be transferred from the KPZ "Istočno Sarajevo" to

²This is in accordance with the instructions elaborated by the Council of Europe, *Resolution of the Council of Ministers (75) 11 on the Criteria Governing Proceedings Held in the Absence of the Accused* dated 21 May 1975.

the KPZ Mostar so that he could be guarded and protected more easily during his hospitalization in the Clinical Centre in Mostar for a surgery on his head. This was so because the Accused insisted and requested categorically that the surgery be carried exclusively in the Mostar Clinic. However, the referenced decision was not executed because of the lack of space in the KPZ Mostar and an insufficient number of official persons who would secure and guard the Accused while he is hospitalized.

113. Since the accused Brekalo kept insisting on the necessity and urgency of his surgery despite all actions taken by the Court, while refusing at the same time to be operated on in the Clinic in Sarajevo, Tuzla or other clinics, where the security problem could have been resolved much easier, on 23 July 2010, the Court ordered the team of forensic experts to carry out a neurosurgical examination of the Accused. The purpose of this examination was to establish the realistic mental and physical condition of the Accused, the urgency of operation, and possibly postpone the scheduled hearings if it was established that the operation was indeed urgent. The Accused's medical documentation was delivered to the expert witnesses, as well as all earlier findings and opinions. The team of expert witnesses comprised of a neurosurgeon, a neuropsychiatrist and a psychologist delivered on 3 August 2010 the Finding and Opinion stating that the Accused was fit to stand trial, with adequate breaks, that a surgery was indicated but could be postponed until after the completion of the trial and that it can be successfully carried out at the Clinics in Sarajevo, Mostar and Tuzla. The Accused, however, again categorically refused to be operated on in any other clinic than in the Mostar hospital.

114. Since it followed from the Findings and Opinion of the expert witnesses that it was not urgent to operate on the Accused, and since the preconditions to carry out a surgery at the Clinic in Mostar did not exist (transfer, adequate securing and guarding of the Accused while hospitalized), which *per se* was not a responsibility of the Court, and since the Accused categorically refused to be operated on at the Clinics in Sarajevo or Tuzla, the Panel concluded that the Accused's reasons not to attend the trial were not grounded. The Panel also inferred that the Accused consciously waived his right to be present at the trial, that despite the positive evaluations of his fitness he simply decided not to attend the trial because he allegedly did not feel well, although he had no objective reason to do so.

115. The Court certainly cautioned the Accused that his presence at the hearings and his active participation in presenting his defence were most useful for him, and provided the Accused with a possibility to change his decision at any time and appear before the Court. Despite the referenced warnings, the Accused decided not to attend the hearings. In this respect, the Court fully complied with the accused Damir Brekalo's right to a defence since both Defence Counsels for the Accused were present at each hearing held before the Appellate Panel. The transcripts of each hearing were also delivered to the Accused. Thereby, the Accused was fully informed about the development of the case at each hearing held.

116. It should be recalled that the European Court of Human Rights clearly emphasized on a number of occasions that the presence of the accused at his trial is considered essentially important³, but also that the European Court of Human Rights has never found violations of the Convention in cases in which the accused was duly informed about the upcoming trial, but he voluntarily chose not to attend, and the trial went on. The Court emphasizes that the presence of the accused during the trial is essentially his right, not obligation, and therefore, also pursuant to the case law of the Court in Strasbourg, the proceedings were fair in all those situations when the accused was duly informed and the proceedings were regularly started or reconvened.

117. The conclusion is that in cases where the accused has all necessary guarantees to exercise his right to be present at and take active part in the trial, it is not justified to consider the trial without his presence as a violation of the rights of the Accused. Practical interests of fairness are therefore in favour of the decision to start or reconvene the criminal proceedings without the presence of the Accused. Such a decision is in compliance with the requirement of the "rule of law" and the main ideas of the Council of Europe and the European Convention on Human Rights, namely with the principles of fairness, democracy, respect for human rights and public interest. The foregoing supports the argument that no criminal-law system should be open to a possibility that an accused obstructs his trial on his own will. This is so because by complying with the principle of equality of arms, different irresolvable problems might occur that would exclusively and definitely be in favour of the accused. Bearing in mind potential interests of the society and the victims, as well as the rights of the Accused, the Court acts in compliance with the rule of law, the jurisprudence established pursuant to Articles 6, 13 and 17 of the European Convention on Human Rights, international case law and the CPC of BiH.

³ See e.g. *Poitrimol v. France*, Judgement of 23 November 1993. para. 35; *Pelladoah v. Netherlands*, Judgment of 22 September 1994, para. 40; *Lala v. Netherlands*, Judgement of 22 September 1994. para. 33;

118. With such a state of facts, the Panel concluded that the accused Damir Brekalo is indisputably entitled to be present at the trial. However, even though the Accused was duly informed and was aware of the consequences of his non-appearance, he waived this right of his having justified it with subjective reasons. In such a situation, the Court used its discretion and continued the trial without the Accused's presence, as supported with the foregoing arguments. This is not considered a trial *in absentia* in terms of Article 247 of the CPC of BiH, or a trial in violation of Article 6 of the European Convention on Human Rights.

H. DECISION TO ACCEPT ADJUDICATED FACTS

119. With a view to proving that the Accused committed the criminal offences as charged under the Indictment, the BiH Prosecutor's Office tried to prove, both in the first instance and the second instance proceedings, that a widespread and systematic attack by members of the army of Bosnian Croats (HVO) was under way against the civil Bosniak population in the western part of the City of Mostar, but also in the broader area, as a general essential element of the criminal offense of Crimes against Humanity in the present case.

120. In this respect, the Appellate Panel accepted as relevant all established facts that were accepted by the Trial Panel and published in their Verdict number X-KR-05/139 dated 28 January 2008, as mentioned and explained in the First Instance Verdict.

121. In this manner, the following facts established in the final ICTY Judgment, Prosecutor v. Mladen Naletilić aka "Tuta" and Vinko Martinović aka "Štela" (*case number IT-IT-98-34-T*) were accepted:

1. Mostar is the largest town in South-eastern Bosnia and Herzegovina and the historic capital of Herzegovina. According to the 1991 census the population of the municipality of Mostar comprised of 126,628 inhabitants of which 34.6% were BH Muslims, 33.9% BH Croats and 18.8% Serbs. The remainder were "Yugoslavs" and others.
2. A referendum from SFRY was held in Bosnia and Herzegovina on 29 February and 1 March 1992. Independence was declared on 3 March, 1992.
3. Following the declaration of independence, the BH Serbs attacked different parts of Bosnia and Herzegovina. The state administration of Bosnia and Herzegovina effectively ceased to function having lost control over the entire territory.

4. As a result of the conflict in 1992 between the BH Croats and BH Muslims on one side and Serbs on the other side, most Serbs left or been driven out of Mostar. In May 1993, between 16,000 and 20,000 BH Muslim civilians fleeing fighting in other parts of Bosnia and Herzegovina had taken refuge in Mostar. The presence of these BH Muslim refugees from outside Mostar created a BH Muslim majority.
5. On April 10, 1992, the president of the HZ H-B, Mate Boban, issued a decree creating the HVO.
6. The HVO became the supreme executive and defence authority for the HZ- H-B and the BH Croats. Mate Boban himself became the supreme commander of the HVO. This meant that in this part of Bosnia and Herzegovina, the HZ H-B had the actual authority.
7. There was a bitter conflict between the BH Croats and BH Muslims from April 1993 to January 1994. Mostar became divided into an Eastern part, dominated by BH Muslims and a Western part, dominated by BH Croats.
8. Both the HVO and A BiH had military formations positioned in the town. Mostar was divided into a Western part, which was dominated by the HVO and an Eastern part where the A BiH was largely concentrated.
9. In the early hours of 9 May 1993, the HVO attacked Mostar using artillery, mortars, heavy weapons and small arms. The HVO controlled all roads leading to Mostar and international organizations were denied access.
10. From about five o'clock in the morning, armed HVO units surrounded apartment buildings and houses and collected and rounded up the BH Muslim civilians. In certain apartment-blocks where both BH Muslim s and BH Croats lived, only the BH Muslims were forced to leave.
11. Hundreds of people were taken to Velez Stadium. Most of them ended up in Heliodrom, west of Mostar in Radoc, which became the main HVO detention centre in the area.
12. In total, between 1,500 and 2,500 Muslim civilians were rounded up and detained at the Heliodrom detention centre on that day.
13. The harassment of BH Muslims by forcing them out of their apartments and detaining them became common and widespread from May 9 throughout the autumn 1993.
14. BH Muslims crossed over to the Eastern side of Mostar in large numbers.
15. The humanitarian situation of the Eastern side of Mostar was horrific. There was no running water, electricity and food.
16. The Eastern side was completely encircled. The bombardment was constant.
17. The siege of East Mostar continued until the beginning of 1994.

18. The attacks resulted in a large number of both prisoners of war and civilian prisoners who were held at different detention centres in the area.

19. The main detention centre was Heliodrom, which at times held thousands of prisoners. The Heliodrom was a former JNA barracks composed of several buildings and hangars. The Ljubuski prison became infamous because "special" prisoners were held there.

20. Prisoners were moved around between places and detention centres.

21. The armed conflict existed between 17 April 1993 and the end of February 1994.

22. Groups of soldiers forcibly evicted BH Muslim civilian families out of their apartments at night, throwing them literally out on the streets and forcing them to leave everything behind.

23. The humanitarian conditions on the East bank of Mostar were appalling. While the Muslim population was swelling due to the intense expulsions from the West bank, water and electricity were cut off and humanitarian organizations were denied access for weeks. Crucial public services, such as the hospital, were located in the West bank of Mostar and, thus no longer accessible to the BH Muslim civilian population. Architecture evocative of an oriental influence, as for instance, the old bridge in Mostar, was destroyed. The street names of West Mostar were changed after the expulsion of the BH Muslim population.

122. According to the Appellate Panel, the foregoing established facts were accepted in accordance with Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the use of evidence obtained by the ICTY in the proceedings before the courts of BiH (Law on Transfer). This Article stipulates that "at the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept the proven relevant facts that are established by legally binding decisions in any other proceedings by the ICTY."

123. In evaluating the admissibility of the facts established in the first instance proceedings, and by using its discretion, the Appellate Panel certainly took into account all standards that a certain fact must satisfy in order to be accepted as established. Since the referenced Law on Transfer does not prescribe the criteria based on which a certain fact would be considered "adjudicated", the Panel took into account the criteria established by the ICTY in their Decision dated 28 February 2003 in the *Prosecutor v. Momčilo Krajišnik* case. These criteria took into account the rights of the accused enshrined in the European Convention on Human Rights (ECHR) and the CPC of BiH.

124. The Appellate Panel used the following criteria in deciding whether to accept the established facts: the fact must be distinct, concrete and identifiable, relevant to the concrete case, restricted to

factual findings and should not include legal characterizations, was contested at trial and forms part of a judgment which has either not been appealed or has been finally settled on appeal; or it was contested at trial and now forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal. Furthermore, the fact does not attest to the criminal responsibility of the Accused, it is not based on plea agreements in previous cases; and it does not impact on the right of the Accused to a fair trial. These criteria supplement Rule 94(b) (judicial notice) of the ICTY Rules of Procedure and Evidence.

125. In addition, the Appellate Panel of the Court of BiH has already accepted these criteria in the *Neđo Samardžić* case number X-KRŽ-05/49 dated 13 December 2006. Just like the Trial Panel, the Appellate Panel also concluded that the aforementioned facts satisfied the referenced criteria and therefore accepted them.

126. The Defence objected that the established facts accepted in these proceedings were irrelevant and contradictory. However, the Appellate Panel concludes that the evidence presented by the Defence did not cast serious doubt on the established facts. A key factor in the Court's decision to accept the adjudicated facts lies in the view that the efficiency of the proceedings will be improved by the acceptance of such facts, and that at the same time the guaranteed rights of the Accused will be protected. According to the Appellate Panel, the rights of the Accused, primarily the right to a fair, public and efficient trial, were respected in their entirety by the decision to accept the established facts.

127. During the proceedings, the BiH Prosecutor's Office adduced abundant subjective and objective evidence in support of the correctness and validity of the established facts. The conclusion about the existence of a widespread and systematic attack directed against the civilian Bosniak population of the Municipality of Mostar is undoubtedly inferred based on the testimony of the witnesses AI, Saja Ćorić, 152, A, C, D, E, F, J, L, R, X, AB, AD, AK, AM, Dika Ćurić, Huso Mehremić and Ramiz Bebanić. This will be addressed further in the reasoning below.

III. APPLICABLE LAW

128. In the course of the proceedings and in the Closing Argument, the Defence was of the view that the Criminal Code of the SFRY that was in effect at the time of the critical events should be applied in the case at hand. The Defence further submitted that the application of any other law than

the CC of SFRY that was in force in the period relevant to the concrete case constituted violation of the principle of legality. In this respect, the Defence referred to Article 7(1) of the European Convention and Article 15(1) of the International Covenant on Civil and Political Rights.

129. It should be noted that Article 3 of the CC of BiH defines the principle of legality by stipulating that criminal offences and criminal sanctions shall be prescribed only by law, and that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law. In addition, Article 4 of the CC of BiH stipulates that “The law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence; 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”.

130. 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 shall have primacy over all BiH laws. Furthermore, this provision of the European Convention stipulates a general principle that prohibits imposing a heavier penalty than the one that was applicable at the time the criminal offence was committed, but does not stipulate an obligatory application of the most lenient law.

131. Article 4a of the CC of BiH however prescribes that Articles 3 and 4 of this Code 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.*” Article 7(2) of the European Convention prescribes the same exemption emphasizing that Paragraph 1 of this Article “...shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.” (See also, Article 15(1) and (2) of the International Covenant on Civil and Political Rights that contain similar provisions. The state of Bosnia and Herzegovina ratified this Covenant as Yugoslavia’s successor).

132. Such interpretation provides a possibility to derogate in such circumstances from the principles provided for in Articles 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention), and from the application of the criminal code that was in effect at the time of the commission of the criminal offence, and to apply a more lenient law in trials for the offences that constitute criminal offences pursuant to international law.

133. In considering the Defence appeal arguments, it should be noted that no provision of the CC of SFRY that was in force at the relevant period of time addressed exclusively Crimes against Humanity in the manner as stipulated in Article 172 of the CC of BiH. Consequently, taking into account other provisions of the applicable substantive law, as well as the principles of international law, this appeal argument of the Defence could not be accepted as grounded.

134. In deciding upon the referenced appeal arguments of the Defence, the Panel had to take into account that the criminal offences charged against the Accused, of which they were found guilty in the Verdict, constitute the criminal offences pursuant to customary international law and are therefore categorized under „general principles of international law” provided for in Article 4a of the Law on Amendments to the CC of BiH, and „general principles of law recognized by civilized nations” set forth in Article 7(2) of the European Convention. For this reason, and pursuant to the referenced provisions, the CC of BiH is applicable to this case.

135. Furthermore, the fact that the criminal acts set forth in Article 172 of the CC of BiH may be also found in the law that was in effect in the relevant period of time – the time of the commission of the offences, namely in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, and 186 of the CC of SFRY, implies that the acts charged against the Accused were punishable also under the then applicable criminal code. This additionally supports the conclusion of the Court in relation to the principle of legality. Even though the referenced provisions of the CC of SFRY were not placed in a formal framework under the title Crimes against Humanity, the acts prescribed therein cannot be certainly exempted from the incriminating substratum.

136. The fact that the imposed sentence is by all means more lenient than the death penalty that was in effect at the time of the commission of the criminal offence additionally justifies the application of the CC of BiH. Thereby, the principle relative to time constraints regarding the applicability of the criminal code, that is, the application of the law more lenient to the perpetrator pursuant to the standard of prescribed punishment has been satisfied. The foregoing is also in accordance with the position taken by Section I of the Appellate Division of the Court of BiH in the Judgments delivered in the Abduladhim Maktouf case number KPŽ 32/05 dated 4 April 2006 and the Dragoje Paunović case number KPŽ 05/16 dated 27 October 2006. The Constitutional Court of BiH also addressed this issue in an appeal filed by A. Maktouf (AP 1785/06). In their decision dated 30 March 2007, the Constitutional Court of BiH 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. “69. In this context, the Constitutional Court holds that it is simply not possible to “eliminate” the more severe sanction under both earlier and later laws, and apply only other, more lenient, sanctions, so that the most serious crimes would in practice be left inadequately sanctioned...”

137. The case at hand concerns trials for criminal offences that, at the time of their commission, were absolutely predictable and generally known to be in violation of the general rules of international law. Therefore, the Panel holds that the Accused had to know that during the state of war or armed conflict the acts they commit are punishable acts, that they are in breach of the internationally protected values, that the application of international rules proscribing these acts have primacy, and that the violations thereof would result in severe consequences.

138. As to all Accused, the Panel further concluded that another standard was satisfied, which in the concrete case renders the applicable CC of BiH the more lenient law in relation to the Law that was in effect at the time of the commission of the criminal offences. While evaluating in this respect the law applicable at the time of the commission of the offence and the law applicable at the time of the trial, the Court found in the case at hand that in relation to the complicity or the acts of co-perpetration on the part of the Accused, the CC of BiH is much more favourable. This clearly ensues from Article 29 of the CC of BiH, which defines this institute far more strictly and restrictively. Therefore, in terms of Article 4(2) of the CC of BiH, the Appellate Panel applied this law to the case at hand, which is, at the same time, in accordance with the referenced Article 15(1) of the ICCPR.

139. Article 29 of the CC of BiH prescribes: „If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.“

140. It ensues from the quoted statutory provision that co-perpetration is a form of perpetration which exists when a number of persons, satisfying all requirements for perpetrators, based on a joint decision, consciously and willingly commit a certain criminal offence, whereby each co-perpetrator gives his own contribution, important and decisive, without which the criminal offence would not

have been committed, or would not have been committed in the anticipated manner. Accordingly, in addition to the joint activities of a number of persons in the realization of the given offence, it is required that they must also be aware that the committed offence represents a common result of their actions.

141. However, the Criminal Code of SFRY, which was in effect at the time of the commission of the referenced criminal offence, prescribed as follows: „If several persons jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act.“

142. It ensues from this statutory provision that all persons who by their participation in the act of commission or in another way jointly committed the criminal offence will be punished and that each co-perpetrator will be punished by the sentence prescribed for the committed criminal offence. Therefore, it is sufficient that the Accused only participated in the act of commission of the criminal offence, regardless of how much his participation contributed to the commission of the offence.

143. Based on the foregoing, an important difference may be observed between these two statutory definitions of the term “complicity”. This difference concerns the fact that, pursuant to the CC of BiH, the term of complicity is defined in a much narrower sense. This is so because the participation representing an act of commission is now limited only to the acts contributing in a decisive manner to the realization of the criminal offence. This standard is much stricter and it is much more difficult to prove. Thereby, this standard is more favourable to the accused charged with complicity. The former law, however, required that only a general contribution to the common consequence of the offence (but not decisive) had to be established, which included a much wider scope of the acts under complicity.

144. After analyzing Article 172 of the CC of BiH and its place in the CC of BiH, it becomes obvious that the essential element of this criminal offence includes, *inter alia*, the elements of violations of international rules. A group of criminal offences that includes crimes against humanity is characterized by the fact that it does not suffice only to commit a certain action pertaining to such criminal offence, but that awareness must also exist that international rules are violated by such a commission. A presumption that the accused must be aware that periods of war, or armed conflicts, or hostilities, are especially sensitive and protected by the generally accepted rules of international law, is quite justified. Therefore the existence of awareness that all the offences committed are even more important and that their commission implies even heavier consequences than would otherwise be the case should be taken into account.

145. An additional argument to apply international humanitarian law is apparent from the fact that at the time of the commission of the criminal offences, Bosnia and Herzegovina, as a successor state to SFRY, was a signatory to all relevant international conventions on human rights and international humanitarian or criminal law.

146. The UN Secretary General, International Law Commission, and the ICTY and ICTR jurisprudence also confirmed the customary status of criminal liability for crimes against humanity and individual liability for war crimes committed in 1993.

147. These institutions established that criminal liability for crimes against humanity is an imperative standard of international law or *jus cogens*.

148. Therefore, it is indisputable that crimes against humanity in 1992 were an integral part of customary international law. The Study on Customary International Humanitarian Law of the International Committee of the Red Cross also confirmed this conclusion.

149. 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 the “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).

150. The Principles of International Law recognized under Resolution 95 (I) of the UN General Assembly (1946) and the International Law Commission (1950) are relative to the „Charter of the Nurnberg Tribunal and the Judgment of the Tribunal”, and thereby war crimes in general. The Principles of International Law recognized in the “Charter of the Nurnberg Tribunal and the Judgment of the Tribunal” adopted by the International Law Commission in 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 therefore and liable to punishment”.

151. Principle 2 also stipulates: “The fact that international law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.”

152. Therefore, the criminal offence of Crimes against Humanity should be in any case categorized under the “general principles of international law” provided for in Articles 3 and 4(a) of the CC of BiH. That is why it is indisputable that crimes against humanity were criminal offences at

the critical period, namely that the principle of legality was satisfied also in terms of *nullum crimen sine lege* and *nulla poena sine lege* regardless of whether being viewed from the aspect of customary international law, international treaty law or the “principles of international law”.

153. Accordingly, pursuant to Common Article 3(1) subparagraphs (a) and (c) of the Geneva Conventions and Article 27 of the Geneva Convention on the Protection of Civilians at Times of War dated 12 August 1949, the criminal offence of Crimes against Humanity should be in any way categorized under “international law”, or “general principles of international law” provided for in Articles 3 and 4(a) of the CC of BiH.

154. Therefore, regardless of whether viewed from the aspect of customary international law or the “principles of international law”, there is no doubt that crimes against humanity were criminal offences at the critical period, which means that the principle of legality has been satisfied.

IV. COURT FINDINGS

A. GENERAL CONCLUSIONS

155. Having evaluated all the evidence individually and in their combination, the Court examined the facts relevant to the charges for the cumulatively outlined elements of the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraphs a), e), f), g) and k) of the CC of BiH.

156. Under the third amended Indictment, the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević were charged with the criminal offence of Crimes against Humanity in violation of Article 712(1)(h) in conjunction with sub-paragraphs a), e), f), g) and k) of the CC of BiH that read:

Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack perpetrates any of the following acts:

- a) Depriving another person of his life (murder);
- e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

f) Torture;

g) Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation or any other form of sexual violence of comparable gravity;

h) Persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognised as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina;

k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,

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

B. GENERAL (CHAPEAU) ELEMENTS OF THE CRIMINAL OFFENCE

157. The quoted legal provisions provide the following general (chapeau) elements of the criminal offence of Crimes against Humanity under Article 172(1) of the CC of BiH that had to be examined and proved in the course of the proceedings:

1. The existence of a widespread and systematic attack, directed against civilians, that is, the conduct which includes multiple perpetration of the crimes under Article 172(1) of BiH CC, against civilians and pursuant to and in furtherance of the state or organizational policy to carry out such attack;

2. The attack is either widespread or systematic and directed against any population;

3. The nexus between the offences of the accused and the attack; or

a) That the offences were committed as part of that attack;

b) That the accused knew of that attack;

c) That the accused knew that their actions were part of that attack;

d) That the accused knew that the attack was carried out pursuant to or in furtherance of the state or organizational policy to commit such attack;

e) That the accused were aware that their actions were committed pursuant to or in furtherance of the policy to carry out such attack, that is, that the unpermitted acts were committed as part of that attack and that the accused knew of such attack.

158. Elements of the criminal offense of Crimes against Humanity under Article 172(1) of the CC of BiH include different acts of commission, that is, a conduct which, pursuant to the definition under sub-paragraph 2(a) of the same Article, includes “multiple commission of the acts under Paragraph 1 of this Article against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack”.

159. Pursuant to customary international law, the existence of a plan or policy to commit such attack against the civilian population or to commit the acts which constitute such attack does not have to be proven as an element of prosecution for crimes against humanity. However, Article 172(2)a) of the BiH CC includes the element of “policy”.

160. The element of policy may be expressed through four sub-elements. Pursuant to Article 172(2)(a), it has to be proven that:

- the policy existed,
- that the policy is state or organizational
- to commit such attack, and
- that the attack is apparently launched pursuant to or in furtherance of such policy.

161. The “policy” may generally define the goals which subsequently should be implemented through individual decision-making on lower levels. Interpreting this element of “policy“, the Panel notes that Article 172 of the BiH CC is identical to Article 7 of the Rome Statute. Therefore, the Panel holds that the Rome Statute, the history of its making and the accompanying elements of the criminal offences constitute a credible authority they had in mind while interpreting this provision.

162. Any interpretation of the second sub-element - “the state or organisational policy” requires defining the notions of “the state and organisation”. In that respect, the Panel notes that while the “state“ is a specific term whose meaning is clearly defined in international law, the term „organization“ is a much broader and more amorphous conception. Although the Panel opines that

it is not necessary that an organization should be considered to be a criminal one based on international or national law in terms of this sub-element, this requirement should be interpreted freely to make sure that it includes a wide range of organizations, and to focus the relevant consideration on the ability of the organization as a group to design and adopt the policy of attack against the civilian population in a widespread and systematic manner.

163. As for the other sub-element of the existence of “the policy“, the Panel notes that “the policy“ should be interpreted differently from “the plan“. The policy may generally define the goals which subsequently should be implemented through individual decision-making on lower levels.

164. “The policy to commit such attack“, as the third sub-element, requires that a state or an organization actively promote, support or encourage such an attack against civilians. The policy does not have to include the criminal offences listed under Article 172(1) of the BiH CC, but only the policy of the attack in general terms.

165. The fourth sub-element requires the causal connection between the state policy and the organizational policy and the attack which was actually committed. This element implies factual considerations in each individual case and in relation to the overall circumstances, including the characteristics of the given policy and the crimes committed during the attack. Whether an attack is widespread or systematic on the one hand, and whether the attack was committed pursuant to or in furtherance of the state or organizational policy on the other, are two separate issues, and the satisfaction of one element cannot simply mean the satisfaction of the other. Although each attack individually does not have to be considered as widespread and systematic, the pattern of attacks against the civilian population regardless of whether they are systematic or widespread individually would, under some circumstances, be proof of a policy to commit such attacks.

(i) Widespread and systematic attack

166. The assessment of what constitutes a widespread or systematic attack or a widespread and systematic attack depends upon the civilian population which, allegedly, was being attacked. The Panel must therefore first identify the population which is the object of the attack and, in light of the means, methods, resources and result of the attack upon the population, ascertain whether the attack was indeed widespread or systematic. The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of officials or authorities or

any identifiable patterns of crimes, could be taken into account to determine whether the attack satisfies either or both requirements of a “widespread” or “systematic” attack vis-à-vis this civilian population⁴.

167. The attack is widespread if it is extensive and targeted against a lot of people. The Trial Panel of the Court of BiH in the Međakić case found that as factors of the widespread character of the attack the following should be taken into consideration: the consequences of the attack on the targeted population, the number of victims, the nature of the acts and the cumulative effect of a series of inhumane acts or the single effect of one act of a large scale.⁵ The attack is systematic if it is organised and constitutes “the non-accidental repetition of similar criminal conduct on a regular basis”.⁶

168. Among other things the following factors are significant for establishing whether the attack is widespread or systematic: “the consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of the officials or authorities, or any identifiable patterns of crimes⁷.”

(ii) Attack directed against civilian population

169. The attack is “directed against civilian population“ if the civilian population is the primary object of the attack⁸. It is not necessary that the entire civilian population be subjected to the attack, it is sufficient to show that enough individuals were targeted in the course of the attack, that they were targeted in such a way as to show that the attack was not directed against the limited and randomly selected number of individuals and did not consist of a limited and isolated acts.⁹

170. Article 3(1)(a) of the Geneva Convention Relative to the Protection of Civilian Persons defines civilians as „persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds,

⁴ *Kunarac, Kvočka and Vuković* (Appeals Chamber) 12 June 2002, para. 95.

⁵ *Željko Međakić*, Trial Verdict of the Court of Bosnia and Herzegovina, (X-KR/06/2009 of 30 May 2008), para 206.

⁶ *Prosecutor vs. Kordić and Čerkez*, IT-95-14/2-A, Judgment of 17 December 2004, para 94.

⁷ *Kunarac*, Appeals Judgment, para.95

⁸ *Id.* para.91.

⁹ *Kordić*, Appeals Judgment, para.95.

detention, or any other cause. The population does not have to be entirely civilian: “the population against whom the attack is directed is considered civilian if it is predominantly civilian”¹⁰.

171. It follows from the case law of both the Court of Bosnia and Herzegovina and the ICTY that not every single member of the attacked group has to be a civilian, it is sufficient that the group consists predominantly of civilians, including civilians/soldiers placed hors de combat. Furthermore, even if an individual was a member of a resistance movement and former combatant, but was no longer taking part in hostilities, he can qualify as a victim of crimes against humanity.¹¹

(iii) Nexus between the offences the Accused are charged with and the attack

172. Article 172 stipulates that the accused have to commit criminal offences “as a part of a widespread or systematic attack directed against any civilian population, being aware of such an attack.” In this case, a nexus has to be established between “as part of a widespread or systematic attack or a widespread and systematic attack directed against any civilian population” and “being aware of such an attack”, that is, between the objective element of the “attack” and the subjective element of “being aware of the attack.”

The elements of the obligatory nexus are:

- 1) the execution of the offence which objectively constitutes part of the attack;
- 2) the knowledge of the accused;
 - a) that the attack against the civilian population exists;
 - b) that his act constitutes part of such attack;
 - c) that the attack was carried out pursuant to or in furtherance of the state or organizational policy to commit such attack; and
 - d) that his act was committed pursuant to or in furtherance of the policy to commit such attack.

¹⁰ *Naletelić i Martinović* (Trial Chamber) 31 March 2003 para. 235.

¹¹ *Blaškić*, ICTY Trial Judgment, para 214; *Kupreškić*, ICTY Trial Judgment, para 549; *Jelisić*, ICTY Trial Judgment, para 54.

173. As to the objective element, in order to be part of the attack, the offences of the accused have to be sufficiently connected to the attack or refer to it to a sufficient extent. It suffices that the offence of the accused is part of the attack. The offences geographically and temporally distant from the midst of the attack may still be considered to be part of that attack if regardless of that they are linked to the attack, for example, by the manner in which they were committed or the identity of the victims, or when they continued after the peak of the attack¹². Finally, the acts of the accused themselves do not have to be widespread and systematic to be part of the attack, as that prerequisite relates only to the attack.¹³

174. Article 172 of the CC of BiH provides that the Accused must be aware of the attack against the civilian population and that their acts are part of that attack. The accused must have had the intent to commit the underlying offence or offences and that he must have known “that there is an attack on the civilian population and that his acts comprise part of that attack, or at least [that he took] the risk that his acts were part of the attack.”¹⁴

(iv) Conclusion

175. Having examined the general elements of the criminal offence of Crimes against Humanity set forth under Article 172(1) of the CC of BiH and following the evaluation of the presented evidence individually and in their combination, the Court established in a reliable and incontestable manner that the Accused, during the conflict between the Army of Bosnia and Herzegovina and the Croat Defence Council (HVO), as part of the widespread and systematic attack directed against the civilian population in the territory of Herzegovina, more specifically, in the area of the Mostar Municipality, knowing of such an attack and knowing that they are participating in such an attack: the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, in agreement with Mario Mihalj (deceased), Ivek Kolobara, Jure Kordić, Nedžad Čorić a.k.a. Nečko, Amel Hadžiosmanović a.k.a. Doktor, Nedžad Tinjak a.k.a. Žuti, among others, participated in the joint criminal enterprise in the Vojno Prison for the maltreatment and persecution of Bosnian Muslims they held imprisoned on the political, national, ethnic and religious grounds, through various types

¹² *Prosecutor vs. Brđanin*, IT-99-36-T, Judgment of 1 September 2004, para. 132; *Prosecutor vs. Kunarac et al*, IT-96-23/1-T, Judgment, 22 February 2001, para 581-592

¹³ *Kordić*, Appeals Judgment, para. 94

of physical, mental and sexual violence: murder, rape, torture, imprisonment and other inhumane acts, and, accordingly, they are liable for the described crimes, which all resulted in natural and predictable consequences of the joint criminal enterprise.

V. FACTUAL AND LEGAL FINDINGS

176. The Panel concluded on the grounds of the presented evidence that there was a wide-spread and systematic attack in the area of the Mostar Municipality at the relevant period, that is, from July 1993 to March 1994, which was targeted against Bosniak civilians. During the attack, multiple offences in violation of Article 172(1) were committed, which were perpetrated pursuant to or in furtherance of the policy and plan of the Croat Community of Herzeg-Bosnia (HZ HB). The attack was carried out by the army and police forces of the Croat Defence Council (HVO), which was the executive and defence structure. The acts committed by the Accused were carried out within the scope of the attack, the Accused knew of the attack, that their actions constituted part of the attack and they knew that their actions were carried out pursuant to or in furtherance of the policy to carry out such an attack.

177. When reaching this conclusion, the Panel took into account the facts established under the ICTY cases of Mladen Naletilić Tuta-Vinko Martinović Štela accepted by the Trial Panel in this case. The Appellate Panel also found these facts to be reliable and important for the specific incidents charged against the Accused.

178. In that respect, the Panel primarily took into account the following established facts:

- Fact no. 5: On 10 April 1992, Mate Boban, the President of the HZ HB, issued an order that the HVO be created.

- Fact no. 6: The HVO became the supreme executive and defence structure of the HZ HB and BH Croats. That meant that the HZ HB had actual power in that part of Bosnia and Herzegovina.

¹⁴ *Kunarac, Kovač and Vuković* (Appeals Chamber) 12 June 2002, para 102., *Krojčelac* (Trial Chamber), 15 March 2002), para 59, (Id).

- Fact no. 7: A fierce conflict broke out between BH Croats and BH Muslims in April 1993, when Mostar was divided in two parts – Eastern that was controlled by Muslims and Western, controlled by Croats.
- Fact no. 9: On 9 May 1993, in the morning hours, HVO units attacked Mostar using artillery, mortars, heavy and light weapons. The HVO took control of the entrance points to the town and denied access to the town to international organisations.
- Fact no. 10: Around 5 a.m. armed HVO units surrounded residential buildings and private houses, took out and rounded up civilians, BH Muslims. There were buildings in which both BH Muslims and BH Croats lived, but only BH Muslims were forced out.
- Fact no. 11: Hundreds of people were taken to the Velež Stadium. The majority of those people ended up at Heliodrom, in Rodoč, west of Mostar, which became the main HVO detention centre in that area (Count 44).
- Fact no. 13: BH Muslims were ill-treated by being forced out of their homes or detained, which became a usual and wide-spread routine as of 9 May throughout the entire autumn of 1993.
- Fact no. 18: Many Bosniaks from other parts of Bosnia and Herzegovina, which were under the control of HVO units, were also arrested in the relevant period and imprisoned in various detention centres.
- Fact no. 19: Heliodrom was the main detention centre and at times, there were thousands of detainees there. Heliodrom used to be a JNA barracks; it consisted of several buildings and hangars. The prison in Ljubuški became notorious because it was intended for “special prisoners.”
- Fact no. 20: Detainees were transferred from one place to another or from one detention centre to another.
- Fact no. 21: The armed conflict existed between 17 April 1993 and the end of February 1994.
- Fact no. 22: Groups of soldiers forcibly evicted BH Muslim civilian families out of their apartments at night, throwing them literally out on the streets and forcing them to leave everything behind.

179. In addition to these facts, many of the heard witnesses, including A.I., Saja Čorić, witnesses 151, 152, 153, A, J, C, F, D, R and others who testified about these facts were consistent in stating that Mostar was attacked by the HVO on 9 May 1993 by artillery fire and fire from all types of weapons, that the Eastern part of Mostar, located on the left bank of the Neretva river, was attacked and that hundreds of Muslim civilians from the Western part of Mostar were arrested during the attack.

180. According to the mentioned witnesses, around 5 a.m. armed HVO units surrounded residential buildings and private houses, took out and rounded up civilians, BH Muslims. There were buildings in which both BH Muslims and BH Croats lived, but only BH Muslims were forced out. BH Muslims were ill-treated by being forced out of their homes or detained, which became a usual and wide-spread routine as of 9 May through the autumn of 1993. Many BH Muslims moved to the eastern part of Mostar. Hundreds of people were taken to the Velež Stadium. The majority of those people ended up at Heliodrom, in Rodoč, west of Mostar, which became the main HVO detention centre in that area. Heliodrom used to be a JNA barracks, it consisted of several buildings and hangars. That day, a total of 1,500 to 2,500 Muslim civilians were rounded up and detained at the Heliodrom detention centre. The attack also resulted in capturing a number of prisoners of war and civilians, who were taken to various detention centres in the area. Detainees were transferred from one place to another or from one detention centre to another. Groups of soldiers forcibly evicted families, Muslim civilians, from their flats; they literally threw them out in the street and forced them to leave all their things in their flats. All structures which were built in oriental style, like for instance Stari Most (Old Bridge) in Mostar, were destroyed. Following the expulsion of Muslim inhabitants from Mostar West, the names of the streets were changed.

181. These decisive facts No. 10, 11, 12, 13, 14, 18, 19, 20, 21 and 22 were established on the basis of accepted facts as found by the ICTY and on the basis of the testimony of the mentioned Prosecution witnesses, admitted by the Court as reliable and accurate, because they do not contradict each other, are consistent and are not seriously called into question based on any other evidence.

182. In order to establish the nexus between the aforementioned accepted facts and the specific incidents in the area of the Mostar Municipality at the relevant period, we will refer to some witnesses' testimony that also covered the period after 9 May 1993 which is not included in the Indictment, as well as areas other than Mostar that were under the HVO control and from which many detainees who testified in this case were rounded up in the similar manner. This points to the reasonableness of the Panel's conclusion on the existence of a widespread and systematic attack on the Bosniak civilian population, as well as of such a policy, and that the relevant acts were committed as part of such policy.

183. Thus, witness 151 stated that he lived in the western part of Mostar in May 1993 and that there was shooting and shelling in the early morning hours of 9 May 1993. He heard over the radio that Muslims were called on to hang white sheets on their windows. Soon afterwards, HVO members entered his flat, took him out and brought him in a van to the Velež stadium, where he

saw many people, including women and children. This witness stated that Croats and Serbs were not taken out of their flats that day, only Muslims. He was then taken to Heliodrom which was controlled by HVO forces and where there were thousands of prisoners. Several days later, he left with a group of prisoners to Ljubuški, while another group was taken to Čapljina. He saw around 200 prisoners in Ljubuški, they were all Bosniaks and there were women and children among them. Ljubuški was controlled by the HVO. They were brought from Ljubuški back to Heliodrom, and then he was transferred from Heliodrom to Dretelj, which was also controlled by the HVO. After that, from Dretelj, he was sent back to Heliodrom again and from there he was taken to a work detail to Mostar and then to Vojno.

184. According to Witness D, as of 9 May 1993, Muslim inhabitants of Mostar started to be arrested and taken away, but, soon after that, individuals and families were arrested and taken away on a daily basis, so that she herself, her seventeen-month-old daughter and 68 year old mother-in-law were arrested in Mostar West in early September and taken to Vojno. All people arrested that day were Muslims, while other inhabitants, who were Croats, stayed in their homes.

185. Witness 152 said that after the HVO attack in May 1993, Bosniak civilians were arrested by the HVO and taken to Heliodrom. Witness A also testified that she was arrested on 9 May 1993 in Mostar West with her two minor children, while her husband was arrested on 30 June 1993 and taken to Heliodrom. HVO members arrested people in the western part of Mostar and mainly took them to Heliodrom or in an unknown direction.

186. Witness Saja Čorić stated that HVO soldiers came to all Bosniak homes on 9 May 1993 and took people out in the street; she saw a line of 200 people.

187. Witness C said that ethnic cleansing of the western bank of the Neretva River started in April 1993, when Bosniak civilians were expelled from their homes and men, who were not members of military formations, were taken to Heliodrom. This witness stated to have seen them cleansing building by building of Bosniaks and that maybe only 5% Bosniaks stayed on the west side of Mostar. She was expelled from her flat in the western part of Mostar together with her husband in early September the same year.

188. Witness E stated that she lived in a flat in Mostar West and that shooting started on 9 May 1993 from heavy weapons and cannons deployed at HVO positions. That day, HVO soldiers came to take her husband, but her son showed them an HVO ID and because of that they did not arrest him on that occasion. According to Witness E, after the shelling, HVO soldiers entered Muslim flats en masse and started to arrest and persecute Muslims in the western part of the town. Men

were mainly taken to the camp at Heliodrom, while women were expelled to the left bank of the Neretva River.

189. According to Witness F, the HVO attacked the left bank of Mostar on 9 May 1993 and the left side of the town was literally burning. It was then that Bosniak civilians in the western part of the town started to be arrested. The witness was arrested in mid August together with her two minor children and taken to Vojno.

190. Witness J was arrested in early September 1993 together with her 73-year-old grandmother and with witness K. Witness K also stated that following the HVO attack on the relevant day in May, Muslims were arrested and taken away, so that all men from the west river bank were arrested and taken to Heliodrom, Vojno and Ljubuški.

191. Witness Hamza Leto stated to have been arrested in July 1993 in Počitelj, Čapljina Municipality, by HVO members. He was rounded up with other Bosniaks so at that time his relatives were also arrested and all of them were taken to Dretelj, which was controlled by the HVO and it was packed with captured Bosniaks. He was transferred from Dretelj to Rodoč, then to Heliodrom, from where he was taken to a work detail in Vojno.

192. Witness AK stated that he was arrested as a civilian in the western part of Mostar in late June 1993, while his wife was expelled to Blagaj. He was then taken to Dretelj, which was controlled by the HVO, where he saw 4000 to 5000 prisoners, all of them Bosniaks, brought there from different parts of Herzegovina and Bosnia, from Teslić, Žepče, Prozor. Prisoners who lived in Mostar were transferred from there to Heliodrom, while others were moved to Gabela. There were thousands of prisoners at Heliodrom, all of them Bosniaks, maybe only a few Serbs.

193. It undoubtedly follows from the established facts and from the testimony given by the above mentioned witnesses that the attack on the Bosniak civilian population of the Mostar Municipality and beyond was carried out pursuant to or in furtherance of the policy and plan of the Croat Community of Herzeg-Bosnia, whose supreme executive and defence structure was the HVO, which is an organisation within the meaning of Article 172(2)(a), to carry out an attack against Bosnian Muslim civilians of the Mostar Municipality. The attack described above was wide-spread and systematic by its nature.

194. The widespread nature of the attack on the civilian population follows from the facts that not only one town/place (Mostar) was attacked but also the whole area under the HVO control. The systematic and organised nature of the attack was reflected in the manner, methods and means of its

execution, starting from the use of artillery through systematic arrests and imprisonments and ultimately the removal of the Bosniak inhabitants, by either expulsion or imprisonment. After the main phase of the attack was completed, when the Muslim population was expelled from the western bank, everything that was built in oriental style was destroyed (like for instance the Old Bridge in Mostar, and the names of the streets were changed), all of which follows from Fact No. 23, established by the ICTY in the case Naletilić-Martinović.

195. The Panel concludes that these events were not random and isolated. Quite the opposite, it is clear beyond a reasonable doubt that these events were a result of planning, organisation and coordination, whose ultimate goal was the attack on Bosniak civilians.

196. The Panel reaffirms that customary international law absolutely bans the use of armed force against civilians and that neither national nor international jurisprudence accepts the defence based on the *tu quoque* ('you too') principle. This was precisely the principle that the Defence relied upon throughout the proceedings, claiming that it was the Army of BiH who committed horrific crimes over the Croat population when they attacked civilians and soldiers in Bijelo Polje on 30 June 1993 and that the only purpose of imprisonment in Vojno was their own protection and their exchange for civilians imprisoned by the Army of BiH.

197. When evaluating these arguments and their relevance to the charges, the Panel was guided by the position taken in the ICTY Judgement against Kunarac, Kovač and Vuković:

„when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent's civilian population. The existence of an attack from one side against the other side's civilian population would neither justify the attack by that other side against the civilian population of its opponent nor displace the conclusion that the other side's forces were in fact targeting a civilian population as such. Each attack against the other's civilian population would be equally illegitimate and crimes committed as part of this attack could, all other conditions being met, amount to crimes against humanity. “¹⁵

198. Therefore, the cause of attack on civilians and the fact that the same attack was carried out against assailant's civilians, is completely irrelevant and the Panel agrees on this conclusion.

¹⁵ *Kunarac, Kovač and Vuković*, Appeals Chamber, Judgment of 12 June 2002, para. 87-88

199. In addition, as opposed to the term “armed conflict”, in the context of a crime against humanity as adopted by the ICTY, the phrase “attack” is not limited to the use of armed force; it also encompasses any mistreatment of the civilian population.¹⁶ Such mistreatment took place in the town of Mostar itself over the relevant period, since Muslims were daily subjected to various types of verbal, mental and physical maltreatment, including expulsion and imprisonment. Having in mind the overall situation in the town of Mostar and its surroundings at the relevant period and that it was established beyond a doubt that the attack existed because Bosniak - Muslim civilians were subjected to the established pattern of violent behaviour reflected in the maltreatment, restriction of movement, seizure of personal property, unlawful taking to camps, imprisonment and keeping under inhumane conditions, torture, sexual abuse and eventually killing, the aforementioned events were beyond a doubt a result of a detailed planning, organization and coordination with a view to carrying out the attack, which actually happened. Therefore, the assumption that the aforementioned events were but random and isolated acts is untenable.

200. The Panel further concludes that the nexus between the attack and the individual actions of the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević amounting to the commission of the criminal offence under Article 172(1) of the CC of BiH was proved beyond a reasonable doubt for the reasons explained below.

201. The Panel concludes that it follows from the scale of the attack, the role of the Vojno camp in it and the specific positions the Accused assumed and the assignments they executed, that they were part of a domineering military and police formation and that their individual acts constituted part of a wider attack. Also, the facts and circumstances of the case prove the nexus between the acts of the Accused and the attack and show that their conduct and actions were directly associated with the attack.

202. The Unit File in the name of Marko Radić shows that the Accused was a member of the First Battalion from 20 September 1991 to 2 November 1992. After that, he was a member of the First Battalion, Second Brigade from 3 November 1992 to 1 December 1993, and then he was commander of the Second Brigade from 2 December 1993 to 4 May 1994. Also, it follows from his Personal File that the Accused Marko Radić was a member of the First Battalion from 20 September 1991 to 2 November 1992, then a member of the First Battalion of the Second Brigade from 3 November 1992 to 1 December 1993, member of the Ivan Stanić Čićo Sabotage Unit from

¹⁶ *Vasiljević*, Trial Chamber, Judgment of 29 November 2002, para. 29, 30.

24 December 1992 to 1 January 1994. It stems from the Order on the Establishment of the Bjelopoljska Battalion issued on 3 July 1993 that the Accused Marko Radić was the commander of the Bjelopoljska Battalion.

203. Dragan Šunjić's certified Personal File shows that he was a member of the First Battalion from 18 September 1991 to 1 July 1992, then a member of the Military Police from 1 July 1992 to 19 April 1993 and a member of the HVO Convict's Battalion from 19 April 1993 to 1 January 1994. The original Military ID in the name of the accused Dragan Šunjić shows that he was assigned to Military Postcode 1520 (First Battalion, Second Brigade of HVO) from 20 September 1991 to 10 March 1994 and, through inspection of the original copy of the Application for Membership Form of the Association of Veterans, it was established that the accused Šunjić was a member of the First Battalion of the Second Brigade from 8 April 1992 to 10 March 1994.

204. The Personal File in the name of the Accused Damir (Emir) Brekalo shows that the Accused Brekalo was a member of the Convict's Battalion from 24 December 1992 to 1 January 1994, member of the First HVO Battalion from 20 September 1991 to 2 November 1992, member of the First Battalion of the Second Brigade from 3 November 1992 to 30 September 1993, member of the Second Brigade, First Battalion from 2 February 1994 to 19 April 1994 and a member of the 81st Guards, Second Battalion from 20 April 1994 to 14 April 1995.

205. The original Military ID in the name of Mirko Vračević shows that he was assigned to Military Postcode 1520 from 30 June 1993 to 18 April 1996, while it follows from the Letter No. 07-03-88-2/07 of the Ministry of Veterans and Disabled Veterans that the Accused Mirko Vračević was assigned to Military Postcode 1520 from 30 June 1993 to 18 April 1996 (from 30 June 1993 to 19 April 1994 – First Battalion, Second Brigade).

206. The Panel notes that it follows from the documentary evidence that the Accused Marko Radić, Dragan Šunjić and Damir Brekalo were members of multiple units at the same time. However, this fact was elucidated by witnesses both for the Prosecution and for the Defence (Slavko Puljić, Zdenko Sesar) by stating at the main trial that it was possible that an individual be recorded in multiple units at the same time (for instance, Ivan Stanić Čićo Anti-Sabotage Unit was part of the First Battalion, so that its members were part of both Ivan Stanić Čićo Anti-Sabotage Unit and the First Battalion). This fact follows from the documentary evidence: the list of the members of the Ivan Stanić Čićo Bijelo Polje Convicts Battalion, including the name of the Accused Brekalo, dated 27 June 1993 and signed by the Accused Marko Radić as the Commander

of the Unit, and the Payroll for November 1993 for members of the Ivan Stanić Ćićo Anti-Sabotage Group that includes the names of the Accused Dragan Šunjić and Mario Mihalj.

207. This situation was best explained by witness Slavko Puljić. According to him, the Accused were motivated by financial reasons to be members of multiple units at the same time because of different amounts of salaries.

208. The Defence for the Accused, primarily for Šunjić and Brekalo, attempted to take advantage of this situation to prove that they were not members of the First Battalion of the Second Brigade at some intervals during the relevant period and exculpate them from individual acts of perpetration of the criminal offence which happened at the time when they were not members of this formation. However, the Panel concluded that it indisputably follows from the examined evidence that all four Accused were members of the same military unit at the relevant period, the First Battalion at the beginning, and then the Second Brigade's First Battalion. Also, the Accused Radić, Brekalo and Šunjić were members of the Ivan Stanić Ćićo Sabotage Unit. In addition to the mentioned documentary evidence, also the testimony of almost all Prosecution witnesses and some Defence witnesses irrefutably shows that the Accused Radić, Šunjić, Brekalo and Vračević, in their respective capacity and role described in the Enacting Clause of the Verdict, significantly contributed to the executed attack by individual acts of perpetration referred to under Article 172(1) of the CC of BiH.

209. It clearly arises from the testimony of many witnesses and from abundant documentary evidence that the Accused were aware of a broader context of their actions and of the role they played in the attack. It follows from the Minutes of the Meeting No. 0-0013/93 held between the Commanders of the Battalions and members of the Municipal Government, which was drafted on 26 March 1993, that the Accused Marko Radić was present at the meeting as the commander of the First Battalion and that he said "we were promised that the town would be cleansed and that there would be flats available to our soldiers. We want the competent Government authorities to state their position in this respect", and also the following: "I believe that it can be done only with strong special forces and your full support."

210. This piece of documentary evidence shows that the policy existed to ethnically cleanse Bosniaks from Mostar, as established by the ICTY in the Naletilić-Martinović Judgment, and that not only was the Accused Marko Radić informed beforehand about the policy and the plan concocted by both administrative and military authorities to carry out the attack, but he himself

insisted that the policy and plan be executed by proposing that special forces be engaged for that purpose.

211. It arises from the written statement given on 31 July 1993 by the Accused Marko Radić, commander of the First Battalion, that he also participated in the attack with his unit and in the cleansing of the place called Jasenjani, when Muslims were arrested, questioned, imprisoned and expelled (cleansed on ethnic grounds).

212. According to the testimony of all the Prosecution witnesses and documentary evidence, the Accused Dragan Šunjić was Deputy Commander of the Vojno prison from August 1993 through March 1994, which follows also from the Minutes of the Meeting of 29 August 1993, which he signed as the Deputy Commander of the Vojno prison, Damir Brekalo took part in arresting civilians, specifically women, children, and in their transfer to Vojno, and on a number of occasions he visited the Vojno camp. All witnesses were consistent that the accused Mirko Vračević was a guard in the Vojno prison in the relevant period.

213. Therefore, the Panel irrefutably established that the Accused were assigned specific tasks and duties in the military and police formations. If their individual acts are viewed in the context of the massive nature of the attack and the overall actions taken by the HVO in the area under their control, it can be reasonably concluded that the Accused were fully aware of the everyday developments.

214. The abuse, violence and maltreatment which occurred during the unlawful arrests and taking away of people, and subsequently during the captivity in the Vojno camp of the arrested women, children, elderly and men brought from Heliodrom to perform forcible labour, took place as part of the attack on Bosniak civilians of the Mostar Municipality which was carried out in furtherance of the HZ HB and HVO policy.

215. Therefore, based on the foregoing, the Panel concludes that the general elements of the criminal offence of Crimes against Humanity under Article 172 of the CC of BiH are satisfied and proved beyond a reasonable doubt.

VI. CRIMINAL OFFENCES ACCORDING TO PARTICULAR SECTIONS OF THE OPERATIVE PART OF THE VERDICT

216. The Panel adjusted the operative part of the Verdict to the findings of fact and law in this case. Considering that the Indictment was structured in such a manner that the offenses were listed separately for each Accused and thus the factual description of the same acts was repeated several times, in the Reasoning of the Verdict the Panel referred to the pertinent counts and defendants for each offense.

A. IMPRISONMENT OR OTHER SEVERE DEPRIVATION OF PHYSICAL LIBERTY IN VIOLATION OF FUNDAMENTAL RULES OF INTERNATIONAL LAW AND OTHER INHUMANE ACTS

(a) Imprisonment

(count 1 Radić; count 7 Šunjić; count 13 Brekalo; count 19 and 20 Vračević)

217. Article 172(1)e) of the CC of BiH prescribes “Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law” as the act of commission of Crimes against Humanity. Accordingly, the essential elements of the criminal offense of imprisonment under Article 172(1)e) of the CC of BiH, are:

- 1) Imprisonment or other severe deprivation of physical liberty, and*
- 2) violation of fundamental rules of international law*

218. The ICTY jurisprudence identified the elements of imprisonment as Crimes against Humanity,¹⁷ which are also confirmed by the jurisprudence of the Court of Bosnia and Herzegovina, as:

- 1) an individual is deprived of his or her liberty;

¹⁷ *Kordić*, Trial Judgment, paras. 292-303; *Krnjelac*, Trial Judgment, paras. 108-115. *Gojko Janković*, Appeals Judgment, 23 October 2007, para. 14 (quotation from the Trial Judgment in *Krnjelac* dated 15 March 2002, para. 115.).

2) the deprivation of liberty is imposed arbitrarily,¹⁸ that is, no legal basis can be invoked to justify the deprivation of liberty;¹⁹ and

3) Acts or omissions of the accused were voluntary or deprivation of liberty was a part of the plan, or a predictable consequence of the plan in which the accused participated.

219. The *mens rea* element of this criminal offense is the intent to deprive the individual arbitrarily of his or her physical liberty or the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty²⁰.

220. The Trial Chamber concludes that the term imprisonment in Article 5(e) of the ICTY Statute should be understood as arbitrary imprisonment, that is to say, the deprivation of liberty of the individual without due process of law, as part of a widespread or systematic attack directed against a civilian population.²¹ The fundamental rights of international law, which are considered violated in case of an unlawful/arbitrary deprivation of liberty, are primarily stipulated under articles 42 and 43 of the IV Geneva Convention, Article 9 of the Universal Declaration on the Human Rights (the Universal Declaration) and Article 9 of the International Covenant on Civil and Political Rights (the International Covenant).²²

¹⁸ *Krnjelac*, Trial Judgment, para. 113 and many human rights international instruments quoted therein.

¹⁹ *Krnjelac*, Trial Judgment, para. 114: “In addition, the legal basis for the initial deprivation of liberty must apply throughout the period of imprisonment. If at any time the initial legal basis ceases to apply, the initially lawful deprivation of liberty may become unlawful at that time and be regarded as arbitrary imprisonment.” If national law is relied upon as justification, the relevant provisions must not violate international law. See the Trial Judgment in the *Krnjelac* case, para. 114. The national law *per se* cannot be arbitrary and the implementation of this law in the given case must not be arbitrary. Article 7(1)(e) of the *Statute of International Criminal Tribunal* also mentions “imprisonment” or other severe deprivations of physical liberty as violations of the fundamental rules of international law.”

²⁰ See the Trial Judgment in the *Krnjelac* case, para. 115.

²¹ *Kordić and Čerkez* (Trial Chamber), 26 February 2001, para. 302-303:

²² See also The UN Working Group on Arbitrary Detention, established within the Human Rights Commission 1991/42 in contrast, identifies three categories under which a deprivation of liberty will be regarded as being imposed arbitrarily: 1) when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty; 2) when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 20 and 21 of the Universal Declaration of Human Rights and, insofar as State parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the ICCPR; 3) when the total or partial non-observance of the international norms relating to the right to a fair trial, established in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character.

221. The Trial Chamber in the Krnojelac case concluded that „If at any time the initial legal basis ceases to apply, the initially lawful deprivation of liberty may become unlawful at that time and be regarded as arbitrary imprisonment.”²³

222. According to this Panel, the evidence adduced undoubtedly demonstrates that Bosniak civilians were detained unlawfully, and that the reasons for such treatment were primarily the ethnic and religious affiliation of the persons deprived of liberty. The testimony of a large number of witnesses demonstrated that members of the VP-HVO had forcibly taken them out of their homes and brought them to the Vojno camp.

223. The facts that the persons who were deprived of liberty were not informed about the reasons for their detention or that the justification of detention was not subject of consideration in a court or administrative proceedings, and that they were deprived of liberty without any legal or realistic reason, certainly indicate that there were no legal grounds for their imprisonment.

224. Almost all the Prosecution witnesses consistently stated that they were arrested as civilians and then imprisoned, except for Witness AA, who stated that he was arrested as a member of the Army of BiH. They were arrested at their homes, or in other places in which they were hiding. They were arrested individually and in groups, some of them were arrested together with their family members and their neighbours, and thereupon transported by different means to Heliodrom and Vojno. Among the detainees there were a large number of women, children, some of whom were babies, and some were sick and disabled. They were not informed about the reasons for their arrest and imprisonment. At the very best, some of them were told that they were going to be exchanged. None of the arrested persons was ever shown any arrest warrant, nor was anyone ever tried, let alone convicted of a crime. Upon their arrival in Vojno, they were questioned, mentally and physically abused, interrogated about their relatives, asked whether they were members of the BiH Army and alike. The obvious and the only reason for their detention was their Bosniak ethnicity.

225. Based on the consistent statements of the heard witnesses, having inspected the List of detainees, women, children and elderly who were detained in the Vojno prison during the relevant period, which was made by the Initiative Board of female detainees of the Vojno Bijelo Polje detention camp on 1 May 1996, and the List of persons that was made on the occasion of the exchange held on 2 December 1993, the Panel has established that, among others, the following

²³ *Krnojelac* Trial Judgment, para. 114.

persons were unlawfully arrested and imprisoned: Witness X, Witness L, Witnesses A, F, Sadeta Macić and Mustafa Macić with their children, Witness E and her son Witness 153, Rahima Makaš with her daughter and two minor granddaughters Mediha and Sanela, Witness B, Zejna Mirica with her daughter, Emica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witness D with her 17-month-old child, Witnesses R, AM, K and J with a 73-year-old old woman, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI, Zejna Tihak and her son, Saja Ćorić, Mehunisa Ćorić and other detainees from Mostar. Witness L was not detained in the Vojno prison, but was unlawfully arrested and detained in a house in Rudnik by the accused Brekalo. She was arrested together with her family, her sister Witness X, her mother and brother, who were all taken to Vojno.

226. The statements of the Prosecution witnesses, particularly the statements of the women who were taken to the Vojno prison together with children and elderly, show that they were arrested and then taken to the Vojno prison mostly by the following persons: Ivica Kolobara a.k.a. Ivek, Jure Kordić, Nedžad Ćorić a.k.a. Nečko, Nedžad Tinjak a.k.a. Žuti, Amel Hadžiosmanović a.k.a. Doktor, the accused Damir Brekalo, who were all members of the 1st Battalion.

227. Witness F was arrested on 15 August 1993 by Kolobara, Tinjak, Hadžihasanović and a young man called Zec. On this occasion, witness F was told that Mostar was not her city.

228. Ivek Kolobara and Žuti (Nedžad Tinjak) arrested Witness E too, as well as Witness D with her child and her mother-in-law. When arrested, witness E was told that „they”/Muslims did not belong there.

229. Witness Saja Ćorić stated that Ivica Kolobara, Nedžad Ćorić and Nedžad Tinjak arrested her together with her niece in her apartment in the Western part of Mostar in early September. Several persons of Bosniak ethnicity were arrested on that day.

230. Witness 152 noted that he was arrested on 11 October 1993 in his apartment in the Western part of Mostar and that Tinjak, a.k.a. Žuti and another person whom he did not know arrested him. On their way towards the prison, a soldier stopped them at the checkpoint in Goranci and he asked Tinjak whether he had a written order and then he said that they were taking them upon the order of Marko Radić, after which they immediately let them proceed. These claims of Witness 152 were entirely confirmed by witness Dika Ćurić.

231. Witnesses L and X with her brother and mother were arrested by Nedžad Ćorić, Jure Kordić and Emir Brekalo in July. When arrested, witness X cried constantly, and Brekalo threatened her

that he would slit her throat. Witness C, who stated that she was arrested either on 9 or on 10 September 1993, said that the persons who arrested her were Tinjak a.k.a. Žuti and Emir Brekalo. Witness A was arrested on 15 August 1993 in her apartment in the Western part of Mostar, together with her two underage children, by Ivica Kolobara, Amel Hadžiosmanović a.k.a. Doktor and Tinjak. Witness J stated that she was arrested on 7 September 1993 in her apartment in the Western part of Mostar and that she was arrested together with her grandmother, who was over 70, by Ivica Kolobara a.k.a. Ivek and Emir Tinjak a.k.a. Žuti, and that Tinjak told her that she would be the first one to be raped in the camp. According to her statement, Witness R was arrested on 13 September 1993 by Ivek Kolobara, Bruno Azinović, two brothers – Tihak and Dražen Lovrić, whom she personally knew. Her mother, husband, underage son and her father-in-law were also arrested. Witness K stated that she was arrested in early September by Ivek Kolobara, Nedžad Ćorić and Emir Tinjak. Witness B was arrested by Nedžad Tinjak and Dario Sušac in August.

232. Almost all aforementioned witnesses, who were arrested in the referenced period, testified that they were loaded onto trucks with trampoline, sometimes more than 20 persons inside the truck, that the conditions were unbearable, that the temperature was high and that they could not breathe. The foregoing statements demonstrate that they were not arrested for the purpose of protection of civilians, as the accused argued, but on the contrary, that they were arrested in a particularly threatening manner motivated by a discriminatory intent and with a goal to create fear and subjugate Bosniak civilians.

233. The Panel concludes that the persons who were arresting civilians around the Western part of Mostar were primarily members of the First Battalion of the HVO Second Brigade. Evidently, the personal file of Nedžad Ćorić shows that during the period from 3 November 1992 to 19 April 1994 he was a member of the 1st Battalion of the 2nd Brigade, which was commanded by the accused Marko Radić, whereas the personal file of Amel Hadžiosmanović shows that he was also a member of the 1st Battalion of the 2nd Brigade during that period. The inspection of Nedžad Tinjak's personal file has shown that he was a member of the 1st Battalion of the 2nd Brigade from 3 November 1992 to 20 May 1994, as well as that he was a member of the Convicts Battalion from 24 December 1993 to 1 January 1994. Ivica Kolobara was also a member of the 1st Battalion during the relevant period.

234. That Marko Radić was a commander of the unit which carried out the aforementioned arrests is evident from the list of the members of the "Ivan Stanić Ćiće" Bijelo Polje unit dated 27 June 1993. Among other names, this list also contains the names of Nedžad Tinjak, Nedžad Ćorić, Ivica Kolobara, Emir Brekalo, Amel Hadžiosmanović and Dario Sušac. This fact also stems from

the payroll list for November 1993 for members of the Convicts Battalion. The list of the ATG Ivan Stanić Ćićo contains 48 names, including the names of the accused Marko Radić, Dragan Šunjić and Mario Mihalj. Also, “The List of privates of the Convicts Battalion whose housing issues needed to be resolved” dated 2 June 1993 shows that it was signed by the accused Marko Radić. It contains the names of 26 persons who were to be granted apartments, with addresses, including Marko Radić, Ivica Kolobara, Emir Brekalo and others.

235. The inspection of the Statement given by Ivica Kolobara on 8 September 1993, as a member of the “Ivan Stanić Ćićo” Convicts Battalion, clearly shows that, following the order of the HVO 1st Battalion Command, on 7 July 1993 he went to Mostar to take the remaining persons of Muslim ethnicity who temporarily resided in Mostar and whose place of residence was in the region of Bijelo Polje, Vrapčići and Raštani. The VOB form in the name of Ivica Kolobara clearly shows that during the period from 20 September 1991 to 30 October 1995 he was a member of the 1st Battalion. Based on the above-mentioned documentary evidence it stems that the 1st Battalion Command, over which the accused Radić had command, issued the Order to arrest the Muslims in Mostar, who were then taken to Vojno, as well as that this Order was issued to the “Ivan Stanić Ćićo” Unit, to which the accused Radić also belonged and over which he also had command.

236. The Appellate Panel considers inadmissible the theory of the Defence for the First-accused that the arrests around Mostar after 30 June 1993 were carried out by wilful groups. On the contrary, the mentioned contents of the testimony of the witnesses heard and the referenced documentary evidence undoubtedly demonstrate that during the relevant period the accused Marko Radić participated in the events by issuing orders that civilians of Bosniak ethnicity, women, children and elderly, be unlawfully arrested and detained in the Vojno prison. Also, the Panel has established beyond any reasonable doubt that men of Bosniak ethnicity were on several occasions and in different groups taken to the Vojno prison as detainees from the Heliodrom detention camp. This primarily ensues from two lists of names of detained persons which were made by witness Ibrahim Šogolj, containing the names of 75 persons, women, and children and elderly, who were imprisoned during the period from 17 November 1993 to 28 January 1994; the List of detainees made by Witness AK containing the names of 72 men. Ibrahim Šogolj and AK were among the detained persons brought to Vojno.

237. Based on the logbook kept in the Heliodrom prison facility, the statements of detainees after they returned to Heliodrom from Vojno on 28 January 1994, and based on several Orders on taking detainees from Heliodrom upon Request of the 1st Battalion of the 2nd Brigade, as well as based on several Reports made by the relevant persons from SVIZ Heliodrom, which refer to the problems in

the Vojno prison, the Panel indisputably concluded that men of Bosniak ethnicity were brought from the Heliodrom detention camp in different time periods and imprisoned in the Vojno prison. Also, the Prosecutor's Office tendered as documentary evidence several lists made by the detainees themselves, as well as by other authorized persons. The following lists were tendered in the case file of the Court: the List made on 1 May 1996 by the Initiative Board of female detainees in the Vojno – Bijelo Polje detention camp containing names of 76 persons, women, children and elderly, who were imprisoned in Vojno; the List of detainees who came from Heliodrom on 21 September 1993, made by the SVIZ Warden Stanko Božić number 703/93 dated 23 September 1993; the List of detainees in the Vojno prison centre dated 13 January 1994 made by Ivica Rotim, Assistant Commander of the HVO 2nd Brigade SIS /Security and Information Service/ number 01-306/94 dated 13 January 1994, containing the names and personal details of 57 detainees; the List of personal details of prisoners in Vojno, made by Anđelko Zlatić, Assistant Commander of the HVO 1st Battalion of the 2nd Brigade SIS.

238. It follows from the aforementioned lists and the contents of the Orders dated 19 August 1993, 2 September 1993, and 6 September 1993 that Bosniak men from the Heliodrom detention camp were brought to Vojno based on the requests of the 1st Battalion of the 2nd Brigade that was under the command of Marko Radić. The referenced evidence (the lists and the orders) including the witnesses statements demonstrate that at the relevant period several dozens of Bosniak women, children and elderly were detained in the Vojno detention centre, as well as a large number of men of Bosniak ethnicity who were brought from the Heliodrom detention camp in different time periods and imprisoned there, and then returned to Heliodrom later on, whose exact number the Panel could not establish given the fact that during the entire critical period some groups were returned while others were brought in the Vojno camp.

239. During the proceedings, the Panel established that the Vojno camp was within the zone of responsibility of the HVO 1st Battalion of the 2nd Brigade, that is, the commander Marko Radić. The Panel infers so from a large number of statements of the Prosecution witnesses and the testimony of certain Defence witnesses, the documentary evidence presented, which will be addressed in more detail in the explanation of the individual guilt of the first accused.

240. In addition to the role of the accused Marko Radić, who ordered that the Bosniak civilians be arrested and brought to Vojno, or taken from Heliodrom and brought to Vojno, the Panel indisputably established the roles of other accused in the process of arrest and detention of civilians.

241. According to the testimony of a large number of witnesses, including: Saja Ćorić, Witness J, Witness 151, Semir Humačkić, Witnesses C, D et al., the accused Dragan Šunjić, along with the Camp Warden Mario Mihalj, were most often the first ones to meet the arrested persons of Bosniak ethnicity upon their arrival, and abused them physically and mentally. Witness J testified that Mario Mihalj and Dragan Šunjić met her and other civilians brought in Vojno on that occasion with the words: “Welcome to the Black Hell.” Witness C testified that upon her arrival in Vojno she was interned in a house with Mario Mihalj, Dragan, Šunjić, Mirko Vračević, that Mario Mihalj and Mirko Vračević frisked her and that they seized from her and other detainees their documents, gold and money. Witnesses Ramiz Mačković and Aziz Suljević testified that on one occasion the accused Šunjić personally came to take the detainees sent from Heliodrom to Đubrani, from which place they were taken to Vojno on foot and tied with wire in the presence of Mirko Vračević. Witness Azer Handžar also testified that Mario Mihalj and Dragan Šunjić took him from Heliodrom to Vojno. Witness D testified that she was transferred from Đubrani to Vojno by night, where HVO member Mirko Vračević met her.

242. It stems from the referenced testimony that Dragan Šunjić personally participated in the unlawful detention of Bosniak civilians, women and children in Vojno, and in the bringing of Bosniak men from Heliodrom and their detention in the Vojno prison.

243. As a guard in the Vojno camp, the accused Mirko Vračević participated with his acts in the unlawful detention of Bosniak civilians, women and children and the elderly, and the Bosniak men brought from Heliodrom.

244. The fact that neither Šunjić nor Vračević participated personally in the arrest of civilians in the city of Mostar, as insisted on by the Defence teams, is irrelevant to the existence of the criminal offense under sub-paragraph e) – imprisonment or other severe deprivation of physical liberty, because both accused undoubtedly participated in their unlawful detention-imprisonment in Vojno. They were not charged with their personal participation in the act of arrest itself.

245. The testimony of a large number of witnesses, particularly Witnesses X, L and C confirmed that the accused Damir Brekalo personally participated in the arrest and apprehension of civilians, and in the subsequent regular visits to the Vojno prison.

246. The Prosecution evidence adduced clearly demonstrates that the accused Radić ordered the unlawful detention of several dozens of Bosniak civilians, women, children and the elderly, and their detention in the facilities in the Vojno settlement, and that he participated in the unlawful detention of men, prisoners from Heliodrom, in the Vojno camp.

247. The accused Šunjić, Brekalo and Vračević, each in his respective role and function, as members of the 1st Battalion of the 2nd Brigade HVO, namely: Šunjić as a Deputy Warden in the Vojno prison, Brekalo as a military police officer and Vračević as a guard, personally participated in the unlawful arrest and detention of persons in the Vojno prison, while the accused Brekalo also personally participated in the arrest of the Bosniak civilians. As already mentioned, the arrested persons were women, underage children, the elderly and the men brought from Heliodrom to Vojno. Therefore, it is evident that exclusively civilians were brought to Vojno, and that the arrested persons cannot be considered prisoners of war in any segment. This is all the more so because many of them were hitherto neighbours, acquaintances and fellow citizens of the accused, and therefore the status of the arrested civilians could not have been unknown to the accused. The men taken from Heliodrom to Vojno were also unarmed civilians, except for Witness AA who was a member of the ABiH at the moment of the arrest. The foregoing is also supported by the List of detainees in the Vojno prison centre made by the Assistant Commander of the 2nd Brigade SIS Ivica Rotim, which indicates that out of 57 detainees not a single one was arrested as an armed member of the Army of BiH and that the majority of them were unarmed at the moment of their arrest, whereas those few of them who were armed were Bosniak members of the HVO units.

248. It undoubtedly follows from the foregoing that the accused persons knew and were aware that the persons who were initially arrested and thereupon detained and kept in the Vojno camp, were civilians who were deprived of liberty and detained on no legal or factual grounds, undoubtedly and exclusively because of their Bosniak ethnicity.

249. The expressions by which the place of detention of Bosniak civilians in Vojno was named, and the inconsistencies in the Indictment in this respect, as tolerated by the Court, are irrelevant from the aspect of existence of the offense under sub-paragraph e). The Court holds that it is essentially irrelevant to the decision-making in this legal matter. Specifically, while giving testimony some witnesses used the term “prison” and some “camp”, while sometimes the referenced documents mentioned a “detention centre” and sometimes a “privately-owned prison”. However, there is no dilemma that they all referred to several facilities/privately-owned houses in the Vojno settlement, to which the civilians were brought against their will and interned therein, after they were unlawfully arrested in other locations, where they were kept without a possibility to leave them or move around the settlement freely, locked and guarded, which is all in violation of the rules of international law. Thereby, all the elements of the criminal offense under Article 172(1)(e) of the CC of BiH have been satisfied.

(b) Other Inhumane Acts.

(count 1 and 6 Radić; count 7 and 11 Šunjić; count 13 Brekalo, count 22a)22b) and 23 Vračević)

250. Given that the Accused are charged with the criminal offense of Crimes against Humanity under Article 172 of the CC of BiH, the Panel examined whether the special incrimination under sub-paragraph k) “other inhumane acts” has been satisfied.

251. The elements of “other inhumane acts” as Crimes against Humanity under Article 172(1)(k) of the CC of BiH are as follows:

- 1) the nature of the acts must be similar to the acts specifically listed under Article 172(1) a), b), c), d), e), f), g), h), i), j);
- 2) the acts must cause great suffering or serious injury to body or health, and
- 3) the acts must be committed with the intention to inflict severe sufferings or serious injury.

252. The CC of BiH does not define “other inhumane acts” under Article 172(k) of the CC of BiH in terms of determination of the specific acts of commission or omission that represent “other inhumane acts”. However, the ICTY jurisprudence offers numerous examples of these specific criminal offenses, namely: mutilation and other types of severe bodily harm²⁴; beatings and other acts of violence²⁵; infliction of serious physical and mental injury; serious physical and mental injury²⁶; serious attack on human dignity²⁷; unlawful labour that caused serious mental harm or physical suffering or injury, or the act constitutes a serious attack on human dignity²⁸; deportation and forcible transfer of groups of civilians²⁹; forced prostitution³⁰ and forced disappearance³¹. In the Blaškić case, the Trial Chamber held that “severe violations of physical or mental integrity undoubtedly represent „inhumane acts” in terms of Article 5 of the Statute.

²⁴ See *Kvočka et al.*, ICTY Trial Judgment, no. IT-98-30/1, para. 208.

²⁵ *Ibid*, para. 208.

²⁶ See *Blaškić*, ICTY Appeal Judgment, no. IT-95-14 para. 239; *Krstić*, ICTY Trial Judgment MKSJ, no. IT-98-33 para. 523.

²⁷ See *Vasiljević*, ICTY Trial Judgment, para. 239-240.

²⁸ See *Naletilić and Martinović*, ICTY Trial Judgment, para. 271, 289, 303.

²⁹ See *Kupreškić et al.*, ICTY Trial Judgment, para. 566.

³⁰ *Ibid*, para. 566.

³¹ *Ibid*, para. 566.

253. Also, in the *Krnojelac* and *Kvočka* cases, the ICTY inferred that inhumane living conditions must occupy the same level of seriousness as other listed or recognized crimes against humanity.³²

254. There are many examples of specific offenses that may be categorized as “other inhumane acts” prohibited under Article 3 of the ECHR, and under the jurisprudence of the European Court and the European Human Rights Commission. For example, in the *Tomasi v. France* case, the European Court established evidently inhumane treatment in violation of Article 3 when the applicant was subjected to slapping, kicked and punched, beaten on his lower arm, forced to stand for a longer period of time with no support, with his hands handcuffed behind his back, when they spit on him and forced him to stand naked by the open window, when he was deprived of food and threatened with fire weapons. The European Court held that a large number of blows inflicted on Mr. Tomasi and their intensity constituted two elements which are sufficiently serious to render such treatment inhuman and degrading.³³ Such treatment has been held by the Court to be “inhuman” because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering.³⁴ The suffering inflicted by the act upon the victim does not need to be lasting so long as it is real and serious.³⁵

255. However, the key issue for the Appellate Panel was distinguishing between the individual incrimination of “other inhumane acts” under sub-paragraph k), and other incriminations under Article 172 sub-paragraphs a), e), f), g) and h), that were also charged against the accused. In considering this issue and bearing in mind the legal standards and views, including the addressed ones, the Panel holds that the main parameter which distinguishes “other inhumane acts” from the other offenses stipulated under Article 172 of the CC of BiH is the gravity of the committed offense and the resulting consequences, that is, whether the offenses caused severe injury or grave sufferings, which are by their nature similar to other acts referenced under Article 172(1) of the CC of BiH.

³² Trial Judgment in the *Krnojelac* case, para. 133; Trial Judgment in the *Kvočka* case, para. 190-192; *See also*, Trial Judgment in the *Limaj* case, paras. 288-289 (which inferred that the inhumane living conditions were such as to cause serious mental and physical suffering to the detainees, and constituted the charged offense of cruel treatment under Article 3 of the ICTY Statute); Trial Judgment in the *Simić* case, para. 97 (which finds that harassment, humiliation, the creation of an atmosphere of fear through torture and other forms of physical and psychological abuse, an insufficient supply of food and water, lack of space, unhygienic detention conditions, and an insufficient access to medical care are circumstances that may constitute confinement under inhumane conditions and meet the *actus reus* of cruel and inhumane treatment as a persecutory act); Trial Judgment in the *Čelebići* case, para. 1119. (which inferred that the inhumane living conditions- including the atmosphere of terror together with the deprivation of adequate food, water, sleeping and toilet facilities and medical care- constitutes the offenses of cruel treatment and willfully causing great suffering or serious injury to body or health under Article 2 of the ICTY Statute).

³³ *Tomasi v. France*, 13 EHRR 1, 1993, para. 115.

256. The Appellate Panel infers that the acts of the Accused, who held the position of domination and power, inflicted on the victims severe sufferings, both physical and mental, which meet the standard as required by the definition of the offense at issue. There is no doubt that the victims, who were confined in inhumane conditions, detained in cramped rooms, with insufficient food and water supply, deprived of toilette facilities, were in the state of despair, subjugation, desperation, in fear for their own lives, all of which is certainly beyond the usual human experiences. There were the Accused who personally beat and abused them, or enabled other individuals to sadistically abuse them in most different ways. All the aforementioned constitutes an unlawful act by someone who may decide about their destinies, which the Appellate Panel considers a heinous crime within the context of inhumane act and treatment.

257. The foregoing ensues from the statements of a large number of witnesses, including the witnesses AI, Saja Ćorić, J, A, C, D, 152, C, Ramiz Mačković, Ramiz Bebanić, Semir Humačkić, Zulfo Humačkić, Hasan Trtak, Hamza Leto, Witnesses AF, AD et al.. Based on the statements of all the Prosecution witnesses it stems that men were held in a garage and a cellar of a house, whereas women were held in the rooms which were located in two houses. According to their statements, the conditions in which they were held there were unbearable. Witnesses AI, AD, Ramiz Mačković and Semir Humačkić consistently testified that they were held in a garage with 50-60 men detained there at the same time. Witness Zulfo Humačkić stated that during the time he spent in the garage there were between 65 and 70 prisoners. Witness AI testified that the garage in which he had been detained was cramped, that the detainees were lined like sardines, that they did not have sufficient water to drink, let alone to have a bath. Witness Samir Humačkić, who was also in the garage, stated that he had a bath only one time during two and a half months of detention, namely on the occasion when disinfection of the room was carried out due to the spread of lice.

258. The garage in which the men were detained had no sufficient sunlight, no toilets; there was a bucket in the corner in which they took care of their bodily functions. Witness Ramiz Bebanić testified that there was a horrible smell in the garage because 60 men were cramped in such a small space. The garage was locked, the guards were in front of it, and the detainees were not allowed to go out, except in the morning when they were taken to work. The foregoing witnesses testified that there was insufficient food. Witness AF testified that they were hungry most of the time, except when soldiers “took pity” on them and gave them their leftovers. This witness also stated he did not

³⁴ *Lorse et al. v. The Netherlands*, Appeal Judgment, no. 52750/99, 4 May 2003, para. 60.

³⁵ See, *Krnojelac* case, ICTY Trial Judgment, para. 131.

wish to live after being released from prison because of what he had been through there. Witness Hasan Trtak was detained in a cellar in poor conditions too.

259. Witness Saja Ćorić testified that the room in which she was detained together with 29 women was around three meters long and two meters and seventy centimetres wide. They would be given food around 1 o'clock P.M., and sometimes in the evening, mostly a soup with pork meat, which they did not eat, some bread and a can. It was insufficient and they would firstly feed their children, and ate thereupon if anything was left over. The hygiene conditions were non-existent, they could not have a bath or change their clothes, they were not provided with any toiletries. They could not wash even the only clothes they had. The witness also described the rules of conduct which they had to adhere to as communicated to them by guard Mirko Vračević. According to these rules, when the Wardens would come, namely Warden Mario Mihalj and Deputy Warden Dragan Šunjić, the detained women had to stand up, bow down their heads and address them with "Sir". These rules also applied to children, and if the children were asleep when the Warden and the Deputy Warden came, their mothers had to wake them up, the children had to stand up, bow their heads down and put their hands behind the back.

260. Witness J testified that she was in a room size 2.5 x 2 m with around 22 women with children, that there was no electricity and water in the house, and that there was a concrete floor in the room. Witness A testified that she was detained in a room size 4 x 4m, together with five women and eight children, that the conditions were inadequate, with no electricity and water, they slept on the floor, ate four-five-day-old bread and the soldiers' leftovers. The children had no milk or any other food.

261. According to witness Saja Ćorić, Dragan Šunjić brought a dog to the prison once and gave him some milk, and the children watched this. A small girl, daughter of witness R, lied down next to the dog. The witnesses stated that due to the insufficient food, a large number of them lost their weight. They had no warm water, soap or basic means for their personal hygienic needs. The house door was locked with a padlock, and would be opened only in the presence of a guard. Witness C also testified that she was detained in a room of the house with around twenty women and children. The room was so small, there were no beds, and they were lined up like sardines in a can.

262. The detainees in the Vojno camp had inadequate medical protection. They were tortured and beaten up, some of them were beaten on a daily basis, and some were subjected to electroshocks. Witnesses 152, 153, AI, AF, Zulfo Humačkić, Ibrahim Šogolj, Hamza Leto testified that they were never provided with medical assistance. Witness AK testified that only the HVO soldiers received

medical assistance. The detained women also testified that they had no health protection whatsoever. Due to the bad hygienic conditions and the lack of food, the children frequently had high temperature and diarrhoea. However, despite all this, according to Witnesses E and R, a doctor examined the children only once while they were detained. Witness C, who spent almost three months in Vojno, testified that a doctor had visited them only once, and that on the occasion he stated it was impossible that the people could live in such conditions.

263. The Defence offered a large number of exculpatory arguments related to the living conditions in the prison, particularly regarding the food supply and the accommodation of the detainees. In this respect, the Court took into account the testimony of the witnesses Žarko Leko, Ivan Prole, Rudo Ravlić, Štefica Zovko, Nikola Mihalj and Marica Perić. These witnesses testified that the detainees had the same food and number of meals like soldiers, that there was a canteen nearby in which the women cooked meals for soldiers and that the detainees could buy things there, which some of them did, that as often as possibilities would allow they gave the children milk, as well as vitamins, and that, in general, the conditions were good during all the time when the detainees were in Vojno. By referring to the testimony of the witnesses who were the owners of the houses or their relatives, the Defence also tried to prove that the accommodation of prisoners was good.

264. With respect to proving the fact that the detainees had adequate health protection and medical assistance, the Defence tendered evidence by examining witness Vajdana Tomić, who was the Head of the HVO 2nd Brigade Medical Corps, doctors Ranko Gačić, Teo Tomić, Zoran Trninić and male nurse Vinko Jurišić. It ensues from the testimony of these witnesses that on several occasions they indeed had contacts with detained civilians and provided them with medical assistance. Witness Vajdana Tomić testified that she went to the Vojno prison facility on two or three occasions and that women and children used to come to the medical station to receive medical assistance. Witness Zoran Trninić noted that as a doctor he had contacts with the persons detained in Vojno on at least two occasions. He is familiar with the fact that men were also imprisoned in Vojno and that they were provided with medical assistance on at least two occasions when some persons were injured, however he did not keep records of the injuries caused by beating. Witness Ranko Gačić stated that doctors worked in shifts which lasted for 15 or 20 days. He personally had around 10 medical interventions in the Vojno prison facility, where civilians were imprisoned. He did not notice that the women and children were malnourished and nobody complained to him. They provided the children with diapers and vitamins. Doctor Teo Tomić stated that he did not personally go to Vojno for an intervention or examination, but that women, children and men came to him to the rooms in which medical station was located. On one occasion he provided a detained

man with medical assistance because he was wounded, however he did not know anything about the men being beaten. Witness Vinko Jurišić, who was a male nurse in the medical station, stated that he went to the houses in which the detainees were held on three occasions and that some detainees came themselves to the medical station to get medical assistance.

265. The Panel gave only partial credence to the Defence witnesses, namely in the part in which they are consistent with the testimony of the witnesses-victims, whom the Court credited, and who unlike the mentioned Defence witnesses had no reason not to tell the truth. Certain discrepancies in their statements are a result of changes that took place over several months (detainees were coming in groups, during the 8-9 months of the camp operation, and over several seasons), and of different subjective experiences of individual witnesses, which is quite understandable given the circumstances. Contrary to them, the referenced Defence witnesses themselves were at the time members of the 1st HVO Battalion and were very much interested in presenting the situation in the camp in a much better light than it was indeed, and thus try and help the accused, whom they know very well given that they used to belong to the same units, and thereby avoid possible own responsibility for the situation and events in the camp.

266. It indeed follows from the testimony of certain Prosecution witnesses that they were sometimes provided with medical assistance. In this respect, witness F stated that on the occasion of the attempted rape and sexual abuse she fainted twice and that she was provided with medical assistance. Witness A also noted that after she thought she was pregnant she was taken to Mostar. After he was wounded while digging trenches, witness Azer Handžar was taken to the Bijeli Brijeg hospital in Mostar.

267. It is evident from the foregoing that physicians indeed sometimes provided medical assistance to some of the detainees. However, medical assistance and interventions were not provided to the extent and scope to which the state of health of both the aforementioned detainees and all other detained persons objectively required. Specifically, a large number of witnesses confirmed that they were on a daily basis mentally and physically abused, beaten, and beaten up, due to which they sustained different injuries, broken bones, cuts and injuries on different parts of their bodies, whose consequences they still suffer, but which certainly required daily medical interventions and care. The Panel further infers that in their condition as it was, the detainees could not themselves go to the medical station and they had to be provided with the necessary assistance. In addition, there were a large number of detainees, who were frequently taken and returned from labour, but obviously medical workers did not visit them regularly. All this is a logical explanation of the reasons why certain witnesses and physicians testified that they knew nothing about the men

being beaten, although it existed to a great extent, both pursuant to the documents of the persons in charge of Heliostrom and the other HVO documentation, not only pursuant to the witnesses' statements.

268. Given the functions they held both in the HVO military structures and the Vojno camp itself, and their physical presence in the Vojno camp, the accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević were aware of the brutal, humiliating and inhumane conditions in the Vojno camp, of which all accused are held responsible. They were all aware that women, some of them with small children, and a number of the elderly, were detained in two houses in very small rooms, and that the men were detained in a garage and a cellar in very difficult conditions, as already described.

269. Pursuant to the foregoing, the Appellate Panel inferred beyond a reasonable doubt that the brutal, humiliating and inhumane conditions, including mistreatment, humiliation and other forms of physical and mental abuse of Bosniak civilians, of which the accused were found guilty, constitute other inhumane acts under Article 172(1)(k) of the CC of BiH.

(i) FORCED LABOUR

270. Pursuant to the CC of BiH, forced labour with its incrimination does not fall under the criminal offense of Crimes against Humanity in violation of Article 172(1) of the CC of BiH but under the criminal offense of War Crimes against Civilians. However, the ICTY jurisprudence holds that forced labour constitutes the criminal offence of cruel treatment, inhumane treatment, persecution and other inhumane acts. In addition, not all types of forced or compulsory labour during an armed conflict or occupation are per se unlawful under international jurisprudence.³⁶ The ICTY Appeals Chamber also accepted such a view in the Blaškić case, when it established that

“The Occupying Power may in fact compel protected persons to work if they are over eighteen years of age, and subject to certain other conditions; protected persons may not, however, be compelled to undertake any work which would involve them in the obligation to take part in military operations, and in no case shall the requisition of labour lead to a mobilization of workers “in an organization of a military or semi-military character”. Such work must not be

³⁶ See Trial Judgment in the ICTY case *Blagoje Simić et al.*, para. 88

related to military operations, and it must not have a military character or intention.

271. In this respect, in order to establish if such taking to forced labour was unlawful, as established in the Judgment of the Appeals Chamber in the Blaškić case, it is necessary first to determine whether the taking to forced labour has a character of “cruel treatment”. In defining the term of cruel treatment, the Appeals Chamber in the Blaškić case accepts the definition of cruel treatment from the ICTY Judgment in the Čelebići³⁷ case according to which

Cruel treatment as a violation of the laws or customs of war is a. an intentional act or omission [...] which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity, b. committed against a person taking no active part in the hostilities.

In this respect, the Appeals Chamber concludes that using persons taking no active part in hostilities to build military fortifications... constitutes a serious attack on human dignity.... Accordingly, any order compelling the protected persons to dig trenches or prepare other military facilities, etc. constitutes cruel treatment.

272. As indicated above, for the existence of the criminal offense of inhumane treatment it is necessary to prove that the acts of the perpetrator contain the elements of “other inhumane offenses” underlying the offense of Crimes against Humanity. Bearing in mind the fact that the detainees were taken from the Vojno camp to perform forced labour, that the accused forced them to do so, that the detainees, particularly men, were exposed to life danger while performing the labour, the Panel infers that in the instant case the act of forced labour may be categorized under “other inhumane acts” in violation of Article 172(1)(k), given that these acts were committed with the intention of inflicting great sufferings, and that the performance of labour to which the detainees were compelled resulted in their severe suffering or serious physical or mental injuries. In addition, a large number of detainees were killed on the frontlines while performing forced labour, which even more supports the conclusion about the extent of danger to which they were exposed, the sufferings and injuries that they endured, and the inhumane acts of the accused.

273. In addition, grave breeches of Article 40 of the Geneva Convention relative to the Protection of Civilians in War Times dated 12 August 1949 that govern the manner and conditions under which protected persons may be compelled to work were found to exist.

³⁷ See ICTY Appeals Chamber Judgment in the *Blaškić* case, para. 595, invoking to the Judgment in the *Čelebići* case, paras. 424-426

274. The Prosecution charged the accused with forcing the detainees to perform forced labour in the Vojno prison and the surrounding areas. The women prepared food, did the laundry and washed dishes, cleaned houses. The men were forced to work outside the camp and near the frontlines, they had to dig trenches and carry ammunition boxes, and were at the same time exposed to crossfire and sniper fire, to cut woods and perform other jobs for the HVO needs. There were a large number of unlawfully detained civilians, some of whom were wounded or killed while performing forced labour.

275. The conclusion that during the proceedings, through the presented evidence, the Prosecution proved beyond a doubt that the detainees from the Vojno camp were used for forced labour, the Panel infers based on the following:

276. Witness AD testified that the detainees worked from the morning until the evening in smaller groups, that they were assigned to different military units to perform different tasks. Witness 152 testified that he was taken to forced labour to dig trenches and communication trenches. Witness AK stated that he was taken to perform labour on a daily basis, that they dug trenches in Bočine near the M-17 highway and that they were exposed to crossfire during the labour, so that they were afraid to stand up. Witness Ramiz Mačković stated that they were taken to perform labour on a daily basis, that they dug and expanded trenches, they did not receive any compensation for the labour, except for perhaps some slapping in the face, and on one occasion Vračević took him to the Neretva River to perform labour. Witness Ramiz Mačković stated that in September 1993, while he was digging trenches, he was hit by a sniper bullet which came from the direction of the M-17 highway.

277. Witness Ramiz Bebanić also said that he was digging trenches near the Zalihići houses and the Leke houses near the motorway M-17. They were taken to these locations by soldiers, who would come with a list and take as many of them as they needed. Witness Semir Humačkić stated that he mostly dug trenches, made pillboxes, mostly on the line of separation, on the motorway. It follows from the testimony of witnesses 151 and AE that they chopped woods, dug trenches, while witness AE even made wooden boats. Witness Aziz Dautbegović said that he performed all kinds of labour, starting from digging, carrying food, chopping woods and everything else that needed to be done. They went to the frontlines which were located next to the highway. During the work they were exposed to cross-fire nearly every day. In this manner, the following persons were killed: Džemal Sabitović, Hamdija Tabaković, Mujo Kahvić, Mensur Salem.

278. It is evident from the testimony of all witnesses-men who were detained in the Vojno camp, particularly Hasan Trtak, AA, AD, AI, Hamza Leto, that they too performed forced labour duties at different locations along the frontlines, including Bočine, the area near the Zalihići houses, a part of Bijelo Polje, Vojno, Potoci, Elementara and Livač.

279. In addition to the labour duties performed by the detained men, the detained women unwillingly performed different jobs for the HVO soldiers on a daily basis. Thus the witnesses A and J testified they mostly did the washing, cleaning and cooking for the HVO soldiers. They did not volunteer. They were escorted by the guards when they were taken to perform forced labour. Witness J stressed that all the women went to perform labour which lasted from morning till evening. She noted that Šunjić would sometimes come in and picked certain women. This was also confirmed by witness F who said that Šunjić and Mihalj used to come to take the detainees. Witness E stated that the guards took them to perform labour on a daily basis. Witness Saja Ćorić said that she was taken to perform labour for 70 days and that she did the washing, prepared food, cleaned and so on. On one occasion Mirko Vračević took them to perform labour in Bočine, where they were exposed to fire from the positions of the Army of BiH.

280. In addition to the referenced testimony of the witnesses, the fact that the men were taken from Heliodrom to the Vojno camp to perform different kinds of labour also ensues from ample documentary evidence, primarily from the Order to take detainees, Order of the Mostar Defence Sector, the Heliodrom prison log book, the Report concerning the accommodation of the prisoners of war, the Statement dated 28 January 1994 given by the detainees who were taken to perform labour in Vojno. They all confirm that Bosniak men continuously arrived in Vojno in groups, which took turns, and that they were all taken to perform forced labour.

281. The Defence witnesses Žarko Leko and Ljubo Vukoja also testified that the detainees were taken to perform labour. Witness Vukoja said that they used to take the detainees whenever they needed them.

282. The theory of the Defence was that the detainees went to perform labour voluntarily, and that it was the engineering unit who possessed the mechanical equipment, that dug trenches near the frontline. It is, however, evident from the testimony of the referenced witnesses that their labour was in no way voluntary. Witness AI testified that any refusal to go to work would mean a suicide. Witness 151 testified that the detainees never dared to object for fear that they would be killed. Witness AE was determined when he stated that the detainees did not volunteer to go to work. Other Prosecution witnesses also confirmed this.

283. Bearing in mind the beating and killings of the detained men in the camp, torture and sexual violence, in addition to the inhumane conditions in which men and women were detained, it can be logically inferred that the detainees had no other choice but to do as ordered. It is evident from the foregoing that the Vojno camp was not a place where a freedom of choice existed, but on the contrary, the detainees had to do unreservedly all that they were ordered to do in order to survive.

284. Accused Radić, Šunjić and Vračević as the persons who controlled the prison and who performed certain duties there, with their behaviour actively participated in this inhumane act. Each in their own way, the accused had control over the camp. As already stated, the accused Radić ordered the women to be arrested and requested that male detainees be taken to Vojno to perform labour, and he used to see the same detainees working on trenches while he was touring the frontline. In support of this, witness Aziz Dautbegović testified that he saw Marko Radić twice, first when he dug trenches, and thereupon when he chopped woods. Many witnesses testified that when they were taken to perform labour, they passed by the command of Marko Radić, and witness Zulfo Humačkić even talked with him once. The detained women were also frequently taken to his command to perform different labour activities.

285. The Accused Šunjić controlled the detainees going to perform labour, he ordered where each of them was to go to perform labour. On one occasion he personally took the detainees to perform labour on Raška gora, whereas Vračević took the detainees to perform labour and guarded them after they would return. Therefore, they all personally participated in the engagement of detainees and they were all aware that the detainees were forced to perform labour.

286. Starting from the foregoing analysis, the Court found beyond a reasonable doubt that in the Vojno camp a system of forced labour existed, and that the accused were certainly aware that by their actions they strengthened the system of abuse and persecution of Bosniak civilians. Accordingly, all the accused are guilty of inhumane acts of forced labour with the intention of inflicting great suffering on the detainees.

B. KILLINGS

Elements of the offence - murder

287. Pursuant to Article 172 (1) a) of the BiH CC, the act of „deprivation of another person of his life (murder)“ qualifies as Crimes against Humanity and shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.³⁸ Therefore, to prove this criminal offence, the basic (chapeau) elements of Crimes against Humanity must be proved, that another person was deprived of life and that there was direct intent to deprive another person of life; when a perpetrator was aware of his deed but still desired its perpetration and voluntarily committed it.³⁹

288. The legal characterization of this criminal offence under Article 172(1)a) corresponds to the legal qualification of the offence in the customary international law at a given time.⁴⁰

289. Notwithstanding that the criminal offence of murder must be clearly proved by reliable evidence (dead body or death certificate), this can be problematic and unfeasible in situations that involve mass killings and imprisonment of inmates and civilians in camps in which victims were killed in great numbers and buried in temporary graves, or at unknown locations. Concluding beyond a reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered, based on all of the evidence presented. All that is required to be established from that evidence is that the only reasonable inference from the evidence is that the victim is dead as a result of the charged offences. This position was taken by the ICTY in the Krnojelac case and it is entirely accepted by this Panel.⁴¹

290. The term “murder” undoubtedly implies that the act was done, or that omission was made by the accused, or a person or persons for whose acts or omissions he bears criminal responsibility.⁴² As for the causal relationship between the perpetrators and the victim’s death, the death of the victim does not have to be directly caused by the actions of the accused, it can be a foreseeable consequence of the acts or omission of the plan pursued by the Accused⁴³ or the

³⁸ Article 172.1-a) of the CPC of BiH (2003).

³⁹ *Damjanović Dragan*, X-KR-05/51, Trial Verdict, 15 December 2006, pages 53.-54.

⁴⁰ *Brđanin* Trial Judgment, para 381.

⁴¹ *Krnojelac* Trial Judgment, para 326:

⁴² *Vasiljević*, Trial Judgment, para 205; *Krnojelac*, Trial Judgement, para 324.

⁴³ *Tadić*, Appeals Judgment, para 190.-229.

consequence of the acts or omissions of one of his subordinates⁴⁴ or the Accused willingly took the risk that the death can occur.⁴⁵

291. This difference is very important in this specific case that involves multiple murders committed for the purpose of carrying out a criminal plan, some of which were committed by individuals other than the accused, but they too resulted directly from the organized system and the omissions or conduct of the Accused.

1. Murder of Mesud Dedajić

(count 2 and 2a) Radić; count 8 and 8a) Šunjić; count 12 Brekalo; count 21 Vračević)

292. During the proceedings, the Panel established beyond a reasonable doubt that the detainee Mesud Dedajić was held and killed in the Vojno prison in August 1993. Witnesses Azer Handžar and AD testified about this incident.

293. In his testimony, witness Azer Handžar stated that he was held in the Vojno prison facility from 18 August 1993 and that he came from the Heliodrom camp with a group of detainees. He was present when Mesud Dedajić was killed. They dug trenches on the confrontation line in Bijelo Polje when Mesud Dedajić suddenly fell down. Having taken a closer look, the witness noticed that Mesud was hit below his left shoulder and that the bullet came from the Croat side of the confrontation line. Mesud Dedajić died on the spot. The witness buried the body of Mesud Dedajić with other prisoners under a fig tree, some 6-7 meters from the place where he was killed.

294. During the cross examination, prosecution witness AD also noted that he was some 20 meters far from Mesud Dedajić when he was killed and that the bullet was fired by the soldiers who were near the Zalihići house, which was within the direct zone of responsibility of the 1st Battalion.

295. On 5 July 1994, prosecution witness Huso Mehremić and Ismet Dedajić, father of the deceased, identified the dead body of Mesud Dedajić, whose mortal remains were recovered in

⁴⁴ Standard of recklessness adopted under Čelebići case, (Čelebići, Trial Judgment, para 439). Kupreškić, Trial Judgment - “the conduct of the accused was a substantial cause of the death of the victim.” Kupreškić, Trial Judgment, para 560, See also Čelebići, Trial Judgment, para 424.

⁴⁵ *Tadić, Appeals Judgment*, regarding the alleged killings under Article 3(1)(a), the responsibility of an individual for a murder also infers from the participation of the Accused in the criminal plan or aim to commit inhumane acts where he/she was aware that such actions can amount to murder. The Appellant, nevertheless willingly took that risk.” (*Tadić, Appeals Judgment*, para 232).

Bijelo Polje, between the Zalihić house and the Monastery, as it followed from the witness testimony. According to witness Mehremić, it was Hajro Hadžiomerović who showed him the location since he was one of the people who had buried the dead man. Exhibit T-19-N shows that Mesud Dedajić was killed on 28 August 1993 close to the Zalihić house in Potoci near Mostar.

296. It also follows from the Report No. 636/93 of 3 September 1993, made by Warden Stanko Božić, that the detainee Mesud Dedajić was killed. According to the same Report, on 19 August 1993, 50 detainees were handed over for forced labour to the 1st Battalion of the 2nd Brigade. The detainees were guarded by Dragan Šunjić.

297. During the proceedings, the Panel established that the space between the Zalihić house and the Monastery, where Mesud Dedajić was killed, was in the area of responsibility of the 1st Battalion of the 2nd HVO Brigade, commanded by the Accused Marko Radić. The Defence for the Accused Radić argued that it was the 2nd Brigade that requested Mesud Dedajić and other inmates to be sent for labour, while battalions had no role in taking the inmates from Heliodrom to Vojno camp. However, under the Order No. 02-4/3-04/2-933/93 of 19 August 1993 signed by Zlatan Mijo Jelić, Commander of the Mostar Defence Sector, it was approved that at least 50 inmates be taken from Heliodrom at the request of the 1st Battalion of the 2nd Brigade dated 19 August. Dragan Šunjić was responsible for taking over the detainees.

298. The Report No. 636/93 of 3 September 1993 made by Warden Stanko Božić shows that the detainee Mesud Dedajić was killed. According to the same Report, dated 19 August 1993, 50 detainees were handed over for forced labour to the 1st Battalion of the 2nd Brigade. The detainees were guarded by Dragan Šunjić.

299. Therefore, the stated evidence and many other pieces of documentary evidence referred to earlier in the Verdict and those that will be referred to further in the Verdict, clearly indicate that the request for taking the detained men from Heliodrom came precisely from the 1st Battalion of the 2nd Brigade, that the taken-over inmates were secured and guarded by members of the 1st Battalion of the 2nd Brigade, that the Vojno camp in which the inmates were detained after being brought from Heliodrom, and from there taken on a daily basis for labour to the confrontation lines, was in the area of responsibility of the 1st Battalion of the 2nd HVO Brigade, commanded by the Accused Marko Radić.

300. Having reviewed all the above evidence individually and in combination, the Panel accepted the statements of these witnesses as truthful and reliable, since they are consistent and complement each other, being also in accordance with the above mentioned documentary evidence. Based on all

the above evidence, the Panel indisputably established that an unidentified HVO soldier shot dead Mesud Dedajić while he was performing forced labour on the confrontation line in Bijelo Polje, on or about 28 August 1993, after which detainees buried the body of Mesud Dedajić near the place where he was killed. His body was exhumed between the Zalihić house and the Monastery, exchanged and identified on 5 July 1994.

2. Murder of Hamdija Tabaković

(count 2d) Radić; count 8d) Šunjić; count 12 Brekalo; count 21 Vračević)

301. During the proceedings, the Panel established beyond a reasonable doubt that the detainee Hamdija Tabaković was killed in late December 1993 or in early January 1994 while performing forced labour on the confrontation line in Bijelo Polje.

302. The Panel reached such a conclusion on the grounds of testimony of a number of witnesses and documentary evidence that corroborates this fact.

303. In his testimony, witness Hamza Leto stated that he was brought to Vojno together with the other detainees from Heliodrom in November 1993. He went for forced labour every day. The witness knew about the killing of Hamdija Tabaković. He described that this killing had occurred about 100 meters away from him while he performed forced labour. The same witness stated that together with other prisoners he buried the body of Hamdija Tabaković.

304. Witness 154 was transferred to Vojno in mid-November 1993. They went to the frontlines where they were digging trenches and bunkers. He knew that Hamdija Tabaković was also killed in Vojno while he was there and he saw his dead body while they were carrying him on the stretchers.

305. Witness AL too knew that Hamdija Tabaković was killed during his stay in Vojno and he heard about his death when he returned from forced labour on one occasion. He did not personally see the murder of Tabaković, but together with several prisoners he buried the body of Hamdija Tabaković and he personally put a gravestone next to his head. He heard that Tabaković was killed about 50 meters away from the trenches. According to this witness, Hamdija Tabaković told him that he had been beaten up by Mario Mihalj and Dragan Šunjić.

306. Witness Aziz Dautbegović also stated that Hamdija Tabaković was killed in the Vojno prison while he was there, that Tabaković was in the cellar and he described him.

307. Witness Ibrahim Šogolj was transferred to Vojno on 17 November 1993 and he knew that Hamdija Tabaković, among others, was also killed during his stay in Vojno. On that occasion, Dragan Šunjić asked from him and other prisoners to sign a document stating that Tabaković had been killed by the BiH Army.

308. Mario Mihalj made a Record on 30 January 1994 where it was said that Hamdija Tabaković had been killed during the time when he was a prisoner in Vojno. A written document dated 27 May 1996 (Exhibit No. 22), made by the Head of the MUP Crime Police Sector, clearly shows that Hamdija Tabaković was killed in Vojno and that his body was found and identified. In addition, the death of Hamdija Tabaković is proved by the Death Certificate in his name and by the Decision on permission to enter the death of Hamdija Tabaković into the Register of Deaths in the Mostar Municipality. The death of Hamdija Tabaković was ascertained based on the Report of the SVIZ Warden Stanko Božić dated 31 January 1994, where the killings of several prisoners were mentioned, including that of the prisoner Hamdija Tabaković.

309. It follows beyond a reasonable doubt from the foregoing witness statements, which are accepted by the Court as reliable and credible because they are consistent with each other and with the documentary evidence, that Hamdija Tabaković was killed in late December 1993 or in early January 1994, while he performed forced labour at the confrontation line in Bijelo Polje. His body was exchanged and identified on 10 April 1994.

3. Murder of Džemal Sabitović

(count 2d) Radić; count 8d) Šunjić; count 12 Brekalo, count 21 Vračević)

310. The Panel concluded on the grounds of ample presented evidence that Džemal Sabitović was killed in late December or early January 1994 at the front line while he was performing forced labour - carrying bricks in the *Andora* warehouse.

311. Witness 154 was personally present when Džemal Sabitović was killed. The same witness was taken to forced labour in the *Andora* warehouse on the relevant day together with Džemal Sabitović and Aziz Dautbegović, to dig blocks for building bunkers. On that occasion he heard a shot, lifted his head and saw a motionless body of Džemal Sabitović, who was hit by a bullet in the back of his head. The *Andora* warehouse was located on the opposite bank of the Neretva River near the confrontation lines. They waited for the nightfall and then he and Aziz Dautbegović carried

out and brought the dead body of Sabitović to the camp. They buried him during the dark, 50 meters away from the garage, where some other bodies were also buried.

312. In his testimony, Witness Aziz Dautbegović also stated that he was present when Džemal Sabitović was killed. They were on their way to forced labour, Džemal Sabitović went in front of him and he saw that at some point he was hit in the head. He does not know who killed him. In the evening, they brought Sabitović's body to the Vojno prison facility. He knows that Sabitović was afterwards buried in a lot near the camp, but he himself was not among those who buried him.

313. Witness Hasan Trtak was a Vojno camp inmate, he was transferred from Heliodrom to Vojno in mid-December 1993 together with 60 other prisoners. On that occasion, they were met by Mario Mihalj and Dragan Šunjić, who was the deputy commander of the camp. In Vojno, he was detained in a cellar. They were dispatched for forced labour from Vojno where they were digging trenches at Bijelo Polje, Potoci, Livač and Vrapčiči. He knew that Džemal Sabitović was killed during his stay in Vojno and added that there were some other killed prisoners there. Sabitović was killed somewhere on the line; he did not see the killing, but he saw when other inmates carried him back.

314. The review of the Official Note on the inspection and identification dated 10 April 1994 reveals that the body of Džemal Sabitović was exchanged and identified on 10 April 1994 under number NN 104, and that he was killed as a prisoner in the Vojno prison. In addition, the death certificate from the Register of Deaths for Džemal Sabitović and the report on the death of the above person show that he was killed and that his body was found, exchanged and identified on 10 April 1994.

315. Taking into account the foregoing evidence, which the Court fully accepts since it is fully consistent, the Panel established that Džemal Sabitović was hit by a bullet in his head in late December 1993 or early January 1994, while carrying bricks near the confrontation line and the *Andora* warehouse, which caused his death.

4. Murder of Mustafa Kahvić

(count 2e) Radić; count 8e) Šunjić; count 12 Brekalo; count 21 Vračević)

316. During the proceedings, a number of pieces of evidence were presented with regard to the killing of Mujo Kahvić. Based on that evidence, the Panel established that an unidentified HVO

soldier deprived of life Mustafa Kahvić in December 1993 while he performed forced labour near the confrontation line in Bijelo Polje.

317. Witness Hamza Leto stated that in mid-November he was taken with a group of prisoners from *Heliodrom* to the Vojno prison for forced labour. The witness knew when Mujo Kahvić was killed and that it happened when they went together for forced labour. On that occasion, they were escorted by an HVO member. On their way, they met another soldier who started insulting and hitting them. Witness Leto was walking first in the line and the soldier started hitting him with a butt, kicking him with his boots. Then, the same soldier continued hitting Mujo Kahvić, he then stepped back for some 15 meters and started shooting. He killed Mujo Kahvić who fell down near the witness. Mujo died on the spot. The person escorting them ordered the witness to carry him to the prison.

318. Witnesses Samir Humačkić, protected witnesses AL, 154 and Hasan Trtak were consistent in stating they knew about the killing of Mujo Kahvić in the Vojno camp. Witness Ibrahim Šogolj knew that Mujo Kahvić had been killed while performing forced labour in Zalihići as a Vojno prisoner by the soldier with a nickname Roki. Witness Aziz Dautbegović stated that he had heard that Kahvić was killed by some HVO soldier with a nickname "Roki".

319. Witness Huso Mehremić, who officially attended the examination and identification of exhumed bodies, stated that the body of Mustafa Kahvić was identified on 10 April 1994. According to the Official Note drafted by this witness, the bodies were identified by Munib Dizdar and Kemo Zuhrić.

320. It also follows from the List of prisoners made by Ibrahim Šogolj that Mujo Kahvić was killed, among other prisoners, during his stay in the Vojno prison (number 73) and that Hamza Leto, Ibrahim Šogolj, witness 154 and others were imprisoned in the Vojno prison at that time.

321. The death of Mustafa Kahvić aka Mujo was also proved by the Report made by the SVIZ Warden Stanko Božić, dated 31 January 1994, which shows that several prisoners were killed, including Mustafa Kahvić. It also follows from the Record dated 30 January 1994 drafted by Mario Mihalj that Mustafa Kahvić was killed as a prisoner in Vojno.

322. All the above evidence, accepted by the Court as credible, clearly indicates that an unidentified soldier deprived of life the prisoner Mustafa Kahvić on an unspecified date in December 1993 while he performed forced labour near the confrontation line in Bijelo Polje. The body of Mustafa Kahvić was exchanged and identified on 10 April 1994.

5. Murder of Mensur Salman

(count 2e) Radić; count 8e) Šunjić; count 12 Brekalo; count 21 Vračević)

323. A lot of evidence was presented during the proceedings regarding the murder of Mensur Salman.

324. Witness Ibrahim Šogolj was present when Mensur Salman was killed. The killing occurred while they worked together in a bunker in Zalihići. On that occasion, he was shot with a sniper bullet in his neck, which the witnesses assumes came from the direction where the forces of the BiH Army were positioned. Salman died immediately of the injury.

325. Witness Hamza Leto worked on the same frontline that day. When he returned from forced labour, he and another prisoner were told to bury „*the Balia, who was killed by yours*“. Hamza Leto recognized the dead body of Mensur Salman, whom he buried not far from the frontline - near the place where he was killed.

326. According to witness AK, Mensur Salman a.k.a. *Menso* from Ljubinje was detained with him and it was known to him that he was killed on the third day after his arrival in Vojno while they were building a bunker between the Zalihići houses and the old monastery in Bijelo Polje. The witness was standing near Mensur when a bullet hit his head and killed him on the spot. The same witness notes that he caught Mensur while he was falling on the ground, but he was already dead. Four prisoners carried him through trenches. One soldier from the Third company said that he was dead. Mensur's body was buried 50 meters away from the place where he was left.

327. Witness Aziz Dautbegović and protected witness AL also knew that Mensur Salman was killed during his stay in Vojno. Aziz Dautbegović did not witness the murder of Mensur Salman, but he heard that he was killed from a sniper.

328. The Report made by Stanko Božić, Warden of the SVIZ, dated 31 January 1994, shows that Hamdija Tabaković, Mensur Salman and Mustafa Kahvić were killed during their stay in the Vojno prison. It follows from the Record dated 30 January 1994 made by Mario Mihalj that Mensur Salman was killed as a prisoner in Vojno. According to the evidence from the case file, the body of Mensur Salman has yet to be identified.

329. Based on the statements of all the above witnesses, which have been accepted by the Court as consistent in all important parts and corroborated by the documentary evidence, the Panel

concluded beyond a reasonable doubt that Mensur Salman had been killed on an undetermined date in November 1993 as a detainee of the Vojno prison, while performing forced labour near the Zalihići houses in Bijelo Polje.

6. Murder of Aris Začinović, Enver Kajtazi, Husnija Ćorajević and Željko Čakalović

(count 2b) Radić; count 8b) Šunjić; count 12 Brekalo; count 21 Vračević)

330. Based on the testimony of the witnesses and documentary evidence attached to the case file, the Panel established that inmates Aris Začinović, Enver Kajtazi, Husnija Ćorajević and Željko Čakalević were brought from the Heliodrom camp to the Vojno prison in September 1993 and killed there.

331. Witness AB testified before the Court about the incident. He was taken to labour on a daily basis and had to dig trenches all day long. While they were working the relevant day, Marko Radić, who witness AB had heard was the commander of that Brigade, came to inspect the line. They heard a shot which hit and wounded the soldier escorting Marko Radić. Afterwards, they were ordered to carry the soldier to the medical station accompanied by two soldiers. However, since this HVO soldier died in the meantime, they were blamed for the soldier's death for not being quick enough, and were subjected to beating by Mario Mihalj, Jure Kordić and a third person, whom the witness described as a blond, fairly short man. Those men were beating him and these four mentioned prisoners with their batons. He could not remember full names of all the four inmates who were beaten up, but he named Aris Začinović, certain Kajtazi, a short man of Albanian origin, certain Čakalović and Ćorajević. The witness described in detail how he was beaten up by Mario Mihalj and said that Mihalj used his knife to make cuts on his chest and stomach, he engraved letter "U" in his back and extinguished cigarettes on his and other inmates' bodies. The beating continued until Kajtazi fainted. Mihalj tried to regain his consciousness by pouring water on him, but as he did not manage to do so, he pulled a knife out of Jure Kordić's holster and together with the third soldier, he slit Kajtazi's throat. The witness could not see who exactly slit Ćorajević's throat because he and the other inmates were told to face the wall. He heard wheezing and a death rattle. Afterwards they covered the body of Kajtazi with a blanket and continued to kick and hit them using everything they had. Then, another inmate - Ćorajević or Čakalović - also fell down and Mario Mihalj and the blond soldier deprived him of his life in the same manner as Kajtazi. After that, the door of the garage opened and a man with dark brown hair entered the garage. Mario Mihalj addressed him as "Dragan". At that moment, all of them left the garage, while the witness

and the other two inmates stayed inside. Witness AB proposed to the other inmates to escape and described how he jumped out through a ventilation opening and Aris Začinović followed him. He ran and managed to escape, but Aris did not. He heard shooting, but he did not know what had happened to Aris.

332. Witness Ramiz Bebanić knew Aris Začinović quite well. Once, while returning from forced labour, he heard Aris Začinović begging Mario Mihalj not to kill him. This witness stated that he afterwards heard the wheezing which reminded him of a sheep being slaughtered. Later on, looking from the garage, he saw four bodies lying on the ground, covered with blankets.

333. Witness 153 saw dead bodies of prisoners when he returned to Vojno from forced labour. Mario Mihalj told them that those killed prisoners had wanted to run away. Standing beside the piled bodies the witness saw Damir Brekalo and Dragan Šunjić.

334. Witness AA knew about the killing and stated that two prisoners attempted to escape from Vojno. One of them managed to escape, but the other one did not. He heard shooting and some commotion and then saw them dragging one wounded inmate back to the garage. He saw Mario Mihalj approaching him with a knife and slitting his throat. In addition, witness AA saw a lot of blood when he entered the garage while the men who buried the dead bodies told him that the four men had been killed.

335. Witness AD confirmed these allegations by stating that he too heard shooting and shouts coming from the garage while he was returning from forced labour to the Vojno prison. When he arrived in front of the garage, he saw four dead bodies among whom he recognized the body of Željko Čakalović.

336. Witness AI described the incidents which had taken place the relevant day. One day, upon their return from labour, they were ordered to stop in front of the garage and to stand there looking down to the ground. Then he heard one prisoner screaming for help, saying, *Sir, please, don't do that*, then he heard some wheezing and assumed that the inmate's throat had just been slit. On that occasion, he also heard Dragan Šunjić saying that he had shot one prisoner in his leg when he started running away.

337. According to witnesses AA, AD and AI, when they entered the garage that night they saw blood on the walls, floor and ceiling.

338. The conclusion on the death of Aris Začinović ensues from the Official Note of the CSB Mostar of 25 April 1994 drafted during the identification of the dead bodies. The body of Aris

Začinović was identified by his uncle Šemsudin Začinović. The same Official Note says that Aris was killed in the Vojno prison by HVO soldiers. There was a wound on his neck 8 cm long.

339. It follows from the Official Note of the CSB Mostar dated 25 April 1994 that the body of Željko Čakalović was also identified on that occasion by his brother-in-law Rezedin Prguda. It was a male body whose skull was completely severed from the backbone. According to the same Official Note, Čakalović was killed in the Vojno prison in September by HVO soldiers.

340. Witness Mehremić was present during the identification of Husnija Čorajević and he drafted the Official Note dated 25 April 1994. Husnija's body was identified by his brother Arif Čorajević. It was noted that the body belonged to a Muslim civilian who was killed by the HVO in the Vojno prison and whose skull was severed from his spine.

341. Witness Mehremić stated that there was a piece of paper in the plastic bag with the dead body and it was written on it that it was the body of Enver Kajtazi. However, it was subsequently established that it was the body of Željko Čakalović. The name of Enver Kajtazi was written on two papers found on the bodies which were transported for identification, but none of the bodies was identified as Enver Kajtazi. The witness did not know who wrote the name tags, but according to some information, it was done by the workers of the "Park" utility company.

342. The Report dated 14 September 1993 drafted by the SVIZ Commander Stanko Božić, proves inter alia, that the four prisoners: Husnija Čorajević, Enver Kajtazi, Haris Začinagić and Željko Čorić were indeed killed in Vojno. This Report was sent by Mario Mihalj. Although the names of Željko Čorić and Haris Začinagić are stated in the Report of 14 September 1993, there is no doubt that the two persons were actually Aris Začinović and Željko Čakalović, as also follows from the witnesses' testimony and from other documentary evidence. In addition, the List of killed prisoners dated 6 January 1994, made by the Lodging for War Prisoners, shows that these two persons were killed too.

343. The Panel found credible and reliable the statements of the above witnesses, since they were compatible, complemented each other and were consistent with the presented documentary evidence. The Defence for the Accused Brekalo disputed his participation in the killing of those inmates. The Panel could not establish beyond a reasonable doubt on the grounds of witness testimony and documentary evidence that the third HVO soldier, who participated in the killing of these four prisoners, was the Accused Damir Brekalo, as stated in the Indictment of the Prosecutor's Office, since he was not mentioned by any of the examined witnesses. The account that was given during the trial by witness AB, basically the only eye-witness of the incidents, could not be specific

that it was exactly Damir Brekalo. He only said that the third person who participated in the execution of the inmates had blond hair. The description that was given during the investigation by witness AB, based on which the investigator said that it was Damir Brekalo, and the allegations of witness 153 according to which he saw Brekalo on that occasion washing his hands at the stand-pipe, were not sufficient for the Panel to establish beyond any doubt the direct participation of Brekalo in the killing of these four prisoners, as stated in the Indictment of the Prosecutor's Office.

344. Finally, the Panel concluded that the brutal and barbaric murder of the four prisoners in early September 1993 by Mario Mihalj, Jure Kordić and a third individual, was one of the cruellest and atrocious murders committed in the Vojno camp.

7. Murder of Salim Halilović

(count 2c) Radić; count 8c) Šunjić; count 12 Brekalo; count 21 Vračević)

345. During the evidentiary proceedings, the Court established that the detainee Salim Halilović was deprived of life by Mario Mihalj on an unknown date in the month of September during his stay in the Vojno prison.

346. Witness Junuz Halilović was among the witnesses brought from Heliodrom to the Vojno prison. This witness could not be directly examined before the Court because he died in the meantime, so that his statement given during the investigation was admitted into evidence pursuant to Article 273(2) of the CPC of BiH.

347. In his statement given during the investigation, witness Junuz Halilović stated that he was the brother of Salim Halilović with whom he was detained at Heliodrom and transferred to Vojno for forced labour in the territory of Bijelo Polje. Upon their arrival in Vojno, they were met by the camp commander, Mario Mihalj. The prisoners were lined up and asked whether they were capable of working. His brother Salim said that he could not perform forced labour due to his heart ailment. Afterwards, Mario Mihalj ordered him to step out of the line and fired from his pistol at Salim's head. When Salim fell down, he fired another bullet and shot him in his heart and Salim died instantly. After that, he ordered four prisoners to bury Salim's dead body. The witness also recalled Marko Radić a.k.a. Maka, Dragan Šunjić and Mirko Vračević a.k.a. Srbin, who all participated in the killings in their own way. According to the witness, 55 people were brought to Vojno at a time and were all detained in a 16m² garage, where they had a bucket to relieve themselves. Witness Junuz Halilović was imprisoned 3 times for twenty days in Vojno. His brother was buried near the

place where the prisoners were detained. Witness Junuz Halilović gave the same statement before the Investigative Judge of the Higher Court in Mostar on 6 September 1996.

348. The testimony of witness Junuz Halilović is corroborated by the documentary evidence tendered into the case file. The Report of the SVIZ Warden Stanko Božić, No. 698/93 dated 22 September 1993 shows that Dragan Šunjić, as the commander of the Vojno prison, made a Report dated 15 September 1993 in which Salim (Selim) Alilović's killing was mentioned. The Panel found that Salim Halilović was the brother of Junuz Halilović because of the same name of their father and the same time and place of the murder. All this, coupled with the fact that the letter "H" is frequently omitted in some parts of BiH, indisputably leads to the conclusion that it was the same person - Salim Halilović, the brother of witness Junuz Halilović, not Alilović.

349. The Report says that this prisoner was buried immediately after he was killed, which is also consistent with the testimony of Junuz Halilović.

350. The Decision of the Basic Court in Zavidovići dated 28 April 1997 shows that the death of Salim Halilović was established on 14 September 1993 in the place of Bijelo Polje, Mostar municipality. The reasoning of the same Decision shows that the death of Salim occurred in the manner and at the time as stated by witness Junuz Halilović during the investigation. In addition, the List of war and civilian prisoners who were killed includes the name of "Salim Alilović" under number 27.

351. Bearing in mind the mentioned testimony of witness Junuz Halilović, which the Panel evaluated as objective and accurate, the Panel could not accept the statement Dragan Šunjić made in his record on 15 September 1993 that Salim Halilović was killed by enemy forces. Making an analysis and comparison of this record with other records mentioning the death of persons imprisoned in the Vojno camp, the Panel concluded that MOS forces were routinely blamed for the death of inmates, in an attempt to cover up the real truth about the cause of death of the inmates in the Vojno camp and the clues suggesting the responsibility of somebody from Vojno. Taking into account the testimony of witness Junuz Halilović whose testimony was accepted by the Panel as credible and reliable, which was fully corroborated by the documentary evidence tendered into the case file, the Panel established that on an unknown date in the month of September 1993 prisoner Salim Halilović was killed in Vojno by the prison commander Mario Mihalj. Notwithstanding that Junuz Halilović could not be specific and precise about the time certain incidents took place, he was nevertheless very clear and precise about the conclusive facts relevant to the murder of his brother. His description of the premises where he was detained and the conditions of their stay in Vojno was

very clear and precise, so that the Panel concluded that this witness indeed was held in the Vojno prison at the relevant time, that he testified about the relevant incident truthfully and reliably and the Panel accepted his testimony.

8. Murder of Asif Čakrama

(count 2c) Radić; count 8c) Šunjić; count 12 Brekalo; count 17 Vračević)

352. Based on the presented documentary evidence, the Panel concluded beyond any reasonable doubt that Mirko Vračević killed Asif Čakrama on the road between Đubrani and Vojno in September 1993. Vračević fired a bullet at close range in Asif Čakrama from his weapon. The bullet went through Asif Čakrama and wounded another prisoner in the chest. The Panel concluded that this followed from the testimony of witnesses who gave account of this incident and from the presented documentary evidence.

353. Witness Aziz Suljević stated that he was in the prison at Heliodrom and that fifty of them, the prisoners, one day were taken to the place of Vojno. They reached Vojno through Đubrani. In Đubrani, he saw Mario Mihalj and Dragan Šunjić for the first time. They were tied up there with wire and proceeded to Vojno. The witness knew about the killing of Asif Čakrama and that he was killed from a rifle by Mirko Vračević, who shot at him once, without reloading the rifle, from the distance of about one meter and a half. He described Vračević as a fairly short man who was about 48 years old and had problems with one eye. It was possible that Vračević was intoxicated on that occasion. He did not see the injury on the body of Asif Čakrama but assumed that he was shot in his chest. They left Asif behind and continued towards Vojno, where they were packed into a garage. Afterwards, he dug a grave for Asif with three other prisoners and buried him. When the murder took place, the witness did not know that the killer's name was Mirko Vračević, but he learned his name later on, during his stay in the camp, and he also saw Mirko frequently afterwards. In his opinion, Dragan Šunjić was present when Asif Čakrama was killed.

354. Witness Ramiz Mačković was transported from Heliodrom to the Vojno prison in late September, together with 50 other prisoners. On their way to Vojno, in Đubrani, they were intercepted by Mario Mihalj, Dragan Šunjić and Mirko Vračević. Mario Mihalj and Dragan Šunjić tied them with wire there, they were ordered to keep their free hands above their heads. Whenever somebody's hand fell down, the Accused Vračević would hit him with a rifle butt. On the way to Vojno, Mirko Vračević recognized prisoner Nuhan Makaš to whom he said "Have you come again? Tomorrow, you will dig a grave for yourself and I will come to kill you"; then, he asked Mario

Mihalj if he could kill Nuhan Makaš. When Mihalj gave his approval, Mirko Vračević asked prisoners “What word do you, Muslims, use for a grave?” Asif Čakrama replied “mezar”, after that Vračević suddenly turned around and fired, at close range, his rifle to Čakrama's head, which instantly caused his death. The bullet which exited Asif wounded prisoner Junuz Kovačević, who was admitted by the medical staff upon his arrival in Vojno. At the moment when Mirko Vračević fired and killed Asif Čakrama, Dragan Šunjić was standing on the side. The witness knew Asif Čakrama quite well; they slept bed to bed in the camp. They brought the body of Asif Čakrama and buried him in an orchard, in the place where some other bodies were also buried. The body was subsequently exhumed and the witness went to show the graves of people killed in the Vojno prison. Same as witness Aziz Suljević, Ramiz Mačković used to see Mirko Vračević very often later on in the Vojno prison performing the duty of a guard. He described him as a person with an eye defect.

355. Witness Damir Lukić confirmed that, as a member of the HVO Military Police, he escorted the group of 50 prisoners from Heliodrom to the Vojno prison. Witness Lukić did not go further from Đubrani, where he handed over the group of 50 prisoners to Mario Mihalj. Apart from Mario Mihalj, there was also a blond man there, in a camouflage uniform, who might have been about 20 years old.

356. With regard to this count of the Indictment, the Court inspected the abundant documentary evidence. The Logbook which was made at *Heliodrom* states on its page no. 01535329 that 50 prisoners were taken from Heliodrom to the 1st Battalion of the 2nd Brigade, including the names of the killed Asif Čakrama, witness Ramiz Mačković and Aziz Suljević. The transferred group was guarded by the military police officer Damir Lukić. The above page of the Logbook does not contain the date, however, the following page of the Logbook bears the date of 28 September 1993, while the previous pages bear the dates of 26, 27 and 28 September 1993. Based on these dates it is possible to conclude that the inmates Čakrama, Mačković and Omanović were taken away in late September 1993. The same list of prisoners contains the name of Nuhan Makaš under number 14, which is the person who was addressed by the Accused Mirko Vračević immediately before the killing.

357. The death certificate for Asif Čakrama dated 30 June 1996, submitted by the MUP, shows that he was killed in Vojno in September 1993. It follows from the Official Note on the examination and identification of the body carried out by the CSB Mostar on 25 April 1994 that the name of Haris Balić was written on a tag in the pocket of the plastic bag containing one dead body. According to the detainees, there is a possibility that it was Asif Čakrama's body. However, this

body was not identified on that occasion, so that it is not possible to conclude with certainty on the basis of the Official Note of the CSB Mostar dated 25 April 1994 exactly whose body it was. It follows from the statement of witness Huso Mehremić, who, in the capacity of an official person attended the identification of dead bodies exhumed in Vojno and the surrounding places, that the woman whose name was Sanija recognized her husband Asif on the photographs. Witness Mehremić was not present when the wife recognized her husband, but his logbook contains the date of 30 July 1993 when this recognition was made.

358. The Defence pointed at certain discrepancies in the statements the witnesses gave about the time when this incident took place. Ramiz Mačković said that it happened on 26 September 1993, while Aziz Suljević said that it took place in October. The Defence also raised the differences as to where the bullet hit Asif Čakrama, whether he was killed in a burst of fire or by one bullet only. According to the Defence, the sanity of the Fourth-Accused at the time of perpetration of the offence was also doubtful and they referred to the testimony of witnesses who stated that Vračević was under the influence of alcohol. Having evaluated all the evidence relevant to the incident, the Court found that the statements given by witnesses Mačković and Suljević were compatible in all essential elements and with the relevant portions of the above logbook and the statement given by witness Damir Lukić. Therefore, the Court indisputably established that the witnesses Mačković and Suljević had been taken together with Asif Čakrama from Heliodrom to be transferred to the Vojno prison via Đubrani. It indisputably follows from the testimony of witnesses Mačković and Suljević and the testimony of witness Damir Lukić that these prisoners were taken over by Mario Mihalj in Đubrani. Witnesses Suljević and Mačković stated that Dragan Šunjić and Mirko Vračević were also there. According to both witnesses, they did not know Vračević's name at the time when he shot Čakrama, but they learned it later on in the camp. The Panel accepted the testimony as consistent, since these witnesses afterwards spent dozens of days in the Vojno prison where they were seeing Dragan Šunjić and Mirko Vračević. It is a fact that Dragan Šunjić and Mirko Vračević performed some duties in the Vojno prison in late September, that Šunjić was the deputy commander and Vračević was a guard in the prison. Therefore, the Court finds acceptable that the two of them came to Đubrani together with Mihalj to take over the prisoners since Mihalj could not do that alone and no one else was ever mentioned to be involved in this incident.

359. With regard to the possible intoxication of the Accused Vračević at the time of perpetration of the offence, the Panel refers to the Findings and Opinion of the team of experts given during the first-instance proceedings, as well as the Findings and Opinion given by expert witness Doc. Dr. Alma Bravo-Mehmedbašić. It follows from the Report that the Accused Vračević was mentally sane at the time of perpetration of the criminal offence he is charged with, so that the Panel does not

at all doubt that fact. The Panel examined the Defence allegations about Vračević being intoxicated by alcohol at the time Asif Čakrama was killed, and concluded that even in such a case he would not be exonerated since this murder was but one in a series of murders committed within a joint criminal intent to carry out a systemic joint criminal enterprise, and also given the institution *actiones libera in cause* (action free in its cause) because the Accused caused his own intoxication.

360. However, the Panel could not indisputably establish if the bullet hit Asif Čakrama in his head or in his chest. Moreover, the Panel could not determine how many bullets were fired at him since the body of Asif Čakrama was not yet identified. Nevertheless, this fact is not particularly important, nor would it change anything, given that the Panel established beyond any reasonable doubt that Asif Čakrama was killed in September 1993 by Mirko Vračević who fired at close range from his firearm. This fact is sufficient to prove the commission of the offence under Article 172(1)a) of the CC of BiH.

C. TORTURE

Elements of Torture under Article 172(1)(f) of the CC of BiH

361. The Criminal Code of Bosnia and Herzegovina recognizes torture as Crimes against Humanity under Article 172(1)(f) and defines it in paragraph 2(e) of the same Article as “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the perpetrator except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions.”

362. Accordingly, the elements of the criminal offense of torture are:

- 1) the intentional infliction;
- 2) of severe pain or suffering whether physical or mental;
- 3) upon a person in the custody or under control of the perpetrator.

363. In addition to these elements, according to customary international law and certain ICTY jurisprudence, the element defined as “prohibited purpose” is also required. Pursuant to the

Judgment of the Appeals Chamber in the Kunarac et al. case (IT- 96-23/1 dated 12 June 2002, para. 142) “The act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person represents the satisfaction of the requirement of ‘prohibited purpose’”.

364. According to the ICTY interpretations, this element was an integral part of customary international law in relation to the act of torture at the time of commission of the referenced criminal offenses.⁴⁶

365. The jurisprudence of the Court of Bosnia and Herzegovina adds this requirement to the list of elements, and this Panel does it too, by accepting the ICTY conclusions regarding the applicable customary international law during the period of time included in the Indictment. The ICRC Commentary of Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (IV Geneva Convention), deals more with the purpose than with the gravity of the offence of torture itself and points out that “what matters is not the pain as such, but the purpose for which it was caused.”.

366. As for the specific prohibited purposes as a requirement for the criminal offense of torture, the description of the purpose of torture under the Convention on Torture also reflects the customary international law. As such, these purposes are relevant to the determination of concrete acts in this case as the act of torture.

367. According to the qualification, the consequences caused by a prohibited act must have a certain degree of severity in order to constitute the criminal offense of torture. Article 172(2)(e) prescribes that there must exist an infliction of severe pain or suffering. This is a rather imprecise category because no parameters have been established to define a boundary between severe pain and suffering and other inhumane acts that also cause pain and suffering, but not to the extent to which these acts would be characterized as the acts of torture. In the Krnojelac case, the Trial Chamber has established certain objective issues, such as the nature and the context of causing pain, the intent and institutionalization of maltreatment, physical condition of the victim, the manner and methods used, and the position and inferiority of the victim. According to the same jurisprudence, the act of maltreatment during a longer period of time may also constitute a factor that may suggest

⁴⁶ The ICTY has accepted the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention on Torture) from 1984, 1465 U.N.T.S. 85, that came into effect on 26 June 1987, as a standard of customary international law at the time of the commission of the criminal offenses in the former Yugoslavia.

the existence of the criminal offense of torture. In the Kvočka case, the Trial Chamber recognizes that the subjective, individual circumstances of the victim should also be taken into account in evaluation of the severity of pain and suffering.

368. The Human Rights Commission presents no concrete actions as the acts of torture. The European Court of Human Rights has concluded that a number of different types of maltreatment amount to torture, including: hanging of the victim by his arms tied behind his back (“Palestinian hanging”), Aksoy; repeated punching, kicking and hitting with objects, the threat by a burner and syringe, and breaking of the chest bone; electric shocks, hot-and-cold water torture, hits in the head and psychological pressure, etc.

369. Recognizing all the accepted views regarding the existence of the elements of the act of torture, the Panel evaluated the gravity of pain and suffering inflicted on the victims by different acts in the light of each concrete case and viewed each case together with the other relevant circumstances that may have any impact.

1. Torture of Mustafa Čilić and Rasim Lulić

(count 3 Radić; count 8 and 9 Šunjić; count 14 Brekalo; count 22 Vračević)

370. Based on the evidence presented, the Panel undoubtedly established that in July 1993 a group of male detainees were brought from Heliodrom to the Vojno camp to perform forced labour, which included the fortification of frontlines in the combat zone. Mustafa Čilić and Rasim Lulić were among these detainees.

371. The Panel established this fact both from the testimony of witness AA, who was brought to the Vojno camp together with them, and the Report of the SVIZ Commander (Military Remand Prison Centre) Stanko Božić number 676/93 dated 14 September 1993, from which it ensues that on 6 July 1993 the First Battalion of the Second Brigade took 8 detainees to perform forced labour. According to the Report, out of these eight detainees, six returned, while Rasim Lulić and Mustafa Čilić did not return.

372. Also, it ensues from the List of detainees currently at work that was made by the Deputy Commander of the SVIZ Heliodrom that Rasim Lulić and Mustafa Čilić were taken together with the group of prisoners to perform forced labour.

373. In his testimony before the Court, witness AA described the hard labour conditions for him and other detainees during his 20-day detention. He testified that each day they were taken to perform labour, they were all the time exposed to cross-fire and subjected to daily beatings. Witness AA emphasized that Mustafa Čilić and Rasim Lulić were beaten up most frequently and most heavily. Witness AA stated that he personally eye-witnessed when Čilić and Lulić were beaten up by the accused Damir Brekalo when he was digging trenches with them in July 1993. The accused came dressed in a black uniform and started beating Čilić and Lulić. The accused Brekalo made a break during the beating, approached witness AA, gave him a cigarette, and started talking with him. After that, the accused Brekalo returned to Čilić and Lulić again, and continued beating them. Witness AA watched the beating of Čilić and Lulić from the distance of 20-30 meters. As a result of the beating, Čilić and Lulić sustained bruises, and upon returning to the camp on the same evening, they complained of pains all over their bodies. According to this witness, on the very same evening, around 23:00 hrs, somebody opened the door of the basement and called Čilić and Lulić to step out. Witness AA testified that judging by the voice it seemed to him that it might have been the voice of Emir Brekalo with whom he had talked on the same day. After stepping out, Mustafa Čilić and Rasim Lulić never returned to the basement and were never seen again.

374. The bodies of Mustafa Čilić and Rasim Lulić were subsequently exhumed from the territory of Bijelo Polje and Vojno, and taken to the Sutina mortuary.

375. The Prosecution witness, Huso Mehremić, identified the bodies of Čilić and Lulić. Witness Mehremić knew them both because he was detained with them in Heliodrom before they were taken to Vojno. Witness Mehremić testified that after he was released from the camp he became the Head of the MUP Forensic Department, and one of his duties was to identify dead bodies. He was detained with Čilić for around two months and he could therefore identify Čilić's body. Čilić's body was further identified by his neighbour Zijad Kladašak, and subsequently by Čilić's father and two brothers.

376. As to Rasim Lulić, witness Mehremić testified that he was detained with him for a while in the Ljubuški prison centre, and thereupon in the same room in the Heliodrom camp. This witness testified that he recognized the body the moment he saw it. Zijad Kladašak and Lulić's close family also confirmed Lulić's identity. This witness also confirmed that he personally signed the Official Note of the CSB Mostar dated 10 April 1994, marked as NN 108, which was related to the dead body of Rasim Lulić.

377. The Panel accepted the testimony of witness AA because it was given in a very clear and convincing manner. This witness clearly and undoubtedly described the role of the accused Brekalo in the beating of Čilić and Lulić, whom he described, and with whom he spoke on that day and thus was able to see him well. Based on the foregoing, the Panel established beyond a reasonable doubt that on an unspecified date in July 1993, the accused Damir Brekalo beat up the detainees Mustafa Čilić and Rasim Lulić while they performed forced labour.

378. Witness AA testified that judging by the voice he assumed that the person who took Čilić and Lulić out of the basement on that critical evening was the accused Damir Brekalo. In addition, it undoubtedly ensues from the aforementioned documentary evidence that the accused /as in the B/C/S original/ Čilić and Lulić were deprived of their lives.

379. The Panel, however, could not establish beyond a reasonable doubt that the accused Brekalo was the person who deprived them of their lives. Witness AA's mere assumption that the voice he had heard on the critical night before Lulić and Čilić were taken out of the cellar was the voice of Damir Brekalo, whom he had seen and heard for the first time on that day, and with no other sufficiently convincing arguments, could not be sufficient for the Panel to establish beyond a reasonable doubt that Damir Brekalo was the person who deprived these two detainees of their lives.

380. However, without any dilemma, Brekalo was the man who had on that day beat up Čilić and Lulić twice without any reason whatsoever. In this respect, the Panel infers that while they were held in the Vojno prison under the supervision of the Accused persons, severe bodily injuries and mental suffering and pain were inflicted on detainees Čilić and Lulić by the concrete act of beating, and that, on this occasion, there existed an intention to inflict on them by such act the gravest physical and mental pains. This is all the more so if it is taken into account that this was not the only occasion when the detainees were beaten up. According to witness AA, Čilić and Lulić were beaten up most frequently and most severely. The purpose of the beating was to intimidate all other detainees and discriminate against them. Therefore, the Panel has qualified these acts as the act of torture under Article 172(1)(f).

2. Torture of Arif Omanović

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 and 22f) Vračević)

381. The evidence adduced indisputably demonstrates that Arif Omanović was detained in the prison facilities of Vojno in August 1993, together with his wife Huma Omanović.

382. Witnesses 151 and Azer Handžar testified that after their arrival in Vojno they were lined up, and thereupon Dragan Šunjić and Mario Mihalj brought up two prisoners showing their bodies which were black and blue because of the beating, and told them that everybody would look the same if they did not obey the orders. Witness 151 testified that those men were detainees Arif Omanović and witness 153. This witness also stated that Mario Mihalj and Dragan Šunjić were beating some prisoners at the time.

383. Witness Handžar stated that he did not know the names of those two detainees at the time, but that he was subsequently detained together with them in the cellar of a house.

384. Witness 151 further testified that he personally saw Dragan Šunjić beating Arif Omanović asking him: “Where is your son?” because they knew he was a member of the ABiH. This witness also saw Dragan Šunjić and Mario Mihalj beating up Arif Omanović in the garage. According to witness 151, Arif Omanović died of the consequences of the repeated beatings and was buried by a group of prisoners.

385. Witness AA also stated that he remembers Arif Omanović, whom he saw in front of the garage the first day upon his arrival and that on that occasion Arif Omanović was brought there together with another person, when they were ordered to pull up their shirts for us to see their bruises and open wounds inflicted on them by severe beatings.

386. Witness 153, who was detained in the garage together with Arif Omanović, testified that during one night-shift Mirko Vračević entered and called Arif Omanović to come with him, and that they could hear his screaming and cries, “please, don’t, don’t”. When they brought him back, he was deformed, swollen, having no control over his body. Judging by the voices, witness 153 assumed that he had been beaten by Mario Mihalj and one of the Kordić brothers. When one day after that the detainees came back from forced labour, they did not find Omanović in the garage any more.

387. Witness Saja Ćorić also personally saw Arif Omanović at the moment when the HVO soldiers tortured him.

388. According to the testimony of the defence witness Žarko Leko, who was a guard in Vojno, the son of Arif Omanović, Miralem Omanović, was responsible for the killing of three prisoners, Croats, who had been arrested by the BiH Army forces. This statement suggests the conclusion that the HVO members, including also the Accused, had exactly this as a motive to retaliate and kill Arif Omanović.

389. The testimony of witness Huso Mehremić, who attended the identification of bodies delivered from the Vojno area as the Head of the Police Forensic Department, and the Official Note of the CSB Mostar dated 21 April 1994 show that the identity of Arif Omanović was confirmed by his son Miralem Omanović.

390. The accused Dragan Šunjić denied his presence in the Vojno camp during the critical period of time and his participation in the beating of Arif Omanović. In doing so, he referred to the testimony of witnesses who did not mention him in their statements at all. He submitted that in July and August he was in Đubrani, not in Vojno.

391. With a view to contesting the credibility of witness 151, the Defence for the Second-accused particularly pointed to the statement given by this witness before the ICTY on 1 October 1998. The Defence submitted that nowhere in his statement did this witness mention Dragan Šunjić as the person who was beating Arif Omanović. However, all the aforementioned witnesses, including witness 151, undoubtedly testified before the Court that on these critical occasions, in addition to other HVO soldiers, exactly Mario Mihalj and Dragan Šunjić were beating Arif Omanović.

392. In his statement given before the ICTY, witness 151 stated that Arif Omanović was beaten up by soldiers from the Second Brigade and that all detainees were beaten up and abused. It is correct that witness 151 did not name Dragan Šunjić in his statement as the person who had beaten up Arif Omanović, but he neither denied that Dragan Šunjić beat Arif Omanović. Specifically, the witness testified that soldiers from the Second Brigade did this, while the accused Šunjić himself was a member of the Second Brigade.

393. In his testimony before the Court, however, witness 151 explicitly and clearly stated that Arif Omanović was beaten up by Dragan Šunjić and Mario Mihalj. The witness stood by this statement of his also during the cross-examination when the Defence for the Second-accused attempted to contest his credibility. The Panel therefore concludes that the statement of witness 151

given during the investigation before the ICTY and his testimony given at the main trial are not mutually contradictory. The fact is that in his testimony given before the Court, the witness 151 gave much more details about the persons who had beaten Arif Omanović. Therefore, the Appellate Panel accepted as credible and accurate, and gave credence to the testimony given by this witness before the Court.

394. Bearing in mind the fact that the aforementioned witness statements are mutually consistent and supplement each other, and also the contents of the documentary evidence on which no serious doubt was cast, the Panel has accepted as true and reliable all statements of the mentioned witnesses, victims-detainees of the camp.

395. Even though the accused Šunjić was charged under the Indictment of the Prosecutor's Office with the death of Arif Omanović which resulted from the beatings, the Panel could not establish with certainty from the evidence adduced that the death of Arif Omanović resulted exactly from his being beaten up by Dragan Šunjić, Mario Mihalj and other members of the HVO, namely that the injuries inflicted on this occasion (and not the previous ones, or a former disease, and alike) caused his death. Specifically, it ensues from the witness statements that Arif Omanović was also beaten up for several times by different HVO soldiers, not only by Mihalj and Šunjić. He died several days after the referenced beating, but it was not established whether exactly this beating caused Omanović's death.

396. Contrary to the aforementioned, the Panel has established beyond a reasonable doubt that Dragan Šunjić personally, Mario Mihalj and other HVO soldiers were beating Arif Omanović. The Panel also established that, on one occasion, Mirko Vračević took out Arif Omanović, and that thereupon he was beaten up, and returned all covered in blood and swollen. The motive for such a treatment was certainly to retaliate, that is, to punish Arif Omanović for the killing of three Croats, who had been allegedly killed by his son, Miralem Omanović. On this occasion, severe bodily and mental pain and suffering were inflicted on Omanović, the purpose of which was to intimidate other detainees, and certainly to discriminate against the detainees. Therefore, the Panel has qualified all the referenced acts as the act of torture under Article 172(1)(f).

3. Torture of Avdo Jelin

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 and 22f) Vračević)

397. Based on the evidence adduced, the Panel established that Avdo Jelin, a detainee in the Vojno camp, was also beaten up in late August or early September.

398. The fact that Avdo Jelin too was in the Vojno prison facility during the relevant period stems from the testimony of numerous witnesses who were transferred together with him to Vojno from the Heliodrom camp.

399. Witnesses AD and Zulfo Humačkić stated that they were brought to Vojno from Heliodrom in late August 1993, while witness Ramiz Bebanić stated that he was brought there on 2/3 September 1993, while witness AI testified that he was arrested on 2 September 1993, and brought from Mostar straight to Vojno.

400. The foregoing witnesses consistently confirmed that upon their arrival in Vojno they were lined up in front of the garage, and thereupon Mario Mihalj and Dragan Šunjić asked them to introduce themselves by telling them first their name and then the last name. If someone said it vice versa, that was taken as a reason to beat the prisoners, which would last until the moment when these people realized how to introduce themselves.

401. Witness Ramiz Bebanić stated that on this occasion Avdo Jelin, who was beaten by Mario Mihalj, had the worst luck. Dragan Šunjić, whom the witness had known from before, watched while Jelin was beaten. According to witness Bebanić, Mario Mihalj beat Jelin so much that he could not even go to the garage alone, but the detainees had to carry him.

402. Witness AI testified that he himself was a victim of the beatings on a daily basis, becoming worse and worse. He stated that upon his arrival Mario Mihalj and Dragan Šunjić hit him with batons, punched and kicked him in front of the garage. This witness noted that it was worst on one evening when guard Mirko aka Srbin came and took him to the house where Mario and Dragan Šunjić already waited for them. They tied up his hands with electric wire which was connected to a telephone that caused electric current to go through his body. This was done by Mihalj while Šunjić was jumping on him. Witness AI stated that Avdo Jelin was brought into that room immediately after that, being tortured in the same way. During that time, they threw Witness AI into the next room from where he could hear that they did the same to Avdo Jelin. According to the witness, afterwards, they also brought Avdo Jelin to that room and then returned both of them to the garage.

In the morning, Jelin tried to stand on his feet, but he was falling down all the time. They continued to beat him for a couple of days. Once, when the detainees returned from forced labour, they did not find Jelin in the garage any more.

403. The fact that Avdo Jelin died also ensues from the following documentary evidence: Report on the killing of these detainees, sent by the commander of the „private prison“, Mr. Mario Mihalj, and the Final list of killed detainees made by Stanko Božić dated 6 January 1994 (the name of Avdo Jelin is written under number 15).

404. The fact that Avdo Jelin died follows from the Death Certificate of the MKU number 04/II-15 issued under the name of Avdo Jelin by the Registry Office Mostar - Stari grad where it is written that the death occurred on 8 September 1993. Moreover, the Official Note made by the CSB Mostar on 25 April 1994 shows that this was the date when the body of Avdo Jelin was identified by his brother Jadran Jelin.

405. It follows from the review of the Report of the SVIZ Warden Stanko Božić, number 676/93 dated 14 September 1993, that on 2 September 1993, 50 persons were handed over to the 1st Battalion of the 2nd Brigade for forced labour. They were escorted by Dragan Šunjić. On 11 September 1993 they received information from the “private prison” that the detainees from Heliodrom had been killed, including Avdo Jelin under number 3.

406. The Defence for Dragan Šunjić contested the fact that Šunjić was in the Vojno prison facility at the time when the beatings and murder of Jelin took place, noting that at that time he was on leave as a military police officer. The accused Šunjić personally testified about his absence from the Vojno camp at the critical time. The Defence referred to the contents of the documentary evidence, primarily the Report of the II Company of the V Battalion, where it is said that there was a rotation of the Goranački Platoon of military police officers in Đubrani on 28 August 1993 and that it lasted until 5 September 1993.

407. However, it undoubtedly follows from the Order dated 2 September 1993 that Šunjić escorted 50 persons, who were brought to Vojno. The statements of the Prosecution witnesses, who were brought to the Vojno prison facility as prisoners on 2 September 1993 (AI, AG, Saja Ćorić, Ramiz Bebanović) show that Dragan Šunjić was present from the very beginning of their arrival onwards. In addition, the witnesses who were brought to Vojno in late August (AD, Zulfo Humačkić) claimed that Dragan Šunjić was in Vojno at the time.

408. Taking into account the compatible statements of witnesses regarding the presence of Šunjić in Vojno at the time when Avdo Jelin was killed, and particularly parts of the statements addressing the beatings of Avdo Jelin by Dragan Šunjić, the Panel did not accept the argument of the Defence for the second-accused and the second-accused himself that he was not present in Vojno at all at the time when Avdo Jelin was brought, beaten up and maltreated.

409. However, based on the evidence adduced, the Panel established a different time frame of these incidents. The Panel noticed that it ensues from the testimony of the witnesses and the referenced documentary evidence that Jelin was physically abused in late August or early September and not on “or about 2 November” as alleged in the Indictment. Also, even though the death of Avdo Jelin is evident, which the Panel considers undoubtedly established, the Panel could not infer beyond a reasonable doubt from the evidence offered that his death directly resulted from the beatings by none other than Mario Mihalj and Dragan Šunjić, and not from some other beatings and with the exclusion of all other potential causes of death.

410. Therefore, based on the foregoing testimony of the witnesses, which the Court has accepted as credible and reliable, since they are consistent both mutually and with the documentary evidence in the case record, the Panel established beyond a reasonable doubt that in late August or in early September several dozens of detainees had come from the Heliodrom camp to the Vojno camp, where many were physically abused and beaten up by Mario Mihalj and the accused Dragan Šunjić, including Avdo Jelin, on which occasion severe physical and mental pains were inflicted on Avdo Jelin with a view to intimidating and discriminating against Avdo Jelin on account of his ethnicity. Thereby, all essential elements of the criminal offense of torture under Article 172(1)(f) of the CC of BiH have been satisfied in relation to Jelin too.

4. Torture of Witness AI

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22g) Vračević)

411. Having evaluated the evidence presented, the Panel has established beyond a reasonable doubt that the Prosecution allegations related to the torture of the protected witness AI are also well-founded.

412. Specifically, witness AI testified that he was arrested in his apartment in Mostar on 2 September 1993, together with his wife, six-year-old daughter, father and his father-in-law age 70. They were taken to the Vojno camp. In Vojno, they were met by Mario Mihalj and the accused

Šunjić with the words: “Welcome to hell, not many of you will leave this place alive.” This terrified him. Thereupon, he was taken to a room where he was interrogated. Mihalj and the accused Šunjić punched and kicked him, hitting him with batons, while one HVO soldier hit him with a pistol and put the pistol in his mouth. He thought he would die. The beating lasted for about twenty minutes. He sustained different injuries, the nose and the mouth bleeding, and bruises on his neck. He received no medical assistance for his injuries.

413. The witness AI also testified that, on one occasion, he and Kajtazi were beaten together. He could not stand on his feet after this beating. The witness thereupon also recalled an incident when they were ordered to bang their heads against a sheet-metal door. On one evening, Dragan Šunjić and Mario Mihalj beat him so much that his several ribs were broken. The witness noted that the detainees were regularly beaten after returning from forced labour.

414. According to the witness, it was worst for him when guard Mirko Vračević took him one evening to a house where Mario and Dragan were already waiting for them. They tied up his hands with electric wire and produced electric current. The electric current job was done by Mihalj while Šunjić was jumping on him. These electric shocks lasted for ages for him, and he thought it was the end of everything.

415. Witness AG, who is the wife of witness AI, stated in her statement that was read out at the main trial that she was brought to Vojno together with her husband and the rest of her family. Her husband was detained in a garage, and when she once saw him, he was not able to stand on his feet because he was tortured with electric shocks. According to this witness, his seven ribs were broken, which did not heal properly because no medical care was provided to him.

416. Witness Aziz Suljević testified that on one occasion Mihalj and Šunjić entered the garage with torches in their hands. They looked for more corpulent persons to beat them. This witness also stated that on this occasion Mario Mihalj requested the detainees to bang their heads against the wall, which they had to do. Witness AI also testified about this. On this occasion, Suljević himself was also beaten by Mario Mihalj.

417. Witness Ramiz Mačković also confirmed that Mario Mihalj had ordered them to bang their heads against the wall. They had to bang so strongly until their heads started bleeding. If they failed, the HVO soldiers would grab their hair and hit their heads against the wall. On this occasion, Dragan Šunjić was also in the garage with Mihalj.

418. Witness Zulfo Humačkić submitted that after he arrived in the camp he found in the garage 10 to 15 detainees who were suffering from malnutrition, had visible traces of the beatings, head injuries, and bruises. Witness Ramiz Bebanić confirmed all this and stated that he found detainees in the garage in a very bad shape, including witness AI.

419. Witness 153 stated that other detainees were also subjected to electric shocks and that he knew the person under the pseudonym AI with whom he left the camp.

420. It ensues from the Finding and Opinion made by the Regional Medical Centre Dr. Safet Mujić Mostar of 13 September 1996 that witness AI had fractures of seven ribs. Also, the Finding and Opinion made for the witness AI by the Neuropsychiatric Department of the RMC Dr. Safet Mujić demonstrates that during 1996 he was diagnosed with phobic anxiety disorder.

421. Based on the contents of the referenced evidence, the testimony of the witnesses and the offered documentary evidence that are mutually consistent, the Panel had no reason whatsoever not to accept them all as objective and accurate. The Panel concluded beyond a reasonable doubt that while he was detained in the Vojno camp witness AI was beaten and tortured several times by Dragan Šunjić and Mario Mihalj. The Panel accepted the testimony of witness AI as convincing and reliable since it is consistent both with the testimony of the other witnesses mentioned, and the documentary evidence. In addition, other Prosecution witnesses, including Saja Ćorić, witnesses J and D, Ramiz Mačković et al. also confirmed in their testimony the beatings upon arrival in Vojno during the interrogation in the room where Mihalj and Šunjić were present. The testimony of witness AI is entirely consistent with the testimony of other witnesses who described their heads banging against the door or the wall. Witness AG confirmed that the witness AI was beaten up in the garage when his ribs were broken. This was also confirmed by the medical findings and opinion. In addition to witness AI, Saja Ćorić and witness 153 also experienced the electric shock torture.

422. Based on all the foregoing, the Panel concluded that a pattern of abuse and torture of detainees undoubtedly existed in the Vojno camp. This is apparent from both the physical beatings and different other forms of mental and physical abuse, a victim of which was the witness AI too. Since witness AI was on several occasions subjected to the repeated and different forms of beating over a longer period of time, including the electric shocks, and bearing in mind the consequences to his health that resulted from these acts (fractures of ribs and anxiety disturbance), the Panel established that during his detention in the Vojno camp, members of the HVO, including the accused Dragan Šunjić, inflicted on witness AI severe bodily and mental pain and suffering, that all

this was happening during the time when witness AI was under their control in the Vojno prison, and that a clear intention existed to inflict on him the gravest physical and mental pains so that he suffers as much as possible. The purpose of all these acts was discrimination against witness AI on ethnic grounds. Therefore, the Panel has qualified these acts as the act of torture under Article 172(1)(f) of the CC of BiH.

5. Torture of Witness AB

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 Vračević)

423. According to the Panel, the well-foundedness of the allegations in the Indictment concerning the torture of the protected witness AB also ensues from ample evidence.

424. Specifically, according to witness AB, in early September, he and around fifty other detainees were brought from Heliodrom to Vojno. They arrived by night and were met by Mario Mihalj, who according to the witness was the Camp Warden. The witness opined that his deputy was Dragan, whom he also saw for the first time then. He was placed in a garage with around fifty other detainees. They were taken to perform labour on a daily basis, and upon their return they were exposed to abuse and beatings. Mario Mihalj would take out anyone he wanted and beat him. The detainees were forced to fight among each other, while the soldiers laughed. There were detainees who were beaten up, and had broken noses and teeth. None received any medical assistance.

425. According to witness AB, on one occasion, when the detainees dug trenches and Marko Radić came to visit them and when a shot was heard, a soldier who escorted him was hit. Witness AB and the other present detainees were forced to carry the wounded soldier to the ambulance escorted by two soldiers. However, the injured HVO soldier died, while witness AB and the other detainees who had carried him were blamed for his death. Thereupon, they were detained in a room and beaten by Mario Mihalj, Jure Kordić and another person whom the witness described as a blond short person. They had batons with which they beat witness AB and four other detainees.. These persons were Aris Začinović, one Kajtazi – a short Albanian, one Čakalović and Ćorajević.

426. The witness described in detail how he was beaten up by Mario Mihalj, who also cut his chest and the abdomen with his knife, and carved a letter “U” on his back. The witness stated that they used to put out cigarettes on him and other detainees. The testimony of the witnesses Ramiz Bebanić, Zulfo Humačkić, witnesses AD, AI, and AA also confirmed these beatings and the killing of Enver Kajtazi, Husnija Ćorajević, Željko Čakalović and Aris Začinović. Their statements are

described in more detail in the Section of the Verdict addressing the killing of these four detainees, and therefore will not be repeated herein.

427. Witness Saja Čorić also confirmed that she knew that the witness AB had escaped from the Vojno camp. Witnesses AA and AD also testified that the escaped detainees were shot at on this occasion.

428. According to this Panel, it undoubtedly ensues from the statements of the referenced witnesses, which were accepted by the Panel as objective and accurate (they were rather convincing and were not mutually contradictory), that witness AB was present in the garage of the Vojno camp when four detainees were killed. Prior to these killings, witness AB and the other subsequently killed detainees were beaten up by Mario Mihalj, Jure Kordić and one soldier, who took turns kicking, punching and hitting with buttons all five men. The intensity of the beatings was so heavy that two detainees fell down due to the blows, and thereupon their throats were slit. Witness AB himself was beaten up, cigarettes were put out all over his body, and he was cut with a knife. When he escaped, the HVO soldiers fired shots after him, and injured his hand.

429. By the acts of beating, severe physical and mental pain and suffering were intentionally inflicted on witness AB, who was undoubtedly under the Accused's control. The throat-slitting of two detainees with whom he shared the same destiny and the listening to their rattles while their throats were slit also resulted in the witness's severe mental pain and suffering. The injuries that he sustained after his flight and his wounded arm also resulted in a severe physical pain.

430. These acts were intentional and their direct goal was to blame witness AB and the four other detainees for failing to carry fast enough the soldier who was in Warden Marko Radić's escort to the ambulance.

431. Bearing in mind the foregoing, the Panel concludes that, in the case at hand, all elements of the offense—torture in violation of Article 172(1)(f) of the CC of BiH have been satisfied, due to which these acts are qualified as the act of torture.

6. Torture of Witness 153

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22e) Vračević)

432. Witness 153 testified that he was arrested on 15 August 1993 in Mostar, together with his mother and brother age 6. They were taken to the Vojno camp. At the time, the witness was a minor

of age 16. They were arrested by: Kolobara nicknamed Ivek, a person nicknamed Jež, Ćorić and Tinjak. He learned the names of those soldiers while he was in prison, except for Kolobara whom he had known from before. After their arrival in Vojno, they were met by Mario Mihalj, Camp Warden, and his Deputy, Dragan Šunjić. Immediately upon their arrival, when he introduced himself he was slapped by Mihalj. Dragan Šunjić was also present there. While he was in Vojno, the witness was beaten up several times, which resulted in concussions and his hearing impairment. One day, after Mirko Vračević had returned Arif Omanović in the garage, who was malformed from the beatings, he came for him and took him to Mario Mihalj. Mihalj ordered him to strip to the waist and then the beating started and lasted for about two hours. During the beating, Mario used two police batons, a part of a curtain rod and a handle of a tool. Witness 153 managed to bear all the hits at the beginning, which made Mario mad, who then continued beating the witness who eventually fell on the ground. After that beating, Mirko Vračević took the witness to the garage, which is when the witness lost his conscience. Then other prisoners helped the witness. He was covered in blood. He could not move due to the pain. They lifted him up to prevent him from suffocating in his saliva and blood.

433. According to witness 153, the other situation was when they brought him to a room where in addition to Mario, the accused Dragan Šunjić and Mirko Vračević were also present. There was a cable in the room which they connected to the witness's fingers and started turning the electricity on and off, subjecting him to electric shocks in that manner. Apart from those electroshocks, the witness was pricked by Mirko Vračević several times with a bayonet. During that time Dragan Šunjić laughed at his suffering, playing the guitar. For the witness, this lasted for an eternity.

434. In addition to these beatings, the witness was, according to his own testimony, beaten up two more times. On one occasion, Mario ordered him and two other detainees to do push-ups, and then he ordered them to stand up, upon which Mario hit him twice and as a result he fell down. Then Mihalj rushed and kicked him in his chin, consequently his head hit a bar and it was then when he suffered concussion.

435. The witness was beaten up by Mario Mihalj while he was cleaning the toilette when Mihalj ordered him to tell him: "Mr. Commander, you are Ustasha", which the witness had to do because he threatened him that on the contrary he would kill him. Then Mihalj beat him up under the excuse that he had insulted the Commander.

436. The witness added that apart from these cases, he experienced other beatings. He stated that they would just come to the garage and beat them up and that other detainees, too, were subjected to

electroshocks. He submitted that he saw Marko Radić in Vojno 4-5 times, out of that number twice when he came to the Command to visit Mihalj, and a couple of times when he took food to the front, as he had to pass by Radić's Command.

437. He saw Emir Brekalo around 5-6 times. On one occasion he asked him to bite off an ear of a prisoner, but he did not do that. He saw Dragan Šunjić on a daily basis.

438. According to the witness, while he was in Vojno on one occasion he was ordered to take off his shirt, together with Arif Omanović, in front of detainees who had just arrived, for them to see their injuries. The witness was all injured then, his body was black and blue, his head was swollen. Arif was in an even worse condition. He was released from Vojno in late September 1993.

439. The foregoing statements of the protected witness 153 are confirmed by the statements of many other witnesses.

440. Witnesses 151 and Azer Handžar, who came to Vojno in the second half of August, also testified that they were met there by Dragan Šunjić and Mario Mihalj, that detainees were brought before them and ordered to lift their shirts in front of the detainees who had just arrived to see what would happen to them. According to witness 151, those two detainees who were brought in front of them were Arif Omanović and witness 153. According to the testimony of all the mentioned witnesses, these two were heavily beaten up.

441. Witness F also saw when the son of the witness E lifted his t-shirt in front of the line of prisoners, and the bruises on his back which made her blood run cold.

442. The witness E, mother of the witness 153, testified that her son and the other women were physically abused. The witness E was, as all other women in the Vojno Camp, separated from the men, and she saw her son only on one occasion shortly before the exchange. She saw that his forehead was broken and that he had a big wound on it. He hid his forehead with his hand in order to hide the wounds from his mother.

443. The Panel accepted the statement of witness 153 as credible and reliable, as it is consistent with the statements of other mentioned witnesses. The Panel held that the witnesses had no interest in not telling the truth and incriminating anyone on no grounds. Based on the referenced testimony, the Panel concluded that the beatings when the detainees were received and questioned in Vojno were a common practice implemented by Mario Mihalj and Dragan Šunjić. In addition to witness 153, other witnesses also experienced such a reception (Saja Ćorić, witnesses J and D, witness AI, Ramiz Mačković, witness AD who testified that Mihalj hit him with a baton upon his arrival).

Therefore, the Panel holds reliable the testimony of witness 153 who was also beaten up upon his arrival in the prison.

444. With regard to the torture of witness 153 with electro-shocks, the Panel also gave credence to his testimony because it is concise and given in a very convincing manner with many details. Witnesses Saja Ćorić, AI and 152 were tortured in the same manner. Therefore, it can be concluded that exactly this was a method of torture used in the Vojno camp.

445. Witnesses 151, Azer Handžar, witnesses F and E testified about other mistreatments and beatings of the witnesses in Vojno by which many injuries were inflicted. The Panel considers proved that witness 153 was mistreated and beaten up during a longer period of time, exposed to many different methods of abuse, like when he was subjected to electroshocks by Mario Mihalj and Dragan Šunjić, or stabbed with a bayonet by Mirko Vračević. The fact that witness 153 was underage when he was surviving this torture adds a particular gravity to these acts of commission.

446. The Panel concludes that while witness 153 was in the Vojno camp, under the control of the Accused, he sustained severe physical and mental pains, and that a clear intention existed to inflict on him the gravest physical and mental pains so that his sufferings become even stronger. The purpose of the beatings and torture was also to intimidate other detainees and discriminate against witness 153 on the grounds of his ethnicity. Therefore, the Panel has qualified these acts as the act of torture under Article 172(1)(f) of the CC of BiH.

7. Torture of Witness 152

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 and 22c) Vračević)

447. That the allegations under the Indictment related to the torture of witness 152 are well-founded undoubtedly ensues from ample evidence.

448. Witness 152 testified that he was arrested in his apartment in Mostar by the persons called Tinjak and Žuti, and that he was brought to Vojno on 11 October 1993. He was age 17 and was not a member of any military formation. Upon his arrival in Vojno he was met by Mario Mihalj, whom he knew even before the war from school, so he thought this would have helped him. However, when Mario Mihalj took his personal information and when he did not say his name properly by their rules, Mario Mihalj and Dragan Šunjić started hitting him. These blows knocked him down on the floor, he was unconscious for a while and on that occasion they knocked his three teeth out. Due to this beating he was all battered, and he was not able to open his eyes.

449. Witness 152 also testified that Mihalj tortured him with electric power-electroshocks, connecting the wires to his fingers and then to the phone. He suffered terrible pains and begged them not to torture him but to kill him. Then Mihalj gave him a pistol telling him to commit suicide. Then they gave him another pistol, and finally Dragan Šunjić gave him a knife telling him to kill himself, but witness 152 did not want to. Then Dragan Šunjić took him outside the house, took a position if he was about to cut his throat. At that moment a guard appeared who told him to stand up and took him to a solitary confinement. He was interned in a basement of a house where the women and children were held. He spent there 40 to 45 days. The first morning guard Mirko Vračević aka Srbín entered the basement, introduced himself and told them the rules of conduct. The next day Mihalj came and started cutting his hair with a knife. He ordered him to drink the liquid from the bucket where he relieved himself, which he was not able to do. Then Mihalj pushed the bucket into his mouth and poured the faeces from the bucket on him.

450. This witness stated that he was beaten up almost every day and there was no medical protection or assistance. On one occasion Dragan Šunjić started hitting him and then Dragan and Mario started playing and he had to sing “I don’t like you Alija, only because you are balija“. Then Dragan took him out and told him to clean the rifle, and he responded that he did not know how to do it, and then he beat him up with the rifle butt. On one occasion Mihalj came into his room and told him to speak up and then he cut off the buttons from his shirt with a knife and then he stabbed his arm and then he felt the blood running down his arm. Then Mihalj fired from the pistol. Witness 152 fell but was not shot.

451. Witness 152 knew the accused Marko Radić before the war because he was a professor and a homeroom teacher in the first year of his secondary textile school. He saw him twice in Vojno. He first saw him in front of the cellar where he was detained. The accused Radić then asked him what had happened, and then he responded that it was nothing, because he did not dare say what had happened to him. Mario said that he had fallen off the ladder, which he confirmed. Then Radić asked him whose son he was and when he responded Radić said: “That is why you look like that”. At the time his nose was broken, his teeth knocked out, the hair partially cut and the shirt torn. The second time the witness saw Radić was at the exchange. After a phone conversation in which the witness was mentioned, Marko Radić told him that he would be exchanged.

452. Witness 152 said that he had seen Dragan Šunjić often. He beat the witness up, but he could not recall how many times. Mirko Vračević once provoked him saying that he had slit his aunt’s throat and that he was going to slit his, too. Thereupon he hit him with his rifle butt.

453. The truthfulness of these assertions of the witness-victim 152 ensues from the testimony of a number of other witnesses.

454. Witness AL confirmed in his statement that in the basement of the house where he was held the detainee 152 was held too, that at the time he was 16, and looked terrible. This witness said that the witness 152 had told him that he was beaten most by Mario Mihalj.

455. Witness Saja Ćorić stated in the investigation that this 17-year-old boy was isolated in the basement, that he was in the house where the women's prison was located, and that he was continuously beaten up. He was exchanged with them. They asked for the exchange to be stopped until the witness 152 joined them.

456. Witnesses Hamza Leto and Hasan Trtak testified that upon their arrival in Vojno they were interned in the basement and found a young man there, who was all beaten up. Witness Leto stated that Mario Mihalj forbade them to contact him.

457. Witness AD also confirmed that witness 152 was in the Vojno Camp, that he was underage at the time and that he was in another facility.

458. Witness Dika Ćurić, who is related to the witness 152, stated she had been brought to the Vojno Camp together with him. She saw them taking the witness 152 into the interrogation room. Then she heard his crying and his voice, but she did not see when he went out.

459. Ample documentary evidence speaks about the injuries that witness 152 sustained while he was detained in the Vojno camp. The Medical Findings and Opinion of 11 April 1996 by the RMC Gradska Bolnica Mostar regarding the witness 152 indicates that his nose bone was broken. As a result of this, the patient has difficulties with breathing which is why surgical reconstruction was recommended.

460. Having reviewed the photo documents made by SIPA on 9 June 2006 regarding the taking photos of the scars, they can be seen on the nose, forehead on the right arm, the front teeth are knocked out and the scars are also obvious on the left side of the body of witness 152 in the region of ribs. In addition, the medical documents from 2000 issued by the Clinical Centre in Sarajevo and the Dr. Safet Mujić RMC in Mostar indicate that the witness had a spontaneous pneumothorax which was the reason why he was operated.

461. Based on the testimony of witness 152, and all statements of the other witnesses which the Court credited as they were objective and in accordance with the documentary evidence, the Panel

established beyond a reasonable doubt that while being detained in the Vojno Camp witness 152 survived the torture by being repeatedly beaten up and physically maltreated. The Panel concludes that the statement of witness 152 is credible as the witness's statements and descriptions of the events were consistent, and that his testimony is consistent with the testimony of other witnesses who testified about his presence in the camp, his condition and appearance. Also, the testimony of witness 152 is fully consistent with the documentary evidence filed in the case record, namely the medical documentation bearing the name of witness 152, and the photo-documentation which clearly demonstrate the injuries the witness sustained while being physically maltreated.

462. Bearing in mind the objections of the Defence for the Second-accused regarding the beatings of the witness, the Panel concludes that during the cross-examination the Defence failed to cast doubt on the truthfulness of the mentioned testimony of witness 152 and the other essentially corroborating evidence. Thus the accused Šunjić stated that at the time when witness 152 was beaten up he did not have the status of a military police officer, because he was released from this duty in September 1993, that he could not have been the Camp Deputy Warden as he had no rank, and that the medical documentation showed no head injuries that must have been seen had the accused hit witness 152 on his head with a rifle butt, as witness 152 described in his testimony.

463. Notwithstanding these objections, the Panel nevertheless holds proven that the accused Šunjić and Mihalj directly participated in the infliction of injuries and in the physical and mental abuse of witness 152. The Panel has inferred so based on the large number of (already mentioned) statements of the witnesses who testified about Šunjić's presence in the camp during the critical period. These statements also relate to the other crimes committed during the same relevant period, the torture of witness 152, and particularly based on the testimony of witness 152 himself, who explicitly stated that Dragan Šunjić and Mario Mihalj were beating him, and that on one occasion Mirko Vračević hit him with a rifle butt. The Court had no valid reason whatsoever not to give credence to the foregoing.

464. Therefore, there is no doubt that during his detention in the Vojno camp, witness 152 sustained severe bodily injuries on different parts of his body. According to the Panel, in inflicting these injuries, the perpetrators of these acts were fully aware that the injuries, both physical and mental, will result in severe physical and mental pains and sufferings. The perpetrators used their powers to control witness 152, who was underage and fully helpless at the time of commission of these acts given his status of a detainee in the camp. Witness 152 was maltreated and beaten up during a longer period of time, namely during a three-month period, which demonstrates a continuity of the acts of torture and abuse carried out against this detainee. Bearing in mind the age

of the witness at the time of infliction of evident physical injuries, their gravity and the fact that during a longer period of time witness 152 was subjected to a series of different methods of mistreatment and abuse, all these acts constitute the acts of torture. Therefore, the Panel has qualified these acts as the offense of torture under Article 172(1)(f) of the CC of BiH.

8. Torture of Witness AF

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22e) Vračević)

465. The evidence presented by the Prosecutor has also undoubtedly proved the torture of witness AF.

466. Witness AF testified that after being arrested on 3 July 1993 he was taken to the Gabela camp, and thereupon to Heliodrom. From Heliodrom, he was taken to different locations to perform forced labour. Thus, in January 1994, he was transferred to the place of Vojno with a group of 25 detainees. Upon their arrival in Vojno they were met by members of the HVO. Among them, he remembered Mario Mihalj, Dragan Šunjić, Emir Brekalo and Marko Radić. They were interned in a garage. Mihalj immediately ordered them to carry ammunition boxes to the firing positions. He stayed around two months in Vojno under very difficult living conditions. They were taken to perform forced labour on a daily basis. They dug trenches, reinforced front lines, chopped wood.

467. The witness thereupon described the daily beatings. He stated that he was beaten up four times, and that Mario Mihalj, Dragan Šunjić and Emir Brekalo beat him. The first beating happened when Mario Mihalj and Dragan Šunjić lined up all the prisoners and then, by hitting them with bats and kicking them, they tried to knock them down. He was beaten by Mihalj, while Dragan Šunjić beat other prisoners.

468. On the second occasion, Mario Mihalj, Dragan Šunjić and Emir Brekalo lined up the detainees in two rows and then started kicking them and hitting them with bats. Witness AF stated that the first blow knocked him down. Then Mihalj took a needle and ink and ordered Huso to tattoo a cross on the “baliija’s shoulder” by pointing to witness AF. Huso complied with the order. Thereupon, Mihalj, Šunjić and Brekalo continued the beatings. Witness AF lost consciousness. He was splashed with water, and when he regained consciousness, Mihalj ordered Huso to remake the cross into lily, and Huso did that. Thereafter, the three of them beat the witness up because of the lily. He lost his consciousness again due to the beating. As a result of such brutal and painful beating the witness was unable to stand up for 24 hours.

469. According to witness AF, the third beating happened once when he returned from work and stumbled on a wire, and when Mihalj and Dragan Šunjić came to him and started kicking him in the face, ribs and kidneys. The fourth time they were collectively beaten up when Mihalj, Šunjić and Brekalo came to the garage with a razor and ordered them all to shave. After the shaving, all three of them started kicking them and hitting them with baseball bats. He was first beaten by Mihalj with the bat, and when he fell on the floor, he could not tell any more who beat him.

470. Witness AF stated that Šunjić and Brekalo also beat the other prisoners who happened to be there, that as a consequence of these beatings he still feels different pains, and that the Vojno prison was the worst of all prisons he was ever detained in, because of the beatings, hunger and poor hygienic conditions.

471. During his testimony before the Court, witness AF explained some inconsistencies in his statements given during the investigation, that were pointed to by the Defence and because of which it contested the credibility of this witness. The witness was determined in asserting that he saw Marko Radić in Vojno three times, that among others Dragan Šunjić also beat him, and he described the uniform of Damir Brekalo, and the implements with which he beat him.

472. The truthfulness of the testimony of witness AF also ensues from the “Joint statement of all detainees in the Vojno Camp who were returned to Heliodrom on 28 January 1994” which is very illustrative of all the methods in which the detainees were physically and mentally abused and tortured, particularly by Mihalj and the accused Šunjić. The mistreatment, abuse and different methods of torture during the period included in the referenced Statement are fully recognizable and apparent from the referenced testimony of witness AF.

473. The Panel accepted the testimony of witness AF as credible and reliable. The Panel evaluated that the witness testified in a convincing manner, and that his testimony is in the relevant parts consistent with his earlier given statement. His testimony was in the end confirmed with the tattoo made by the detainee Haso upon Mihalj’s order, and in the presence of the accused Šunjić and Brekalo. Given the foregoing, and based on the testimony of this witness and the other evidence mentioned, which was also accepted as objective and accurate, the Panel established that during the critical period this witness was abused, that severe bodily and mental sufferings were intentionally inflicted upon him by Mihalj and the accused Šunjić and Brekalo. Witness AF undoubtedly endured enormous pains during the forced tattooing, and he lost a tooth as a result of the beatings. He also stated that he did not want to live after he was released from the prison because of everything he had experienced in the camp.

474. For a long period of several months, witness AF was a victim of the model of behaviour of the Accused persons that included their beating him and other detainees in different ways, most frequently by kicking, punching and hitting them with bats. The Panel concludes that these acts of perpetration, in their entirety and in their mutual relation, constitute the offense of torture under Article 172(1)(f) of the CC of BiH.

9. Torture of Witness AA

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 Vračević)

475. After an evaluation of the evidence adduced, the Panel concludes that the Prosecution allegations regarding the torture of witness AA are also well-grounded.

476. Specifically, it follows from the testimony of witness AA that he was arrested on 13 June 1993 in the place of Rotimlja by members of the HVO, taken to the Gabela camp, and subsequently transferred to the Heliodrom camp, from where he was taken twice to the place of Vojno to perform forced labour. When he came to the Vojno camp for the first time on 6 July 1993, he was placed in a basement along with eight other detainees. On this occasion, he stayed in the Vojno camp for around twenty days. He was taken every day to perform forced labour together with other detainees. They mostly worked at the separation line between the warring parties, and were frequently exposed to cross-fire.

477. The witness also testified that during his first stay in Vojno he was beaten up several times, mostly by a soldier nicknamed Bačva. In addition to this soldier, the witness and the other detainees were beaten by everyone else who was present there.

478. According to witness AA, Mario Mihalj and Dragan Šunjić came to Heliodrom in mid August and personally selected 80 detainees to work in Vojno. He learned the names of these two from the detainees who had been returned from Vojno to Heliodrom. Then he was taken to Vojno for the second time. Upon their arrival, around thirty detainees were immediately beaten up. They were mostly beaten by Mario Mihalj. The witness stated that he knew Mirko Vračević and Dragan Šunjić. He described Mirko as a person who had problems with an eye, and emphasized that he too constantly beat the detainees. According to witness AA, Mirko did everything upon the orders given by Mario Mihalj and Dragan Šunjić.

479. Witness Zulfo Humačkić confirmed in his testimony that witness AA was in Vojno with him. According to witness Humačkić, upon the arrival in the camp, they were taken to a garage,

lined up and then provocations started. Whoever failed to introduce himself properly (his first name first and then the last name) was beaten up.

480. Witness AD testified that upon their arrival in Vojno Mario Mihalj hit them with a baseball bat and that on that occasion Emir Salčin, Ibro Omerika and witness AA were severely beaten up.

481. It undoubtedly ensues from the statements of the foregoing witnesses, which are consistent and supplement each other, and which the Panel considers credible and accurate, that witness AA was in the Vojno camp on two occasions, and that different acts of abuse and beatings were taken against him. On both these occasions, the witness was beaten up, once by a soldier nicknamed Bačva, and the other time by Mario Mihalj. In addition to these cases, the witness stated that he and the other detainees were beaten by whoever came by, which means that the two mentioned beatings were not the only ones that this witness suffered. While he was detained in inhumane conditions, he was taken to perform forced labour at the front line where he was exposed to cross-fire, and therefore suffered from enormous fear for his own life.

482. Bearing in mind all the foregoing, the Panel holds undoubtedly proved that witness AA was subjected to a series of acts of maltreatment, mental and physical abuse, all with a view to inflicting serious bodily and mental pain and suffering. Viewing these acts in their entirety, the Panel has qualified them as the acts of torture under Article 172(1)(f) of the CC of BiH.

10. Torture of Ramiz Mačković

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 Vračević)

483. The Panel holds that the torture of detainee Ramiz Mačković has been undoubtedly established for a number of reasons.

484. Witness Ramiz Mačković testified that he was taken prisoner by HVO members on 25 June 1993 in his apartment in the area of the municipality of Maglaj. Those days around 426 Bosniaks were captured who were bussed to the village of Vitina in the municipality of Ljubuški. Two and a half months later they were transferred to the Heliodrom Camp. They were sent to perform forced labour from the Heliodrom Camp. In late September 1993 he was transferred to the village of Vojno together with 50 other prisoners and stayed there for 45 days. They arrived there via Đubrani, and were met there by Mario Mihalj, Dragan Šunjić and Mirko Vračević. According to the witness, thereupon Mario and Dragan tied them up with a telephone cable in two groups of 25 prisoners. They had to keep the left hand above their heads and all those who would put the hand down would

be hit by Mirko with his rifle butt in the back or in the chest. After the arrival in Vojno they interned them in a garage and on the first night there they were taken to the Command to Mario for interrogation, when they had to introduce themselves. All those who would say their family names before the first name and those who would say *hiljada* instead of *tisuća* would be hit by a rifle butt by Dragan Šunjić and Mirko Vračević. Then they would take the prisoners to the garage and teach them “good manners.”

485. Witness Mačković also stated that he was slapped on a regular basis and on one occasion Dragan Šunjić slapped him too. In addition to that beating, the witness recalls that one soldier, who was wearing a black uniform, who was called “crnokošuljaš“ (black shirt), also maltreated and beat them. The witness Mačković stated also the events when Mirko Vračević “convicted” him to execution by a death squad because he was a teacher, and allegedly engaged in the campaign of hatred against the Croats in Bosnia.

486. Witness Ramiz Mačković recalled the incident when Mario Mihalj ordered them to put their hands behind their backs and hit their heads against the wall so strongly until their heads started bleeding. If they failed to do so, then the HVO soldiers would grab their hair and hit their heads against the wall. Apart from Mario, Dragan Šunjić was also there on that occasion. The same witness saw them both hitting the prisoners’ heads against the wall. The garage walls were stained with blood running from their heads.

487. The witness recognized the accused Dragan Šunjić in the courtroom.

488. Witness AI confirmed the assertions of witness Mačković that after they returned to the garage they were beaten on a regular basis. He recalls an incident when they were ordered to hit their heads against the tin garage door and they had to do that several times.

489. Witness Aziz Suljević in his statement said that he came to Vojno in the same group as Ramiz Mačković. The same witness recalled that one evening Mario and Dragan entered the garage carrying torches, and Mario ordered them all to hit their heads against the garage door. Ramiz Mačković was also in the garage. On this occasion, Mario beat the witness until he fell down. Witness Suljević also added that Mačković showed him the scars on his head caused by banging his head against the garage door.

490. The Panel accepted the testimony of witness Mačković as credible and convincing since the witness testified consistently and convincingly, his testimony was not contested during cross-examination but was confirmed in all essential parts by the testimony of the other mentioned

witnesses. The Panel had no reason whatsoever not to credit these statements. The Panel accepted the testimony of the witnesses in which they speak about the slapping, the beatings, maltreatment, hitting their heads against the wall and the threats that were made.

491. Based on the testimony of the aforementioned witnesses, the Panel established beyond a reasonable doubt that during the critical period of time one of the methods of physical abuse of the detainees was to force them to bang their heads against the wall and the door of the garage.

492. Witness Mačković was together with other detainees forced to hit his head against the wall until his head started bleeding. The Panel gave credence also to the statement of the witness Mačković, where he stated that Šunjić slapped him only because he failed to turn out the pockets when he returned from work, since according to the camp rule of conduct the detainees were prohibited from bringing anything from work. Also, the Panel considers the testimony of this witness true in the part in which he speaks about being hit by the soldier called “crnokošuljaš”, given that several witnesses testified that they were hit by everybody.

493. The Panel also admitted as credible a part of the testimony of this witness stating that the accused Vračević threatened him that he would shoot him because, as a teacher, he had propagated hatred against Croats. During the proceedings several witnesses stated that Vračević threatened also other detainees in the prison. Witness J, witness 152, witnesses K, Zejna Tihak and Emica Ćurić confirmed so. Therefore the Panel accepted Mačković’s assertion that he, too, was threatened and intimidated by Vračević.

494. Based on the testimony of the aforementioned witnesses the Panel undoubtedly established that witness Ramiz Mačković was physically abused while he was detained in the Vojno prison. The Panel holds that all the mentioned acts against witness Mačković were committed with the intention to humiliate him and inflict on him severe physical and mental pain and suffering. By hitting his head against the wall, slapping him, and other soldiers hitting him, by being intimidated by Mirko Vračević, the witness was humiliated and mistreated. In such a manner, he was subjected to different acts of violence. Bearing in mind these forms of violence that were undoubtedly caused by the fear for his own life during his entire stay in the camp, the Panel holds that, by these acts, the act of torture under Article 172(1)(f) of the CC of BiH was committed against Ramiz Mačković.

11. Torture of Zejna Tihak

(count 3 Radić; count 14 Brekalo; count 22 Vračević)

495. The Panel holds established the torture of detainee Zejna Tihak for the reasons to follow:

496. Witness J stated that one day in the room where the detainees were held Mario Mihalj and Dragan Šunjić set ablaze the sweater of Zejna Tihak, who started burning at that moment, and they started suffocating with the smoke because they did not allow them to extinguish the fire. Witness K also stated that on one occasion Mario Mihalj set alight the sweater of a woman in the room, which produced a dense smoke.

497. Witness C stated that she saw the guard Mirko maltreating Zejna. When Zejna asked him for a cigarette, Mirko started shouting at her, and he pointed his rifle at her and, doing so, pushed her out of the room. This statement of witness C was confirmed in her statement also by the witness Saja Ćorić who said that Vračević, at the moment when Zejna Tihak asked him if he could give her a cigarette, started beating her by the rifle butt, due to which Zejna fell down, and she thought that she was assisted to stand up by the witness K. Witness K confirmed this in its entirety and said that Mirko Vračević on one occasion kicked and beat up Zejna Tihak with the rifle butt.

498. Witness B confirmed that Mirko Vračević once entered the room and took out her, Zejna Tihak and Emica Ćurić in front of the house, where he brought blood-stained blankets from the garage. On that occasion he held an M-48 rifle and told them to wash the blankets, and if they failed to do so, someone else would wash their own blood off the blankets.

499. Based on the consistent statements of the aforementioned witnesses, which the Panel had no valid reason whatsoever not to accept as objective and accurate since no serious doubt was cast on them, the Panel has established that on an unspecified day Mario Mihalj burned the sweater of Zejna Tihak in the room in which she was kept together with other women detainees, and that after Zejna had asked him for a cigarette, Mirko Vračević hit her with his rifle butt.

500. The Panel also accepted as convincing the statement of witness B, namely that Vračević gave her, Emica and Zejna Tihak blood-stained blankets from the garage to wash them, that he was armed, held an M-46 rifle in his hand, and ordered them to wash the blankets, threatening them that if they did not do so, someone else would wash their own blood off the blankets. According to a number of Prosecution witnesses, after two detainees had been killed, the garage was all covered in blood, and that subsequently four dead bodies covered with the blankets were seen in front of the

garage. This undoubtedly suggests the conclusion that blood-stained blankets were indeed in the garage.

501. The Panel concludes that while she was detained in the Vojno camp, Zejna Tihak was subjected to different methods of maltreatment, which certainly caused her physical and mental sufferings. There is no doubt that this detainee experienced physical pains because an armed man had hit her with a rifle butt with the intention to inflict on her severe sufferings. The burning of the sweater, and the fire and the smoke because of which the women detainees started suffocating caused confusion and an enormous fear in all women detainees, including Zejna Tihak. The washing of the blood-stained blankets with the threats made to them by Mirko Vračević certainly caused anxiety and mental suffering in the detainees due to the fear for their own lives.

502. Based on the aforementioned, the Panel established that during a longer period of time Zejna Tihak was subjected to different methods of maltreatment and abuse. In viewing these cases individually, it may be concluded that these acts constituted a series of inhumane acts taken against Zejna Tihak. The Panel, however, holds that these individual acts should be viewed in their entirety, by taking into account the subjective and the objective circumstances which defined the daily life of all detainees in the Vojno camp, including Zejna Tihak. In this respect, we recall the statements of a large number of witnesses who testified about the bad conditions in which they lived, the atmosphere of terror and fear that prevailed in Vojno. Bearing in mind all the foregoing, the Panel concludes that the concrete acts taken against Zejna Tihak have satisfied all the elements of the offense of torture under Article 172(1)(f) of the CC of BiH.

12. Torture of Enver Tihak

(count 3 Radić; count 9 Šunjić; count 14 Brekalo; count 22 Vračević)

503. The Panel concludes that the Prosecution allegations regarding the torture of detainee Enver Tihak are well-founded, as established on the reasons to follow:

504. During the examination, witness Saja Ćorić confirmed that at the location of Avenue in Mostar, Zejna Tihak was arrested with Enver Tihak age 18, and that together with others they were transferred through the location of Đubran to the place of Vojno where they were detained. Mirko Vračević, Mihalj and Dragan Šunjić received them in Vojno. Mihalj told them: “Welcome to hell!” They all had to introduce themselves properly. Whoever failed to “properly” introduce himself would be hit. They were beaten most by Mario Mihalj. Enver Tihak was the first to enter the room

for interrogation. While Tihak was in the room, they heard his screams and cries, which lasted for a rather long period of time. When Tihak appeared from that room, he was all covered in blood.

505. The witness D also testified that Zejna and Enver Tihak were among the arrested persons and that, together with other civilians, they were brought to Vojno. She confirmed that Mihalj, Dragan Šunjić and Mirko Vračević received them in Vojno. Mihalj then said: “Welcome to hell”. All civilians were interrogated at the command post of Mario Mihalj. She also confirmed that Enver Tihak was the first among them who entered and they severely beat him up on that occasion. This witness stated that while Enver Tihak was in the interrogation room she too heard him screaming, and saw him coming out all covered in blood. As soon as the witness D entered the interrogation room, she saw Mihalj and Dragan Šunjić there.

506. Also, witness J said in her statement that Zejna and Enver Tihak were among the arrested persons. Upon arrival in Vojno they were told: “Welcome to hell“, and then they started interrogating them. Enver Tihak was the first to enter the room. When he appeared from that room Enver was all covered in blood, and his mouth was bleeding and his shirt was all covered in blood. Having seen Enver, they were petrified because the interrogation of the others followed. The witness stated that at the time present in the room were Mario Mihalj, Dragan Šunjić, Marko Radić and Dario Sušac.

507. It undoubtedly follows from the statements of the aforementioned witnesses, which the Court accepted as credible and reliable as they are mutually fully consistent, that Enver Tihak was indeed beaten up in the Vojno camp and sustained visible injuries. Specifically, the Panel established that immediately upon arrival Enver Tihak was brought to the Vojno Prison command post for interrogation. The accused Dragan Šunjić was in the room. All witnesses consistently testified that they heard Tihak’s screams and cries, and that he appeared from the room all covered in blood. In addition, witness Saja Ćorić stated that the beating lasted for a rather long period of time.

508. According to the Panel, serious physical injuries and grave sufferings were inflicted on Enver Tihak by the described acts of beating. These acts were committed intentionally, with a view to inflicting severe pains on Tihak and intimidating other detainees who were to enter the interrogations room after him. Bearing in mind that during this violent abuse he screamed and yowled with pains, that his injuries were visible on his face, and the quantity of blood described by the witnesses, there is no doubt that on this occasion severe bodily and mental pains and sufferings were inflicted on Enver Tihak, and that the gravity of the inflicted pain and suffering is, according

to the Panel, sufficient to qualify these acts as the offense of torture under Article 172(1)(f) of the CC of BiH.

(i) Elements of “Other Inhumane Acts”

509. Elements of the act of “other inhumane acts” as Crimes against Humanity under Article 172(1)(k) of the CC of BiH are the following:

- 1) the acts by their nature have to be similar to those which are listed under Article 172(1);
- 2) the acts have to cause a great suffering or serious physical and mental injuries or damage the health; and
- 3) the acts have to be committed with an intention to cause a great suffering and serious injuries.

510. The legal issues related to the existence of the elements of “other inhuman acts” have been already sufficiently explained in paragraphs 249 to 254 of the Verdict and they equally address the concrete acts of commission of “other inhumane acts” regarding the paragraphs to follow, and in which the Panel established that they have satisfied the essential elements of this criminal offense.

13. Witness J

(count 22a) Vračević

511. That other inhumane acts were committed against detainee J the Panel has established for the following reasons:

512. Heard during the proceedings, witness J stated that she was arrested on 7 September 1993 in her apartment by four HVO soldiers together with her mother, the protected witness K. Among the soldiers who arrested them, she recognized Ivek Kolobara and Emir Tihak aka Žuti. After they had been arrested together with other civilians, she was transferred to Vojno. Immediately upon their arrival, they were met by Mario Mihalj and Dragan Šunjić in Vojno. Mario then said that he was the Commander and Dragan the Deputy Commander. All civilians who came had to introduce themselves and give a statement. While they were waiting to give statements they were standing in

the hall of the house where the Command of Mario Mihalj was situated. There was a guard in the hall by the name of Mirko a.k.a. Srbin. Witness J stated that at one moment Mirko approached her, pressed a knife at her throat and told her: “The fox is brought to the furrier“. The witness had not known Mirko before. By the manner in which he addressed her, she assumed that he had mistaken her for another person, or perhaps Mirko had known her before. The witness stated that she felt fear at that moment, because the blade was so close to her neck that she thought he would stab her any moment. The witness described the physical appearance of the Accused Vračević at the time when she was in the camp. She also identified him in the courtroom.

513. Witness K confirmed the statement of witness J and stated that upon their arrival in Vojno she saw two guards armed. While they were waiting in the hall to give their statements, one of the guards approached witness J and asked her how he knew her, and then he took a flick knife out of his pocket and put it at her throat. At that moment the other guard who she found out was named Kuna, told Mirko to put the knife down. The witness stated that she later found out that the guard who had put the knife at her daughter’s throat was Mirko Vračević aka Ćoro or Srbin.

514. According to the Panel, witness J described in a very detailed and convincing manner how Mirko Vračević had put the knife to her throat, which was also confirmed by witness K. This suggests the conclusion that the witness had indeed experienced this abuse. The Panel therefore accepted her testimony as credible and reliable. The statement of witness J given during the investigation concerning this event is consistent in all essential parts with the testimony given during the examination in the first instance proceedings.

515. Bearing in mind that the offense was committed by an armed guard immediately upon the witness’s arrival in the camp and with threats, the Panel concluded that the Accused committed this offense with the intention to cause great suffering to the witness. The referenced act caused enormous fear to the witness because the knife blade was so close that she thought he would stab her. Such behaviour of the accused Vračević represents an act of violence and intimidation of the victim.

516. The atmosphere of fear present among the detainees while they waited in the hallway of the command post to be taken in for interrogation, the welcoming words “Welcome to the black hell”, and the fact that witness J was still a child at the time, undoubtedly resulted in her great mental suffering. Therefore, the Panel concludes that by this act the accused Vračević committed other inhumane acts under Article 172(1)(k) of the CC of BiH.

14. Witness D's Child

(count 22b) Vračević)

517. The Court established the commission of “other inhumane acts” against the child of detainee D based on the testimony of witness D and several other witnesses, which the Court credited.

518. Specifically, during the examination, witness D stated that she was arrested in September 1993 by HVO members with her 17-month-old child and her mother-in-law who was 68 at the time, in her apartment on the west bank of the Neretva River. Among the four soldiers who arrested her she recognized Ivek Kolobara and Nedžad Tinjak. Following the arrest together with other civilians they were transferred to the place of Vojno, where they were met by HVO member Mirko Vračević nicknamed Srbin or Čoro. He told them to enter into a house. While they were standing in the hall of the house, Mirko kept constantly passing by the present detainees, and at some point he stopped in front of the witness who was holding a 17-month-old child in her arms and said: “Look at this little girl, how beautiful she is, do you want uncle Mirko to give you an apple”. Mirko held a hand grenade in his hand. The witness was petrified when she saw that, and Mirko kept saying to the girl: “Did your father give you one like this? Did he show you this? Did you see this beautiful apple? Take it.” Being in fear, the witness pressed the child tightly against her chest and turned around to prevent her from extending her arms.

519. The statements of the witnesses J, K and Saja Ćorić corroborate the testimony of witness D. Witness J also stated that after they had been arrested and taken to Vojno, they waited in the hall of the command post of Mario Mihalj to give their statements, that guard Mirko aka Srbin was there, who at one point approached little girl Dina, took a hand grenade and asked her if her father had any like that in his house. The child thought it was a bonbon and said: “Bona, bona“. The child’s mother, witness D, kept moving the child away from him.

520. Witness K also described in her testimony the event when in the hall of the prison command building Mirko Vračević was giving a hand grenade to the small daughter of witness D and telling her to take a bonbon.

521. Witness Saja Ćorić confirmed that witness D too was arrested with her and her 17-month-old baby. She confirmed that after their arrival in Vojno, Mirko Vračević lined up all the prisoners in the hall of the command while they waited for interrogation. The witness remembers that she was standing next to witness D who held the child in her arms. At one moment, Mirko Vračević approached her and asked the girl “What’s your name? Do you want uncle to give you a bomb? Would you like to bite an apple?” Witness D was moving the child away.

522. Having in mind the referenced testimony of the witnesses, which the Panel has fully credited, the Panel established beyond a reasonable doubt that on an unspecified date in August 1993, while the prisoners were waiting for interrogation in the hall of the command post of Mario Mihalj in the Vojno camp, Mirko Vračević approached a 17-month-old baby of witness D, gave her a hand grenade and asked her: “Does your father have one like this at home”, while witness D tried to move the child away to protect her. This incident caused enormous fear and unrest with all present prisoners, particularly the child’s mother.

523. The Panel established that the statements of the witnesses given with regard to this incident were rather convincing and mutually consistent in their essential parts, and therefore accepted them as credible and reliable. Witness D testified in a convincing manner, having described the concrete incident in detail. During the cross-examination, the witness was resolute that on the critical occasion Mirko Vračević offered her daughter a hand grenade, but she did not take it, because the witness turned her toward herself. This testimony was fully confirmed by the testimony of witnesses J, K and Saja Čorić.

524. The Panel holds that the accused Mirko Vračević committed the referenced act intentionally with a view of intimidating the detainees. The accused Mirko Vračević used the 17-month-old baby to cause fear in the child’s mother and the other present persons. The fact that a hand grenade was offered to a small child unaware of the situation, who can take the hand grenade in her hands and drop it, and thereby hurt herself and the others, speaks about the act of the Accused, which is void of any form of humanity. This incident certainly created enormous fear in all present persons, bearing in mind the fact that most detainees were then women and children. This is also considered a factor that contributed to the creation of great sufferings. The Panel therefore concluded that by these acts the accused Vračević committed “other inhumane acts” in violation of Article 172(1)(k) of the CC of BiH.

D. RAPE AND SEXUAL VIOLENCE.

525. Pursuant to Article 172(1)(g) of the Criminal Code of Bosnia and Herzegovina, the following amounts to rape:

“Coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape) ..., or any other form of sexual violence of comparable gravity.”⁴⁷

526. According to the ICTY jurisprudence, the *actus reus* of rape comprises the following:⁴⁸

1) the sexual penetration, *however slight*;

(a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or

(b) of the mouth of the victim by the penis of the perpetrator;⁴⁹

2) without the consent of the victim.⁵⁰

3) with force or threat of force to the victim or a third party.⁵¹

527. The *mens rea* of the crime of rape is:

“the intention to effect sexual penetration and the knowledge that it occurs without the consent of the victim.”⁵²

528. The factual circumstances can be a good proof in the decision-making as to whether the accused had the required *mens rea* to commit the rape.⁵³ These implicit modes of crime make it clear that the perpetrator knew that the sexual intercourse did not and cannot occur with the consent of the victim, especially in the situation when women were held in captivity.⁵⁴

⁴⁷ BiH Criminal Code, Article 172(1)(g)

⁴⁸ *Furundžija*, Trial Judgment, Para 185; *Kunarac*, Trial Judgment, 22 Feb 2001, paras. 460, 447–456; *Kunarac*, Appeals Judgment, 12 June 2002, paras. 127–128 (matches the definition of rape in the Trial Judgment). See also *Kvočka*, Trial Judgment, 28 Feb 2005, para. 177 (relies on the definition of rape given in the case vs *Kunarac et al.*, Trial Judgment).

⁴⁹ *Furundžija*, Trial Judgment, 10 December 1998., paras. 183–186.

⁵⁰ *Kunarac*, Appeals Judgment, 12 June 2002, paras. 128-129.

⁵¹ *Kunarac*, Appeals Judgment, 12 June 2002, para. 129 (explains that „force or threat of force provides clear evidence of non-consent, but force is not an element *per se* of rape. There are other factors [other than force] which would render an act of sexual penetration non-consensual or non-voluntary on the part of the victim.“ The Panel particularly explained that „force or threat of force could permit perpetrators to evade liability for sexual activity to which the other party had not consented by taking advantage of coercive circumstances without relying on physical force.“; Also see *Željko Lelek* X-KR-06/202, First-instance Judgment, 25 May 2008, p.36 (finds that the coercion should not necessarily happen at the time of the act of rape itself).

⁵² *Kunarac*, Appeals Judgment, 12 June 2002, paras. 127 and 129 (explains that the absence of consent can be shown on the basis of coercive atmosphere or circumstances without relying on physical force or threat of force); also see *Kvočka*, Trial Judgment, 28 February 2005, para. 178.

⁵³ *Kunarac*, Trial Judgment, paras. 646-647.

⁵⁴ *Id.* *Kunarac* Judgment reads that given the general context of the existing war-time situation and the specifically delicate situation of the Muslim girls detained in this case: “The Trial Chamber regards it as

529. With regard to the application of force, as defined by international law and national regulations, the existence of force, threat of force, or coercion vitiates consent of the victim as a defence.⁵⁵ Along those lines, Article 264(3) of the CPC of BiH clearly prescribes that: “In the case of the criminal offense against humanity and values protected by the international law, the consent of the victim may not be used in favour of the defence.”

530. With regard to the legal position about the definition of sexual violence, we refer to the Decision of the Trial Chamber of the International Criminal Tribunal for Rwanda, the case vs. Akayesu, which reads that

“Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact,”⁵⁶

such as public display of nudity.

531. In the Kvočka case, the ICTY gave a similar definition of sexual violence finding that sexual violence is a broader concept than the rape itself and comprises such criminal acts as violence. Further, in the *Željko Lelek* case, the Court of Bosnia and Herzegovina found that sexual violence is defined as “any severe abuse of sexual nature inflicted upon the integrity of a person by means of coercion, threat of force or intimidation in a way that is humiliating and degrading to the victim’s integrity.”⁵⁷

532. The acts described in the text below constitute criminal acts of rape and sexual violence in violation of Article 172(1)g) committed by the accused themselves or those committed by other persons that the accused have been found guilty of because those acts are encompassed by the joint criminal enterprise.

highly improbable that the accused Kunarac could realistically have been “confused” by the behaviour of the victim”; Trial Judgment further finds that it is irrelevant as to whether or not Kunarac was aware of the threats by the guards to the victim. The Trial Panel reminded that the victim was in captivity and in fear for her life, and thus the Trial Judgment found beyond any reasonable doubt that “Kunarac had sexual intercourse with the victim in the full knowledge that she did not freely consent”

⁵⁵ *Kunarac*, Trial Judgment, 22 February 2001, paras. 461-462.

⁵⁶ *Akayesu*, Trial Judgment, para. 688.

⁵⁷ *Željko Lelek*, X-KR-06/202, Trial Judgment, 25 May 2008, p. 38; see also *Akayesu* Trial Judgment, para. 598.

1. Rape of witness „A“

(count 4 and 4b) Radić; count 10 Šunjić; count 16 Brekalo; count 24 Vračević)

533. Ample evidence that is concrete and convincible undoubtedly shows that the rape charges relative to witness A are well-founded.

534. Thus, in her testimony, witness A stated that she was arrested on 15 August 1993 in her apartment in the Western part of Mostar, together with her 16-month-old son and 33-month-old daughter, and taken to the Vojno camp. Among the members of the HVO and HV who arrested her, she recognized Ivek Kolobara, Amer Hadžiomerović a.k.a. Doktor and Tinjak. Immediately upon their arrival at Vojno, they met Mario Mihalj who ordered them to line up two by two. Thereafter he took them to a room and asked them to introduce themselves. They were supposed to say the first name first and then the surname and if someone said it the other way around, he/she would be slapped in the face. Then Mario Mihalj placed them in the rooms of one of the houses. She was in a room with her children. After some time, Mario Mihalj appeared at the door and told her to go with him because the commander wanted to talk to her. Accompanied by two guards, she was taken together with witness E to Commander Marko Radić. The witness described the road and said that it took them 20-25 minutes to reach that house walking. When they got to that house, Marko Radić, a soldier from Croatia whose name was Ivan and another soldier whose name she did not know were sitting on a couch. They had to introduce themselves and say which family members were with them. Then Marko Radić introduced himself by saying his name and he told them that he was the commander of the Bijelo Polje Battalion. He then told witness E to go to the kitchen to wash the dishes, while he told her to go upstairs to tidy the room. She went to the room and realized that the room was done. After some time, Marko Radić came in and ordered her to undress. She refused but Radić tried to rip off her shirt and again ordered her to take off her clothes. She then took off her clothes while Radić undressed and lied in bed. She felt miserable. Radić pulled her toward him and asked her if she longed for a man beside her because she had not been with her husband for a long time. After that, Marko Radić vaginally raped her. She explicitly confirmed that he penetrated into her sexual organ. After that Radić got dressed, went downstairs and told her to stay in the room. A few minutes thereafter, a soldier whose name was Ivan entered the room, told her to get dressed, said that he was not like Radić. Ivan did not even try to rape her. He stayed in the room about an hour or an hour and a half trying to talk to her. After that, Ivan went downstairs, and Radić told him “what happened, you could not do anything to her” and ordered her to get back to the room and undress. She did that and Radić raped her again.

535. When he raped her for the second time, he ordered her to put her clothes on and go downstairs. Witness A stated she felt sick and humiliated. She felt very bad after what she had lived through and she vomited. She was taken to a medical doctor. She was brought back to the camp where Mirko Vračević frisked her and took her to a house where she found female detainees, witnesses F, B, D and others.

536. According to witness A, she spent 107 days in that house. In addition to the earlier two rapes, Marko Radić raped her one more time. That happened 15-20 days after she arrived in Vojno. A guard came and told her to go to the camp command. She came to a room where she found Marko Radić, Branko Božić, Mario Mihalj, Dario Sušac and she thought that Dragan Šunjić was there as well. Marko Radić asked her how the things were there for her. She did not dare to say anything because she had already been raped twice. Radić told her to go to the adjacent room. In that room, a VCR was there playing a porn film. Radić came into the room after her and ordered her to undress. She noticed a pistol by his belt, and she undressed. He ordered her to watch the porn movie and to do to him everything she saw in the movie. She refused that, but Radić raped her, nevertheless.

537. Witness A stated other prisoners including B, D, E and AG were also raped. She stated that they did not dare talk about it but she knew it because when they returned to the room, they looked exactly the same as she did when she was raped. She was not ill-treated in any other way. On one occasion, she had a medical check-up because she thought that she was pregnant. Upon the order of Marko Radić, Mario Mihalj took her one night to a hospital in Mostar for a check-up under a false name.

538. Witness E also testified that she came to the Vojno camp together with witness F and her two little girls and witness A with her two small children. Mario Mihalj and Dragan Šunjić met them there and introduced themselves as commander and deputy commander. Mario Mihalj questioned them on that occasion, while Dragan Šunjić was writing something. After that, they were placed in a house and when the children fell asleep Mario Mihalj entered her room and told her to get out to the corridor. She did as she was told and saw witness A waiting in the corridor. Mihalj ordered them to go with a soldier to see Marko Radić, allegedly to give their statements. Witness E then described that they went over a bridge made of barrels and reached a house where the command of Marko Radić was quartered. When she entered the house, she saw three soldiers in camouflage uniforms sitting on the couch. Marko Radić introduced himself and said that he was the commander of the area and told them that they should give statements. After that, Radić ordered her to go to the kitchen and do the dishes while witness A stayed there. After she did the dishes Radić questioned her about her son who was in the HVO. After that, he ordered a soldier to

take her back to the camp. She got back to the camp without witness A. She heard witness A's children crying and she supposed that their mother was not there. She saw witness A the following day around 11 a.m., when two soldiers were rather carrying than escorting her. She was crying pushing her children away and she did not look normal. Witness E also stated that witness A later told her that she had been raped by Marko Radić on that occasion.

539. Witness F also confirmed that she was arrested at the same time as witness A together with her two minor children, as well as witness E with her two sons. When they arrived in Vojno, Mario Mihalj met them there and told them that he was the commander and Dragan Šunjić was introduced as deputy commander, and then quartered in the room with witness E, while witness A was in another room. She confirmed that she heard Mario Mihalj telling witness A and witness E to get out, but she did not know where they were taken. During the night she saw that witness E returned while she saw witness A as late as the next day around 10 o'clock. Further, she said that witness E had told her that she and witness A were taken to Marko Radić's command, that upon her return witness A was beside herself, in tears and dishevelled and pushing her children away. They did not ask her anything, as everything was clear to them. She knows that witness A had been taken to the prison command, later on, that she often cried, and she knows that witness A was taken for a check-up in Mostar as she thought she was pregnant.

540. Witness C also confirms to have known that other women had been raped, including witness A, and she learned that from other women who had been raped, while for some of them she could tell it from their looks.

541. In the cross-examination before the Trial Panel the Defence attempted to discredit witness A. To that end, they confronted her with differences between her testimony at the main trial and her statements given during the investigation.

542. Having analyzed all statements of witness A, the Panel concluded that witness A is a credible witness and that her testimony was truthful and reliable. The Panel is satisfied that the testimony of witness A is consistent with the testimony of witnesses E and F in all relevant parts, particularly with the testimony of witness E who was taken out the first night together with witness A and brought to the command of Marko Radić. The witness remained adamant as to the identity of Marko Radić and his function as a commander and the identity of Accused Dragan Šunjić, Damir Brekalo, Mirko Vračević. With regard to certain inconsistencies in her statements, the Panel fully accepts the reasoning provided by the Trial Panel, and finds that those are minor discrepancies which do not occur in substantive parts but in parts pertaining to some side details, wherefore the

Panel accepted as truthful and credited the testimony of this witness at the main trial, as well as the testimony of witnesses E, F and C, concluding that they have no reason to concoct stories of being raped and thus charge the Accused without a valid ground.

543. Pursuant to the said evidence, the Panel found beyond any reasonable doubt that on or about 15 August 1993 Marko Radić raped witness A twice at his command post in Bijelo Polje and that 15 or 20 days later he again raped witness A at the command post of Mario Mihalj. On all three occasions, Marko Radić exerted force upon witness A, effected penetration, without the consent of the victim, acting with direct intent.

544. In the course of the first-instance proceedings, and then in the appeals from the Trial Verdict and also in the course of the second-instance proceedings, the defence teams for all Accused challenged the **credibility of all rape victims** pointing to the inconsistencies between their earlier and subsequent statements, that is, statements given in the course of the investigation and the ones given before the Court. Additionally, the Defence pointed to the discrepancy of the testimony of one witness and statements of other witnesses, arguing that the witnesses are untruthful and unreliable because their statements are not identical. Bearing in mind that such objections of the Defence were repeatedly raised during the second-instance proceedings, the Panel shall provide a short elaboration and its position about some discrepancies that this Panel also noticed in the statements of witnesses, primarily rape victims. **This elaboration will also include the evidence of other witnesses about other instances of rape as described in the text below.**

545. The Court of BiH has tried many war crime cases with a very large number of rape victims. The Court used its discretion when resolving these cases and accepted the position that in the evaluation of the evidence with regard to sexual violence, the judgment as to the credibility of a witness lies solely in the domain of the Court, with judges free to draw any conclusion they see fit, providing it passes the threshold of reasonableness and that corroboration is not required in general or in particular.⁵⁸ Additionally, the ICTY took a position that in the evaluation of rape victims'

⁵⁸ *Gojko Janković*, Trial Judgment, X-KR-05/161, 16 Feb 2007, p. 58; *see also Delalić* case, Trial Judgment, para. 956. (adoption of Rule 96 of the ICTY Rules of Procedure and Evidence used in *Tadić* and *Akayesu* no corroboration of the victim's testimony shall be required and that the account of the victim about the sexual assault provides the same presumption of reliability as accounts of victims to other types of crimes).

testimony it is important, among other things, to recognize the influence of the trauma on the witnesses.⁵⁹

546. In this specific case, the Panel indeed determined certain discrepancies and inconsistencies in the statements of witnesses – rape victims that were given during the investigation and their testimony before the Court. Furthermore, the Panel noticed discrepancies in the accounts of the same events given by several witnesses. However, the Panel notes that the testimony of the witnesses – rape victims before the Court was in principal more extensive than the statements they gave during the investigation. This also pertains to the testimony of witness A that has been described above, as witness A gave a far more extensive account before the Court than in the investigation. This pattern of giving more detailed and in Panel’s view more reliable accounts leads to the conclusion that there are no discrepancies in the substantive parts of the statements that would amount to the level of contradiction and thus explicitly cast a reasonable suspicion about the events described in such accounts; rather, those discrepancies concern minute elements and result in no material change but only provide clarification and more specific account of certain situations presented and interpreted before the Court due to the technique used in direct and cross examination, among other things.

547. Additionally, the Panel finds that the discrepancies in the statements of rape victims are caused by different types of experience that the victims underwent during their stay in the camp (some of them had worse personal experience than the others).

548. The witnesses have been victims to the crimes and thus the Panel opines that they cannot be reasonably expected to recall the minutiae of particular incidents charged, such as the precise sequence, the exact time and place of the event, and identical description of the events after ten years or more. In that regard, some minor discrepancies in evidence such as the colour of uniforms, whether or not the accused had a white belt and some other side details cannot have a significant influence on the credibility of witnesses unless such discrepancies cast a doubt about the essence of the incidents charged. The Panel anyhow expected certain inconsistencies in the victims’ evidence due to various objective and subjective circumstances such as the lapse of time, social factors, circumstances under which various statements were given, personality of the witness and the witness’s individual characteristics, and particularly the quality of memory and the

⁵⁹ *Kunarac*, presuda Raspravnog vijeća parag. 564.

experienced trauma. However, the Panel finds that the testimonies of witnesses-victims are consistent in critical parts and, therefore, the Panel accepted this evidence as truthful and authentic.

549. The Defence for all Accused referred to discrepancies between the evidence of different witnesses, submitting that certain witnesses gave false testimonies. The Panel, however, notes that the Defence provided a very selective interpretation of witnesses' testimonies in their intention to present those testimonies as fully contradictory. On the other hand, as stated above, the Panel finds the testimonies consistent when it comes to substantive facts and circumstances resulting in the guilty verdict for the criminal offenses and there is no dilemma that the incidents, confirmed by these testimonies, have been proven. The said discrepancies are of a second-rate and minor importance to raise serious suspicion about the incidents charged. On the contrary, the Panel is of the opinion that there would be far more grounds for suspicion if the testimonies of witnesses were identical and without any discrepancy. If that had been the case, then there would have been a suspicion about collusion amongst witnesses-victims as to the contents of their evidence to the detriment of the Accused and the influence by the Association leader, as the Defence teams maintain.

550. Therefore, contrary to the Defence argument, the Panel finds the discrepancies in the victims' testimonies are absolutely normal given all the described circumstances of the events, different perceptions and different education background and interpretation skills of the witnesses, as well as the lapse of time which is of a particular importance due to the normal process of forgetting minor details.

551. In their efforts to corroborate their argument about the lack of credibility on the part of the examined witnesses-rape victims, the Defence for the Accused Šunjić proffered eight photos to show what the Accused Šunjić looked like back then (different from the given descriptions). However, these photographs also lead to the conclusion that different descriptions do not necessarily imply that the witnesses were not telling the truth because the Accused's appearance even varied on the presented photos. The Accused Šunjić appears blond on one photo and on the other one he appears as a man with a dark-colour hair. On one photo, he appears as a man of medium height, or even as a short man, while on the other photo he seems to be a tall man. These differences are the result of different angles from which the photos were taken, different light angle, as well as other persons who were taller or smaller than him on the photos. All the aforementioned leads to the conclusion that different perceptions of his appearance in different situations are absolutely normal and, thus, the differences in the witnesses' descriptions do not necessarily mean that they were not telling the truth, as the Defence argued.

552. Finally, the Defence allegation that certain witnesses and especially rape victims gave false statements and that they were only concocted by witness Saja Ćorić has not been supported by a single piece of specific evidence, nor has it been shown that the witnesses had a specific, sufficiently strong motive to give false statements and to burden the Accused without any ground despite being instructed by the Panel of the duty to tell the truth and of the consequences of giving a false testimony.

553. Additionally, it is common knowledge that women who were raped take care that the public does not come to know about that and they keep hiding it even from their closest family members, let alone trying to spite anyone with the talk of being raped if that is not the case. An instance of a serious, family woman trying to spite someone with a story that she or a person close to her was raped is almost inconceivable in this area. This clearly follows from the finding of expert witness, Professor Dr. Alma Bravo-Mehmedbašić.

554. Rather, according to the opinion of the expert witnesses which was accepted by the Panel, women raped under the circumstances similar to those in this case mainly start talking about such traumatic experience and opening up only later, after internal suffering and struggle when they cannot keep it in themselves any more and when they see other women doing it and when faced with direct questions. Thus, the Panel finds it absolutely logical that some of them spoke about the rape for the first time several years after it had happened to them and that they are trying to avoid or shorten the story about that traumatic event by mentioning the act of rape only (as many victims did in this specific case), holding the details completely irrelevant and irritating.

555. Anyhow, if they had been motivated to spite the Accused, as the Defence argues, it is very likely and logical that they would have chosen a different way than the story about the rape they suffered or a rape of a person with whom she spent the most difficult times of her life and shared the same destiny. Bearing that in mind, the Panel finds that the Defence allegations as to the credibility of the examined witnesses-victims and the frame-up by Saja Ćorić and Association of Camp Inmates are arbitrary and totally ill-founded.

2. Rape of witness „X“

(count 4a) and 5 Radić; count 15, 15b) and 16 Brekalo)

556. Pursuant to the evidence adduced in the course of the proceedings, the Panel found beyond a reasonable doubt that the relevant counts of the Indictment relative to the abuse and rape of witness

X are well-founded. The Panel is satisfied that everything mentioned in the Indictment undoubtedly ensues primarily from the testimony of witness X. In her testimony, witness X said that she lived with her sister, brother and mother in the western part of Mostar and that they were arrested on 23 July 1993 by Emir Brekalo, Jure Kordić, Nedžad Ćorić and an individual whose nickname was Bura. She was only 15 at the time, her sister, witness L was 16 while her brother was 10. She already knew Brekalo, Kordić and Ćorić, since they lived in the same neighbourhood. They were first brought to a house in Rudnik, where Emir Brekalo, swearing and mistreating them, started questioning them about the Army of BiH, military actions and so on, with which she had nothing to do, being a 15-year old child. After that, Brekalo and Kordić took her and her sister to a flat in Avenija in Mostar. Witness X noticed that the “Convict’s Battalion” was written on the door. They offered them some alcohol and cigarettes there, and Brekalo ordered her to smoke and drink. Although witness X begged him not to do that, she was forced to light a cigarette and drink some alcohol as he constantly pulled out his knife and pistol, which scared her. After that, Brekalo pulled her sister – witness L out of the room and she stayed there with Kordić. She heard Brekalo shouting and her sister pleading and crying. Half an hour later Brekalo came out of the room forcing her sister out, her sister was crying and her clothes were creased.

557. After that, according to witness X’s account, Brekalo and Kordić brought her and her sister back to the house in Rudnik. Her sister got sick in the house and they took her upstairs. Thereupon, Emir Brekalo drove her, her mother and brother to Vojno, while her sister remained there. They were first brought to the water company facility called Studenac and then to a weekend house in Bočine at the left bank of the Neretva River. From there, escorted by a soldier who told her that he was taking her to Marko Radić for questioning, she was taken to another weekend house. When she came in, Marko Radić ordered the soldiers to get out, and then he introduced himself as the commander. Ivek Kolobara was also in the room. Radić asked her questions about the Army, about her father and at one moment he asked her if she had a boyfriend and if she was a virgin. The witness told him that she was a virgin and that she was only 15. Then, Radić took her to a room, pushed her on the bed and told her to undress. She begged him not to do that, but he only smiled. But he then changed his mood and he ripped off all her clothes and told her to sit on a chair and turn so as to face him and Kolobara. Radić ordered her to sit on the bed between the two of them. They humiliated her; Kolobara pulled her by her hair, took out his knife and started cutting her fingernails. Then Radić ordered Kolobara to get out. He asked her if she felt like having sex. The witness begged him to let her alone because she was just a child, that she was not to be blamed for anything, but he told her to choose between oral sex and sex. Radić took his shirt off and then the phone rang. He took the call and then told her to get dressed and that she got lucky, but that the

next time she would not be that lucky. Before that time she knew Marko Radić by sight as he lived not far from the place where she spent part of her childhood.

558. According to witness X, the following day she was taken near the house where Marko Radić's command was stationed. There were soldiers there, including Emir Brekalo. She described how Emir Brekalo raped her. First he took her to a room, telling her that he would rape her and every other Muslim woman from 7 to 77. He forced her to undress. He took out his knife, threatening to cut her throat. At one moment, he ripped off her clothes, threw her on the bed, grabbed her by her arms, spread her legs and raped her. She felt a strong pain and she was screaming, but Brekalo covered her mouth. He penetrated her. While doing that, Brekalo pulled her hair and slapped her once in the face. After that, she got very sick, they poured water on her, put her clothes on and carried her to another house. Soon after coming to Vojno, she was wounded in both legs and transferred to hospital in Mostar. She saw Emir Brekalo in the hospital on one occasion and he told her that he could not wait for her to return to Vojno, which additionally motivated her to flee from the hospital.

559. The testimony given by witness X regarding their arrest, their being taken to Rudnik, their being taken for questioning and abuse in an apartment in Mostar and witness X being taken together with their brother and mother to Vojno, was fully confirmed by her older sister, witness L.

560. In her statement, witness F said that she was brought to Vojno on 15 August 1993, that she found a 10-year-old boy there and she learned that he was witness L's brother, which corroborates the veracity of the witnesses X and L's accounts in that part.

561. The evidence of witnesses X and L corroborates the evidence of witness Saja Ćorić, who also said that she knew that witness X was in the Vojno prison, where she was sexually abused.

562. Having inspected the List compiled by the Initiatives Board of Female Prisoners of the Vojno Camp, Bijelo Polje, dated 1 May 1996, it was established that witness X and her mother were detained in Vojno, and that they were exchanged on 14 August 1993, as well as her younger brother, who was exchanged on 1 September 1993. The Discharge Letter bearing the name of witness X shows that she was indeed admitted to the hospital in Mostar on 25 July 1993 because of perforating wounds in her both legs, and that she stayed there until 23 August 1993, which confirms the veracity of her evidence in that part, too.

563. Having analyzed all statements made by witness X, and statements made by witness L and witness Saja Ćorić, the Panel concluded that they are consistent in their interrelatedness, and also

consistent with the aforementioned documentary evidence, and thus found them reliable and credible. The Panel recalls that the testimony of witness X before the Trial Panel was very concise and convincing. The witness gave a detailed account of how her family was arrested, how she and her sister's stayed in the apartment in Mostar, and how she was taken to the Vojno camp together with her mother and brother. In this part, her statement is fully consistent with the statement of her sister who confirmed it all and also with the documentary evidence - List compiled by the Initiatives Board of Female Prisoners of the Vojno Camp, Bijelo Polje, dated 1 May 1996, which shows that witness X, her mother and brother stayed in the camp at the relevant time, and that they were exchanged. The wounding of witness X and her stay in Mostar hospital is described in her statement but also in the discharge letter issued to her name.

564. With regard to the sexual abuse of this witness by Marko Radić and her rape by Emir Brekalo, the Panel heard her detailed account of these events. Although there was no third party with direct knowledge about the said rape and sexual abuse, the Panel fully accepted the statement of witness X who is a victim of these crimes, including that part, too. The Panel found her statement objective and truthful for several other reasons. First of all, witness X stated that Marko Radić did not rape her but only mistreated her and forced her to sexual intercourse. Furthermore, the witness gave a very convincing account of the rape committed by Damir Brekalo in the manner as she experienced it. Additionally, the witness stated that Jure Kordić did not disturb her while she was with him in the apartment in Mostar. Thus, having evaluated the statement of witness X relative to all these events, the Panel concluded that the witness was entirely honest and that she did not want to accuse just anyone. Although there were no direct eyewitnesses to the sexual abuse and rape, the manner in which the witness described these events convinced the Panel that the witness indeed lived them through. Additionally, the Panel found indirect probative value in the evidence provided by witness Saja Ćorić and witness L who stated that they had heard of it.

565. Having compared the testimony of witness X before the Court against her previous statements made in the investigation, the Panel found them discrepant in minor details but not in decisive facts and parts relevant to the acts charged. Bearing in mind all the aforementioned, the Panel accepted the evidence of witness X as authentic and reliable, as well as the evidence of witness L and witness Saja Ćorić.

566. Therefore, the Panel found beyond a reasonable doubt that Marko Radić told witness X, who was only 15 at the time, to take off her clothes in order to have a sexual intercourse, that he later ripped off her clothes, pulled her by her hair, told her to sit naked between two men and told her that she could choose to have either oral or vaginal sex. This specific case amounts to a grave

sexual violence committed with direct intent, and so the Appellate Panel qualified this offense as sexual violence given that penetration was not effected.

567. Furthermore, pursuant to the evidence adduced in the course of the proceedings, the Panel found that the Accused Damir Brekalo raped the 15-year old witness X on or about 24 July in a house located in Bijelo Polje, on which occasion he effected penetration and carried out sexual act in its entirety using force and threat; this satisfies the elements of the criminal offense of rape in violation of Article 172(1)g) of the CC of BiH.

3. Rape of witness „L“
(count 5 Radić; count 15, 15a) Brekalo)

568. Having analyzed the presented evidence, the Panel concluded beyond any reasonable doubt that prisoner L was raped in the manner and at the time specified in the Indictment. This conclusion has been reached based on several pieces of evidence.

569. Witness L said that she lived in her uncle's house in Mostar when she was arrested on 23 July 1993 by the same persons who arrested witness X, her mother and brother. Nedžad Ćorić and Jure Kordić said that they came to take them to the Vojno Camp under the command of Marko Radić, and that they were acting upon his orders and relocating all Muslims. Emir Brekalo was there; he threatened and said that every Muslim should be killed. The witness explained that she knew all three soldiers and she said that there was a fourth one there who went by the nickname of Bura. They were all armed. Her mother and brother were taken by one car, while her sister and she were taken by another car. They drove them through Rudnik, towards privately-owned houses. When they got in front of a house, Jure Kordić called his mother to throw him a key. Her mother and brother were already in the house. They were questioned about where the Army of BiH was, why they were Muslims and the like. Thereafter, Brekalo and Kordić took her and her sister to one apartment with the "Convicts Battalion" inscription on the door. After that Brekalo poured some alcohol into glasses and forced them to drink. After that, Brekalo said that they would be questioned separately, took her to the bedroom and continued to force her to drink alcohol while he went on drinking and smoking cigarettes with a strange smell.

570. Witness L then described how Brekalo was walking across the room holding a knife, threatening, saying that he used to see her earlier but her parents protected her. The witness asked him about his family, expecting that he would accept their acquaintance, and that she was just a

child, but he hushed her threatening that he would slit her throat and throw her into the Neretva River. Then he ordered her to undress, and she did so. The witness explained how miserable and humiliated she felt. Brekalo then took off his clothes, he was drunk, stoned, and he held a knife and told her to lie down. He got on top of her, rolling and dribbling and she was stiff out of fear, each muscle was rigid. The witness explained how he tried to penetrate her but he could not effect full penetration. Still, his sexual organ touched her organ, he had an erection. It lasted for about half an hour. At one moment, he got off her and told her to get dressed. She and her sister were brought back to the house where they found their mother and brother. The witness then described the terrible psychological condition she was in due to everything that happened to her. Her legs and arms stiffened and suddenly she lost her consciousness.

571. According to witness L, that same evening Emir Brekalo returned to the house where she was. He made her take a shower, and take her clothes off. She knew he would try to finish the rape, his sexual organ touched hers but he could not penetrate as she was totally stiff. Just like the previous time, Brekalo kept on drinking alcohol, he was heavy; he dribbled, humiliated, mistreated her and threatened her holding a knife. Then he got dressed and left. She was in a state of shock. In the morning, Nedžad Ćorić unlocked the door and told her that she was free to go. She rushed to an apartment of one Croat whom she knew who then gave her a ride to the disengagement line and she crossed to the territory under the control of the Army of BiH. She did not know anything about her mother, brother and sister. To the question of the Panel and Prosecutor as to whether Brekalo effected the penetration, the witness stated that his sexual organ penetrated only partly but not entirely.

572. In her testimony, witness X confirmed that she was arrested on 23 July 1993 together with her sister-witness L, mother and a brother who was 10. They were arrested by Emir Brekalo, Jure Kordić, Nedžad Ćorić and an individual whose nickname was Bura. They were first brought to a house in Rudnik, where they mistreated and questioned them. After that, Brekalo and Kordić took her and her sister to a flat in Avenija in Mostar. "Convict's Battalion" was written on the door. She also confirmed that Emir Brekalo offered them some alcohol and cigarettes there and ordered them to smoke and drink. Then Brekalo took her sister to another room, while she stayed in the room with Kordić. She heard Brekalo yelling in the other room, her sister crying and begging, but Brekalo got louder and louder. Half an hour later, Brekalo pulled her sister out of the room and she saw that her sister was crying and that her clothes were torn and creased. After that, both of them were brought back to the house in Rudnik. Her sister got sick in the house and they took her upstairs, while Emir Brekalo drove her, her mother and brother to Vojno.

573. The said evidence of witnesses L and X is corroborated by other pieces of evidence. Witness Saja Ćorić also said that she knew that among others, witness L was sexually abused. Witness F stated that upon her arrival in the Vojno camp, she saw a 10-year old boy who was witness L's brother.

574. It further follows from the Official Note of the Security Services Center Mostar, dated 13 December 1993 (Defence exhibit 02-43), that witness L was arrested with her family by the persons who conducted arrests around Mostar upon the order of Marko Radić. The document reads that on 2 December 1993, fifty-seven (57) Muslim civilians were released from the Vojno camp, mainly women and children from Bijelo Polje who were in the parts of Mostar under the control of the HVO. It also reads that the arrests were conducted upon the order of the First Battalion Commander Marko Radić aka Maka and carried out by Emir Brekalo, Ivek Kolobara, Nedžad Ćorić, Tinjak and others.

575. The statements of Ivica Kolobara and Mario Mihalj dated 8 July 1993 also mention Brekalo as a person who conducted arrests in Mostar in July, and that the order for the arrests came from the First Battalion of the Second Brigade.

576. The List compiled by the Initiatives Board of Female Prisoners of the Camp "Vojno" Bijelo Polje, dated 1 May 1996, shows that witness X, her mother, sister and brother were in the Vojno camp and that they were exchanged.

577. The Appellate Panel reviewed all statements made by witness L, as well as evidence that witness L gave before the Trial Panel and, bearing them in mind, accepted the evidence made by witness L which she maintained before the Trial Panel, finding it truthful and authentic considering that it is consistent with the evidence provided by other examined witnesses and particularly evidence of witness X. To wit, witness X provided an identical account of their arrest, her stay with her sister, noise in the room to which Brekalo took her sister, cries and pleadings of her sister, and the creased clothes of her sister after she got out of the room, while parts of the evidence of witness L that pertain to the taking of her mother, brother and sister to the Vojno camp, and their release from the Vojno camp, were corroborated by the evidence of witness Saja Ćorić and witness F, and the said documentary evidence.

578. The Defence disputed the credibility and authenticity of evidence provided by witness L by focusing on the discrepancies in her statements and details pertaining to the persons who arrested them, the house, the door to the apartment where they were later brought. The Appellate Panel finds that the discrepancies underlined by the Defence are details which normally assume different

interpretations on several different occasions, and finds them acceptable due to several factors and especially bearing in mind the subjective condition of the witness and the trauma that she lived through. The Panel holds that those discrepancies and inconsistencies refer to peripheral details and they are of a second-rate importance and as such they could not have influenced the quality of the entire evidence. Finally, the witness stated that she fully maintained what she stated before the Court (in the first-instance proceedings). Anyhow, the Panel finds indisputable those critical parts of the evidence of this witness which pertain to the identification of the Accused Damir Brekalo and the overall description of the events provided by witness L. The witness gave her evidence before the Court in a very convincing manner, by words of a victim who indeed lived through the events she was giving account of, providing an accurate description of mental and physical reactions that she had at the moment of sexual abuse by Damir Brekalo, but even then stating that there was no full penetration; all this shows her sincerity and absence of any motive or intention on her part to accuse anyone, including even the Accused Brekalo (the only one whom she accused of raping her) with more than he actually did to her.

579. Therefore, pursuant to all the aforementioned subjective and objective pieces of evidence, primarily the consistent evidence of witness X and witness L, the Panel found that the Accused Emir Brekalo raped a sixteen-year-old witness L on 23 July 1993. To wit, on 23 July 1993, the Accused used force and threat against witness L on which occasion he effected partial penetration. Since the *actus reus* of the criminal offense of rape consists of sexual penetration, however slight, the Panel is satisfied that it was proven beyond a reasonable doubt that the Accused Brekalo committed the act of rape. Having evaluated his overall conduct on that occasion such as threats to witness L, mistreatment and swearing, the Panel finds that the Accused Brekalo committed the offence of rape in violation of Article 172(1)g) with a direct intent.

4. Rape of witness E

(count 5 Radić; count 10 Šunjić; count 16 Brekalo; count 25 Vračević)

580. Pursuant to the adduced evidence, the Panel found that Mirko Vračević on 27 August 1993 in the evening hours took witness E to the house where the Camp Command was situated, where Marko Radić ordered her to go with Mirko Vračević, telling her to do whatever she was told to do, after which Mirko Vračević took her to Mirko Bukara, an HVO member, handed her over to him saying: "Here she is!" Thereupon, Mirko Bukara forced the witness E to sexual intercourse.

581. With regard to the aforementioned, Witness E said that she was taken away from her flat in Mostar to the Vojno camp on 15 August 1993 by Ivek Kolobara whom she knew from before, by another soldier whose nickname was Žuti and two more soldiers whom she did not know, all of whom were HVO members. They went to Vojno where Mario Mihalj and Dragan Šunjić met them. Then, Mario Mihalj questioned them, while Dragan Šunjić was writing something down. Mario Mihalj told her and witness A that same night to go to see Marko Radić. The witness described the road they took to get to the house where the First Battalion Command was located. Marko Radić introduced himself as the commander of that area.

582. Then the witness described how on 25 August 1993 she and another prisoner whose name was Hubana were taken from the camp to clean some houses escorted by soldiers, one of whom went by the nickname Dinar, and she remembered that the other one had long hair tied in a ponytail. When they arrived there, they told her to stay at the ground floor, while Hubana went upstairs. Half an hour later, Hubana came downstairs in tears. She was told to go to another room and, immediately after that, the other soldier with his hair tied in a ponytail came in, grabbed her, threw her on the bed and told her ‘don’t you know why you are here, you are here for sex’. He put the rifle to her neck and threatened to kill her if she lied that she had her period. She had to show him that she had a period and then he told her to satisfy him in another way. She refused that by telling him that she would rather die. Then, the soldier whose nickname was Dinar came into the room and asked what was going on. After that, they took her to another room.

583. Witness E told witness A about the incident, who told it to Marko Radić and he called her an hour later to the Command. Dragan Šunjić was there with two other soldiers and she had to tell them everything that had happened to her and to write a statement.

584. Witness E then gave an account of the event of 27 August 1993; she and Rahima Makaš were taken to the Command of Marko Radić in order to clean the premises. She described how they got back to Vojno by a boat across the lake. When they got back to the camp, Mirko Vračević told her that Marko Radić wanted to see her. Escorted by Mirko Vračević, she went to the Command of Marko Radić who then ordered her to go with Mirko Vračević wherever he takes her and do whatever he tells her to do, otherwise, he would kill her and her children. She begged him not to take her away because her child did not feel well, but he told her cynically “so what, you will not pickle cabbage in it; you must go because I say so.” The witness pointed out that the weather was really bad and that she walked behind Mirko Vračević who was armed. They crossed a bridge and reached a small house roofed by a concrete deck. A man appeared at the door whom she recognized as a person who had taken her and Rahima Makaš by boat that day across the lake when

they were going back from Marko Radić's Command. He told her that she was there for sex and that his wife was imprisoned on the left bank. She begged him not to do that but to no avail, he raped her. Later on she found out that his name was Mirko Bukara. He was an HVO soldier and he told her that he was a taxi driver near the HIT department store.

585. Ample evidence corroborates the veracity of witness E's evidence. Witness A testified that she knew that in addition to her other female detainees too were raped in the Vojno prison, including witness E. She said that they did not need to talk about the rape, because one could draw such a conclusion by the way they looked – they looked just as she did when she was raped.

586. Witness Saja Ćorić and witness C also stated that as they know and as to what they had heard witness E was also amongst the women who were raped. Witness C pointed out that witness E was not in the same room with her but she heard it from her when they performed labour. Witness F also stated that she knew that one evening witness E was taken away by Mirko Vračević and that she came back after midnight when it was heavily raining and that she was in tears, which was corroborated by the account of witness E.

587. With regard to the Defence objections and arguments about the discrepancies in the statements, the Appellate Panel reviewed all statements made by witness E, including the statements she made at the investigation stage and her evidence before the court, and found that there are no significant discrepancies between her evidence given before this Court and before the Higher Court of Mostar on 12 April 1996 (tendered by the defence in their efforts to discredit this witness) in terms of decisive facts about the witness being taken away and raped by Mirko Bukara.

588. The Defence for the Accused Šunjić argued that there is no evidence to corroborate the fact that a person by the name of Mirko Bukara actually exists and that such a person was a member of the HVO unit at the relevant time. The Panel finds these defence arguments totally ill-founded because the witness clearly stated that Mirko Bukara had told her that he had been a taxi driver stationed at the HIT department store, and she was explicit that his name was Mirko Bukara. In addition, the witnesses stated that she saw Mirko Bukara that same day at Marko Radić's Command and that he was a soldier of the HVO, which is sufficient. Anyhow, significant facts that are decisive in terms of decision about the guilt for this crime is that, upon the order of Commander Marko Radić, Mirko Vračević escorted the witness E to Mirko Bukara who raped her at the time while she was a prisoner in the Vojno camp where all Accused, including Dragan Šunjić as a deputy commander of the camp, had a certain control and supervision over prisoners, wherefore they all were responsible for what happened to prisoners.

589. Therefore, the Panel gave full credence to the consistent statements of the said witnesses and found beyond a reasonable doubt that during her stay at the Vojno camp witness E was forced to a nonconsensual sexual intercourse with the person named Mirko Bukara, and therefore the Panel qualified this act as rape in violation of Article 172(1)g) of the CC of BiH.

5. Rape of witness C

(count 5 Radić; count 10 Šunjić; count 15d) Brekalo; count 24 Vračević)

590. Having analyzed the presented evidence, the Panel concluded beyond any reasonable doubt that prisoner C was raped in the manner and at the time specified in the Indictment. This conclusion has been reached based on several pieces of evidence.

591. When testifying as a protected witness under the pseudonym C, this witness stated that together with her husband she was evicted from her flat in the western part of Mostar on 9 or 10 September 1993. Together with her husband, her two sisters and two children of one of her sisters they were taken by a van to Vojno. Then Brekalo drove them in a small car to the camp command in Vojno. In the corridor of the camp command, she recognized Mario Mihalj, Dragan Šunjić, Mirko Vračević and another soldier whose name was Kuna. When the detainees introduced themselves they were supposed to first say their first name and then their last name, and those who failed to do so were ill-treated. Then she described how Emir Brekalo and Mirko Vračević frisked them; everything was seized from them such as personal documents, gold, jewelry and money. The witness stated that the guards kept them in the houses where they stayed. Among the guards, she could remember Rudo, Kuna and Mirko Vračo. The witness then described Mirko Vračević and stated that she used to see him often in Vojno. On one occasion, he told her that three of them (sisters) would never go back. The witness knows that Mario Mihalj was the commander of the Vojno camp and Dragan Šunjić deputy commander, while Marko Radić was a commander to all of them. On one occasion, Marko Radić told her that she had a typical balija's name and surname. The witness described the difficult conditions of their stay in the camp and she stated that women had to carry out all sorts of duties against their will on a daily basis. They were taken away in such a manner that soldiers arrived in the morning and required a number of women for labour.

592. According to witness C, on one occasion she was taken to the Command by soldier Rudo Ravlić. Dragan Šunjić, Kuna and two other soldiers were there too. They told her that she had to do something; she asked for a receipt that she was going for labour, but Dragan Šunjić screamed at her telling her that she had to do some night work, that she had no rights and that she was in the hell

itself, as she herself realized at that moment. Then, two soldiers took her to a house, to a room where Emir Brekalo was with a soldier whose name was Marko. She was told to undress. She begged them not to do that, but they threatened her by knife which they stabbed in the table. She had to take off her clothes. She was frightened. When she undressed, they told her to place her finger into her vagina while they watched and laughed. She begged them to let her go, but they forced her to drink alcohol. She had to do everything they told her to do. After that, they dragged her into the kitchen, where they forced her to put their sexual organs into her mouth. Then they dragged her to another house where that soldier Marko slapped her in the face repeatedly and told her that she had to satisfy them, but then they had to go for an assignment.

593. She knows that similar things happened to other women, witnesses A, B, D, E, F, J, AG, M. She was in the same room with some of them, and when they came back to the room one could see that nothing good had happened to them.

594. Witnesses J and D confirmed that witness C was among the women who were imprisoned in the Vojno camp. Witness D remembered that women were taken away almost every night and that each of those women could tell what had happened to her personally. Witness R stated that she was arrested and brought to a house in the Vojno prison, where she found witness C with her two children, among other women. Witness R testified that women were taken away during night by guards, who would enter the rooms only to take them away. She did not see what they did to those women, but she could guess as she could see the women upon their return, among them witness C.

595. In her testimony, witness Dika Ćurić said that she was arrested in October and brought to the Vojno camp, where she found witness C among others. Witness Saja Ćurić stated that witness C was among those women who were raped in the Vojno camp.

596. The defence tried to discredit witness C. However, during the cross examination, the witness maintained that she knew that Mario Mihalj was the camp commander in Vojno, and Dragan Šunjić deputy commander, and according to her estimate and information Marko Radić was the commander to everyone. She described Dragan Šunjić at the time as a tall, thin, possibly 30 years old. She also stated that Dragan Šunjić beat her, and placed a pistol on her temple when they complained about the conditions in the camp. She identified Dragan Šunjić in the courtroom. In addition, the witness was positive about the identity of Damir Brekalo whom she had known from before the war as he lived in the vicinity and passed by her house frequently. She believes that he was about 25 at that time, her husband and her brother did not know him, and she does not know if her sister-in-law knew him and if she was in a relationship with him.

597. Witness C explained the discrepancies in the statements that she gave at the investigation stage. As for the persons in the police who took that statement from her, she said that she did not know Adis Nuspahić but she knew Juso very well. She also stated that Damir Brekalo did not force her to labour, did not beat her, and did not deprive her of water and food. She met Mirko Vračević at the Vojno camp; she had not known him from before.

598. Having evaluated the evidence of the said witnesses, the Panel concluded that they are consistent with each other with regard to the fact that witness C was a prisoner in the Vojno prison at the relevant time. In addition, statements of witnesses J, D, R, Saja Ćorić and Dika Ćurić are consistent in the part that pertains to the women being frequently taken away from the rooms and the fact that upon their return one could conclude what had happened to them (they looked miserable, wretched and sad), witness C being one of them.

599. Although certain discrepancies are identified in the statements made by this witness at the investigation stage and her evidence given at the main trial, the Panel finds that the witness provided a satisfactory explanation for the inconsistencies. To wit, the witnesses stated that she was ashamed to speak about rapes on the occasion of her first interrogation in the Ministry of Internal Affairs because she knew certain Juso there. The Panel finds that such an attitude of the victim (not disclosing bad things that happened to her because of feeling ashamed) is something completely normal and widespread in these areas. With regard to the Defence objections that the statement was given not to Juso but someone else, the Panel notes that the fact that the statement of this witness does not contain a signature of any Juso does not mean that Juso was not present in the room during her examination or that he was not in the immediate vicinity, that he did not enter or exit the room or had access to statements.

600. Bearing in mind all the statements given by witness C, the Panel concluded that she is still a credible witness who gave her evidence in a truthful and reliable manner. The Panel finds that witness C gave her evidence in a very detailed and convincing manner, and that she provided a totally acceptable explanation for certain discrepancies. Furthermore, her evidence is consistent with evidence of other witnesses, wherefore it is accepted as truthful and reliable.

601. Bearing in mind that according to the adduced evidence it is concluded beyond any reasonable doubt that Accused Brekalo, along with the soldier Marko, forced witness C to put her finger into her vagina while they were watching and laughing and then they forcefully placed their sexual organs into the mouth of witness C as claimed under the Indictment. The requirement has been met to qualify this act as the crime of rape because the penetration into the victim's mouth by

the perpetrator's penis makes the *actus reus* of rape in violation of Article 172(1) g) of the CC of BiH. The accused Brekalo committed these acts with a direct intent.

6. Rape of witness B

(count 5 Radić; count 10 Šunjić; count 16 Brekalo; count 24 Vračević)

602. Having analyzed the presented evidence, the Panel concluded beyond any reasonable doubt that prisoner B was raped in the manner and at the time specified in the Indictment. This conclusion has been reached based on several pieces of evidence.

603. During her testimony, witness B stated that she lived in a flat in Mostar West with her husband and two children until mid-August 1993, when she was taken to the Vojno camp. When they got to Vojno they went inside the house to give statements. The witness stated that the house was the command of Mario Mihalj and Dragan Šunjić. Mario introduced himself as the Camp Commander, and said that Dragan Šunjić was his deputy. Since she introduced herself in the wrong order, Mario slapped her in the face two times. After that, Mirko Vračević took her, her two children and Edita to one house, where she was locked in. Mirko Vračević introduced himself and said 'you Balija women have no idea where you just came'. He had a rifle with engraved "Only survivors will survive" and warned them to keep that in mind. They were scared, but they had to put up with it because of their children.

604. The witness described the house where she stayed, stating it was on the ground floor of the house and that next to her were also witnesses A, E, F and AG, while Emica Ćurić, Edita, Zejna and her two daughters, AG's daughter and grandmother were in another room. She stayed for 100 days in that room. Male prisoners were quartered in the basement. Dragan Šunjić and Mario Mihalj would go to the basement with a cassette player and after that they could hear music and moans of the prisoners.

605. Witness B then described their difficult living conditions and pointed out that they went out of the house only when they were taken to carry out forced labour. One day, Dragan Šunjić came and told her to get out. A red car was waiting in front of the Command and a soldier Sergej was standing there. Dragan Šunjić told Sergej "take this Balija woman, she is all yours." They all got in the car. Sergej was driving. They started humiliating, insulting and mistreating her. Dragan Šunjić mentioned "jastučenje" ("pillowing") to Sergej. It was the first time that she heard that expression but she assumed that that meant that they could do to her what they actually did at the Police

Station. Dragan Šunjić asked her how many openings she had in her body, told her that they would fill in all of them and that she would have an Ustasha child. They took her to the Police. Sergej followed her, while Dragan Šunjić stayed. Sergej ordered her to take some fire wood and start a fire, then return and get a bucket of water for the dishes and for herself, which she did. Sergej then told her to come and sit next to him and she had to do that. There were alcohol and drugs on the table and he asked her if she was taking anything. After that, Sergej told her to tidy three rooms. There was a twin bed in the bedroom. At that point, Sergej told her “Balija woman, take your clothes off”. She begged him not to do that, but he took a knife, placed it under her throat and told her to decide whether it would be her or her two children. She had to undress. He threw her on the bed and brutally raped her, during which she also had to put his sexual organ into her mouth. It hurt her, but she did not dare to resist and she was silent. After that, Sergej got up and another soldier came in, his name was Dario Mihalj and he was Mario Mihalj’s brother. Dario Mihalj also raped her and she also had to put his sexual organ into her mouth. Then, certain Babo came in, after him Tomo Aničić and after that Nedžad Tinjak a.k.a. Nečko. Each of them raped her vaginally and she had to take sexual organs of all of them into her mouth. When it was over, Sergej came in and told her to get dressed and then brought her back to the Command. Dragan Šunjić was there and when he saw her he asked her if there was any “jastučenje” (‘pillowing’). Šunjić brought her inside the house, witnesses A, E and F were there and she told them that she was in the Police and that she was raped. She told Zdravko Šunjić a.k.a. Kuna that Dragan Šunjić took her to the Police and that she was raped, and that Mario Mihalj slapped her twice when she told him that she was raped ordering her not to tell anyone about it.

606. Witness F confirmed that she knew that witness B was raped and abused. She described how on one occasion witness B told her that she was taken to the military police where she was raped by four soldiers, Dario Mihalj being among them. When she told them this, Mario Mihalj entered the room and slapped witness B twice. Witness B looked terrible, she was in tears and exhausted.

607. Witness A and witness E stated that among other witnesses they were in the room with witness B and her children. Witness A stated that in addition to her, witness B, D, E and AG were raped. Further, witness E recalled that witnesses A, B and AG were raped. Both witnesses stated that the appearance and conduct of these women clearly showed that they were raped.

608. Having inspected the List compiled by the Association of Female Prisoners of the Camp Vojno - Bijelo Polje, the name of witness B was also recorded among the names of women who were in Vojno during the relevant period.

609. When evaluating the credibility of witness B, the Appellate Panel reviewed the statements that this witness gave before the ICTY, Higher Court in Mostar and Prosecutor's Office of Bosnia and Herzegovina and her evidence before the Court. The Panel notes that the discrepancies as pointed to by the Defence teams indeed exist, but the witness explained those discrepancies when testifying before the Court and she explicitly stated that she saw Marko Radić twice although she did not mention that in her previous statements. The witness further stated that when she gave a statement on the premises of the Prosecutor's Office of Bosnia and Herzegovina, she confused soldier Babo for Sergej and on that occasion she stated that Babo took her there but in the direct examination before the Court she explained that it was Sergej together with Dragan Šunjić who took her and that what she stated at the main trial was correct. Furthermore, the witness clarified the discrepancies in certain details but this Panel does not find those details as significant facts that might put into question the veracity of the witness's account of the event. To wit, even after she was confronted with those discrepancies, the witness maintained that what she stated before the Court was true.

610. The Panel finds that the Defence did not succeed in discrediting this witness with regard to crucial facts related to the rape which she presented at the main trial. Despite certain minor discrepancies between her evidence given before the Court and her prior statements, the Panel finds that witness B gave a convincing explanation in her evidence before the Court, which was very detailed and presented by words of a victim who indeed was raped by four men.

611. Pursuant to all the foregoing evidence, primarily the evidence of witnesses A, F and E that is consistent with the evidence of witness B, which the Court accepted as objective and accurate, the Appellate Panel found beyond a reasonable doubt that during her stay in the Vojno Camp witness B was raped by Tomo Aničić, Dario Mihalj, and soldiers Babo and Sergej, on which occasion the penetration was effected by the sexual organs of all of the said persons into the victim's vagina and mouth, which amounts to the criminal offense of rape in violation of Article 172(g) of the CC of BiH.

7. Rape of witness D

(count 4c) and 5 Radić; count 10 Šunjić; count 15c) and 16 Brekalo; count 24 Vračević)

612. Ample evidence undoubtedly shows that the rape charges relative to witness D are well-founded.

613. Prisoner D was examined as a witness and stated that in the first week of September 1993 Ivek Kolobara and Nedžad Tinjak arrested her in her apartment located in the west part of Mostar

together with her daughter and mother-in-law. They were taken to the Vojno camp. Mario Mihalj met them there, he said that he was a Commander and Dragan Šunjić his deputy. She also saw Mirko Vračević who offered a hand-grenade to her daughter on that occasion.

614. The witness recalled that during her stay in the camp women were taken away every night, and so was she, too. On one occasion, Emir Brekalo came into their room with four more soldiers. Those soldiers were Mario Mihalj, Dragan Šunjić and two more individuals, and she learned later on that those two were Dario Sušac and Marko Radić. Emir Brekalo asked her about her husband and ordered her to go with him and to leave her child behind. They later told her that Marko Radić threw her child on the floor. They brought her to a room in the prison command. Emir Brekalo ordered her to take her clothes off. She begged him not to do that, but he took out his knife, put it under her throat and started insulting her. She begged him but he was merciless, he threw her onto the bed and started tearing off her clothes. She resisted, but he slapped her in the face two times, took his pistol and threatened to bring her child and cut the child's throat. She was still begging him not to do that, but he slapped her one more time, and then raped her. He penetrated her. After that, she heard him telling Dario Sušac "now it is your turn". Then Sušac entered the room, he also raped her and he penetrated her as well. After that, Emir Brekalo threatened her not to tell anyone about that, otherwise he would kill her child. When she was brought back to Vojno she did not tell anyone about the rape, but she was disturbed, she was crying and Saja Ćorić was comforting her.

615. According to witness D, the aforementioned rape was not the only time she was raped. Several evenings after the said incident, guard Rudo Ravlić came and told her to follow him. He took her to the command and told Emir Brekalo "Here she is, I brought her again." Besides Brekalo, there were Mario Mihalj, Dragan Šunjić and Dario Šunjić. They threatened her. Then, they took her to one house and when they entered Emir Brekalo told Marko Radić that they brought her. Marko asked what they did to her, introduced himself and said he that he was in chief, that the soldiers obeyed his orders and thus everyone else had to obey him. He ordered her to take off her clothes. She begged him not to do that, but he pulled her by her hair, unbuttoned his trousers, pulled out his sexual organ and put it in her mouth. She begged him again not to do it, but he again pulled her by her hair and forcibly pushed his sexual organ into her mouth. She felt sick. He then threw her on the bed and raped her. After the rape, Marko Radić threatened her not to tell anyone about what happened. He left and soon afterwards an HVO soldier showed up and told her to take off her clothes. She begged him not to that. He then told her that Maka ordered him to rape her and that he must not know that he did not do it. Then, Marko Radić, Emir Brekalo and Dario appeared and threatened that she must not tell anyone about what happened to her and then they brought her

back to the prison. The house in which she was raped was on the other side of the Neretva River; she believes it was in Bočine. This happened to her in the first month of her arrival in Vojno.

616. Witness D stated that they performed forced labour on a daily basis. At some period of time she worked in the canteen and soldier Dragan Galić was there. On one occasion, while she worked in the canteen, she saw Tinjak and Brekalo. She froze in fear and started crying. Dragan Galić asked her why she was crying and she told him that she was crying because she saw Tinjak and Brekalo. She did not tell him that Brekalo had raped her, but he could figure it out based on her behaviour, since she said at one moment “not again, can it be that they will come tonight to take me away again”.

617. Witness Saja Ćorić, and witnesses J and K confirmed that they were in the Vojno prison, sharing the room with witness D. They all confirmed that on one occasion Damir Brekalo Mario Mihalj, Dragan Šunjić, and Marko Radić got into the room, and witness K mentioned that a person who went by the nickname Jež was with them. Brekalo introduced himself and told witness D to leave her child and follow them. Witness Saja Ćorić stated that upon her return witness D looked horrible, she was crying, sat down in the corner and did not want to take her child. That day, witness D told her that she was raped by Damir Brekalo and that he threatened her not to say anything to anyone. She further stated that she knew that witness D was raped by Marko Radić as well and that witness D told her so when she returned to the room. Witness J stated that witness D was in poor condition when she got back and that she told her that she was raped by Damir Brekalo, among others, and that they threatened to kill her child if she told that to anyone. Witness K also confirmed that on the pertinent occasion when witness D got back she was crying, her hair was dishevelled and she admitted that they raped her.

618. Witness C testified to have known that many women were raped in the Vojno prison and those women were taken away from the prison, including witness D. Witness A also testified to have shared the room with witness D and that it was common knowledge that witness D was among those witnesses who were raped. She could tell that according to the way they looked when they returned to the room, they looked the same as she did when it happened to her.

619. Witness Dragan Galić confirmed that he was a member of the First Bijelo Polje Battalion and that he was in charge of the canteen in a certain period of time. He stated that he met there a person under the pseudonym D or F. He knows that that person had a little girl. On one occasion, when Damir Brekalo came to the canteen, her behaviour changed, she started crying and said that Damir Brekalo had raped her.

620. Based on the said statements of witnesses, the Panel found that witness D gave a sincere account of the rapes that she suffered in the Vojno camp, and the Panel accepted her evidence. The witness provided a very detailed and convincing account of the place, time, manner and persons who raped her. Furthermore, her evidence is consistent with the evidence of witnesses Saja Ćorić, witness J, witness K, witness A, witness C and witness Dragan Galić, which the Panel accepted as objective and accurate.

621. The defence wanted to discredit this witness by pointing to the inconsistency of her evidence with her previous statements. The Appellate Panel once again, just like in the above acts of rape, finds that these inconsistencies are not significant or substantial to cast a doubt on the conclusion of the Appellate Panel relative to the existence of all significant circumstances of the offenses committed against this witness.

622. Based on the said evidence, the Appellate Panel found beyond a reasonable doubt that on an undetermined date in September of 1993, witness D was brought to the command post of Mario Mihalj and Dragan Šunjić; that witness D was humiliated there and that Damir Brekalo and Dario Sušac took witness D to the command post of Marko Radić where Marko Radić sexually abused her, ignored her pleadings, pulled her by her hair, unbuttoned his pants and forcefully placed his sexual organ into her mouth and raped her, whereupon he ordered an unidentified HVO soldier to rape her but the latter did not do it. In the same period of time, Damir Brekalo forced witness D to sexual intercourse on two occasions and then handed her over to Dario Sušac to rape her, and the latter did so.

623. The Accused Radić and Brekalo, as well as Sušac, used force and threat against witness D during the rape, they penetrated on each occasion, the rapes were obviously committed without the victim's consent and with a direct intent since they were aware of their acts and willed their perpetration. Bearing that in mind, the Panel qualified these acts as crimes against humanity in violation of Article 172(1) (g) – rape.

8. Rape of witness J

(count 5 Radić; count 10 Šunjić; count 16 Brekalo; count 24 Vračević)

624. Ample evidence undoubtedly shows that the rape charges relative to witness J are well-founded.

625. In her testimony at the main trial Witness J said that she was taken from her apartment in the western side of Mostar on 7 September 1993, she was taken to the Vojno camp together with her mother, witness K, and grandmother. Four soldiers took them, of whom she knew Kolobara a.k.a. Ivek and Emir Tinjak a.k.a. Žuti from before. They did not inform them of the reasons for their capture except that Emir Tinjak told her that she would be the first one to be raped when they get to the place they were taking her to. There were around 30 persons on the truck, and she knew D, J, K, AM, Saja Ćorić, Merhunisa Ćorić, Dina Handžo, Fatima and Aida Ćišić, Zejna and Emir Tihak. Upon arriving in Vojno, they ordered them to take out all their personal belongings and then lined them up in the corridor of the house where they waited for interrogation to start. Mario Mihalj and Dragan Šunjić met them there, and said “welcome to hell.” Mario Mihalj introduced himself as the commander and Dragan Šunjić as the deputy commander and told them to address them as “sir”. Prisoners who were brought there had to introduce themselves by saying first name first and then their surnames. Witness D said her surname and then her first name and Dragan Šunjić swore her Balija mother. A guard was in the corridor, his name was Mirko and his nickname was Srbín. After some time, Marko Radić came with Dario Sušac and another soldier and they started entering the interrogation room. When she entered the room they took away her hand-bag with documents. Marko Radić said that he was the commander of the First Battalion and the whole sector in the Vojno camp. Then, upon the order of Marko Radić, Dragan Šunjić frisked her, touched her breasts, and searched her bra and her underpants, to see if she hid something there.

626. The witness also stated that the camp command was in Vojno and that the main command was in Bočine, as the witness used to go there while she performed some work. She stated that she saw Marko Radić three times in Vojno, and she saw Emir Brekalo once when he took witness D, and she saw Mirko Vračević every second day if not every day. She knows that Marko Radić was superior to Mario Mihalj and Dragan Šunjić.

627. According to witness J, the second or third night upon arrival in Vojno, Rudo Ravlić came and told her to go to clean a house. When she entered she saw Dragan Škobić on a double bed. He told her to sit down. He told her that he liked a photo of hers. She defended herself and begged him not to touch her but he pulled out a pistol and said: “take off your clothes, it is better that I do it then 10 others”. He then raped her. When she left the house, she heard someone from the dark calling Dragan’s name.

628. On another occasion when they went to perform labour, she saw Dragan and she stood petrified and one person who knew him told her that his name was Dragan Škobić and that his house was across the command. That was how she found out who raped her. The witness recalled

his pimple face. She did not dare to talk about the rape because he threatened that would kill her closest family members.

629. Witness J also stated that the detained women in the camp did not talk about rape, each of them kept their suffering to themselves. Only person D told her that she was raped.

630. She spent a month and a half in Vojno. Her neighbours Mate Divić and Miro Glibić went to the Command to see Marko Radić and they said that Glibić would marry her, but it was just a pretext to get her out. According to the witness, ever since she left the camp her health condition was poor, she has suffered gynaecological problems and hormonal disorder, and she will never have children, all of that as a consequence of a psychological stress.

631. Witness Saja Ćorić confirmed that she was in the same room with witness J. She knows that witness J was raped when she was taken to a house where artillery positions were. Witness Saja Ćorić said that she could tell that witness J was raped because of her looks but she did not know who did that.

632. Witness C stated that she knew that witness J was on one occasion taken out by a soldier who took her out of the room. When witness J returned after a while that same night, she was dishevelled and looked awful.

633. According to witness R, she was in the prison together with witness J. She knew that witness J was also taken out at night, like some other women. Witness K is witness J's mother and they were brought to Vojno together and she stated that her daughter was raped by Dragan Škobić while she was in the Vojno camp, and that guard Rudo Ravlić took her out of the room and brought her back on that occasion.

634. With regard to the Defence objections as to the credibility of witness J and discrepancies in her statements, the Appellate Panel evaluated in detail the record of examination of witness J before the Higher Court in Mostar dated 29 March 1996, the record of examination before the Prosecutor's Office BiH dated 30 June 2006 and the statements that the witness gave to the ICTY investigators on 28 April 1997 and concluded that the said evidence indeed shows certain discrepancies that the defence focused on. Specifically, the statement given to the Higher Court in Mostar does not contain any mention of the rape. However, in the course of the direct examination before the First-Instance Panel, the witness clarified that she did not mention anything about the rape because the investigative judge was an elderly man and she found it uncomfortable and difficult to talk to him about it, which is understandable. Furthermore, with regard to the discrepancy in terms of the

persons who came to arrest them, that is, the fact that she said they were arrested by three HVO soldiers whom she did not know, the witness explained that she was afraid of those people and could not recall everything, which can also be accepted as a reasonable explanation.

635. The Appellate Panel fully accepts such explanations bearing in mind that it is not easy for victims to talk about traumatic events, that they usually want to suppress such events given that rape is one such event, and that it is especially difficult for victims to give their account before persons whom they know and meet on a regular basis, which was exactly the case here, as witness J knew the investigative judge who is an elderly man and lives in the same town. In terms of the discrepancies about the arrest, the Panel concludes that it is highly likely that witness J, just like other witnesses-victims, feels certain fear due to everything she suffered in the camp and is trying to forget unpleasant experiences such as the arrest and being taken away from home.

636. The Defence tried to discredit witness J by submitting that her evidence was a result of a pre-arrangement and concoction orchestrated by Saja Ćorić, raising the issue of the truthfulness of her evidence. However, this Panel considers that witness J gave evidence before the Court in a clear and unambiguous manner, describing how she was taken away by Tinjak and Ivek Kolobara and describing the rape she was subjected to. The witness described the appearance of Marko Radić who questioned her and Dragan Šunjić who frisked her, and identified him in the courtroom. She stated that she met Damir Brekalo in the camp and that she saw him for the first time when he took witness D out of the room and she described what he looked like on that occasion. She did not know Mirko Vračević from before but she came to know him while in the camp, and she knew him as Mirko a.k.a. Srbin or Ćoro; she described him as a short wall-eyed man, and identified him in the courtroom. She saw him for the first time when she arrived in the camp, on which occasion he placed a knife under her throat and said `the fox is brought to the furrier.` The Panel finds that the witness explained certain discrepancies in her statements in a completely reliable and acceptable manner and convinced the Panel in the truthfulness of those statements.

637. Pursuant to the evidence of the said witnesses, which is consistent in terms of substantive facts and accepted as objective and authentic, the Panel found that at the relevant time while she was in the Vojno camp, witness J was raped by HVO soldier Dragan Škobić, which constitutes the criminal offense of rape in violation of Article 172(1) g) of the CC of BiH.

9. Rape of witness AM

(count 5 Radić; count 10 Šunjić; count 16 Brekalo; count 18 Vračević)

638. Ample evidence undoubtedly shows that the rape charges relative to witness AM are well-founded.

639. Witness AM gave evidence before the Panel of the Appellate Division and on that occasion stated that she lived in an apartment together with nine other Bosniaks near the hospital in Mostar, municipality West, from the beginning of 1993 until 7 September 1993. She was not a member of any military formation. On 7 September 1993, she was forced out of her apartment and captured by three persons in uniforms, members of the HVO and taken to the Vojno camp where she stayed until 2 December 1993. On the way to the camp she was in a truck together with witness D. The morning upon their arrival, Mirko Vračević separated women from men. They were told that they were arrested for the purpose of exchange. The witness was incarcerated in a house with two rooms. She states that she was in one room all the time together with witnesses C, D, J, K and R. and others. They were locked all the time and could not walk out. As far as she knew, Marko Radić was in charge. She is categorical that she was sexually abused during her stay in the camp.

640. According to the account of witness AM, one night, she could not recall precisely when, Mirko Vračević arrived and took her out of the room, and brought her to the room where the guards were usually sleeping. He told her to take her clothes off and she did so. She did not oppose as she was in fear, she was afraid that he might kill her. He performed a sex act on her and then returned her to the room. She was miserable and ashamed before the other female detainees.

641. He raped her again but she does not know how many times, he always did it in the same manner. The eyewitnesses to her being taken away are other detainees who were in the same room. She did not know Mirko Vračević by that time but later on she learned who he was. She described him as a rather skinny person, of dark complexion, with a squinted eye. She recognized him in the courtroom.

642. Witness AM also stated that other women were also taken out and that one could feel uneasiness in the room where they stayed. They did not talk about it but they suspected that they were taken out to be raped. She claimed that she was raped only by Mirko Vračević.

643. Witness Saja Ćorić confirmed that she was in the same room with witness AM. Further she confirmed that witness AM was amongst the women who were sexually abused in the camp. She

saw Mirko Vračević coming at night or before dawn and taking out witness AM. When witness AM returned she looked terrible, miserable.

644. Witness C and witness D also stated that they were in the same room with witness AM.. Witness C pointed out that other women were taken away and raped, and that witness AM was taken out by Mirko Vračević.

645. Witness Dika Ćurić stated that Mirko Vračević most frequently took out witness AM, she does not know for which reasons and how many times but she mentions that each time witness AM returned she looked sad and dishevelled.

646. It follows from the list compiled by the Association of Female Prisoners of the Camp Vojno that witness AM was amongst the women who were in the Vojno camp.

647. The Panel accepted the evidence of witness AM as truthful and reliable as it is consistent with her statement made at the investigation stage and the evidence of witnesses: Saja Ćorić, Dika Ćurić, C, D, who were in the same room with witness AM and confirmed that she was taken away by Mirko Vračević and that upon her return she was in a bad mood and with dishevelled hair. The Panel accepted these pieces of evidence as well, finding them sincere and truthful as these witnesses have no particular reason to groundlessly accuse just anyone, the Accused Vračević included.

648. The Defence tried to discredit witness AM by submitting that the charges for the rape of AM by Mirko Vračević are grounded on AM's testimony only, that the witness avoided giving precise answers during the examination and that she could not be specific as to the number of instances when she was raped. However, it should be noted that witnesses Saja Ćorić, Dika Ćurić, C and D, were in the same room with witness AM and they all confirmed that she was amongst the raped women, and that she was taken away by Mirko Vračević. Thus, their evidence undoubtedly corroborates the testimony of witness AM about the rapes that she suffered in the camp. The fact that not one of them was present during the act of rape or saw it directly is completely normal and logical given the circumstances and the character of the crime, and it by no means raise any suspicion as to the truthfulness of the evidence of witness AM.

649. Contrary to the submissions of the defence, the Panel concludes that the witness was fully consistent with the statements given at the investigation stage in terms of the key acts such as her being taken away, her stay in the camp, rapes. On the occasion of making a statement during the investigation she was in no position to state how many times Mirko Vračević raped her and she maintained that position while giving evidence before the Court, repeating that she did not know

how many times she was raped but pointing out that it was always done in the same manner. Such evidence points to the fact that witness AM was indeed sincere and that she was raped on several occasions but she could not specify the exact number of instances when she was raped, which is definitely a result of an extraordinary mental state at the relevant time and a consequence of the trauma that she suffered. Therefore, the Panel concludes that witness AM was forced to sexual intercourse on several occasions, and it does not insist on the determination of the precise number of instances when she was raped.

650. Based on the evidence of witness AM, as well as the evidence of the aforementioned witnesses, which has been accepted in its entirety for the aforementioned reasons, the Panel established that in the period from 7 September to late November 1993, witness AM stayed in the Vojno camp, during which time the Accused Mirko Vračević took her out of the room in the evening hours on several occasions and with threats of physical force forced her to sexual intercourse, whereby Mirko Vračević personally, acting with a direct intent, committed the criminal offense of rape in violation of Article 172(1)(g) of the CC of BiH.

10. Rape of witness AG

(count 5 Radić; count 10 Šunjić; count 16 Brekalo; count 24 Vračević)

651. Based on the presented evidence, the Panel concluded beyond any reasonable doubt that witness AG also suffered repeated rapes by a number of HVO soldiers during her imprisonment in the Vojno camp.

652. Prisoner AG did not directly testify as a witness before this court, either in the first instance or in the appellate proceedings because she suffers from the PTSD and her mental condition is such that it was impossible for her to testify directly before the court and to be cross-examined without a risk to further deteriorate her health. This undoubtedly arises from the expert evaluation report by expert witness Doc. Dr. Alma Bravo Mehmedbašić that is outlined and reasoned in detail in the part of the Verdict named Procedural Decisions.

653. It follows from the written expert evaluation report by Dr. Bravo that there has been no improvement from the most recent evaluation of the ability of witness AG to testify before the court (during the first instance proceedings), when it was found that she was not capable of testifying before the court. Her cognitive and emotional ability to process the contents associated with her

psychological trauma has not changed, therefore, no major recovery can be expected in the future with regard to the ability of witness AG to appear before the court as a witness. According to the expert witness, any further summons and pressure on this witness to testify would only re-activate her existing psycho-pathology. At a hearing held on 14 February 2011 before the Appellate Panel, expert witness Doc.Dr. Alma Bravo Mehmedbašić verbally explained her report and entirely maintained her findings.

654. Having accepted the expert witness report as objective and accurate because it was not seriously disputed by any other evidence, the Appellate Panel concluded that the legal requirements have been satisfied, same as during the first instance proceedings, to apply Article 273(2) of the CPC of BiH, which allows exceptions from the direct examination of witnesses and the use of statements given by witnesses in the course of the investigation when their presence in court is very difficult or impossible due to important reasons. In any case, the health of witness AG, coupled with the risk that it could deteriorate or that she would be re-traumatised, as the expert witness explained, amount to important reasons for the exception from the direct examination of this witness and allow the use of the statements given during the investigation - the statement given by witness AG before the Higher Court in Mostar, dated 12 April 1996, and her statement given to the ICTY investigators in the Hague on 28 June 2002. With regard to the latter, the Panel took into account that pursuant to Article 7 of the Law on Transfer of Cases, statements given to the ICTY officers during the investigation can be read out in the proceedings before the Court of BiH.

655. The Appellate Panel concludes that it follows from the statements given by witness AG during the investigation that she was repeatedly raped by a number of HVO soldiers during her imprisonment in the Vojno camp.

656. Witness AG gave a statement before the Higher Court in Mostar on 12 April 1996. She stated that she was arrested by Ivek Kolobara and Nedžad Tihak on 2 September in her flat in the western part of Mostar together with her husband, her underage child, her father, father-in-law and grandmother. They put them on a truck and took them to Đubrani, then to the Vojno camp. Mario Mihalj, Dragan Šunjić and Emir Brekalo were those who mostly abused women who were in the Vojno camp. They had to perform various kinds of labour for HVO soldiers and all that time they were humiliated and abused. Emir Brekalo and Mario Mihalj came one night, took her away over a bridge to a house, gave her an injection, so that she was half conscious and they raped her. With regard to Mihalj, the witness also stated that he used to bring unknown soldiers to select women they would take away and rape and he charged soldiers 100 Marks for that. A number of women were raped like that, she could not remember their names.

657. In the statement she gave to the ICTY investigators on 28 June 2002, witness AG repeated what she said in her statement given earlier before the Higher Court in Mostar about being arrested and brought to the Vojno camp. When they arrived in Vojno, Mario Mihalj and Dragan Šunjić met them there and started insulting them by saying “*Balijas*, now you will see what the hell is like” and the similar. They took five young women, including herself, to another room, where they raped them.

658. According to witness AG, during the three months of her stay in Vojno, she was not raped only five days. She was taken away by night and raped, she was also raped during the day, when she went for labour in the houses. Marko Maka Radić raped her three times. She was taken to the camp HQ, where he raped her and, on some occasions, three or four men in a row raped her. Mario Mihalj also raped her in the HQ. He was brutal and he slapped her in the face while raping her. His deputy, Dragan Šunjić also raped her, as well as Emir Brekalo.

659. Attached to the statement is a sketch made by witness AG where she marked the houses in Vojno she had previously described.

660. The statements given by witness AG are in general substantiated by other witnesses.

661. Witness Saja Ćorić testified to have known that witness AG was among the women who were raped and sexually abused. She knew that because some women had told her so when they were released from the prison, while she heard about some other women when they met at work.

662. Witnesses A, C, F, E also stated that, in addition to themselves, other women were also raped, including witness AG. Witness A could tell that because when they returned, they looked exactly the same as she did when it happened to her. Witness C also stated that AG used to be taken away, that the whole neighbourhood knew about it and that she suffered a lot.

663. According to witness F, witness AG was taken away every night. Witness E shared the room with witness AG and remembers that she was raped. On one occasion, witness AG showed her a needle prick on her arm, so that she assumed that witness AG was given drugs.

664. During the proceedings, the Defence denied the truthfulness of the witness AG’s statements. However, given that all other above mentioned witnesses were consistent and complemented each other, the Panel concluded that witness AG told the truth and that she was indeed taken from her room on a number of occasions and repeatedly raped by a number of HVO soldiers from September to early December 1993. The Panel gave special weight to the testimony of witness F who directly corroborated the words of witness AG about being taken away almost every night. In her testimony,

witness E, too, substantiated the statement given by witness AG and she saw a needle prick in her arm.

665. The statements given by witness AG about her arrest and her being taken away from the apartment with her family, her stay in the camp, forced labour, ill-treatment, beating and torture of her husband are also consistent with the statements of other Prosecution witnesses who were in the Vojno prison at the same time as witness AG. This directly leads to the conclusion that her statements are credible. Having that in mind, the Court did not have any reason whatsoever not to trust witness AG about many rapes committed by a number of HVO soldiers.

666. Therefore, the Appellate Panel found beyond any reasonable doubt that witness AG suffered repeated rapes by a number of soldiers and that she was a victim of the criminal offence of Rape under Article 172(1)(g) of the CC of BiH. On the other hand, based on the available evidence – statements of witness AG and other witnesses who testified about this fact – the Panel could not conclude beyond any reasonable doubt that the witness was not raped only five days during her stay in Vojno, that Marko Radić personally raped her three times and that Dragan Šunjić and Damir Brekalo raped her because these allegations were not corroborated by any of the heard witnesses, nor did they follow from other evidence.

667. As already stated, the mentioned witnesses substantiated AG's statement about being taken away and repeatedly raped, but they did not give any names of perpetrators. In contrast, witness AG was not directly examined and/or cross-examined before the court, her statement given during the investigation was not corroborated in that part by other female witnesses and evidence (unlike its previous portion). Therefore, the Panel could not conclude beyond any reasonable doubt that the Accused Radić, Šunjić and Brekalo personally raped her. In view of that fact and guided by the *in dubio pro reo* principle prescribed under Article 3 of the CPC of BiH, the Accused Marko Radić, Dragan Šunjić and Damir Brekalo had to be acquitted of the charges that they personally raped witness AG as alleged in the Indictment. The reasoning thereto will be provided in the acquitting part of the Verdict.

668. Nevertheless, the fact that the Accused are acquitted of these charges does not exonerate them from their responsibility for the rapes AG suffered in Vojno by other individuals, given that those offences (rapes by unidentified soldiers) were committed as part of the Joint Criminal Enterprise to which the Accused agreed and furthered, so that the Accused Radić, Šunjić, Brekalo and Vračević were found guilty of the rapes of witness AG by unidentified HVO soldiers as part of the JCE.

11. Sexual abuse of witness F

(count 5 Radić; count 10 Šunjić; count 15 and 16 Brekalo; count 24 Vračević)

669. Ample evidence undoubtedly shows that the charges relative to witness F are well-founded.

670. Witness F stated that she lived in her apartment in the western part of Mostar until mid August. On 15 August 1993, Kolobara, Tinjak, Hadžiosmanović and a guy who was called Zec burst into her apartment. They searched the apartment and then took her and two minor children to Vojno. When they arrived in Vojno, Mario Mihalj met them there and introduced himself as the commander, together with Dragan Šunjić, who was deputy commander. They took away all their belongings and documents, and Mihalj sent them to the rooms. Soon after their arrival, a soldier told her and witness E to go to the basement to dust some blankets. In the basement, she saw terrible conditions in which the people were quartered. After that, she was taken to the Command where Mario Mihalj was and she was told to go inside and tidy up a room. When she entered, she realized that the room was already tidied up. A soldier entered and told her to undress, but she refused. Mario Mihalj heard it and he ordered her to take off her clothes. She refused again and Mario Mihalj slapped her in the face two times, and told her to get lost, to go back to her children and she left.

671. Witness F testified that the same night Mirko Vračević ordered her to follow him to Marko Radić in order to be questioned. When she entered the room she recognized Mario Mihalj and Dragan Šunjić. Two other soldiers whom she did not know were there. Marko Radić introduced himself and said that she had to answer each question. One of the questions he asked was if she would give birth to an Ustasha, she said that she would not, but then he said that they would see about that and that they would all give birth to one. Then this fourth man told her to take a cigarette and Marko Radić told her to be grateful to Jež.

672. About ten days after that, Marko Radić, Mario Mihalj, Dragan Šunjić and a person whom other women called Damir Brekalo burst into the room searching for a prisoner who escaped. She saw Marko Radić on two more occasions, once when she went to cook for soldiers in the First Battalion, and second time on the occasion of the exchange on 2 December 1993. She stated that she went to perform labour on a daily basis, except for the first ten days.

673. According to witness F, on the fourth day upon her arrival in Vojno, Edita brought her to the camp Command, to Mario Mihalj, who told her to go to a room where a man was waiting for her “to give him some love.” Mihalj then opened the door of the room and there was a naked man lying

on the bed. When she saw that, she fainted out of fear. She does not know what was going on, but when she regained consciousness, she saw Edita washing her face and realized that she was wet. Dragan Šunjić was standing in camouflage pants, naked from waist up, and a soldier who went by the nickname Slovenac was also there. She does not know if the man who was lying naked in the room was Dragan Šunjić. After that, Edita and guard Kuna took her to the camp.

674. Five days after this incident, Rudo Ravlić ordered her to get out because she had to go to clean a house. Two men escorted her; they crossed a small bridge to get to the other bank of the Neretva River. They got to a weekend-house. There were many soldiers in one room who were watching a porn movie. One bald soldier with an ear-ring came to her and asked her if she enjoyed when doing it and ordered her to follow him. He brought her to a room and told her 'take off your clothes, you Balija woman.' She refused, but he took out his pistol and told her that he would kill her. Then he ripped off her T-shirt. She refused again and he slapped her. She fainted. When she regained consciousness she heard another soldier saying 'leave her to me, Brekalo, leave her to me Emir' and then ordered her to undress. She refused again. Then a fair-haired, tall man appeared and told them to let her go. The one who told her to undress the second time was Dario Sušac, and the bald man who tried to rape her first was Emir Brekalo.

675. The witnesses stated that Emir Brekalo ill-treated her on one more occasion. It was when she and witness A came to the military police premises as they were ordered to do the laundry and clean the bathroom, while witness A had to make lunch. One soldier told her to warm up some water, and amongst themselves they mention certain Žuti. When she entered the room, she saw witness A naked and a soldier who was standing beside her, asked her for some warm water and then told her to undress as well. She refused and he rushed at her, looking like an animal. She fainted and when she regained consciousness, she saw witness A. Soldiers were there and they addressed each other as Sergej, Žuti, Dario. She was brought back to the room where she stayed and soon thereafter Mario Mihalj and Dragan Šunjić arrived; Mario said that it would be better next time. The witness stated that she was not raped on any of the said occasions, and that each time it was an attempt.

676. Witness A said that she was arrested on 15 August 1993 and that on the way to Vojno, she saw witness F with her two minor children. Witness A described the incident when she was taken together with witness F to the premises of the Military Police when one soldier asked her to warm some water and take a bath. After that, he ordered her to take her clothes off. Knowing from earlier experience that she was in no position to refuse, she took her clothes off and went to bed with this police officer. A soldier who was in the corridor ordered witness F to get into the room

and watch what they would be doing. At one point witness F entered the room but when she saw naked witness A in the bed with this man, witness F fainted. They got concerned and ordered her to get dressed and help witness F to regain consciousness.

677. Witness Saja Ćorić and witness C confirmed that among other women witness F was taken away and sexually abused.

678. Witness B said that she was in the basement of a house in Vojno together with other women, including witness F. Witness E stated that she was arrested together with witness F and that she once went with witness F to the basement to dust some blankets, that she could sense a strong stench and that she saw a jerry can that people use to relieve themselves.

679. During the cross examination, witness F explained certain discrepancies and she was explicit in saying that she saw Damir Brekalo on three occasions and that she also saw Mirko Vračević although she did not mention it before. Having inspected all statements that this witness gave, the Panel found that this witness gave a consistent account of the said events without substantial discrepancies.

680. Based on the said statements that the Panel accepted as truthful, as previously explained, the Panel found that at the relevant period of time witness F stayed in the Vojno camp and that she was sexually abused by the Accused Damir Brekalo and Dario Sušac in the manner she described. The evidence of witness F is fully consistent with the evidence of witness A who confirmed everything as an eye-witness, stating that witness F fainted once she saw her naked in the bed. Witness B who was raped by several persons also confirmed that the rapes took place on the premises of the Military Police, and those are the same persons that witness F mentioned, too.

681. Furthermore, witness Saja Ćorić and witness C testified that they knew that, among other women, witness F was sexually abused, which is also consistent with the evidence of witness F.

682. Having evaluated these statements, which are consistent with each other and to which the Panel gave credence, the Panel finds that witness F was sexually abused in the aforementioned manner. Although witness F was not raped and although there was no penetration effected, the force, violence and threats posed to this witness caused a mental stress due to which she kept fainting.

683. The Appellate Panel qualified the said acts committed against witness F as sexual violence referring to Article 172(1) (g) of the CC of BiH which reads that: “or any other form of sexual

violence of comparable gravity constitutes the criminal offense equal to rape”. Therefore, the Panel qualified the acts committed against witness F as sexual violence.

E. PERSECUTION

(count 1 to 6 Radić; count 7 to 11 Šunjić; count 12 to 16 Brekalo; count 17 to 25 Vračević)

684. Article 172(2)g) clarifies that “persecution” is “the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity”.

685. According to this, pursuant to Article 172(1)(h) of the CC of BiH the elements of the criminal offence of persecution as Crimes against Humanity are the following:

- 1) the intentional and severe deprivation of fundamental rights;
- 2) contrary to international law;
- 3) by reason of the identity of a group or collectivity;
- 4) against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law;
- 5) in connection with any offence listed in Article 172(1) of the CC of BiH, any offence listed in the CC of BiH or any offence falling under the competence of the Court of BiH.

686. The ICTY Appellate Chamber has defined the elements of persecution as Crimes against Humanity as acts or omissions which are:

- 1) de facto discrimination and which deprive or violate a fundamental right defined in customary international or treaty law; and
- 2) perpetrated wilfully, with the intent of discrimination on one of the above-mentioned grounds, more precisely on racial, religious or political grounds.⁶⁰

687. The following elements must be proven to establish that persecution as a crime against humanity has been committed: 1. The perpetrator commits a discriminatory act or omission; 2. The

⁶⁰ Prosecutor vs. *Kvočka et al*, IT-98-30/1-A, Judgment of 28 February 2005, para 320.

act or omission denies or infringes upon a fundamental right laid down in international customary or treaty law; 3. The perpetrator carries out the act or omission with the intent to discriminate on racial, religious or political grounds. If these elements exist, the general requirements for a crime against humanity pursuant to Article 5 of the Statute have been met.⁶¹

688. The definition of persecution by the ICTY properly reflects customary international law during the relevant period, and the definition of persecution under customary international law is completely incorporated in the definition of persecution set forth in Article 172(1)(h) and paragraph (2)(g) of the CC of BiH.

689. A key constituent of persecution appears to be the carrying out of any prohibited conduct, directed against a civilian population, and motivated by a discriminatory *animus* (political, racial or religious grounds). Under customary international law in the case of persecution, the victims of crimes against humanity need not necessarily be civilians; they may also include military personnel.⁶²

690. Discriminatory acts charged as persecution may not be examined in isolation. However, the scope of offences that may qualify as persecution must be precisely defined. Therefore, it is accepted in that context that the acts of persecution must be at least as grave and serious as other offences enumerated in Article 172 of the CC of BiH.

691. In line with the Court of BiH and ICTY case law to date, the Appellate Panel adjudicating in this case also agrees that multiple acts of perpetration of the criminal offence of persecution can be viewed as one legal scope of the criminal offence of *persecution* committed as crimes against humanity that encompass other criminal offences committed with the specific discriminatory intent (the fifth element of the criminal offence of persecution). When it comes to the criminal offence of persecution, the criminal acts have to be examined together and as a whole and they have to amount to serious and obvious deprivation of the fundamental human rights with a discriminatory intent. Therefore, the previously proved criminal offences of killings, torture, imprisonment, sexual violence and other inhumane acts qualify as intentional and severe deprivation of fundamental rights in violation of national and international law, thereby satisfying the first and second element of the criminal offence of persecution.

⁶¹ *Naletilić and Martinović* (Trial Chamber), 31 March 2003, para 634.

⁶² *Kupreškić et al*, ICTY Trial Judgment, para 568.

692. In this specific case, the victims of the perpetrated criminal offences belonged to one ethnic group - Bosniak/Muslim, which clearly proves the discriminatory nature of the persecution on political, national and religious grounds, and this satisfies the third and fourth element of persecution.

693. The presented evidence undeniably shows that the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, as officers and members of the First Bijelo Polje Battalion of the Second HVO Brigade, as part of a widespread and systematic attack on the Bosnian Muslim civilian population of the Mostar Municipality and the broader area, which was committed in furtherance of the organizational policy to carry out such an attack, knowing about the attack and that their actions constituted part of the attack, persecuted the Bosniak population on political, national and religious grounds, by way of deprivation of life (killings), unlawful imprisonment, psychological and sexual abuse, torture and other inhumane acts committed intentionally to cause severe physical and mental pain and suffering, whereby they committed the criminal offence of crimes against humanity in violation of Article 172(1)(h) of the CC of BiH, in conjunction with sub-paragraphs a), e), f), g) and k) of the CC of BiH.

VII. GUILT

A. JOINT CRIMINAL ENTERPRISE

(a) Introduction

694. The Prosecution charged the accused Radić, Šunjić, Brekalo and Vračević with the direct commission of the criminal offense of Crimes against Humanity or as participants in the joint criminal enterprise (JCE). The Prosecution charged the accused Radić and Šunjić with the commission of the referenced criminal offense also pursuant to the principle of command responsibility given that they were direct superiors and had control over subordinated persons, including guards and other HVO soldiers who had different functions and duties, who visited and had access to the detainees and camp premises, namely they had the superior-subordinate relationship with those who participated in the *actus reus* of the crime. According to the Prosecution, both Accused were aware of the crimes, but none of them took any necessary measures prescribed by the law to prevent the crimes or punish the perpetrators. Furthermore, Radić and

Šunjić were alternatively charged under the Indictment that they at least aided the direct perpetration of the crimes, namely that they aided and abetted the joint criminal enterprise.

695. The legal nature of the JCE, the existence of the JCE and its application to the facts and circumstances stated in the Operative Part of this Verdict were first addressed in the examination of the grounds for the Indictment in this part. Thereupon, the Appellate Panel found the accused Radić, Šunjić, Brekalo and Vračević guilty of the commission of the criminal offense of Crimes against Humanity under subparagraph h) persecution, in conjunction with a) killing, e) detention, f) torture, g) rape, k) other inhumane acts against the detainees in Vojno which served as a camp during the period from July 1993 to March 1994. The Panel also established that, as co-perpetrators, all the Accused bear personal liability for the commission of this criminal offense within the JCE, which is, in this specific case, by its characteristics resulting from the established facts and the circumstances, categorized as type II or the so called systemic joint criminal enterprise.

696. In relation to the Indictment proposal to find the accused Radić and Šunjić liable also based on their command responsibility pursuant to Article 180(2) of the CC of BiH, this Panel recalls the case law and the view of the national Court in the Verdict of the Appellate Panel in the *Mitar Rašević et al.* Case No. X-KRZ/06/275, whose reasoning reads as follows:

„This Panel first notes that it is completely illogical to find the Accused criminally responsible for planning, instigating, ordering or committing the offense while simultaneously convicting him of failing to prevent the crime or punish the perpetrator thereof.”

The ICTY had the same view in the *Krnjelac* case, where it was stated that

“It is inappropriate to convict under both heads of responsibility for the same count based on the same acts.”

Having relied on the referenced case-law of the Court of BiH and the ICTY and the reasons of lawfulness, the Appellate Panel infers that is not possible to convict the Accused on both these grounds. Therefore, the Appellate Panel finds that, as co-perpetrators, the Accused are guilty of the commission of the criminal offense within the JCE. Notwithstanding that the elements of both types of criminal liability are integral part of the charges, the category which best characterizes the manner of the commission of the criminal offenses is co-perpetration within the systemic joint criminal enterprise.

(b) Legal Nature of Joint Criminal Enterprise pursuant to the BiH Law and Customary International Law

697. The issues of incorporation of guilt based on the JCE in the CC BiH and the application of the theory of the systemic JCE pursuant to the principle of lawfulness have been previously addressed in numerous Judgments of the ICTY and Verdicts of the Court of Bosnia and Herzegovina.

698. In the First Instance Verdict against *Mitar Rašević* and *Savo Todović*, the Panel concluded that liability based on the JCE is incorporated in Article 180(1) of the CC of BiH and that it was an integral part of customary international law at the time of the commission of the crimes in the referenced case. Furthermore, the JCE finds its basis also in Article 7 of the ICTY Statute that also has a customary status. Specifically, it is stated in the Verdict against *Mitar Rašević* and *Savo Todović* that Article 180(1) of the CC of BiH is derived from Article 7.1 of the ICTY Statute and is identical to it; that Article 180(1) became an integral part of the CC of BiH after Article 7(1) came into effect, and after the ICTY interpretation that it included specifically a JCE as a way of co-perpetration by which individual criminal responsibility or guilt is acquired. The Appellate Panel in the same case and the Appellate Panel in the *Željko Mejakić* et al. case have also upheld these conclusions in their entirety.

699. The Appellate Panel in this case fully upholds and advocates the referenced view that the JCE is a form of guilt which is incorporated in Article 180(1) of the CC of BiH, and that the responsibility based on the JCE represents a part of customary international law, which was as such an integral part of the legislation of Bosnia and Herzegovina also at the time of commission of the criminal offenses that are the subject of the Indictment in this case too, and today as well. According to the Panel, the referenced position is quite logical, acceptable and based on the law.

700. During the entire course of the proceedings, the Defence was indicating that the application of the theory of JCE constituted a violation of the principle of legality incorporated in Article 3 of the CC of BiH, Article 7 of the ECHR and that no applicable law in BiH, or the applicable law of the SFRY that was in effect at the critical time, allowed for a direct application of customary international law.

701. Contrary to the Defence arguments, the Appellate Panel concludes that the application of responsibility based on the JCE in the case of these Accused does not amount to a violation of the principle of legality because the Accused were subject to customary international law at the time of

commission of the criminal offenses pursuant to the law that was in effect at the time, and also pursuant to the currently applicable law. A guilt based on the JCE constituted a part of customary international law at the time of commission of the criminal offenses which are the subject of these proceedings. Therefore, the Accused could have logically assumed at the time that they would be criminally prosecuted for the commission of the criminal offenses based on their responsibility for the JCE.

702. Specifically, customary international law was an integral part of the national legislation long before 1993. The Constitution of BiH⁶³ and the earlier Constitution of the SFRY⁶⁴ prescribed the direct application of the regulations of the ratified international treaties, including the agreements on international humanitarian law, the Geneva Conventions from 1949 and both Additional Protocols, and Marten's clause that places civilians and soldiers under the protection of customary international humanitarian law.

703. Therefore, the Accused were explicitly liable under "the principles of international law derived from the established custom" at the time of commission of the criminal offenses, and therefore the courts were bound to apply this law, as well as they are today.

(c) Elements of General and Systemic JCE

704. The case-law of international courts, both in trials for war crimes committed during World War II, and the ICTY and the Court of BiH, distinguishes three forms of joint criminal enterprise: "general", "systemic" and "extended" form.

705. The following elements are required for the existence of the general form of the JCE:

- a plurality of persons;

⁶³ Article III. 3b) of the Constitution of BiH prescribes that „The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities”.

⁶⁴ Article 210 of the Constitution of SFRYJ-a prescribes that“ International treaties shall be applicable as of the day when they come into effect, unless the ratification documents or treaties made pursuant to the authorization of the responsible body stipulate otherwise. The courts shall directly apply the published international treaties.”

- the existence of a common plan, design or purpose which amounts to or involves the commission of a crime for which there is no necessity to have been previously arranged or formulated, and may materialize extemporaneously;
- participation of the accused in the common design involving the perpetration of one of the crimes by a form of assistance in, or contribution to the execution of the common plan or purpose.

706. 1) For the existence of guilt of the Accused pursuant to the general JCE it is necessary to establish that the Accused and other participants had the intent to commit the criminal offense (stipulated in Article 7(1) of the Statute or Article 180(1) of the CC of BiH), which represents their common purpose.

707. 2) A systemic form of the JCE is a variant of the general JCE for whose existence, in addition to the mentioned elements, also requires the existence of an organized system of abuse, the knowledge of the Accused about this system and the Accused's intent to further this system.

708. 3) An extended form of the JCE exists when (in addition to the elements of general form) one or more perpetrators also commit the criminal offense or offenses which, while outside the common design, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose.

709. For the existence of any of the mentioned forms, it is necessary that the Accused, as already stated, participated in effecting the common plan, design or purpose by committing a concrete criminal offense, either by aiding in other way, or contributing to the commission of the common plan, design or purpose.

710. It follows from the foregoing that the Accused will be found guilty if as a participant in the JCE he contributed to the effecting of the common plan, design or purpose with the intent to further the prohibited purpose, or if he personally, as the principal perpetrator, committed the planned criminal offense, or if as a co-perpetrator he aided the principal perpetrator in committing the planned criminal offense, or if by his acts he aided a certain system in which a certain criminal offense was committed based on the superior position or function of the accused and with the awareness of the character of the system and the intent to support this system. If the planned crime is committed by one or other of the participants in a joint criminal enterprise, as has already been

discussed, all of the participants in the enterprise share the equal guilt of the crime regardless of the part played by each in its commission.⁶⁵

711. In relation to the aforementioned view, as also fully upheld by this Panel, it is inferred that the JCE generated in customary international law and incorporated in Article 7(1) of the ICTY Statute, and Article 180 of the CC of BiH, also represents a form of guilt of the accomplices, in this case the co-perpetrators, who contribute to the furtherance of the prohibited common purpose by sharing the common intent.

712. *Although only some members of the group may physically perpetrate the criminal act (murder, extermination, wanton destruction of cities, towns or villages, etc.), the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. It follows that the moral gravity of such participation is often no less – or indeed no different – from that of those actually carrying out the acts in question.*⁶⁶

713. *Under these circumstances, to hold criminally liable as a perpetrator only the person who materially performs the criminal act would disregard the role as co-perpetrators of all those who in some way made it possible for the perpetrator physically to carry out that criminal act. At the same time, depending upon the circumstances, to hold the latter liable only as an aider and abettor might understate the degree of their criminal responsibility.*⁶⁷

714. This Panel fully accepts the aforementioned views referenced to by the ICTY Appeals Chamber in the *Krnjelac* case. This is so because in the concrete case against the accused Radić, Šunjić, Brekalo and Vračević, the commission of a large number of incriminating acts was established as a result of common acts of all the Accused, that is, the contribution of all the Accused that represented a key contribution to the materialization of the common criminal purpose. These acts include a large number of acts that were directly committed by the Accused themselves as principal perpetrators, while the other acts were taken by other HVO members but the Accused enabled and supported such acts by their acts or omissions and they constitute an integral part of the criminal plan. Therefore, the Accused are also liable for those acts.

⁶⁵ ICTY Trial Chamber in *Vasiljević* case, 29 November 2002, para 67.

⁶⁶ ICTY Appeals Chamber in the *Krnjelac* case, para 29;

⁶⁷ *Ibid*;

715. By taking into account the evidence adduced and the facts that ensued from this evidence, the Appellate Panel established that a systemic JCE existed in the Vojno camp during the period from July 1993 through March 1994.

716. The systemic variant of the JCE, that is, co-perpetration within the detention camp (so called JCE II), as a form of guilt, has been known in the international case law since the trials for the crimes committed in German concentration camps after World War II.⁶⁸

717. Pursuant to the views in the referenced cases, the accused were liable for their acts based on the common plan to kill and abuse the detainees and therefore they constitute war crimes.

718. The required *mens rea* is comprised of the personal knowledge of the nature of the system of abuse and the intention to further that particular system.⁶⁹ This intent can be proved either directly or by drawing conclusions from the character of powers of the accused within the camp or organizational hierarchy. The concept of common intent is applied in the cases charged for the criminal offense which were established to have been committed by members of military or administrative units, like the ones that run concentration camps, namely groups of persons who acted based on an organized plan.

719. In the summary of the *Belsen* case, the International Military Court adopted three requirements that were identified by the Prosecution as required to establish guilt in each case:

- the existence of an organized system to ill-treat the detainees and commit the various crimes alleged,
- the accused's awareness of the nature of the system; and
- the fact that the accused in some way actively participated in enforcing the system, i.e., encouraged, aided and abetted or in any case participated in the realization of the common criminal design."

720. The elements of the JCE distinguishable from customary international law are easily recognized. Therefore, for the *actus reus* of the existence of guilt based on the JCE the following is required:

- plurality of persons
- a common purpose and
- the participation of the accused by his contribution to this purpose.

721. In the interpretation of the aforementioned in terms of the systemic JCE whose existence was established in the case at hand, the common purpose is represented by the commission of one or more criminal offenses by means of "an organized system in force."

722. For the *mens rea* of the systemic JCE, the existence of the following factors is required: personal knowledge about the organized system in force and its common criminal purpose, and the intent to contribute to this system, namely to put this system into effect.

723. If the common criminal purpose includes the commission of the criminal offense that requires a special intent, as in the case of the act of persecution where it is required that the accused have a special discriminatory intent on racial, religious or political grounds, then a participant in the JCE must share this special intent. However, the common purpose, even the special one, can be derived and is frequently derived from the awareness of the existence of the plan and the participation in its materialization.

Systemic JCE in the Vojno Camp

724. The Appellate Panel established that a Joint Criminal Enterprise existed in the Vojno camp during the relevant period from July 1993 through March 1994 in which a number of persons from a number of military units and bodies participated.

725. As already mentioned above, in order to find a person guilty of the commission of crimes within the JCE, the following elements must be proved:

1. a plurality of persons;

⁶⁸ See the Judgments and the information about the cases related to the crimes committed in the concentration camps *Auschwitz, Bergen-Belsen, Dachau and Mauthausen*, that were collected by the official reporters for the United Nations Legal Reports during the trials in English, that the UN filed at the web page: <http://www.ess.uwe.ac.uk/WCC>.

⁶⁹ Judgment of the Appeals Chamber in the *Krnjelac* case dated 17 September 2003.

2. the existence of a common plan which amounts to, or involves the commission of a crime provided for in the Criminal Code of BiH, and

3. participation of the accused in the common design involving the perpetration of one of the crimes.

726. This participation need not involve the commission of a specific crime (.....), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose.⁷⁰

i. Actus reus - Plurality of Persons

727. The participation of a plurality of persons is a necessary prerequisite for the existence of JCE. However, according to the legal theories and views upheld by this Panel too, no specific form of organization is required, and it is not necessary to limit the enterprise to a membership in one or any organization. A number of persons from several different organizations-units may join together to create a criminal system. For this reason, the question of whether all Accused were members of the same military unit during the critical period (1st Battalion of the 2nd Brigade), on which the Second-accused and his Defence particularly insisted by submitting that he was a member of other units, that is, the military police, becomes irrelevant.

728. The Trial Chamber in the *Kvočka* case established that, in the Omarska detention camp, persons who participated in the systemic JCE included outside investigators, internal guards, employees of the mine on whose property the camp was located, members of the local Crisis Center, special external security units and members of the Territorial Defence.

729. The success of the systemic JCE requires the participation of a plurality of persons who are implementing the system of persecution by their joint actions.

730. A group of people existed in the Vojno camp which performed different tasks, had different functions and duties. As already mentioned, certain HVO members were tasked with arresting women, children and the elderly around West Mostar and taking them to Vojno. The detainees from Heliodrom were transferred to the Vojno camp based on the requests made by the 1st Battalion

⁷⁰ Appeals Chamber in the *Tadić* case para. 227;

of the 2nd Brigade or the Second Brigade, and the responsible SVIZ persons acted upon such requests. The Commander of the *Ivan Stanić Čičo* Special Unit from Bijelo Polje and the HVO Second Brigade had control over the staff in the Vojno camp and the persons from his units who apprehended the detainees. The Deputy Warden and the guards in the Vojno camp had a daily control over the detainees in Vojno, without which they would not have been unlawfully detained or available to other persons to abuse, rape and kill them.

731. The staff in the Vojno camp were the persons who met these detainees, questioned them, instructed them how to behave, interned them around the facilities and rooms, selected the persons to perform labour.

732. The guards secured the detainees, took them out of their rooms and handed them over to different soldiers who would come to take them to work, or they would personally take them to perform labour.

733. All the Accused, each in his own way, had effective control over the detainees in the Vojno camp. They committed crimes personally and enabled others to commit crimes. The Accused actively participated in the systemic JCE, maintained and strengthened this system, or contributed to the system and the commission of crimes. Even though not each participant personally participated in the commission of all crimes, which is not necessary, they all contributed by their acts in a decisive manner to the overall criminal purpose.

734. Specifically, as members of the JCE, the Accused cannot be exculpated by the fact that they did not personally participate in the commission of all the crimes committed in Vojno of which they were found guilty, since it is quite sufficient that by their acts or omissions they gave a decisive contribution to the commission of these crimes, supported them or shared the same criminal intent and purpose.

735. In addition, the Appellate Panel concludes that the JCE in the Vojno camp could not have existed independently, or only with the participation of the Accused. The fact of taking civilian Bosniaks from Mostar to the Vojno camp were known and supported by certain structures of the HVO and the HZ HB, as well as establishment of the prison camp and the taking of detainees from Heliodrom to Vojno, as ensues from the ICTY adjudicated facts in the Naletilić-Martinović case. The fact that many detainees from the lists of the taken persons never returned to Heliodrom was also known and documented by ample evidence. Other crimes that took place during the camp existence could not have remained unnoticed. On the contrary, the existence of the camp and the commission of crimes exactly depended on the support of crimes and failure to prevent them.

736. In any case, it undoubtedly ensues from all the foregoing that the first requirement for the existence of the JCE in relation to the *plurality of persons* has been satisfied.

737. In this respect, the Panel concludes that the JCE system in the Vojno camp could not have existed without the acts of “other” participants in the JCE in addition to the Accused. However, they were not included in the Indictment by their names and therefore will not be the subject of further observations.

(ii) The Acts Demonstrating the JCE

Establishment and Existence of the Vojno Camp.

738. The purpose of the system itself in the systemic JCE is "the commission of crimes which may be considered as common to all the perpetrators beyond a reasonable doubt." It is not necessary to prove an explicit agreement with the crimes to be committed by the system, while the purpose may be created with or without a formal design.

There is no necessity for this plan, design or purpose to have been previously arranged or formulated. The common plan or purpose may materialize extemporaneously and be inferred from the fact that a plurality of persons acts in unison to put into effect a joint criminal enterprise.⁷¹

739. This Panel fully accepts the foregoing views. The Panel also accepts the view that lacking the evidence on formal consent or plan, sufficient evidence must exist to satisfy a trier of fact beyond a reasonable doubt with the facts of the existence of JCE. This conclusion can be based on the evidence that the participants took part in unison or in couples, in the repeated character of the criminal offenses of similar nature and the evident commission of the criminal offenses.

740. According to the Panel, the establishment of any camp, including the Vojno camp, is a complex work and, as such, requires joint actions of a plurality of persons. Notwithstanding that it was established that the Vojno camp comprised only a few facilities: the command, two houses and a garage and was not fenced, nor could one conclude by its outward appearance that it was a camp, except that the rooms with the detainees were locked up, and guards were in front of the doors, it

⁷¹ *Tadić*, Appeals Chamber, para. 227.

still was a place which, if not by its form then by its contents, regardless of how it was called (prison, shelter, private prison) was a camp because detainees were unlawfully confined there in inhumane conditions, in addition to forced labour, against whom different crimes were committed which by their nature represent the acts falling under the scope of the criminal offense of Crimes against Humanity.

741. Given its purpose, location, the length of the time period during which it existed, the establishment and the existence of the camp was not possible without the knowledge and the use of HVO resources.

742. The establishment of the camp, in addition to the arrests of the civilian population, constitutes the first phase of the creation and functioning of the system of abuse that was implemented therein.

743. The existence and the functioning of the camp irrefutably ensue from a large body of subjective and objective evidence.

744. According to the Panel, even though it is not possible to establish the direct participation of the accused Šunjić, Brekalo and Vračević in the act of establishment of the camp itself, this fact is not essentially important. This is so given that subsequently, during the functioning of the camp, all the Accused, and each by his own actions, contributed in a decisive manner to the camp functioning, that is, to the maintenance of the organized system of abuse of the detainees.

745. The settlement of Vojno, in which the persons were detained, is located in the territory of the Municipality of Mostar, north of Mostar, on the right bank of the Neretva River, a couple of hundred meters from the Sarajevo-Mostar main road. This settlement belongs to a wider geographical area called Bijelo Polje.

746. The camp included the command building, located in a privately-owned house. Next to the command there were two privately-owned houses in which women and children were imprisoned, while men were held in the basement of one of the houses, as well as in a garage located in the yard of the house in which the prison command was located and in which male detainees were held.

747. It undoubtedly ensues from the statements presented during the explanation of the criminal offenses addressed in the separate sections of this Verdict that the civilians, including the witnesses Saja Ćorić, Dika Ćurić, A, E, F, C, R, K, D, AM, AG, AI, J, 153, X, that the men who were transported from Heliodrom to Vojno, including the witnesses AK, AA, Ramiz Mačković, Azer Handžar, Ramiz Bebačić, AL, Semir Humačkić, Aziz Suljević, Hamza Leto, 151, Hasan Trtak,

Ibrahim Šogolj, AF, Zulfo Humačkić, Aziz Dautbegović, AE, 154 were detained in the facilities (two houses, a basement and a garage), where they all spent a certain period of time within the period of time related to the charges.

748. The arrests of civilian women, children and the elderly, the unlawful detention of men, the detainees from Heliodrom who were brought to perform forced labour, were already addressed in the part of the Verdict addressing the detention under Article 172(1)(k). Therefore, it appears redundant to explain these facts again.

749. Ample documentary evidence also speaks in support of the fact that Bosniak women, children and the elderly were unlawfully arrested around Mostar and brought to the Vojno camp, and that the Bosniak men were brought from Heliodrom to Vojno.

750. Also, it is evident from the Report of the SVIZ Warden (*Central Military Investigative Prison*) Stanko Božić No. 676/93 dated 14 September 1993 that on 6 July 1993 the 1st Battalion of the 2nd Brigade took 8 detainees to perform labour. Out of these 8, 6 detainees were returned, whereas detainees Rasim Lulić and Mustafa Čilić were not returned. The same Report says that on 11 September 1993 information was received from the so-called Commander of the privately-run prison in Bijelo Polje, Mario Mihalj, that 7 detainees who had been brought from SVIZ were killed.

751. Based on the Order of the Mostar Defence Sector dated 19 August 1993 it follows that 50 detainees were taken from the SVIZ Heliodrom for the needs of the 1st Battalion of the 2nd Brigade and that Dragan Šunjić was responsible for them. With regard to this, there is also the SVIZ Report number 636/93 which says that, on 19 August 1993, 50 detainees who were secured by Dragan Šunjić, were handed over to the 1st Battalion of the 2nd Brigade.

752. The Report of the SVIZ Warden No. 698/93 of 22 September 1993 shows that the prison in Bijelo Polje was “a privately-run prison”. In the same Report, with regard to the accused Dragan Šunjić, it was noted that he had sent a letter as the so-called Commander of this prison. Enclosed with this Report is also the letter dated 15 September 1993, written and signed by Prison Commander Dragan Šunjić, in which he reported that “on 15 September 1993 detainee Selim Alilović was killed while digging a ditch in Vojno”.

753. In addition, the Report of the SVIZ Warden dated 18 September 1993 stated that there were many cases of the abuse of detainees in “the privately-run prison” in Đubrani. The Report on the visit of the ICRC to the POW accommodation facility, which was made by the HR HB /*Croat Republic of Herceg-Bosna*/ Ministry of Defence, No. 02-4-1/94-104 dated 31 January 1994, shows

that 60 detainees performed labour in Vojno, whereas Mario Mihalj, a member of the Bijelo Polje Battalion, abused his position, abused the detainees and killed them. Among the documentary evidence related to the existence of the prison in Vojno, the Prosecutor's Office also tendered into the case file the Statement of the detainees who returned from "the Vojno prison" having arrived in Vojno in two groups on 8 November 1993 and on 17 November 1993, and returned to Heliodrom on 28 January 1994. The certified copy of the Heliodrom Log Book shows that on 7 March 1994, 25 prisoners returned to Heliodrom from the Vojno prison. The return of these detainees took place based on two Orders of the 2nd Brigade Commander Marko Radić, dated 27 January 1994 and 6 March 1994, who issued an order to all units of the 2nd Brigade that all the detainees be returned to the Heliodrom detention centre, based on the Washington Agreement, with the aim of releasing the detainees and normalizing the relations.

754. In addition to the described documentary evidence, the other evidence stated in Chapter VI of the Verdict, Paragraph A/a), undoubtedly indicates that the Bosniak men, detained in Heliodrom, were brought to the Vojno camp on several occasions, in different groups and in different time intervals.

755. When it comes to the persons who arrested the Bosniak civilian population around the western Mostar and their membership in the military formations, which was addressed in the part of the aforementioned Verdict Chapter, Paragraph A(a), it was undoubtedly established that among those making the arrests were Nedžad Tinjak, Nedžad Ćorić, Ivica Kolobara, Emir Brekalo, Amel Hadžiosmanović, Dario Sušac, and that they were primarily members of the 1st Battalion of the 2nd Brigade HVO, whose superior was Marko Radić.

756. Therefore, it undoubtedly ensues from the aforementioned evidence that members of the 1st Battalion of the 2nd Brigade, and the *Ivan Stanić Ćiće* Special Unit, arrested civilians and supervised and controlled the Vojno camp during the entire period of its existence.

757. The organization in the Vojno camp and the role of the persons who performed certain functions in the camp itself were undoubtedly established.

758. During its entire period of existence, the Vojno camp was within the zone of responsibility of the 1st Battalion of the 2nd Brigade HVO, whose superior was Marko Radić. This will be addressed in more detail in the explanation of the guilt of the accused Radić.

759. It ensues from the consistent statements of the witnesses AI, J, K, Semir Humačkić, AI, Ramiz Bebačić, et al. that Mario Mihalj was Commander of the Vojno prison, and that the accused

Dragan Šunjić was his Deputy Commander. Even though their functions were not formally-legally defined in terms of the existence of a separate decision appointing specifically Mario Mihalj and Dragan Šunjić to the posts of the Commander and the Deputy Commander respectively, the fact that they effectively performed these functions ensues from the statements of a large number of witnesses and the mentioned documentary evidence in which these persons were mentioned in the capacity of the camp Commander and Deputy Commander. The accused Mirko Vračević was a guard. This fact ensues from the testimony of all witnesses-detainees, and the Defence for the accused Vračević did not contest it either.

760. The accused Brekalo was a member of the 1st Battalion of the 2nd Brigade HVO during the period from November 1992 through 30 September 1993, and from 2 April 1994 through 19 April 1994. He was also a member of the Convicts' Battalion from 24 December 1992 through 1 January 1994. The foregoing ensues from his personal file. His membership in the Convicts' Battalion was also established from the other documentary evidence.⁷² In addition, it ensues from the statements of a large number of the witnesses, particularly the testimony of witness Saja Ćorić, witnesses A, D, K, AF, Ramiz Bebanić et al. that the accused Brekalo visited the camp and that the witnesses saw him in the Vojno camp.

761. Based on all the mentioned pieces of evidence, which are mutually consistent and supplement each other, the Appellate Panel established that the Bosniak civilians (women, children and the elderly), who were first arrested in an unlawful and intimidating manner in order to instil fear in them right from the start, and the Bosniak men who were brought from Heliodrom to Vojno, were detained there already from early July 1993 through 7 March 1994, when the Commander of the 2nd Brigade Marko Radić issued two orders, dated 27 January 1994 and 6 March 1994 respectively, to all units of the 2nd Brigade to return all Bosniak detainees to the Heliodrom detention centre.

762. The Appellate Panel concludes that the establishment and existence of the Vojno camp is certainly one of the segments of the existence of a widespread and systematic attack directed against the civilian population of Bosnian Muslims in the Municipality of Mostar by members of the army of the Bosnian Croats (HVO) and its military police, whose members the Accused were. Subsequently, during the existence of the camp, all elements of persecution on political, religious

⁷² *Evidence of the BiH Prosecutor's Office*: List of soldiers of the Convicts' Brigade dated 2 June 1993, signed by Marko Radić, List of members of the Convicts' Brigade „Ivan Stanić Ćićo“, made by Marko Radić on 27 June 1993; List of soldiers of the Convicts' Brigade who should be issued with decisions for apartments dated 2 June 1993.

and ethnic grounds were evident in the camp as a framework in which the Bosniak population was subjected to different acts, first the arrests and unlawful detention, and thereupon the killings, torture, rape and other inhumane acts under Article 172(1) of the CC of BiH.

763. By their external characteristics, primarily the number of victims, the number of proved criminal acts of commission, these offenses demonstrate that they are a result of an organized and systematic persecution in which the Accused participated consciously and had their roles.

The Initial Phase: Arrests, Admission and Interrogation of Detainees

764. During the proceedings, the Defence indicated and the Appellate Panel accepted the Defence argument that on 30 June 1993 the BiH Army attacked the HVO units in the territory of Bijelo Polje and captured a major portion thereof.

765. The said attack is not subject of the charges in the indictment and therefore the Panel will not deal with it here, but it is undoubtedly established that after a while, in July 1993, the camp of Vojno was established in the settlement of Vojno, which belongs to the territory of Bijelo Polje which remained under the control of the HVO First Battalion commanded by Radić, and after 30th of June 1993 remained under the control of the 1st Battalion of the 2nd Brigade HVO.

766. According to the facts ensuing from the available evidence, a system of organized abuse was implemented in the Vojno camp, which was apparent from the methodical and mass taking of different incriminating actions against the detained persons.

767. The first phase, which we can say lasted not only in the beginning, but also during the entire critical period as new groups kept coming in, represented a process of unlawful arrest of civilians, mostly women, children and the elderly who lived in the western part of Mostar, and their detention in the Vojno camp. The most frequent arrests took place in July, August and September. Also, during the entire period of the camp existence, Bosniak men were brought from Heliodrom to Vojno to perform forced labour. They were all detained in inhumane and humiliating conditions, fully unfit and undignified for people to live in, particularly for children and the elderly who were also arrested and detained, as already established.

768. In their testimony, many Prosecution witnesses emphasized that they were arrested as civilians in their homes in Mostar by members of the HVO, mostly the same persons, including Ivica Kolobara aka Ivek, the accused Damir Brekalo, Jure Kordić, Nedžad Ćorić aka Nečko, Amel Hadžiosmanović aka Doktor, Nedžad Tinjak aka Žuti. They were all members of the 1st Battalion and the *Ivan Stanić Ćiće* Convicts' Battalion who were under the command of the accused Radić. Many witnesses confirmed these facts in their statements.⁷³

769. The Vojno camp additionally served also as a centre for detained men who were brought from Heliodrom, where they had been also unlawfully detained, to perform dangerous and hard forced labour on the frontline. This was confirmed by the statements of a large number of witnesses, including the witnesses AK, AA, AD, AF, Ramiz Mačković, Azer Handžar, Ramiz Bebanić, Semir Humačkić, Aziz Suljević, Hamza Leto, Hasan Trtak et al., and the ample documentary evidence⁷⁴. All these witnesses confirmed that they were brought from Heliodrom to Vojno to perform different kinds of labour for the HVO needs.

770. The system of intimidation would start immediately upon the detainees' arrival in the camp. All detained persons went through almost the same procedure of interrogation and "admission". It was mostly Mario Mihalj and Dragan Šunjić who met the detainees on their arrival. This fact was consistently confirmed by the female witnesses: A, E, D, C, B, F, J, the witnesses AI, AB, 153, 152, Hasan Trtak, Hamza Leto, Ibrahim Šogolj. On this occasion, they would personally introduce themselves as the Commander and the Deputy Commander of the camp, or Mario Mihalj would do it by introducing himself as the Commander, and Dragan Šunjić as his Deputy Commander. All witnesses-victims of detention in their testimony mentioned an almost identical manner of their admission in the camp, which was reflected in the fear and repression spreading among each newly-arrived group.

771. Specifically, the detained civilians and the men brought from Heliodrom would upon their arrival be lined up in front of the prison command building or in front of the garage. Present there on such occasions were Mario Mihalj, the prison Commander, and Dragan Šunjić, Deputy Commander, and sometimes also Mirko Vračević. The demonstration of power would start immediately, the creation of an atmosphere of fear and terror in the way that Mario Mihalj would welcome them with the words "Welcome to the black hell", and frequently with "I am the Black Satan".

⁷³ See section VI chapter A a) of this Verdict.

⁷⁴ See Section VI chapter A a) and A b) i) of this Verdict.

772. Both men and women had to introduce themselves immediately first by saying their first name and then their surname. Due to the situation in which they were and the fear that they felt, many detainees frequently did not understand that they should first tell their first name and then their surname, so they did it vice versa, as they used to do before. Because of doing so, they were slapped so they could immediately upon their arrival understand what would be happening to them if they fail to comply with the instructions of the superiors unconditionally. The same situation was when they had to say the year of their birth, and when they would say *hiljada* instead of *tisuća* to refer to “thousand”, they would also feel on their back the rage of their investigators. Thereupon, Mario Mihalj or Dragan Šunjić, and frequently Mirko Vračević too, would give them the instructions for behaviour in the camp (they had to address them with Sir Commander, Sir Deputy Commander, Sir guard, they had to stand up upon their entry and stand still with their heads bowed, including even children, and alike).

773. The witnesses 151 and Azer Handžar testified that upon their arrival in Vojno they were lined up and thereupon Dragan Šunjić and Marijo Mihalj brought two detainees and showed them their bodies which were all black and blue as a result of beating, so that the other detainees could see what awaited them if they failed to comply with the orders.

774. Witness AI testified that upon their arrival in the camp they were met by Mario Mihalj and the accused Šunjić with the words “Welcome to hell! Few will ever get out of here!” This terrified him. Thereupon, he was taken to the room where he was interrogated. Mihalj and the accused Šunjić punched and kicked him there, and beat him with a baton, while an HVO soldier hit him with a pistol and put the pistol into his mouth.

775. Witness 153 testified that upon their arrival in Vojno they were met by Mario Mihalj, the camp Commander, and his Deputy Dragan Šunjić. Immediately upon arrival, he was slapped by Mihalj, and Dragan Šunjić was also present there.

776. Witness B stated that the house in which she was taken immediately upon her arrival was the command post of Mario Mihalj and Dragan Šunjić, that Mario introduced himself as the Commander of the camp, and Dragan Šunjić as the Deputy Commander. Since the witness did not introduce herself “properly“, Mario slapped her twice.

777. Witness J testified that Mario Mihalj and Dragan Šunjić met them with the words „Welcome to the black hell!“ Mario Mihalj introduced himself and told them that he was the Commander, and Dragan Šunjić his Deputy Commander, and that they had to address them with “Sir.” The detainees brought there had to introduce themselves by first telling their first name, and then the last name.

Since the witness D had first said her last name and then her first name, Dragan Šunjić cursed her Balija's mother. A guard, Mirko Vračević aka Srbin, also stood in the corridor. At one moment, he approached her, and put a knife to her throat, and said "*The fox is brought to the furrier.*" Then Marko Radić, Dario Sušac and another soldier came in. They started taking them in and interrogating them. Emir Tihak was the first one to enter, and he went out all covered in blood, with blood in his mouth, all black and blue.

778. It undoubtedly ensues from the foregoing facts that the rules of behaviour of which the detainees were notified immediately upon their arrival were also important in the implemented system of intimidation and humiliation. These rules implied that they had to put their hands behind their back, they were not allowed to talk among themselves, they had to address Mihalj and Šunjić with "Sir", they had to stand up when the superiors entered, giving instructions to the detainees and the manner in which it was done, speak in support of the fact that the intention of the participants in the system of abuse was to create with the detainees immediately at the beginning a model of behaviour steeped in fear for their own lives.

779. It is obvious from the foregoing that the criminal actions were taken against the detainees immediately upon their arrival in the Vojno camp. Specifically, the unlawful deprivation of liberty and apprehension were followed by a "welcome" which consisted of interrogation, abuse, humiliation and beatings in order to intimidate and humiliate the detainees, and subsequently, while the detainees were held in the camp, other incriminating acts were taken against them such as forced labour, torture, rapes, murders and other inhumane acts.

780. After the unlawful detention of civilians and prisoners, other crimes followed as a result of the criminal plan (forced labour, torture, rapes, murders and other inhumane acts).

781. Bearing in mind the foregoing, the Appellate Panel concludes that there is no doubt that all these acts in their entirety constituted a form of an organized criminal system, established with a view to persecuting the Bosniak population, that is, with the discriminatory intent on ethnic, religious and political grounds.

Living Conditions in the Camp and Forced Labour

782. During the proceedings, it was undoubtedly proved that the living conditions in the camp were rather difficult for the detainees, and by any standard beneath the needs of a human being. As already stated a number of times, and particularly in the part of the Verdict addressing the inhumane

acts⁷⁵, the Panel will here briefly refer to the accommodation, the living conditions and to taking the detainees to perform forced labour.

783. It ensues from the statements of a large number of witnesses that men were kept in the basement of one house and in a garage, and women and children in the rooms of two houses.

784. A review of the sketch of the crime scene made by SIPA on 17 July 2006 showed that the referenced garage consisted of one room measured 6 by 4 meters, and another smaller secondary room, which measured 3.5 by 4 meters.

785. Witnesses AI, AD, Ramiz Mačković, Semir Humačkić consistently testified that they were held in a garage with 50-60 men, while witness Zulfo Humačkić stated that at the time when he was held in the garage, there were 65 to 70 men.

786. The mere fact that 50-60 or more people are held in such a space at the same time speaks about how difficult it was to live in such a space, that is, speaks about the non-existence of minimum conditions for a dignified life.

787. Also, there were no windows in the basement in which the detainees were held, that is, no light, water, or toilette. Many witnesses testified that there was a bucket in the corner of the basement in which they took care of their bodily functions, and that the living conditions were awful and unbearable. The same thing applied to the garage which had an antechamber where they relieved themselves and which was used for putting aside their footwear.⁷⁶ Witness E stated that on one occasion, when she went with the witness F to shake out the blankets from the basement, she saw in the corner a bucket for taking care of bodily functions and felt a bad smell, and that she could not believe in what conditions those men lived. There was no sufficient food or any conditions for personal hygiene.

788. The living conditions in the rooms where the women and children were kept were the same.

789. Witnesses J, C and D testified that they lived in the rooms of the house which were small, that around 13-30 women, children and the elderly women were held in a single room, and that they slept like sardines. Witness A stated that she slept on the floor with her children, without blankets. Witness J stated that there was no electricity or water in the room in which they were held, and the floor was made of concrete. There was insufficient wood, but they were very often given pork meat

⁷⁵ See section VI chapter Ab) of this Verdict.

which they, as Muslims, do not eat. They received no means to take care of their personal hygiene. Witness E stated that they had bath with cold water without soap, and had only the cloths in which they were arrested.⁷⁷

790. All the Prosecution witnesses, both the detained women and the men, are equally consistent in describing the living conditions which were very difficult indeed.

791. There is no doubt that the victims who were kept in inhumane conditions, detained in cramped rooms, with insufficient food and water, no means to take care of their personal hygiene, were in the state of despair, subjugation, hopelessness, fear for their own lives. These conditions were certainly beyond any common human experiences.

792. All detainees performed forced labour. The Panel concludes that the primary reason for bringing the detained men from Heliodrom was exactly to perform labour for the HVO needs. Both women and men were taken to perform labour. Most frequently, men dug trenches and ditches, chopped woods, and did other different jobs as ordered. This labour was very frequently performed at the very frontline. Women did the washing, cooking and cleaning for the HVO members. They all worked under coercion, they did not dare object (when they came, they were told that they must comply with all orders without any objection), without any fee, most frequently from the morning until dark, and were beaten, abused and humiliated while doing so.⁷⁸

793. The purpose of the inhumane conditions and forced labour, in addition to securing the labour force to the HVO, was to exploit the detainees as much as possible, except the elderly ones, and to demoralize them, weaken, intimidate, humiliate them and thus secure order and obedience.

794. In considering the described living conditions and the forced labour in terms of their overall characteristics as “other inhumane acts” within the Crimes against Humanity, in the manner as described and as established to have been committed, the Panel concludes that the purpose of the incriminating acts through which these offenses were committed was to make the life of the detainees as difficult and unbearable as possible.

⁷⁶ Ibid.

⁷⁷ For more details see section VI chapter Ab) of this Verdict.

⁷⁸ See section VI chapter Ab)i) of this Verdict.

Murders, Torture, Rapes

Murders

795. During the proceedings, it was established beyond a reasonable doubt that a large number of incriminating acts were committed in the Vojno camp and that by their characteristics they represent the acts of murder, rape and other inhumane acts within the criminal offense of Crimes against Humanity under Article 172(1) of the CC of BiH. Some of these acts were committed by the accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević personally, while the others are a result of the acts of commission of other persons. However, the Accused are also responsible for these acts based on their participation in the joint criminal enterprise since such acts of the others are also a part of the criminal plan and the intent.

796. It was undoubtedly established from the consistent testimony of the witnesses and the available documentary evidence that the detainees from the Vojno camp: Mesud Dedajić, Hamdija Tabaković, Džemal Sabitović, Mustafa Kahvić and Mensur Salman were deprived of their lives while they performed forced labour on the frontline. Also, the detainees Mustafa Čilić and Rasim Lulić, who were among the first detainees in the Vojno camp, were on one night called to come out of the basement and never returned since, were never seen again, and their bodies were exhumed and identified. Detainee Asif Čakrama was killed in September on the road toward Vojno by the accused Mirko Vračević. Mario Mihalj killed Salim Halilović because he had told him that he could not work because he suffered from a heart disease.

797. One of the most heinous murders took place after the death of one HVO soldier. On this occasion, the detainees who failed to properly carry the wounded and then deceased soldier, were subjected to retaliation and thereupon killed. Those were Aris Začinović, Enver Kajtazi, Husnija Ćorajević and Željko Čakalović. The morbidity of this incident was described by the only person who survived and witnessed the beatings and the subsequent killing of these four detainees, witness AB, who avoided the same destiny by escape.

798. None of the Accused ever tried to prevent the murders. On the contrary, their actions were encouraging, decisive and sent a message that murders could be committed with no obstructions.

799. The exposure of the detainees to cross-fire while performing forced labour frequently resulted in the death of the detainees. Such death was a natural and predictable consequence of the acts of the Accused who had consciously and intentionally exposed the detainees to such a danger by forcing them to work on the frontline under sniper and cross-fire.

800. Analyzing the referenced murders, the Panel concludes that all murders, whether committed by the Accused personally (murder of Asif Čakrama by Mirko Vračević), or in the presence of the Accused, or on the frontline as they were exposed to cross-fire, were committed with the existence of a discriminatory intent, with a view to effecting the common purpose of the criminal system.

801. The Defence teams for the Accused frequently submitted that the Accused were not present when the killings took place, and when other crimes were committed against the detainees. According to them, this is a sufficient reason to acquit the Accused of the responsibility for the killings and other offenses charged against them, which they did not commit. They also submitted that the Accused did not take the detainees to forced labour, and that the detainees did not work in the territory which was within the zone of responsibility of the 1st Battalion. However, as already stated on several occasions, it is fully clear that the detained men were taken from Heliodrom to Vojno to work for the benefit of the HVO, and that some of them were killed while they worked at the frontline. It is not of decisive importance to define precisely the location in the territory of Bijelo Polje where they worked, and whether this location was in the zone of responsibility of the 1st Battalion of the 2nd Brigade. According to the Panel, the important decisive fact which was indisputably established is that the detainees were brought from Heliodrom to Vojno upon the request of the 1st Battalion of the 2nd Brigade, that they were every day taken from the camp to perform labour on the separation frontline between the HVO and the ABiH, and thereupon returned to the camp which was under the control of the 1st Battalion of the 2nd Brigade, whose Commander was Marko Radić. Therefore all the Accused who had control over the detainees' lives during their detention in Vojno are responsible for all the incriminating acts taken against the detainees during their detention. These acts constitute a part of their criminal design of behaviour and relation toward the detainees.

Torture

802. Torture was present in the camp on a daily basis. In addition to torture, other forms of mental and physical abuse were carried out against the detainees. The Appellate Panel established beyond a reasonable doubt that a large number of detainees were tortured in the Vojno camp,

including: Mustafa Čilić and Rasim Lulić, Arif Omanović, Avdo Jelin, AI, AB, 153, Enver Tihak, et al.⁷⁹

803. Many witnesses described that they were punched and kicked, hit with different implements, tortured and abused in different ways, even by the application of electric shocks, forced to beat each other, to bang their heads against the wall, and alike. The accused Šunjić, Brekalo and Vračević personally participated in these acts. The accused Marko Radić could not have been unaware of these acts, namely, he knew about them and, by his relation to the referenced behaviour of the other Accused, and other HVO soldiers, he supported such actions of his subordinated soldiers, and the others who came into contact with the detainees in different ways. There is no doubt for the Panel that tortures were also part of the criminal enterprise, namely that they represented the purpose of the criminal system.

Rapes

804. The Vojno camp was the place where a large number of rapes were committed. Some rapes were committed by the Accused personally, while other rapes were committed by persons whom the Accused enabled to rape the detained women while they were held in Vojno.

805. The raping of women started immediately upon the establishment of the Vojno camp. The witness 001, who was detained already in mid July, stated that she went to complain to the Commander of the 1st Battalion Radić because Mario Mihalj had attempted to rape her daughter.

806. Underage witnesses L and X were raped by the accused Brekalo in July 1993. In the same month, witness X was a victim of sexual violence by the accused Marko Radić. In August, witness A was raped first, and she was twice raped by the accused Marko Radić, who also sent soldier named Ivan to rape her, while a several days later the same witness was raped for the third time by the accused Radić. In September, the accused Radić raped witness D in the command of the 1st Battalion, while in the same month Brekalo raped witness D twice, together with Dario Sušac. In September, witness C was also raped by Brekalo and a soldier named Marko.

807. Witness AM also testified that she was repeatedly raped by Mirko Vračević. While she was in Vojno, witness B was raped on the police premises by Dario Mihalj, Tomo Aničić, and soldiers

⁷⁹ See Section VI chapter C of this Verdict

named Babo and Sergej, while the accused Šunjić had brought her to the police building. Witness F was sexually abused by the accused Brekalo and Dario Sušac. Witness E was raped by Mirko Bukara after the accused Radić had told her earlier to go with Mirko Vračević, who took her to the house where Bukara raped her. Witness J was raped by soldier Dragan Škobić who had earlier visited Marko Radić, and took them to the other side of the river Neretva by boat.

808. It is evident that those were numerous committed acts of rape. It is also evident that the rapes were committed since the mere establishment of the camp, namely since mid July and during the entire period of its existence. A large number of the raped women, some of whom were raped and sexually abused for several times during one and the same day, or for a number of times during a longer period of time, including minor girls, suggests the conclusion that the rapes and sexual abuse, in addition to the other acts, were an integral part of the criminal system of persecution since they were committed with a discriminatory intent against the Bosniak women.

809. All the foregoing indicates that the camp itself was not a common detention place where Bosniaks were placed and taken care of before the expected exchange for the captured Croats, as claimed by the Defence for the accused. In that regard, it should be noted that the Bosniaks were not detained in Vojno at their own request, nor by their own free will, in order to find shelter from war, but were forcibly brought there with brutal mistreatment. They were detained without any decision by the relevant authority, in contravention of the statutory procedure, in the atmosphere of fear, torture and anticipation of crimes they were told to expect immediately upon their arrival in Vojno, and which then took place on a daily basis (beatings, killings, rapes etc.).

810. With reference to the mentioned defence theory regarding the reasons for detention and the establishment of the Vojno camp exclusively for the purpose of effecting an exchange for the Croats captured by the Army of BiH, it should be noted that any displacement of civilians, if not a result of their free will, constitutes an act specifically prohibited by the Geneva Conventions and a gross violation of international humanitarian law, which is why the defence theory, even if that were the only motive and reasons for the detention of civilians and establishment of the camp, is still unacceptable, especially taking into account the crimes that followed (killings, rapes etc.), which have absolutely nothing to do with any exchange and can in no way be justified by any such exchange whatsoever.

811. According to this Panel, the Vojno camp represented a point that was a connection with other crimes. The crimes committed did not represent individual or accidental incidents. All the crimes committed were mutually systematically and thematically connected. Specifically, the existence of the camp was a necessary and fundamental part of the system because the civilians (women, children and the elderly), the detainees from Heliodrom were first brought to the camp, and were subsequently, during the detention, subjected to crimes in the camp or outside it. All crimes, murders, rapes, torture and inhumane acts were committed while the detainees were held in Vojno and depended on the acts and omissions of the staff and the persons who were related to it, wherever the final points of the crime were.

812. Notwithstanding that certain crimes were committed outside this camp (such as certain rapes, or killings during the trench-digging), the existence of the system is not related only to the camp, or one micro-location such as Vojno, but on the contrary, the existence of the camp in Vojno represented a link in the chain of a widespread and systematic attack on the Bosniak population of the city of Mostar and the wider area (a large number of detainees were from other territories) with the goal to persecute them. The persons who committed the referenced crimes were directly connected with the Vojno camp itself. These were the persons who participated in the establishment of the prison, who had effective control of the prison. The prison personnel, particularly the Commander and the Deputy Commander, the guards and soldiers all had free access to the detainees, exercised effective control over them and had freedom to behave toward them as they saw fit.

813. Ample evidence indicates that all the Accused knew each other very well and had frequent mutual contacts. Even though not all Accused were present in the camp during the commission of individual criminal acts, other Accused were frequently present when one Accused committed certain crimes. However, regardless of whether the Accused committed an act personally or not, or whether they were present during the commission of each individual criminal act or not, all the Accused were aware of these acts, which all together constituted an integral part of the criminal plan, and they all shared the criminal intent and contributed in a decisive manner to the commission of that plan.

814. According to the Panel, the coordinated and repeated commission of crimes by their protagonists during a longer period of time is sufficient evidence for the existence of an organized system of abuse. Therefore, the crimes committed were an integral part of the Joint Criminal Enterprise.

B. INDIVIDUAL CRIMINAL LIABILITY

Actus reus and mens rea

815. As already stated, for an accused to be found guilty of crimes committed within a systemic joint criminal enterprise it is necessary that he contributed to the implementation of the joint criminal enterprise, and that he had personal knowledge of the system and the intent to further the system.

816. In order to be held responsible for a joint criminal enterprise, it is not necessary that an accused actually participated in the *actus reus* of the criminal offences, but that he gave his contribution or aided in the commission of the criminal offence.

817. As the Trial Chamber in the *Krstić* case noted:

“General Krstić did not conceive the plan to kill the men, nor did he kill them personally. However he fulfilled a key-coordinating role in the implementation of the killing campaign”. With this, his level of participation made him “a principal perpetrator of these crimes.”

818. This Panel, just like several other Panels of this Court, entirely upholds the position taken by the ICTY that it is not necessary that an accused person was present at the time of the commission of the criminal offences. However, the Accused persons in this case insisted particularly on that fact by arguing that they were not present when particular crimes were perpetrated. The Second-Accused Šunjić was particularly persistent in such attestations.

819. The ICTY Appeals Chamber in *Tadić* has found that: “the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question. This is evident in the systemic joint criminal enterprise that is charged under this case.

820. The ICTY Appeals Chamber in *Kvočka* has found that a participant in a joint criminal enterprise need not participate in any element of a crime provided that all the requirements are satisfied to hold him responsible as a participant in the joint criminal enterprise. The evidentiary factors which are important for determining whether the accused contributed to the common

criminal goal include the following: *de facto* or *de iure* position of the accused person within the system, the extent of the criminal enterprise, the length of the period of time during which he was present in the place of the system, his efforts to prevent criminal activity or to disturb efficient operating of the system, the intensity of the criminal activity, the type of activity which he did indeed carry out and the manner in which he performed his functions within the system.⁸⁰

821. The cited legal position is entirely upheld by this Panel for the same reasons and thus it constitutes a response to the theory of the Defence submitted in the Appeal and throughout the proceedings.

822. All these factors apply when examining the personal knowledge of the system in which any accused person participates.

823. Since the common purpose of the criminal system in this specific case was the persecution of the Bosniak population, it had to be established whether the Accused possessed special intent, that is, if they shared the discriminatory intent.

824. Where the crime requires special intent, such as the crime of persecution, the accused must also satisfy the additional requirements imposed by the crime, such as the intent to discriminate on political, racial, or religious grounds if he is a co-perpetrator. However, if he is an aider or abettor, he need only have knowledge of the perpetrator's shared intent. This shared knowledge too can be inferred from the circumstances. If the criminal enterprise entails random killing for financial profit, for instance, that would not necessarily demonstrate intent to discriminate on "political, racial or religious grounds". If the criminal enterprise entails killing members of a particular ethnic group, and members of that ethnic group were of a differing religion, race, or political group than the co-perpetrators, that would demonstrate intent to discriminate on political, racial, or religious grounds. Thus a knowing and continued participation in this enterprise could evince intent to persecute members of the targeted ethnic group.⁸¹ The Appeals Chamber in the same case upheld the position of the Trial Panel.⁸²

825. The factors that show intent include the significance of contribution of the accused and scope of his awareness. The Appeals Chamber in *Krnjelac* finds that the position of the Accused

⁸⁰ *Kvočka, Appeals Chamber*, para 101 and Trial Judgment in the same case, para 311.

⁸¹ *Kvočka, Trial Judgment*

⁸² *Kvočka, Appeals Chamber*, para 110.

within the system and the opportunity to observe gave him the knowledge of the system, of the crimes committed as part of it and of the discriminatory nature of the crimes,

“a reasonable trier of fact should reasonably have inferred that the accused was part of the system and thereby intended to further it. The same conclusion must be reached when determining whether the findings should have led a trier of fact reasonably to conclude that the accused shared the discriminatory intent. “

826. The importance of contribution of all the co-accused within the system may not be taken as a proof of their shared intent. The position of the accused in the system, assuming more responsibility in the system when its criminal goal became evident, the amount of time spent participating in the system, the importance of his assignments for the functioning of the system, his efficiency in performing the duties, verbal statements about the system and any other direct form of participation in the *actus reus* of the underlying criminal offences represent factors of significance to establish shared intent. Shared criminal intent does not require a co-perpetrator's personal satisfaction or enthusiasm or his personal initiative in contributing to the joint enterprise. The Appellate Panel notes that motive, as perpetrator's subjective state of mind, is not of vital importance and does not preclude the perpetrator from possessing specific intent. The required intent of the accused (discriminatory intent in this case) exists when the perpetrator is aware of the nature of intent shared by other co-perpetrators and, knowing that and being aware of the system of ill-treatment, he contributes to the furtherance of common plan.

827. Therefore, the Panel concludes that the Accused acted with direct intent, aiming to contribute to the systemic criminal enterprise in the Vojno prison. All the Accused were aware of their actions and they wanted to commit them. In addition, they shared the discriminatory intent to persecute Bosniak inmates in the Vojno prison. They were all aware that a system was in place and they all knew about the nature of the crimes committed as part of the system. Nevertheless, they remained part of the system and contributed to it by their actions. Furthermore, the Accused all the time participated as members of the joint criminal enterprise, knowing that the crimes were committed with the intention to discriminate against the detained Bosniaks on national, ethnic and religious grounds. This fact follows from the daily criminal treatment of the Bosniak civilians. Therefore, the Accused personally committed crimes against humanity, either individually or together with the co-accused or other individuals, willingly contributing to the established system.

Participation of the Accused in the systemic JCE

828. When establishing the degree of participation of every individual accused person, it has to be taken into account that the party concerned need not physically be present at the time of perpetration of the criminal offence to be held liable.⁸³ There are certain factors that are applied when the degree of participation of the accused in the JCE is examined. These earlier quoted factors will be applied in the text to follow to explain the culpability of the Accused in light of their specific contribution and intent to establish, further and enhance the JCE.

(a) Marko Radić

Membership in military formations of the HVO and his position as a Commander.

829. The excerpt from the Personal Record Card shows that the Accused Marko Radić was a member of the 1st Battalion HVO from 20 September 1991 until 2 November 1992, a member of the First Battalion of Second Brigade from 3 November 1992 until 1 December 1993, and also a member of the ATG /*Anti Terrorist Group/ Ivan Stanić Čičo* from 24 December 1992 until 1 January 1994. It is stated in the same Record Card that he was Commander of the Second Brigade from 2 December 1993 until 4 May 1994, and that on 9 March 1995 he was promoted to the rank of colonel. The same data about the Accused Marko Radić which refer to his career (member of the 1st Battalion HVO from 20 September 1991 until 2 November 1992, member of the First Battalion of Second Brigade and Commander of the Second Brigade) are stated in the Excerpt from the Unit Record which bears his name.

830. It is written in the above referenced Personal Record Card and Unit Record that he was Commander of the Second Brigade from 2 December 2003, and that a day before his service in the First Battalion of the Second Brigade ceased. It ensues from the Record on Duty Handover, Number 03-1472/93 that on 21 December 1993 the handover of the duty of the Commander of the 2nd Brigade was recorded to have taken place between Marko Radić who took over the duty and Milan Štampar who handed over the duty.

⁸³ *Kvočka*, Appeals Judgment, para 112; *Krnojelac*, Appeals Judgment, para 81;

831. It was not disputed during the proceedings that the Accused Radić was Commander of the 1st Battalion and that he was Commander of the 1st Battalion of the 2nd Brigade later on. The Defence for the Accused Radić did not dispute this fact, which was proved both by the stated documentary evidence and the witnesses who testified about this fact.

832. As opposed to the indisputable fact that the Accused Radić was a member of the 1st Battalion, throughout the proceedings the Defence challenged the fact that Radić was the Commander of the *Convicts Battalion* and in that regard it presented witnesses Zdenko Sesar and Dražen Lovrić.

833. Witness Sesar stated that he was a member of the Anti-Sabotage Platoon from its establishment in 1992 and that Marko Radić was not its Commander. As for the *Convicts Battalion*, he heard that it would be established prior to the fall of Bijelo Polje, but that never happened.

834. Witness Dražen Lovrić noted that Marko Radić never was Commander of the Anti-Sabotage Platoon *Ivan Stanić Ćićo* and that there was never any connection between the 1st Battalion whose Commander was Marko Radić and the Anti-Sabotage Platoon.

835. These claims of the Defence and the testimony of the two witnesses are in direct contravention of other witnesses' testimony and voluminous documentary evidence, whose volume and power convinced the Panel that the Accused Radić was the Commander of the *Ivan Stanić Ćićo* ATG at the relevant period.

836. Witness AH was a member of the 1st Bjelopoljska HVO Battalion. According to him, there was a special unit - *Ivan Stanić Ćićo* - within the Bjelopoljska Battalion, it was under the command of Tuta's units, but the Commander of the *Ivan Stanić Ćićo* unit was Marko Radić.

837. Defence witness Slavko Puljić stated in his testimony that battalions were not organized in the same manner at that time and that some of the battalions had platoons, like anti terrorist groups. Witness Puljić confirmed that there was a sabotage unit *Ivan Stanić Ćićo* whose commander was Zvonko Sesar, and also Marko Radić for some time.

838. The fact that the Accused Radić was a member of the *Ivan Stanić Ćićo* ATG stems also from the List of members of the *Ivan Stanić Ćićo Convicts Battalion Bijelo Polje* dated 27 June 1993, drafted by the Commander of the *Ivan Stanić Ćićo Convicts Battalion* Marko Radić. The List contains the names of 56 persons; it is signed by Marko Radić and stamped.

839. The List of soldiers of the *Convicts Battalion* dated 2 June 1993, including the name of Marko Radić, whose housing situation needed to be resolved, was signed by the Accused Marko Radić himself.

840. The fact that Marko Radić was still Commander of the *Ivan Stanić Čičo* Unit after the above date (June) follows from the Payroll for November 1993, made by Commander of the *Convicts Battalion* and ATJ /*Antiterrorist Unit*/ Mladen Naletilić Tuta, dated 2 December 1993. Its page 00795354 shows that ATJ *Ivan Stanić Čičo* Unit had 48 members, whereas page 00795383 shows that the Major of that Unit was the Accused Marko Radić under number one and Branko Božić under number two. The List contains the names of witnesses Sesar and Lovrić, which suggests that the witnesses did not tell the truth when they testified that the *Convicts Battalion* did not exist, and/or that the Accused Radić had no connection with the Sabotage Unit. The Court finds that statements of those witnesses are not credible and that they were given with the aim of diminishing the potential responsibility of the Accused Radić and dismissed them as unreliable and incorrect.

841. In some documents, *Ivan Stanić Čičo* military formation was referred to as the *Convicts Battalion Ivan Stanić Čičo*, while in other documents it was referred to as *Ivan Stanić Čičo* ATJ or Sabotage Unit. The Panel concluded that this inconsistency is best explained by witness Puljić, who testified before both Trial and Appellate panels, and whose testimony was accepted as most reasonable and credible. The witness, a mayor general and a highly ranked HVO officer at the relevant period, noted then that *Ivan Stanić Čičo* was a sabotage unit and part of the 1st Battalion and that it was also a part of the *Convicts Battalion* as a parallel structure in a parallel system. He was not aware that the *Ivan Stanić Čičo Convicts Battalion* was included in the military structure as a battalion, but according to him there were people who did not know to properly designate the units. According to him, the *Ivan Stanić Čičo* sabotage unit was for some time commanded by Zvonko Sesar, and by Marko Radić for some time. It was possible at that time that an individual be recorded in multiple brigades and/or units at the same time, for financial reasons.

842. The Panel finds the testimony of this witness reasonable and acceptable, given that the same conclusion follows from the submitted documentary evidence. Therefore, the Panel concludes that the *Ivan Stanić Čičo* sabotage unit was in fact *Ivan Stanić Čičo* ATJ, that it was commanded by the Accused Marko Radić for some time, and that he was Commander of the 1st Battalion of the 2nd HVO Brigade at the same time.

The knowledge and participation of the Accused Radić in the widespread and systematic attack of the HVO on Bosniak civilians

843. Together with commanders of other HVO Mostar battalions, the Accused Radić attended a meeting which was held on 20 March 1993 with representatives of the municipal authorities. In the same meeting Radić stated: “We were promised that the town would be cleansed and that there would be apartments for us, soldiers. Let the Government bodies in charge of this problem present their position”. Afterwards, Radić said: “I consider that it can be done only with strong special forces and with full support of those present.”

844. It ensues from the established fact no. 4 that HVO units attacked Mostar early in the morning on 9 May 1993. This fact was substantiated by witnesses Saja Ćorić, Dika Ćurić, Huso Mehremić, protected witnesses A, B, C, D, E, F, and many other Prosecution witnesses, which is accepted by this Panel.

845. The established fact no. 8 shows that the expulsion of Muslims from their apartments started on the referenced date.

846. Based on the abundant documentary evidence: the List of 26 soldiers of the *Convicts Battalion* who were to be issued decisions on apartment allocation, of 2 June 1993, with the name of Marko Radić included; the Certificate of Commander of the 1st Battalion of 24 May 1993 stating that the soldiers housing issue should be resolved; the Certificate of Commander of the 1st Battalion of 23 May 1993 that 33 soldiers should have their housing issue resolved; the Certificate of Commander of the 1st Battalion of 1 June 1993 that 9 soldiers should have their housing issue resolved; the Certificate of Commander of the First Battalion of June 1993 that 46 family members of the killed soldiers of the 1st Battalion *Bijelo Polje* should have their housing issue resolved; the Certificate of the Commander of the 1st Battalion of 9 June 1993 that seven soldiers of the 1st Battalion should have their housing issue resolved; and the Certificate of Commander of the 1st Battalion of 23 June 1993 that one member of the 1st Battalion was free to stay in the apartment because his family house was unfit to live in, the Panel established that the Accused Radić, as the Commander of the 1st Battalion, was very much engaged, especially during the month of June, in providing apartments to more than one hundred persons, members of the 1st Battalion, members of the *Convicts Battalion*, as well as family members of the killed soldiers of the 1st Battalion, the units which were under his command. All these people were, of course, to be allocated flats belonging to Bosniaks and other non-Croats after the “cleansing” campaign that was discussed at the mentioned

meeting attended by battalion commanders, including Radić. The flats were by no means newly built, empty and as such available to the soldiers.

847. In March 1993 already, therefore before 9 May, the Accused Radić attended a meeting with the civilian and military leaders of the HZ HB, on which occasion he asked the Government's bodies to present their opinion about the promise that the city would be *cleansed* in order to vacate apartments for HVO members and their families. The fact that the Accused Radić was actively engaged in resolving the housing situation of the members of his units after the attack of 9 May shows one segment of his knowledge and participation in the widespread and systematic attack on the Bosniak civilian population of the Mostar Municipality.

ABiH attack on Bijelo Polje, first arrests of civilians, the existence of camp in Vojno

848. During the proceedings the Court indisputably established that on 30 June 1993 an attack was launched by the ABiH forces on the HVO positions in Bijelo Polje. The Defence particularly insisted on this fact, while the Prosecution did not dispute it. The Defence argued that Vojno and everything that happened there occurred solely as a consequence of the attack and that Bosniaks were brought to Vojno only to be exchanged for the Croats captured by the Army of BiH.

849. However, such a claim by the Defence is found unacceptable by the Panel given that no crime may be justified by another crime. Although evidence indisputably entails that the widespread attack on the Bosniak population, as established in the adjudicated facts number 9,10,11,12 and 13 in the ICTY Case Naletilić-Martinović, started even before (09th of May 1993), it should be noted once again that no crime can be justified by another crime. Therefore, no crime committed by the adverse party, no matter how serious it can be, may be taken as an excuse for rapes, torture, killings and other crimes the Accused are charged with in this case. In addition, the fact that none of the Army of BiH members has been prosecuted for the crimes allegedly committed over families, friends and neighbours of the Accused, cannot be taken to exonerate them of their responsibility for the offences they committed in Vojno. Everyone has to account for his own acts, while it is up to the Prosecution to decide who will be prosecuted earlier and who will be prosecuted later, depending on the quality of the collected evidence required to issue an indictment. However, this cannot in any way affect the decision on the accountability of the Accused for the offences they are charged with in this case.

850. As already said, it follows from the testimony of all witnesses and from the documentary evidence that the Accused Radić was the Commander of the 1st Battalion of the 2nd Brigade at the time when the ABiH launched the attack on the HVO positions in Bijelo Polje on 30 June 1993.

851. The Order by the Chief of HVO Main Staff of 3 July 1993 shows that immediately after the referenced conflict the *Bijelo Polje* Battalion was formed, and that the Commander of the Battalion was Marko Radić aka Maka. Therefore, shortly after the unexpected attack by the ABiH, that military unit was consolidated and established in that area. Witness Slavko Puljić testified that the First Battalion was under the attack on 30 June, when Bosniak members of that unit attacked Croat members of the same unit, and, as a result, an order was issued on 2/3 July 1993 to establish the so called Bjelopoljska Battalion, the first Battalion of the Second Brigade consisted primarily of the soldiers of the area of Bijelo Polje.

852. The Report of the 5th Battalion Military Police dated 3 July 1993 shows that Military Police officers and Company Commander Mirko Kožul went to Bijelo Polje on 30 June 1993 where they were at the time when the referenced Report was made, they all were alive and well, under the *command* of Marko Radić, and they kept the line of separation with the Army of BiH near the petrol station. Likewise, it ensues from the Report of the 5th Battalion Military Police dated 15 July 1993 that on 8 July 1993 Company Commander Mirko Kožul set off with a Military Police Platoon (twenty police officers) to Bijelo Polje.

853. Defence witness Slavko Kožul, a member of the Military Police, testified to have been in Bijelo Polje at the relevant periods, to have gone to the front lines, to have been under the command of the Battalion and, according to him, the Commander “should have been the Accused Radić”.

854. The Examination Record made by the Military Police Administration on 8 July 1993 shows that Mario Mihalj, as a member of the 2nd Company of MP 5th Battalion, gave a statement. According to him, in the morning hours of 7 July 1993, he came to the VP building and met there Emir Brekalo, Ivica Kolobara and a boy nicknamed Tare, members of the 1st HVO Battalion, who asked him if he knew the addresses of Muslims from Bijelo Polje. They explained to him that they needed to bring such civilians to a truck for exchange. He stated that he was absent from Mostar all the time, because he was in the field in Bijelo Polje, from the date of the attack on the *Tihomir Mišić* Military Barracks until 4 July 1993. On the same date, Military Police Administration made a statement given by Ivica (Ivek) Kolobara who introduced himself as a member of the *Convicts Battalion Ivan Stanić Čičo*. His statement says that he came to Mostar on 7 July 1993 together with Emir Brekalo and Anđelko Zlatić, on the order of the Command of the 1st HVO Battalion, in order

to round up the remaining persons of Muslim ethnicity who at the time lived in Mostar, but had permanent residence in the area of Bijelo Polje, Vrapčići and Raštani, to exchange them for the Croats from those areas. The same person further stated that they accomplished the task and brought the gathered persons by a truck to Đubrani, wherefrom they were returned to Mostar under the order of Miro Andrić. Since the Accused Marko Radić was the Commander of the 1st Battalion in the referenced period, while Emir Brekalo, Anđelko Zlatić and Ivica Kolobara were its members, it is clear that the Accused Radić gave them such an order.

855. The Panel notes that participants in a joint criminal enterprise need not be members of any organization, nor does the enterprise have to be restricted to membership in any organization. The Accused Radić and Brekalo, Kolobara and Zlatić clearly were members of the 1st Battalion, therefore, members of the same “organization” and/or battalion, whereby one more condition has been satisfied – they were members of the same organization, more precisely of the same military unit – battalion. They need not satisfy this requirement to be found guilty of the participation in the joint criminal enterprise or to establish their contribution to the system.

856. The Panel reiterates this fact here precisely because the Defence for the Accused Radić denied that individuals who were under his command arrested people in Mostar. Based on the above stated evidence and the abundance of other evidence that will be elaborated later on, the Panel reached a completely opposite conclusion – the Accused had everything to do with those arrests because they were made by his subordinates, under his orders and as part of the widespread and systematic attack on Bosniak civilians.

857. Defence witness “001” stated that Marko Radić was Commander of the 1st Battalion and that she wanted to see him about a problem with her daughter’s attempted rape because she thought that the camp was under his command.

858. Sisters X and L, together with their mother and brother, were arrested by the Accused Brekalo, Jure Kordić and Nedžad Ćorić in west Mostar. On the same day, underage witness X was sexually abused by the Accused Radić in the Command of the 1st Battalion of 2nd Brigade in Bočine, whereas underage witness L was raped twice by Emir Brekalo. Witness X also stated that two days later she was taken to the cellar of a house in the place of Vojno where she found other prisoners. These were the first documented rapes and abuse of arrested women, girls in this case, by the individuals who had the control and were assigned to the Vojno prison. Those statements confirm that in July there were Bosniak detainees in Vojno, Bosniak civilians, women, children and the elderly from the settlement itself, and Bosniak men from different parts of Herceg-Bosna who

had been brought to Vojno. Also, these were the first documented rapes and sexual abuse of female prisoners by the Accused Radić and Brekalo.

859. It has already been noted that Kolobara, Ćorić, Tinjak, Brekalo and others most frequently unlawfully imprisoned and arrested people. According to the lists of the *Convicts Battalion, ATJ Ivan Stanić Čičo*, and also according to their personal military cards, they all were members of the *Convicts Battalion* which included Antiterrorist Units (ATJ).⁸⁴

860. Exhibit 02-51a, that is, Information of the SIS Centre of 6 September 1993, shows that members of the Anti Terrorist Units were at that time engaged in different jobs, such as “*cleansing of the town and taking people out of their apartments, sometimes to the left bank and at other times in unknown directions.*”

861. It is evident from the Official Note by the CSB Mostar of 13 December 1993 (Exhibit 02-43) that, on 2 December 1993, 57 Muslim civilians were released from the Vojno *Camp*, mainly women and children, who predominantly originated from Bijelo Polje, but were in parts of Mostar under the HVO control, and who were arrested during August and September 1993. The Official Note further states:

“The arrest was made under the order of the Commander of the I Battalion Marko Radić – Maka, and was carried out by: Emir Brekalo, Ivek Kolobara, Nedžad Ćorić, Tinjak and others. Upon their arrival in the Vojno Camp, Commander of the Camp Mario Mihalj said to them: “You’ve come to the black hell. I’m Mr. Commander. I rule the roost here. No one will get out of here.” On the arrival they were subjected to examination and torture, especially to electric shocks; on that occasion, gold items, money and valuable objects were taken from them. The majority of women were raped during the stay in the Vojno Prison in such a manner that they were taken out in the evening, one after another. According to their statements, there were camps in the area of Vrđi and Đubrane. Murder, abuse and rape were committed by Dario Sušac, Mario Mihalj, Emir Brekalo, Mirko Vračević, Đemo Tinjak aka Žuti, Dražen Lovrić and others, and they were members of a part of Tuta’s Unit which was **under the command of the 1st Battalion**. In late November, a group of 89 inmates from Heliodrom was brought to the camp, they mainly consisted of people from Stolac and Čapljina According to a statement of released persons, representatives of the Red Cross tried several times to visit Vojno from the direction of Raštani and Vrđi, but were turned back from those check points.”

All this leads to the conclusion that the information about the camp in Vojno, the conditions therein and the persons responsible for them was known and available to others.

⁸⁴ See section VI chapter Aa) of this Verdict.

862. As stated earlier, the camp in Vojno was not established pursuant to a decision issued by a military or civilian authority, as was the case with the camp Gabela in Čapljina. Also, the persons who assumed certain positions and duties in the camp were not “officially” assigned to those positions on the basis of a written document (decision or order). As it has been already mentioned, it follows from several reports of the SVIZ Warden that it was a *private prison*.

863. The Court found during the proceedings that Mario Mihalj was Prison Commander, the Accused Dragan Šunjić was Deputy Commander and the Accused Mirko Vračević, among others, was a guard. As there was no formal decision on the appointment of Dragan Šunjić and Mario Mihalj as Commander and Deputy Commander, the Panel established those facts on the basis of consistent statements of almost all of the witnesses who were heard, and on the basis of documentary evidence where they put their signatures in the referenced capacity.

864. The Panel found on the grounds of consistent witness testimony that Mirko Vračević, Rudo Ravlić, Žarko Leko, Ivan Pole, Karlo Azirović and Zdravko Šunjić, aka Kuna, were guards in Vojno.

865. Witness Rudo Ravlić stated that he was a village guard and Witness Žarko Leko stated that he had been a member of the *Bijelo Polje* Battalion until the Dayton Agreement was signed.

866. Witness Ivan Prole noted in his statement that he was a guard in the Vojno Prison, that he was a member of the 1st Battalion during 1993 in which Marko Radić was Commander, and that he thought that Mario Mihalj was also a member of the 1st Battalion.

867. Testifying at the main trial, witness Damir Lukić stated that it was not known where exactly Mihalj was deployed, but that he heard he was with Tuta. The same witness stated about Mihalj in the investigation that he had an ID of the *Convicts Battalion* whose Commander was Tuta, and most likely that the young man who was his Deputy had it too, as according to the hearsay they had the same status. The witness stated about the Accused Radić that he also had the same status as Mihalj and as that boy had, only that his level in the hierarchy was higher than the level of the two of them. He learnt from hearsay that Radić was Commander of a special unit.

868. Witness Damir Lukić stated in the investigation that *Bijelo Polje* residents were members of the 1st Battalion, so that those who were present in Vojno were members of the 1st Battalion, including Mihalj and the young man who was with him. This unit was commanded by Marko Radić; consequently, he was superior to Mihalj and the young man with him.

869. The ICRC Report on the visit to the POW accommodation facility, dated 31 January 1994, shows that Mario Mihalj, a member of the Bijelo Polje Battalion, abused his position.

870. It was also established during the proceedings that other soldiers in Vojno were also members of the 1st Battalion. This follows from the testimony of Štefica Zovko who worked in the kitchen, Vinko Jurišić who worked in the Medical Unit and Dragan Galić who was responsible for the canteen.

871. In respect of Mario Mihalj as Vojno Camp Commander, there is evidence in the record that at one time he was concurrently a member of the 5th Battalion of Military Police, as it stems from the Report by the Commander of the 2nd Company of Military Police Mate Aničić who on 14 September 1993 imposed a disciplinary measure on Mario Mihalj, Daily Report of the 5th Battalion of Military Police of 15 September 1993 and the Escort Sheet to serve that sentence. Also, the Questionnaire on Candidate for Guards Brigade, filled out in handwriting by Mario Mihalj on 17 June 1994, shows that that on 16 September 1991 he joined the 1st Battalion *Bijelo Polje*, where he remained until 15 July 1992 when he joined the Military Police. On 19 September 1993, he joined the Anti-Sabotage Platoon *Ivan Stanić Ćićo* where he remained until 1 March 1994. The review of the Proposal for a new assignment of 1 September 1994 shows that at that time Mario Mihalj was assigned to the *Convicts Battalion Ivan Stanić Ćićo*, where he was a Lance Corporal. The proposal for Mihalj was given by the Command of the MO /Defence Ministry/ HB, 2nd Guards Brigade and the Assistant to Minister for personnel affairs. His explanation reads:

“Mario Mihalj, by his previous work and engagement in the 1st Battalion of 2nd Brigade HVO Mostar and the Convicts Battalion since the beginning of the aggression on the territory of HR HB, deserves thoroughly to be admitted as Deputy Commander of the 2nd Platoon of the motorized Reconnaissance Company of the 2nd GMTBR /Guards Motorized Brigade/ HVO”.

872. As already stated, notwithstanding the issue of which military formation within the HVO Mario Mihalj officially belonged to, there is no doubt that he was a member of the 1st Battalion. It indisputably follows from the testimony of the mentioned witnesses and from the physical evidence that Mihalj was a *de facto* warden on the camp and that he participated together with the other Accused in the abuse and persecution of Bosnian Muslims.

873. Based on all the evidence, the Panel concluded beyond a reasonable doubt that the Accused Marko Radić participated in the establishment of the Vojno camp as Commander of the 1st Battalion.

874. During the proceedings, the Defence maintained that the assignment of the prison staff was carried out by a certain Mate Pavlović and, aiming to prove this fact, the Defence examined witnesses Nikola Mihalj, Žarko Leko, Rudo Ravlić, Ivan Prole, Karlo Marić. All these witnesses mentioned the name of Mate Pavlović as a person responsible for the assignment of prison staff, but they were unconvincing and did not know which unit he belonged to and which position he held. The majority of witnesses expressed their reservation as to having received any order or information from him. Only witness Nikola Mihalj, father of Mario Mihalj, stated that he heard that a certain Pavlović appointed his son Mario as the Prison Commander.

875. The Panel holds that such statements of theirs were given for the purpose of diminishing the responsibility of the Accused Radić and transferring it to someone else, in particular because witnesses Karlo Marić and Rudo Ravlić stated that Mate Pavlović died and it was completely clear to the witnesses that their allegations could not be checked by examining Mate Pavlović. On the other hand, none of the Prosecution witnesses ever mentioned Mate Pavlović or his visits to the camp. The Panel, therefore, finds that these Defence witnesses were too subjective and intended to exculpate the Accused of his responsibility, notwithstanding that not a single member of his unit could have been assigned without his knowledge, if not without formal decision (that could have been made by Pavlović).

Area of responsibility of the 1st Battalion of the 2nd HVO Brigade under the command of the Accused Radić

876. During the proceedings, the Prosecution and the Defence held diametrically opposed views about whether Vojno and its surroundings stayed in the area of responsibility of the 1st Battalion of the 2nd HVO Brigade even after the attack on 30 June 1993, or it was in the AOR of the 5th Battalion of the 2nd Brigade. There is no doubt that until 30 June 1993, when the conflict began between the ABiH and the HVO in Bijelo Polje, the 1st Battalion had within its area of responsibility a wide area north of Mostar, including the place of Vojno. What indeed was contestable is whether, at the relevant time, the 1st Battalion of the 2nd Brigade kept the area of Vojno within its AOR after the conflict broke out, that is, after 30 June 1993.

877. It has been noted earlier in the Reasoning that all the Prosecution witnesses, camp inmates, who were examined about this issue, stated that Vojno was in the area of responsibility of the 1st Battalion of the 2nd Brigade at the relevant period and, according to their information, Marko Radić was commander-in-chief in that area. The Panel will now only briefly refer to the testimony of

some witnesses taken by the Panel to conclude that Vojno was in the area of responsibility of the Accused Radić even after 30 June 1993.

878. Witness Saja Ćorić stated that Marko Radić was superior to everybody, and that everything the army did was on his behalf.

879. Witnesses C, D and E stated that Radić introduced himself as a commander during the interrogation and they heard from soldiers that Radić was the commander of the place. Witness C once delivered mail from Radić to certain Hećim. Witness E testified to have been interrogated by Radić immediately after her arrival in Vojno and she once went to see him about some soldiers who ill-treated her and she had to write a statement for Radić about that.

880. Witness J was released from Vojno when Radić gave her permission since certain Glibo told him he would marry her. According to witness R, Radić was in charge of the exchange, he read out the list and gave her coffee and drinks to take to the person in charge of the exchange on the ABiH side.

881. A number of female witnesses, including J and B, stated that Marko Radić, together with Mihalj, Šunjić and Brekalo, came to their rooms when one inmate escaped because he thought they were hiding the prisoner.

882. Witness 152 was about to start for labour when some persons came to take him to a house where Radić was. Radić was speaking over the phone to someone and said:

”He is here, he will be exchanged.“

Marko Radić then told him that he should go with a group of women and children to be exchanged. He was exchanged on 2 December 1993.

883. Witness Ramiz Mačković heard from soldiers that the Accused Radić as the Commander of the *Bijelo Polje* Battalion was a superior to everyone in the prison. On one occasion, when Radić was to come to inspect the Vojno prison, the guards said then that the Commander of the *Bijelo Polje* Battalion would visit there.

884. Witness Samir Humačkić stated that Marko Radić was in charge. He once complained to Radić about the horrible conditions in the garage, it was cramped and they could not sleep, but in response Radić asked him a question in what condition his soldiers were detained.

885. Witness 153 stated that Radić was the superior, that it was a matter of general knowledge. His visits caused commotion; witness Aziz Dautbegović noted that he used to see Radić when he visited soldiers on the front line, the prisoners were in trenches and looked horrible; on one occasion he saw Radić when he was chopping wood and Radić passed by in the company of a military police officer. Witness B saw Radić reading out names during the exchange. He addressed them saying: “Baliya women, you are leaving on your own. Alija sent for you”.

886. In addition to the testimony of these witnesses, the Prosecution tendered voluminous documentary evidence in the case file in order to prove that fact:

887. The Prosecution tendered a number of Orders for the take-over of prisoners and Reports by a SVIZ warden, which state that the 1st Battalion of 2nd Brigade requested and received more than one hundred prisoners for labour and that those prisoners were interned in Vojno (Exhibits T-18A, T-18, T-18F, T-18G, T-18i). Exhibit T-20 E shows that the *Bijelo Polje* Battalion was re-established and that Chief of the HVO Main Staff, Major General Milivoje Petković, issued an Order that the *Bijelo Polje* Battalion be formed out of soldiers, non-commissioned officers and officers in the Bijelo Polje region, and that the Commander of the battalion should be Marko Radić Maka. Under section 2, the *Bijelo Polje* Battalion was placed under the command of forces as stated in the Order of Chief of HVO Main Staff No. 02-2/1-01-1259/93 of 2 July 1993.

888. In the absence of the latter order, the Prosecutor’s Office was proving, also through SIS authorities, the responsibility of the *Bijelo Polje* Battalion for the prison which was located in the place of Vojno, offering numerous evidence in that regard. The review of the Request of the SIS Centre Mostar of 11 December 1993 shows that Chief of the SIS Centre ordered an urgent and thorough report on the number and state of confined persons who were currently *in the zone of responsibility of your unit*. That Request was referred, *inter alia*, to the 2nd Brigade HVO Mostar.

889. On the same day, Anđelko Zlatić, Assistant Security Commander of the First Battalion *Bijelo Polje*, wrote by hand the requested Report on the number and the condition of prisoners in Vojno (Exhibit No. 20B) and on the basis of that Report, Ivica Rotim, Assistant Security Commander of the Second Brigade, made a List of detainees in the Detention Centre Vojno on 13 January 1994 (Exhibit T-20). The fact that Anđelko Zlatić was indeed Assistant Commander of the I Battalion for SIS ensues from the List of Command Staff of the Second Brigade of 1 December 1993 (Exhibit 02-34), which reads that the Accused Marko Radić was the Commander of the First Battalion and that Anđelko Zlatić was Assistant Commander for SIS. All the aforementioned

clearly leads to the conclusion that the Vojno Camp was indeed within Marko Radić's unit's area of responsibility.

890. At the main trial, witness Ivica Rotim changed his previous statement given to the Prosecution. When examined by the Prosecution during the investigation, the witness firmly stated that Vojno was in the area of responsibility of the 1st Bjelopljaska Battalion and this unit was responsible for the prison in Vojno. Then he denied this fact before the Court by submitting that some persons told him later on some details that made him realize that his written statement was incorrect. In his statement to the Prosecution, he said that the brigade police was disbanded, and duties of ensuring accommodation of the prisoners were performed by the 1st Battalion soldiers for the reason that it was the locality and zone of responsibility of the 1st Battalion, which in turn means that the 1st Battalion had responsibility for the Detention Centre Vojno. According to him, the Commander of the 1st Battalion was superior to Anđelko Zlatić, Security Assistant of the 1st Battalion.

891. In his testimony at the main trial, Ivica Rotim changed his earlier statement and maintained that the Vojno Prison was not in the zone of responsibility of the 1st Battalion, but of the 5th Battalion. He especially noted that the First, Third and Fifth Battalions were located on the left bank of the Neretva River and that they were solely responsible for the front line towards the ABiH positions in their zone of responsibility. Battalions could not have the depth of the zone of responsibility, as the Neretva, that is, the lake, was behind their back.

892. With the aim of challenging the assertion of the Prosecutor's Office that Vojno was in the zone of responsibility of the 1st Battalion, the Defence tendered numerous pieces of evidence, and, in that regard, Vitomir Zlatić, Ivan Golemac, Mirko Kožul, Marijan Šunjić, Dražen Lovrić, Ivica Rotim (again), Goran Zovko, Zdenko Sesar, Marica Perić and Slavko Puljić testified. All of the referenced witnesses maintained that Vojno was not in the zone of responsibility of the 1st Battalion, but that the zone of responsibility of the 1st Battalion swept from the Zalihići houses, including the Zalihići houses, to Tange's house, excluding Tange's house, and that further in the northward direction from Tange's house there was the zone of responsibility of the 5th Battalion of 2nd Brigade, and that the place of Vojno was not a part of the zone of responsibility of the 1st Battalion. As for documentary evidence, the Defence also presented two topographic maps, four Orders of the Operations Zone of Southeast Herzegovina from August, September and November, the Plan of Logistic Support for the HVO units and Request of the Main Staff, North Sector, of 24 August 1993.

893. During the first instance proceedings, Major General Slavko Puljić was heard as a defence witness. According to him, Sectors were under the command of the Operations Zone, whereas brigades were under the command of Sectors. Battalion Commander received orders by Brigade Commander. Geographically, Bijelo Polje was a part of Sector North. The Military Police had a parallel pyramidal structure, headed by the Military Police Administration, to which Military Police Forces of the Battalion were subordinated. The zone of responsibility of the 1st Battalion covered part of the demolished bridge where a new bridge was built. He knew about the *Ivan Stanić Čičo* Unit and that at the beginning each commander sought to have companies. He knew that the referenced Unit was part of the 1st Battalion and that it was part of the *Convicts Battalion*. As for the *Convicts Battalion*, the witness noted that it was a parallel structure and a parallel system. Salaries were paid both to the army and police out of the same source, but the police had higher salaries than soldiers. It is possible that the same person received salary both as a soldier and as a police officer. Zones of responsibility were defined in respect of the front line, and the front line went along the main road. Vojno was exactly behind the part that was within the zone of responsibility of the First Battalion. Sometimes, Military Police were added to some Military Unit and it was then under the command of the Commander of the Unit to which it was assigned.

894. Testifying before the Appellate Panel, witness Slavko Puljić stated he was not in the area of Bijelo Polje or Vojno at the relevant period, but he had some information obtained mainly through reports submitted to him about the areas of responsibility of battalions within brigades. After the Defence presented to the witness a topographic map (Exhibit O1-II-1) to mark the areas, the witness said among other things that Gornje Vojno should have belonged to the 5th battalion, that is, Mario Hrkač Čikota Brigade, while the 1st Battalion AOR ranged from Tange's house to the Zalihići houses. Same as in his earlier statements, the witness repeated that the areas of responsibility practically went along the front lines, but that units were logically responsible for all facilities they used and that were close to the front lines. According to the witness, it was possible that the battalions expanded their areas of responsibility in depth, since real life situations are very much different from theory.

895. Having evaluated all the presented evidence relevant to the areas of responsibility and/or the area of responsibility of the 1st Battalion for Vojno, the Appellate Panel concludes that Vojno is in the area that was considered to be under the responsibility of the 1st Battalion in the relevant period. It was behind the front lines and several hundreds of meters away from the main road M-17 (which was the front line), on the opposite bank of the Neretva river. Therefore, throughout the relevant period, Vojno was under the responsibility of the 1st Battalion of the 2nd Brigade and/or in its area of responsibility.

896. The Panel did not accept the testimony of witness Ivica Rotim given at the main trial, when he stated that Vojno was not in the area of responsibility of the 1st Battalion, primarily because this witness firmly stated during the investigation that Vojno was in the area of responsibility of the Bjelopoljska Battalion and that this unit was responsible for the prison in Vojno. However, the witness changed his statement before the Court. Having carefully examined all the statements given by this witness and his general demeanour when he testified before the Trial Panel, the Appellate Panel concludes that the witness was not completely honest because he realized that the first statement of his was detrimental to the First-Accused, whom he after all wanted to help. Also, he stated that “some people told him he had made a mistake in his first statement.”

897. Other mentioned witnesses have information about the areas of responsibility along the confrontation lines, but not behind the lines, so that their testimony did not significantly contribute to resolving the issue of the areas of responsibility beyond the confrontation lines. Witness Puljić gave the same explanation about the responsibility of the battalion both times he testified before the Court. However, before the Appellate Panel, witness Puljić stated that war was not a time of normalcy, when everybody observes military rules, so that it was possible that battalions expanded their areas of responsibility in depth since real life situations are very much different. Also, the army is logically responsible for all installations they used, including those deep inland and close to the confrontation lines.

898. There is no doubt that Vojno was in the area of responsibility of the 1st Battalion prior to the conflict between the ABiH and HVO that broke out on 30 June 1993. According to witness Puljić, during the conflict, the 1st Battalion came under the attack on 30 June, when Bosniak members of that unit attacked Croat members of the same unit, and as a result, the 1st Battalion was consolidated. Given that Vojno was a couple of hundred meters away from the confrontation line, that there were no other units in the area, that civilian police were not at all present there, it is obvious that even after 30 June 1993 Vojno stayed under the *de facto* control of the 1st Battalion under the command of Marko Radić.

899. The Panel reached such a conclusion on the basis of the overall situation before and after the conflict of 30 June, on the evidence presented thereto and primarily taking into account the testimony of witnesses who were imprisoned in the camp and who confirmed the presence of soldiers who were proved to be members of the 1st Battalion of the 2nd Brigade and Convicts Battalion. They provided the best view of the real situation at that time. It also indisputably followed from their testimony that Marko Radić, Commander of the 1st Battalion, visited and inspected the camp, participated in the interrogation and that he was referred to as being in charge

in that area, as well as many other facts already stated. At the same time, no one ever mentioned a commander of any other battalion visiting the camp, as would be reasonably expected should Vojno and the camp there have been in the area of responsibility and under the control of another military unit, as the Defence argued.

900. In addition, had Vojno been outside of the war zone and had it had the status of a typical “behind-the-lines territory” that should, as a rule, be under the control of regular police forces, then Radić would not have come for inspection, interrogation, people should not have complained to him, he would not have requested inmates from *Heliodrom* to be sent there for labour, nor would he have taken other earlier mentioned actions.

(i) Marko Radić - mens rea

901. In order to be held liable as a co-perpetrator of the crimes committed through the systemic joint criminal enterprise, an accused person must personally know about the existence of the organized system and its common criminal purpose. The knowledge of the common criminal purpose requires that the accused person knows about the type and degree of criminal activities in which the system is involved. However, the prosecution does not have to prove that the accused person personally knew of each individual crime committed within the system.

902. The importance of the accused person’s contribution to the system can also be the evidence of his common intent. The high-ranking position within the system, taking over more responsibilities within the system after its criminal purpose became obvious, the length of the time period during which the accused person was part of the system, the importance of his tasks for the furtherance of the system, the efficiency with which he completed his tasks, verbal statements about the system, as well as any other direct participation in the *actus reus* of the underlying criminal offences are all factors which are important for the establishment of common intent.

903. Evidence of the knowledge of the criminal system they furthered can stem from the explicit testimony and voluminous documentary evidence admitted in the case file. It can also be indirectly derived from the position the accused person held within the HVO, his access to the camp, the time he spent in the detention camp, the frequency of contacts with the prisoners, the frequency of contacts the persons who used to come to the detention camp from outside, indirect information on the developments in the camp.

904. The Panel concluded beyond a reasonable doubt that the Accused were aware of the nature and scope of the criminal offences committed in the Vojno prison as part of the systemic criminal enterprise in which they themselves participated.

905. As stated before, the Accused Radić was the Commander of the 1st Battalion of the 2nd Brigade, of the “Ivan Stanić Ćićo” Convicts Battalion and, later on, of the 2nd Brigade, whereby he held the leading positions within the units which were among the most important units in the HVO in the area of Mostar and Bijelo Polje.

906. In March 1993, the Accused Radić attended the meeting with representatives of the Municipal Government in the capacity of the 1st Battalion Commander, on which occasion he asked the Government’s bodies to present their opinion about the promise that the city would be cleansed and that there would be apartments for soldiers. Then throughout the month of June he was actively engaged in finding apartments for his unit members and families of fallen soldiers.

907. The Vojno camp was entirely based on the unlawful arrests of Bosniak civilians who were arrested on the order of the Accused Radić by individuals under his control, all of them members of the Ivan Stanić Ćićo special unit and 1st Battalion of the 2nd Brigade, both of them under the command of the Accused Radić.

908. As noted earlier, the living conditions in the Vojno camp were poor, inmates had to live in small space, were given insufficient food, without medical care and they were in constant fear of physical and sexual abuse. Given that the Accused Radić visited the camp, he could not be unaware of the inhumane living conditions. For instance, he once came for inspection and entered the room in which women and children were held to count the prisoners after two inmates had escaped, and therefore he personally saw the conditions in which the inmates lived.

909. As the Commander of the 1st Battalion of the 2nd Brigade, Radić requested on a number of occasions prisoners from Heliodrom to be sent to Vojno and the surrounding area for forced labour. The Accused Radić repeatedly inspected the front lines and saw prisoners performing forced labour. He talked to prisoners and they told him about certain developments and complained to him about the living and working conditions in the camp. He personally ordered some prisoners to perform labour.

910. The Accused Radić issued orders and used inmates for forced labour at the front lines, he was therefore not only aware of the conditions and actions taken by others, but he personally took some of the relevant actions and in so doing directly contributed to the joint criminal enterprise and

to the volume of the committed criminal offences. That makes him personally responsible for the inhumane treatment, forced labour and killings of the inmates, including those who were killed from sniper bullets from the opposite side. Coercing people to perform labour near the front line automatically poses a threat to their life and limb. In addition, it is clear that these prisoners were sent for labour at the front lines because it was a dangerous area and the Accused Radić did not want to expose his soldiers to danger.

911. It was obvious that prisoners were beaten up and tortured during their stay in the Vojno prison. That happened almost daily, either at the place of labour or inside the Vojno prison. The Accused Radić saw obvious signs of beating and torture when he inspected the prison and the front lines. His failure to prevent and punish the perpetrators was tantamount to his tacit agreement with the commission of the crimes.

912. The Accused Radić personally participated in the rape and sexual abuse of female prisoners; furthermore, he was one of the principal perpetrators of this horrific crime. He raped witness A three times and witness D once, after which he ordered another soldier to rape her. He sexually abused the underage witness X and ordered Mirko Vračević to take witness E to Mirko Bukara, who raped her. Radić was present when the Accused Brekalo took out witness D and then raped her. On one occasion, the Accused asked witness F if she wanted to give birth to an Ustasha, and when she said no he laughed and said: "Each one of you will give birth to one." The Panel opines that these words of his in front of his soldiers indisputably incited and encouraged his soldiers to personally rape prisoners. The rapes personally committed by the Accused Radić, other actions of similar nature and such words of his clearly show his intent, while its manifestation and consequences constitute the *actus reus* of rape.

913. It has already been noted in the Verdict that a number of inmates were killed in the Vojno prison and it was undeniably proved that they resulted from the actions of the Accused or other soldiers, or the prisoners were killed while they performed forced labour.

914. A lot of documents written by the Vojno prison staff, particularly by the Commander or Deputy Commander Šunjić, reported about the killings. This shows that the Accused knew about the killings and that the killings were part of persecution of the Bosniak population to which they contributed.

915. At the time when prisoners were killed at the front lines during forced labour in cross-fire or by sniper bullets, the Accused Radić was Commander of the First Battalion and after that also Commander of the Second Brigade. Hamdija Tabaković, Mensur Salman, Mustafa Kahvić and

Džemal Sabitović were killed at the front line when the Accused Marko Radić was the Commander of the Second Brigade. All killed prisoners were taken from the Vojno prison for forced labour at the front lines. The Accused Radić, having participated in establishing the prison, had control over the prison staff and over everything that happened there.

916. In the Report by the Military Police Administration dated 31 January 1994 it is noted that 13 detainees were not brought back from labour, as well as that they had been sent to the 2nd Brigade during the period from 8 to 17 November 1993. Among those prisoners, a number of them were killed, some of them were injured from fire weapons, while some of them self-inflicted wounds. It follows from the Report that a veto on taking prisoners to perform labour should be imposed on the entire Brigade; however prisoners were still kept in the Vojno prison and performed labour until the end of the relevant period.

917. There is also a SVIZ Report dated 14 September 1993, which shows that on 2 September a total of 50 men were handed over to the 1st Battalion of the 2nd Brigade and that they were secured by the accused Dragan Šunjić. Out of these men, 7 detainees were killed, including Husnija Čorajević, Enver Kajtazi, Aris Začinagić, Mensud Dedajić and Željko Čakalović. All these detained persons were held in Vojno and were killed inside the camp, which was in the AOR of the 1st Battalion of the 2nd Brigade that was under the command of Marko Radić. The Accused Mirko Vračević killed inmate Asif Čakrama on the way to Vojno in September, while Mario Mihalj killed Salim Halilović when he said that he could not work because he was ill.

918. Notwithstanding that the Accused Radić was not present when these killings occurred, he was the *de facto* and *de iure* commander not only on the frontline, but also in the place of Vojno. He participated in the establishment of the camp, controlled the Vojno camp in the manner that he was in contact with its staff, came to the camp command, entered the rooms where the prisoners were held, on one occasion even physically attacked Mihalj, who pulled back, decided to release the witness J from the prison because she was allegedly supposed to marry one of the soldiers, was present when prisoners, women, children and elderly from Vojno were exchanged on 2 December 1993 and read out the names of people who were to be exchanged. All this clearly shows that the accused Radić was in charge of the Vojno prison during the entire period, as the witnesses-prisoners consistently claimed. He was in charge in Vojno, therefore he knew about the killings which took place there. Several cases of killings of prisoners took place precisely in the vicinity of his command in Bočine. Some of the killings on the frontline took place near the Zalihići houses and the nunnery, which were located in his area of responsibility, while other killings took place on the

frontlines where other battalions were deployed, but also in Bijelo Polje, and they were sent there from the Vojno camp.

919. All this irrefutably shows that the Accused Radić knew about the killings, and his behaviour towards them and the perpetrators thereto was to aid and abet and all of them were aimed at maintaining the system in the camp and was part of the joint criminal enterprise.

(b) Dragan Šunjić

920. The Prosecution charged the Accused Dragan Šunjić, with the criminal offenses committed in the period from August 1993 until March 1994, unlike other Accused who are charged for the period from July 1993 until March 1994. The Accused Dragan Šunjić is charged for the period of time starting one month later than the period of charges against other Accused and, therefore, the Prosecution did not charge the Accused Šunjić with the acts committed in the Vojno prison in July 1993.

921. In that regard, the events related to the role, acts, as well as the guilt of the Accused Šunjić will be linked to the said time period.

922. The Prosecution presented ample evidence in order to prove that the Accused Šunjić was a knowing participant of the JCE, and that as deputy commander he had powers and control over the living conditions in the camp and over the persons who worked there. Furthermore, the Prosecution presented evidence to prove that he was responsible for the lives and limbs of all prisoners and that, as deputy commander, he knew that the prisoners were unlawfully arrested and incarcerated civilians; further, he knew of inhumane conditions that the prisoners were subjugated to and that he should have improved. Instead of using his authority and power to the benefit of prisoners, he took part in and contributed to the JCE by participating in the beatings, torture, persecution, rapes and murders in the camp.

923. Throughout the first-instance and second-instance proceedings, the Defence for Dragan Šunjić challenged the claim that Šunjić was a member of the 1st Battalion of the 2nd Brigade before 30 September 1993 and a member of the Convicts Battalion. To that effect, the Defence submitted that Dragan Šunjić was a member of the 5th Battalion of the Military Police until 14 September 1993, which is when he was relieved of duty upon his own request. After that he took care of his injured brother who was exchanged and placed in hospital in Mostar. In the period from 15 to 30

September he did not belong to any unit and then on 30 September 1993 he joined the 1st Battalion of the 2nd Brigade while on 1 January 1994 he became a member of the Guards Brigade.

924. Therefore, the Defence for Dragan Šunjić and the Accused himself denied his participation in the criminal acts committed in Vojno before 30 September 1993, but also his participation in the criminal acts in general, submitting that the Accused Šunjić was not in the Vojno prison, was not a member of the 1st Battalion or the Convicts Battalion and was not present at the time of the committed criminal offenses.

925. Establishing the correct state of facts, the Appellate Panel concludes that it was essential to determine the position and role of the Accused Šunjić in the Vojno camp and his participation in the joint criminal enterprise, that is, the manner and acts pointing to his participation.

926. Having reviewed the Defence objections relative to the Accused Šunjić's membership of various military units, and recognizing the accepted legal positions and standpoints, the Appellate Panel concludes that his membership in specific units is not of critical importance when establishing his guilt within the JCE. To wit, the JCE concept does not require that its members belong to the same organization or military formation. It is absolutely possible, and very frequent in practice, that members of a JCE belong to different military and even civilian authorities. The existence of a common criminal goal and participation in effecting that goal determines the participant's culpability. Possible membership of the same unit and the superior-subordinate relation therein can only be an additional indicator of the existence of a joint action and intent, but it can by no means be an exclusive element for the determination of someone's participation in the JCE. Therefore, the Appellate Panel concludes that Accused Šunjić's membership of a specific unit within the specific period of time is not of crucial importance for establishing his guilt, all the more so in view of the fact that the Accused Šunjić is not convicted on the grounds of command responsibility, as elaborated in section VII, chapter Aa) of this Verdict,.

927. According to the Prosecution exhibit – personal record file – the Accused Dragan Šunjić was a member of the 1st Battalion from 18 September 1991 to 1 July 1992, member of the Military Police from 1 July 1992 to 19 April 1993 and then a member of the HVO Convicts Battalion from 19 April 1993 to 1 January 1994. The original military ID card issued to the name of Dragan Šunjić entails that Dragan Šunjić was a member of the Military Postcode 1520 (the HVO 1st Battalion of the 2nd Brigade) from 20 September 1991 to 10 March 1994. When joining the War Veterans Association, the Accused added in his own hand that he was a member of the OODZTO-Potoci

from 20 September 1991 until 7 April 1992 and also that he was a member of the First Battalion, Second Brigade from 8 April 1992 until 10 May 1994.

928. The Panel concludes that the said Prosecution exhibits unambiguously point to the Accused's membership of the HVO formation including the first Battalion of the Second Brigade and resubordinated Military Police Unit. The Panel accepts these pieces of evidence as relevant and reliable because the material and formal contents of these exhibits are exclusively related to the data and facts of the Accused's military service.

929. It ensues from the Report by the 5th Battalion of Military Police from 30 June until 5 July 1993 that on 30 June ABiH attacked the entire area of Bijelo Polje and the *Tihomir Mišić* Military Barracks, and that on the same day eight police officers, including Dragan Šunjić, who were headed by Mirko Kožul, were sent to Bijelo Polje. Also, the Daily Report by the 5th Battalion of Military Police for 8 July 1993 shows that on that day a group of 21 officers of the Military Police of the 2nd Company, the 5th Battalion, led by Mirko Kožul, went to Bijelo Polje to take over the shift; Dragan Šunjić was among the officers. Departure of the officers of the Military Police of the V Battalion to Bijelo Polje in those periods of time was also confirmed by the statements of the witnesses Mirko Kožul and Slavko Kožul, as well as by other documentary evidence.

930. On the basis of the aforementioned, the Panel concludes that members of the Military Police were at that time under the command of the Commander of the First Battalion.

931. The Order issued by the Defence Sector Mostar on 19 August 1993 by which, at the request of the 1st Battalion of the 2nd Brigade, 50 prisoners were taken from the Heliodrom prison to perform labour, Dragan Šunjić being personally responsible for those prisoners, is a document that for the first time relates Accused Šunjić to the Vojno Camp. Under the referenced Order, Dragan Šunjić secured those 50 persons. The report of the SVIZ /military remand prison centre/ Heliodrom warden Stanko Božić No. 663/93 of 3 September 1993 reads that 50 prisoners were handed over for the purpose of labour to the 1st Battalion of the 2nd Brigade and that Dragan Šunjić was in charge of their security.

932. The report of SVIZ /military remand prison centre/ No. 663/93 dated 10 September 1993 says that SVIZ Warden visited the prison and noticed injured prisoners who wrote their statements. Attached to that Report is the Statement which was given by the prisoner Halil Hamzić and in which it is stated that they performed labour in Bijelo Polje from 19 August to 3 September 1993, and that they suffered unbearable torture there by Commander Mario Mihalj on a daily basis, which

was described in detail by the detainee. It ensues that beyond any doubt this was the group of prisoners from Heliodrom who were taken to Vojno by the Accused Dragan Šunjić.

933. The Order of the Defence Sector Mostar of 2 September 1993 shows that, at the request of the 1st Battalion of the 2nd Brigade, 50 prisoners were taken from Heliodrom, and that Dragan Šunjić was responsible for them. Also, it was stated in the Report No. 698/93 of 22 September 1993 that 70 prisoners who were to be used for labour were taken out of Heliodrom on 13 September 1993 by the Second Brigade and that Šunjić was responsible for that group of prisoners too (Exhibit No. T-18-I). Having reviewed all the aforementioned exhibits authored by officials from Heliodrom and without any justified reason to be suspicious about them, the Panel concluded that Dragan Šunjić personally took over Heliodrom prisoners on several occasions and was responsible for their security and was supposed to take care of them while they were performing labour.

934. The Defence presented ample evidence to challenge the Accused Šunjić's membership of the 1st Bijelo Polje Battalion before 30 September 1993 and his presence in the camp from August 1993 onwards, as well as his participation in the taking of prisoners from Heliodrom. To that effect, the defence examined the following witness: Zdravko Šunjić, Jozo Prga, Marinko Šunjić, Branimir Vidović, Veselko Pandža, Mladenko Šarić, Vlado Ramljak, Mato Aničić, Mladen Mandić, Valter Aničić, Nikica Zovko, Tomislav Aničić, and also presented documentary evidence.

935. Witnesses Marinko Šunjić and Branimir Vidović claimed that the Accused Šunjić stayed in Mostar from 10 September 1993 and on a daily basis paid visits to his brother who was exchanged and treated in the hospital in Mostar.

936. Additionally, some witnesses for the Second-Accused claimed that the Accused Šunjić was in charge of maintaining a generator in the Vojno prison, that he did not make any decisions, and that he acted as a guard when he took a group of prisoners to chop woods at Raška Gora (Witnesses Rudo Ravlić, Ivan Pole, Žarko Leko, Ljubo Vukoja, Božidar Novak, Mladen Mandić).

937. Witnesses Zdravko Šunjić, Jozo Prga, Marinko Šunjić, Veselko Pandža, Mladenko Šunjić, Vlado Ramljak, Milan Sesar, Vladimir Zadro, Miroslav Šunjić, Mato Aničić, Valter Aničić, Nikica Zovko, stated that they used to see the Accused Šunjić in August and September when as a military police officer he manned the checkpoints outside Vojno, maintaining that they knew he was a police member and that he left the police in September.

938. The Defence proffered ample documentary evidence regarding the said circumstances, including the Request by Chief of the Section for Establishment and Staffing of the 2nd Brigade of

16 September 1993, which was sent to the Active Police Officers of the HVO and in which it is written that, based on the current situation on the front line of Bijelo Polje and in connection with the Request by Commander of the 1st Battalion of the 2nd Brigade, Mr. Marko Radić Maka, the addressee was requested to terminate the status of soldier Dragan Šunjić in the Unit as of 14 September 1993. The referenced person was indispensably needed by the said Unit. The Daily Report of the 5th Battalion of the Military Police for 14 September 1993 shows that, on that day, the Military Police Officer Dragan Šunjić was absolved from duty at his personal request and that he turned in his police badge and police ID.

939. Additionally, the Defence proffered the Report for September of the 5th Battalion of the Military Police that early in September they secured the facility of the Military Police, the facility of the Command of the 1st Battalion of the HVO Đubrani and the prison in Đubrani where the persons of Muslim ethnicity were interned. In mid-September, a platoon of military police officers was ordered to withdraw from Đubrani and from that time on the securing of the facility of the Military Police Command and Defence Section of HVO effectively began.

940. According to the Order dated 19 August 1993, issued by Vladimir Primorac, the Commander of Light Assault Battalion of the Military Police, the unit of the 2nd Brigade was granted approval as of 19 August 1993 to take twenty prisoners from SVIZ /military remand prison centre/ Heliodrom, Mostar. The Order further reads that Dragan Šunjić is personally responsible for the takeover, security and care for the prisoners while they are carrying out some utility work. The report of the SVIZ Warden Stanko Božić dated 21 July 1993 (exhibit O-2-4) clearly shows that the approval was granted for the allocation of eight (8) prisoners to perform labour for a longer period of time at the 3rd Battalion in Đubrani. Furthermore, the Report shows that the same unit took over 30 prisoners on 11 July 1993 in Đubrani for a longer period of time.

941. Contrary to the evidence of witnesses Stanko Božić and Ivica Rotim who claimed that the soldiers were responsible to secure prisoners during the transportation from Heliodrom, the Panel concludes that the Accused Šunjić was present in Vojno from August and *de facto* discharged the duty of Deputy Commander. This was confirmed by numerous Prosecution witnesses who among other things stated that they used to see the Accused Šunjić almost every day, and also that he waited for them, mistreated them and physically abused some of them. The said inference is made on the fact that the Record dated 29 August 1993 reads that prisoner Mensud Dedajić got killed by a sniper while performing labour, and is signed by the Prison Commander Mario Mihalj and Deputy Commander Dragan Šunjić.

942. Further, the Record dated 15 September 1993 shows that 14 prisoners were taken by guards to dig out some ditches and that around 11 o'clock the enemy sniper and machine-gun fire started, and a burst of fire shot Salim Alilović. The Record is signed by the Accused Dragan Šunjić as the Prison Commander and Zdravko Šunjić as Deputy Commander. Although it was earlier established that prisoner Salim Halilović was murdered by Mario Mihalj after he stated he was ill and incapable of performing labour, the contents of the record leads to the conclusion that there was an intention to hide that fact. As at the time when this Record was made Mario Mihalj was in custody, it is evident that the Accused Šunjić discharged the duty of Commander in Mihalj's absence and was very well aware of what was going on with the prisoners after they had been brought from Heliodrom.

943. The Defence vigorously disputed the presence and engagement of the Accused Šunjić in Vojno, especially in August and September, wherefore the Appellate Panel analyzed the said documentary evidence with a particular focus on the evidence given by the Prosecution witnesses in relation to that circumstance.

944. Although the majority of evidence given by the Prosecution witnesses has already been interpreted in the previous sections of the Verdict, the following text will only refer to some evidence which point to the presence of Accused Šunjić in the Vojno Prison throughout the time period relevant to the charges.

945. Witness F got to Vojno on 15 August 1993. She stated that upon their arrival they were met by Dragan Šunjić and Mario Mihalj who said "Welcome to hell". Mihalj introduced himself as the Commander and then he introduced Dragan Šunjić as Deputy Commander; Witness E, who was also brought to Vojno on 15 August 1993, stated that upon their arrival they were met by Dragan Šunjić and Mario Mihalj, who introduced themselves as the prison Commander and Deputy Commander. Witness A stated that she arrived in Vojno on 15 August 1993 and that she used to see Šunjić in the prison all the time.

946. Witness 153 stated that he was brought to Vojno on 15 August 93 on which occasion they were met by Šunjić and Mihalj. Šunjić acted as Deputy Commander all the time and his conduct showed it. He did not dare address him. Šunjić was present on the occasion when this witness was subjugated to electric shocks; Šunjić laughed and played a guitar on that occasion.

947. Witness 151 was brought to Vojno in mid-August. Upon their arrival they met Mario Mihalj and Dragan Šunjić who informed them of the rules of conduct and then they brought two prisoners and showed their battered black and blue bodies as an example of what will happen to

them if they do not obey by those rules. This witness stated that he saw Dragan Šunjić beating Arif Omanović on several occasions and asking him about his son's whereabouts.

948. Witness Azer Handžar was brought from Heliodrom to Vojno on 18 August 1993. On that occasion Mihalj introduced himself. The witness says that either Mihalj introduced Šunjić or he heard it from some of the prisoners. After they were lined up, two prisoners were brought out of the basement and ordered to roll up their clothes and show them the bruises so that they could see what would happen to them if they did not obey their orders.

949. Witness B arrived in Vojno on around 20 August 1993 and said that on one occasion Šunjić took her out of the room when a soldier named Sergej came to pick her up. After that she was raped.

950. Zulfo Humačkić also arrived in Vojno in late August. He was met by Mario Mihalj and Dragan Šunjić who threatened him. On that occasion Mihalj and Šunjić beat him up. During his stay in Vojno, he was beaten up by Šunjić on four occasions.

951. Witness D arrived in Vojno in early September. She was met by Mihalj who said "Welcome to hell, I am the black devil." Šunjić was standing next to him, laughing. She used to see Šunjić almost on a daily basis.

952. Witness AI arrived at the camp on 1 September 1993. On that occasion, Mihalj and Šunjić met them saying "Welcome to hell, not many of you will leave this place." Then they questioned him and thereafter he was beaten by Mihalj and Šunjić. Witness Ramiz Bebanić came to Vojno on 2 September 1993 and stayed there for 11 days; he stated that he saw Šunjić every day. Witness Saja Ćorić arrived in Vojno on 2 September 1993 and saw Šunjić together with Mihalj; on that occasion Mihalj said "Welcome to hell, I am the black devil." She was questioned on that occasion and Šunjić was present. The witness stated that she used to see Šunjić almost every day.

953. Witnesses J and K were brought to Vojno on 7 September 1993. Šunjić and Mihalj met them and said "Welcome to hell." Mihalj introduced himself as the Commander and Šunjić as Deputy Commander. Witness J stated that Šunjić was in the room while Marko Radić was questioning her, and then upon the order of Marko Radić he frisked her and touched her breasts.

954. Witness C stated that she arrived at Vojno on 9 or 10 September and upon her arrival she saw Šunjić, Mihalj and Vračević in the corridor of the house to which they were brought. She recalls that Šunjić said "Off you go with those bastards."

955. Witnesses 152, B, D, E, F, R and Hamza Leto stated that Šunjić was introduced as Deputy Commander. They all mentioned that they saw Šunjić on many occasions during their stay in Vojno.

956. Witness R addressed Šunjić with Deputy Commander-Sir, and she used to see him almost every day.

957. Witness AK arrived in Vojno on 17 November 1993 and was met there by Šunjić and Mihalj. The two of them beat him on several occasions. He stated that once they placed a plastic bag over his face and then removed it while beating him.

958. Aziz Dautbegović arrived in a group of 55 prisoners in November 1993. He stated that he used to see Šunjić every day and that Šunjić often hit the camp inmates by a rifle butt during the morning hours.

959. Witness Samir Humačkić arrived in Vojno in mid-November 1993 with a group of 60 prisoners. They were met by Šunjić and Mihalj who informed them about the rules of conduct. He used to see Šunjić frequently.

960. Witness Ibrahim Šogolj arrived in Vojno on 17 November 1993 and stated that on eight occasions Dragan Šunjić beat him up for no reason at all. He stated that every time they came back from labour Šunjić would beat up some of them.

961. Witness Hasan Trtak arrived in Vojno in mid-December 1993. He was also met by Šunjić and Mihalj. He, too, claims that the prisoners were abused in Vojno and states that Šunjić himself beat him up.

962. Witness AE arrived in Vojno on 22 December 1993 and his group was also met by Šunjić and Mihalj. The witness stated that he stayed in Vojno until March and that every morning they decided as to who was going to perform labour and at which place. While in Vojno, he was beaten up by Šunjić on several occasions.

963. Witness AF arrived in Vojno in January 1994 and his group was met by Šunjić, Brekalo, Radić, Mihalj and some other HVO soldiers. They were immediately ordered to carry some ammunition crates. There were beatings in the garage on a daily basis. He was beaten by Šunjić, Brekalo and Mihalj.

964. Witness AL stated that he went to perform forced labour and on one occasion he was brought to Vojno in a group of 60 prisoners. He spent five to six days with Šunjić and a group of prisoners chopping wood in the forest. They had to address him as “Deputy Commander, Sir.”

965. The Report of the POW Accommodation Center in Mostar of 31 January 1994 shows that, on 28 January, 61 prisoners of war, out of those who were taken to work on 8 and 17 November 1993, were brought back from work. The report reads that

“All prisoners were mistreated, abused and beaten, which is evident from the appearance of individuals. Self-styled Commander of the prison in which they stayed was Mr. Mario Mihalj who took the most active part of all in the atrocities, destructive and sadistic ideas, and the soldier Dragan Šunjić was directly after him. With such behaviour, soldiers Mario Mihalj and Dragan Šunjić violated the rules of the Geneva Convention relative to prisoners of war. Besides, we propose that a veto be put on the taking of prisoners for work by the entire 2nd Brigade.”

966. The records, which were signed by Prison Commander Mario Mihalj, were submitted as attachments to that Report. The killings of Džemal Sabitović, Mustafa Kahvić, Menso Salman and Hamdija Tabaković while labouring on the front line were reported therein. Also attached to the same Report was the 28 January 1994 statement of prisoners who returned from labour on their stay in the Vojno Prison. The statement reads that two groups went to Vojno in November and, out of the total of 75 prisoners, only 61 prisoners (four killed, others wounded) came back. The prisoners described difficult conditions in which they were held while in Vojno and the various manners of mistreatment, torture and beating that they were subjected to. It further reads that such abuse took place every day and was also carried out by Deputy Commander Dragan Šunjić and that they were beaten by Mihalj and Šunjić. The report describes the details on mental and physical abuse and, among other, it reads that when taking bath was organized after 60 days of captivity in Vojno Dragan Šunjić and Mihalj made the prisoners say “Dragan is a big donkey” or “Mario is a big donkey”, and then they battered 25 prisoners with a rifle butt, boots, knife handle. Mihalj and Šunjić were beating one retarded prisoner for two hours, so that the prisoner was breathing with a rattle. Two days before the escape of two prisoners, one prisoner was beaten up by Šunjić and made to drink urine from where other prisoners urinated, whereas another one was called to come to official premises of Commander, and Šunjić and Mihalj beat him up there, and connected his body to electricity.

967. In that report, the prisoners wrote about their poor mental and physical shape. The quoted report is a joint report signed by 59 prisoners.

968. As stated earlier, bearing in mind the said evidence and documents which are supplementary to each other, the Panel did not find any reason not to accept them as authentic and reliable. The Panel thus concludes that it was proven beyond any reasonable doubt that the Accused Dragan Šunjić personally took over prisoners from Heliodrom on several occasions in August and September and was responsible for their takeover, security and care while they were performing labour. This clearly follows from the said orders and reports, as well as witness accounts. The ample evidence and its probative value, the fact that the evidence is mutually consistent and congruent in terms of the sequence of the described events, led the Panel to conclude that these pieces of evidence are reliable and truthful.

969. To wit, the Panel observed that there are even some defence exhibits that indirectly point to the fact that the Accused Šunjić participated in the takeover of prisoners from Heliodrom in the relevant time period and was responsible for them during their stay in Vojno (Order of Vladimir Primorac dated 19 August 1993). Although the said order reads that the prisoners are taken over for the purpose of utility works, the Panel finds it to be an indication of the Accused's active role in the takeover of prisoners. In addition, other Defence exhibits point to frequent takeovers of prisoners from Heliodrom for the purpose of performing labour for various military formations (Defence exhibit O-2-4); in order to hide the nature of these works, they are all referred to as utility works but the typical utility works were rather rare; the works were mainly about the labour at the front-line, which have been described above.

970. The fact that the prisoners were taken to Vojno for the purpose of labour needed by other HVO units and not only by the 1st Battalion of the 2nd Brigade does not exonerate the Accused Šunjić from his responsibility for the prisoners whom he personally took over and had to provide security for while they performed labour. Later, in view of his function, he was also responsible for the misdeeds committed against the prisoners.

971. Having analyzed the said Prosecution and Defence exhibits, the Panel concluded beyond any reasonable doubt that in the period from August 1993 to March 1994 the Accused Dragan Šunjić was present in the Vojno camp and committed the offenses as specified in the operative part of the Verdict.

972. To wit, the Panel accepted the evidence given by the Prosecution witnesses relative to the Accused Šunjić's presence in the Vojno Prison, the function that he discharged, as well as acts that he undertook. The said evidence is mutually consistent, and also consistent with the documentary evidence available to the Panel. To that effect, the Panel refers back to the Record dated 15

September 1993, signed by Dragan Šunjić as the Prison Commander and Zdravko Šunjić as Deputy Commander. The Panel notes that the time specified in this record is matching the time interval from 15 September to 19 September when Mario Mihalj was in custody (according to the Military Police daily report and escort sheet), and evidently the Accused Šunjić assumed the function of the Commander in his absence.

973. On the other hand, the Panel did not accept the evidence given by the Defence witnesses according to which Šunjić was just a guard in Vojno, in charge of maintaining the generator, that he had no other specific tasks, and that he brought a group of prisoners to Raška Gora just once. Although the Panel finds the evidence of witnesses rather consistent, it should be noted that the statements were given with the aim of minimizing the Accused Šunjić's culpability, as most of these witnesses knew the Accused, carried out certain military tasks together with him, which, according to the Panel, is a strong motive on their part to testify to his benefit and help him avoid responsibility. Furthermore, the fact the Šunjić was relieved of duty of a military police officer in the 5th Battalion on 14 September 1993, and that on the very same day Marko Radić requested that Šunjić be relieved of that duty as he was needed in his unit - the 1st Battalion of the 2nd Brigade in Bijelo Polje, led to the conclusion that the reason for that was to take over the command in the Vojno prison, and that the Accused Marko Radić appointed him to that post. Finally, this is not of a decisive importance because Šunjić could have been a participant in the JCE even without being a member of any military unit (as mentioned in the introduction to this Chapter) or without being in any hierarchical relation with the Accused Radić. Even if he had really left the unit and had a status of a civilian, he could have remained a participant in the JCE, because the critical point is the common criminal goal, joint purpose, his knowledge of its existence, knowledge that his acts constitute a part of that plan and the intention to maintain the camp system and crimes against the prisoners. Moreover, the fact that he joined it as late as August 1993 is not relevant either.

974. Numerous Prosecution witnesses – former prisoners – gave a detailed description of the events in which the Accused was personally involved. Their statements are complementary to each other and the critical parts are consistent with their evidence given at the investigation stage. Additionally, the manner in which the witnesses gave their accounts before the Panel, their description of the events in the words of the suffering victims (especially the beatings and mistreatments committed by Šunjić himself), frequently identifying the Accused in the courtroom, convinced the Panel of the truthfulness of their evidence.

975. The Panel notes that even if the Accused's submissions were true that he was a member of the Military Police, that on 14 September he was relieved of duty, that he was taking care of his

wounded brother, that he was not a member of any unit in the period from 15 September to 30 September, that on 30 September he joined the 1st Battalion of the 2nd Brigade and on 1 January 1994 became a member of the Guards Brigade, it would not influence the established state of facts and diminish the responsibility of the Accused Šunjić because none of that is of such quality so as to cast doubt on the reasonable conclusion that the Accused Šunjić was physically present in Vojno considering the territorial and geographical connection between the places relevant to the charges and the places where he allegedly stayed.

976. The Accused himself stated that he spent one period of time in Đubrani and one chopping wood at Goranci. Many witnesses mentioned Đubrani as the place they passed on their way to Vojno. Further, witness AL stated that together with other prisoners he went to chop wood, which lasted for five to six days and that Dragan Šunjić was with them. The period of time exactly matched the time that Šunjić himself mentioned as the time that he spent chopping wood, more precisely, from 20 October to early December.

977. All the aforementioned indicates that the Accused was present in the Vojno prison and the surrounding areas in different but very frequent time intervals. Above all, it should be mentioned that the ICTY and this Panel took the position that an accused did not necessarily need to be present in a camp all the time to be held responsible for the crimes committed within the JCE, nor is it necessary that he personally participated therein or in any individual act committed as part of the criminal plan – enterprise and contributed to the realization of its purpose.

978. Bearing in mind all the aforementioned, the Appellate Panel concluded beyond any reasonable doubt that from August 1993 to March 1994, Dragan Šunjić, as Deputy Commander of the prison and member of the 1st Bijelo Polje Battalion of the Second Brigade of HVO, the Sabotage Unit *Ivan Stanić Ćićo* and the HVO Military Police, personally participated in the incarceration of several dozens of Bosniak civilians, women and children in the Vojno prison (the term “incarceration” includes the entire time they spent in the camp without any valid legal ground and legitimate decision of a competent authority) and was responsible for the lives and limbs of those prisoners, and that he personally participated, contributed to and furthered the functioning of the prison system of abuse and persecution of Bosnian Muslims.

979. The Prosecution charged the Accused Šunjić with the participation in the establishment of the Vojno prison and the unlawful arrest of Bosniak civilians, women and children. Having evaluated the available evidence, the Panel was in no position to reach a conclusion that the Accused personally participated in the establishment of the prison and in the arrests of civilians in

Mostar, wherefore this act is not mentioned in the factual description of the Verdict. To wit, the Vojno camp was established in July 1993 and the charges against the Accused Šunjić pertain to the period from August that year. Therefore, the Panel cannot evaluate the Accused's acts retroactively in relation to the period of charges against him. Additionally, none of the civilians who were arrested and brought to Vojno ever mentioned that Šunjić was amongst the persons who came to arrest them. However, the Panel finds it noteworthy that although it was not proven that the Accused Šunjić was involved in the arrests of civilians and establishment of the prison, his activities upon the establishment of the camp contributed to and furthered the system of abuse and persecution; the early beginning of those activities, at least with regard to the Vojno camp, can be found exactly in the establishment of the camp and in the unlawful arrests, whereupon other criminal acts followed.

(i) Personal knowledge (mens rea) of Dragan Šunjić

980. The Accused Dragan Šunjić personally knew of the existence of the organized system of abuse and its common purpose and is therefore responsible for the systemic joint criminal enterprise and the acts undertaken therein, including the acts of Šunjić himself and the acts of other persons which were undertaken for the same purpose. However, the Prosecution did not have the obligation to prove that the Accused knew of each individual crime committed within the system.

981. Witnesses' accounts and numerous documentary exhibits constitute the evidence of knowledge on the part of all Accused, including the Accused Šunjić, about the system in which they all participated. Other previously mentioned indirect indicators also point to their knowledge.⁸⁵

982. The Accused Dragan Šunjić, as Deputy Commander and for several days also as Commander, was present in the Vojno camp almost every day, was aware of all events that took place in the camp and participated in many. His frequent presence in the camp speaks for the fact that it is impossible that he did not learn of the offenses committed there even when he himself did not participate in their perpetration. He was escorting the prisoners from Heliodrom. He was present when these persons were brought to the Vojno prison whereupon they received instructions about the rules of conduct and were mistreated. The Accused Šunjić personally participated in the

⁸⁵ See the section VII chapter Ba)i) of this Verdict.

questioning of prisoners, escorting them to perform forced labour, their beating, torturing and escorting women to places where they were raped.

983. The Accused Šunjić entered the rooms and premises where the prisoners were quartered, he saw the conditions and he knew of their shape, quality of food and medical care, personal hygiene conditions, and the like. The Accused knew it all, saw it personally, and did nothing to improve the conditions. On the contrary, by his acts he made those conditions even more difficult.

984. The Accused Šunjić knew of the forced labour performed by prisoners in Vojno and the surrounding areas. He is the one who, together with Mihalj, sent them every morning to perform labour and on several occasions personally participated in escorting the prisoners from Heliodrom so that they perform labour for the purposes of the HVO and he went to the sites where the prisoners performed labour. The Accused, therefore, knew of the forced labour, the sites and purposes of labour, and he knew that labour was frequently performed at the front-lines where the prisoners were exposed to a life threat.

985. The Panel concluded beyond any reasonable doubt that the Accused Šunjić personally participated in the torture and beating of a large number of prisoners including Arif Omanović, Avdo Jelin, witnesses AI, 153, 152, AF, Ramiz Mačković. Other witnesses also testified that they were beaten by Dragan Šunjić. With respect to the charges against the Accused including those that he personally committed and those to which he gave a significant contribution, the Panel concludes that the most numerous are the Accused's activities in the beating, physical and mental abuse of the prisoners, which are characterized by a high level of brutality. The beating started immediately upon the prisoners' arrival. All sorts of implements and methods were used in the beating and torture in order to inflict as much as pain as possible. The Accused Dragan Šunjić was present when the other Accused and HVO soldiers tortured and beat the prisoners. All the aforementioned supports the inference that the Accused knew of the torture and beating.

986. Šunjić took witness B to a building and mentioned the "pillowing," and thereafter four persons raped her. Witness D stated that before she was taken to the Marko Radić's command, where she was raped, she had been taken to the camp command where the Accused Šunjić, Brekalo, among others, humiliated her, and then Brekalo took her to Radić for rape. Witness C stated that guard Rudo Ravlić took her to the prison command where she met the Accused Šunjić and Mihalj. She was ordered to perform some tasks and the Accused Šunjić told her she was not entitled to any rights as she was in the black hell. Thereafter, the witness was taken to a house where she was raped by the Accused Brekalo and a soldier named Marko. Witness F stated that the Accused Šunjić was

present in the command when she regained consciousness after the first sexual abuse. It follows from the account of witness E that the Accused Šunjić was present when this witness gave a statement about the first attempt of rape committed by an HVO soldier. The Accused Šunjić was present in the room where women were quartered, when Damir Brekalo took witness D out and thereafter raped her.

987. All the aforementioned leads to the conclusion that the Accused Šunjić knew of the rapes and sexual abuse committed against the imprisoned women.

988. Based on the evidence available to the Panel, it was not established that the Accused Šunjić personally participated in the murder of prisoners, except for the murder of an unknown person in early January 1994; according to the indictment, that person is Enes Nurko, but his identity has not been established.

989. However, bearing in mind his presence and function, those murders did not remain unknown to him. The Accused Šunjić personally escorted prisoners from Heliodrom for the purpose of forced labour. Therefore, he was responsible for the security of those prisoners. Considering that the prisoners were sent to perform labour at the front-line, for all those who brought them to Vojno, including the Accused Šunjić, their death was a foreseeable consequence of their exposure to cross-fire but they sent them to perform that dangerous labour nevertheless. The consequence of that was the death of several prisoners at the front-line, including those killed by HVO soldiers and those who got killed in a cross-fire while performing labour. Additionally, the Accused Šunjić was present when Mirko Vračević killed Asif Čakrama. Also a brutal murder of four prisoners (Kajtazi, Čorajević, Čakalović and Začinović) took place in the prison. Furthermore, Mario Mihalj deprived Salim Halilović of his life, while the statement on this murder was signed by the Accused Šunjić in his capacity as the prison commander. With the aim of hiding this murder, the statement reads that Salim Halilović got killed while performing labour. All the aforementioned leads to the conclusion that the Accused Šunjić was well aware of all murders committed in the camp, that he knew of them but did not do anything to prevent them, whereby he undoubtedly approved of them and supported them by his conduct.

990. All the aforementioned leads to the conclusion that the Accused Dragan Šunjić knew of the nature and scope of the criminal activities undertaken in the Vojno prison, such as unlawful deprivation of liberty and incarceration, inhumane treatment, torture, beating, rape, sexual abuse and murders, and therefore, as a participant in the joint criminal enterprise, he is held responsible for all these acts.

(c) Damir Brekalo.

991. As has been previously stated elsewhere in this Verdict, responsibility for Type 2 or “systematic” Joint Criminal Enterprise can only be established if it is possible to prove that the Accused, in this case, Damir Brekalo, not only personally participated in the commission of a crime or crimes for which he is personally responsible, but also that the crimes were committed in furtherance of an existing common plan involving a plurality of persons, joint criminal design or purpose. There is no need to determine whether the JCE participants personally previously planned the contents and the objective of the criminal plan or whether they agreed to the common plan, design or purpose that had already been created by others. It is sufficient to prove that the participation of the Accused in the common design involving the perpetration of a criminal offence was intended to assist or, otherwise, contribute towards the execution of the said common purpose.

992. The Accused’s responsibility under the JCE exists in conjunction with other persons when the offences committed by the Accused were committed in furtherance of some common purpose or when, notwithstanding the absence of his personal participation, the Accused, by his acts and conduct, assists and encourages other JCE participants to do something which constitutes a part of the plan, but also when he abets them by doing nothing to prevent the commission of the criminal offence by a third party.

993. According to the unit records, at the relevant time the Accused Damir Brekalo was a member of the Convicts Battalion (24 December 1992 – 1 January 1994) and a member of the 1st Battalion of the 2nd Brigade (November 1992 – 30 September 1993 and 2 April 1994 – 19/14/1994.) Damir Brekalo’s membership in the Convicts Battalion was also established on the basis of the List of the Convicts Battalion members dated 2 June 1993, which, under number 12, contains the name of Emir Brekalo, which was his name until mid-September 1993. This list was signed by Marko Radić, the 1st Battalion Commander. Emir Brekalo’s name is also found under number 22 on the list of members of the Convicts Battalion *Ivan Stanić Čičo*, Bijelo Polje, which was again signed by Commander Marko Radić on 27 June 1993. The list made by Commander Marko Radić on 2 June 1993, which refers to the Convicts Battalion soldiers who need to be issued with a decision on apartment allocation, shows under number 12 that Emir Brekalo was allocated an apartment in the Kolodvorska Street. Marko Radić, whose name is found under number 5 of the said list, was also

allocated an apartment in the Kolodvorska Street. All this suggests that they knew one another and were friends.

994. Brekalo's membership of the 1st Battalion also ensues from the statement given by Mario Mihalj on 8 July 1993 to the Military Police Administration, when he stated that Emir Brekalo was a member of the 1st Battalion of the HVO. Ivica Kolobara gave a similar statement on 8 July 1993, when he identified himself as a member of the Convicts Battalion *Ivan Stanić Čičo*, and stated that upon the order of the HVO 1st Battalion he went to Mostar together with Emir Brekalo and Anđelko Zvizdić to gather persons of Muslim ethnicity. Considering that it is indisputable that Marko Radić was the 1st Battalion Commander at that time, the issued order clearly shows that Emir Brekalo belonged to the unit under Marko Radić's command.

995. As part of the criminal plan and a system of organized abuse, a number of civilians, mostly women, children and elderly people were, unlawfully, arrested in their homes in Western Mostar and taken to the camp in Vojno. Such arrests were "unlawful" because these civilians were never formally notified as to the reason for their arrest and were never charged with the commission of a criminal offence, as required by law. Therefore, their detention can only be described as being in contravention of all internationally-accepted justification for detention in times of conflict.

996. The regular participation of the Accused in several mass arrests has been established beyond any reasonable doubt. It is unequivocal that the Accused, Damir Brekalo, together with other members of the "1st Battalion" and the "Ivan Stanić Cico Convicts Battalion," regularly took an active part in these illegal arrests. His actions are sustained by the evidence of various witnesses who were arrested by him and accompanied by him to the Vojno camp, including Witnesses L and X whom the Accused, later, raped.

997. It is important to note that the Accused did not act on his own, but was, always, in the company of other members of his Battalion. This is important in this particular context since a plurality of persons is an essential element for determining liability for a joint criminal enterprise. The panel has, also, taken into consideration the fact that all these illegally arrested civilians were taken to the Vojno camp which had been specifically established to house them and keep them under lock and key. The regularity of the arrests and the taking of these arrested civilians to a location which was specifically established to provide for their illegal detention is yet another indication of the existence of a common criminal purpose amongst the perpetrators.

998. It is indisputable that a substantial number of male Bosniak civilians were, from time to time, taken, in substantially large groups, from Heliodrom to the prison camp in Vojno where they

were kept for a period of time in rather inhumane conditions, and from where they were, daily, taken to perform forced labour by digging communication and combat trenches on the front-lines, opposite the positions of their own forces. This transpires from the evidence produced during the course of these proceedings and has been confirmed by the testimony of witnesses AK, AA, AD, AF, Ramiz Mačković, Azer Handžar, Ramiz Bebanić, Semir Humačkić, Aziz Suljević, Hamza Leto, Hasan Trtak and others.

999. It has been determined that Brekalo was a frequent visitor to the Vojno camp at all times of day and night, as has been attested by witnesses Saja Ćorić, A, D, K, AF, Ramiz Bebanić, who have all testified as to the regularity of his visits. Being such a frequent visitor to the camp, Brekalo must have had specific knowledge of what was going on in the camp and of the fact that these male civilians were being, regularly, utilized to perform dangerous work right on the front lines and that they did so not in a voluntary way. Notwithstanding this certain knowledge, the Accused did nothing to stop such irregularity or, at least, abate it and, therefore, knowingly and willingly actively participated in the established system of organized abuse of Bosniaks set in place in the camp in Vojno.

1000. The absolute lack of adequate living conditions throughout the existence of the Vojno camp has been established and this Panel sustains no doubt that this lack of adequate living conditions is, yet, another element of the common criminal purpose of abuse and humiliation planned by those who were keeping these civilians in detention.

1001. The panel is satisfied that significant numbers of male prisoners were detained in a closed area of a garage, measuring not more than 38 square meters, for a considerable period of time. No sanitary facilities were made available, with the detainees having to use an antechamber for this purpose. Other male prisoners were imprisoned in a house basement without electricity, sanitary facilities or running water. A bucket was used to cater for bodily functions and the smell this created in the basement was, to say the least, foul. Women and children, in numbers from 13 to 30, were crammed into small rooms with not enough space to lie down on the concrete floor. No blankets were provided, or electricity, spare clothes, personal hygiene facilities or running water. One can only imagine the sense of despair, fear and humiliation that these prisoners must have felt at the time.

1002. Minimal food was provided to all the prisoners, sufficient to just get by. Often, even though the prisoners belong to the Muslim faith and this being known to their incarcerators, pork was served as the only meal. This fact, in itself, is a confirmation that one of the objects of the detention

of these civilians was the common criminal purpose of abuse and humiliation of the Bosniaks because of their ethnicity and religion.

1003. According to witnesses Saja Ćorić, D, K, AF, J, F, the Accused was a regular visitor to the camp and could, consequently, have been very aware of the prevailing conditions rampant at the time of his visits there or should have been so aware.

1004. As argued above, the evidence of his presence at the camp is prolific and, in this regard, mention is to be made of one incident where the Accused, in the company of Radić and others, entered the room where females were kept, terrorizing its occupants by burning a young girl's skirt over her head and ordering witness D, who was later raped by him, to exit the room. This regular presence of the Accused must be interpreted as a tacit acceptance of the inhumane living conditions prevalent in the Vojno camp while he was there and about which he did nothing. It follows that the reticence of the Accused to improve the living conditions of the detainees and, consequentially, his acceptance of the abnormal living conditions within the camp cannot but be interpreted that the Accused was, definitely, aware of the common criminal purpose of abuse and humiliation of the Bosniak prisoners and supported it, which amounts to the knowing and willing participation of the Accused in the joint criminal enterprise – type 2.

1005. As described and established earlier, large numbers of male prisoners were brought from the Heliodrom prison complex to the Vojno camp for the specific purpose of performing forced labour on the front lines on behalf of the HVO forces who were militarily engaged against the Muslim forces on the other side of the Neretva river. Some of these detainees were never returned to the Heliodrom because they had been killed on the front line while digging communication ditches or combat trenches for the HVO.

1006. Female detainees were also subjected to perform forced labour. They were ordered to do the cleaning of the HVO dugouts, wash the clothes of the HVO soldiers and cook for them.

1007. The detainees were not in a position to refuse to carry out this work because they had been ordered to do so and had been warned, on their arrival in the Vojno camp, that they were to, implicitly, obey any order given to them by their supervisors. Also, they were in fear of their lives and did not dare to refuse any order given to them by their camp Commandant or other person delegated by him to give such an order. It is very obvious that, besides securing ready work force for the HVO in the area, the system was set also to exploit the prisoners as much as possible and to demoralize, intimidate and humiliate them and, in this weakened state, secure their complete compliance. This Court is satisfied that the Accused was aware of this system of forced labour

which was, so obviously, set in place in the Vojno camp yet did nothing to improve the situation. On the contrary, by his specific actions, adhering to the common criminal plan, the Accused contributed to the established system of abuse and humiliation of the Bosniak captives.

1008. This Panel has concluded beyond a reasonable doubt that a number of detainees were killed during their unlawful detention at the Vojno prison. Prisoners Mesud Dedajić, Hamdija Tabaković, Džemal Sabitović, Mustafa Kahvić and Mensur Salman were all killed whilst performing forced labour on the front lines by friendly or enemy fire. This fact alone goes to show how dangerous it was for the prisoners to be used to perform this work where their lives were always at stake. Also, one must note the fact that not only one or two prisoners were killed but a substantial number. It can, therefore, be safely argued that whoever was responsible for ordering the prisoners to this dangerous location knew, with certainty, the perilous nature of this enterprise yet, notwithstanding, did not desist from this criminal behaviour. The aforementioned specific evidence clearly shows the common criminal purpose shared by all the Accused and others which was, solely, aimed at the abuse and maltreatment of the persons under their control. Their deaths were a natural and predictable consequence of the acts of who was in command or of who had control over the prisoners who had, consciously and intentionally, exposed the detainees to such danger.

1009. Further evidence of this common purpose is the disappearance of prisoners Mustafa Čilić and Rasim Lulić who had been unaccounted for ever since the day when Brekalo severely beat them up until their bodies were exhumed and identified after the war. Asif Čakrama was killed by Mirko Vračević while Salim Halilović was killed by Mario Mihalj. Aris Začinović, Enver Kajtazi, Husnija Čorajević and Željko Čakalović were all killed on the premises of the camp because they were blamed for the death of a wounded HVO soldier. All together, a substantial number of deaths were caused within a relatively short period of time and all the victims were persons who were being held captive and forced to work for their captors. While no evidence has been produced that this Accused was, personally, involved in any of the killings, no doubt exists to the fact that he, definitely, knew about them and supported them by his conduct.

1010. None of the Accused, Brekalo included, ever tried to prevent the killings although they knew that they constituted unlawful actions that cannot be justified. His actions and omissions, as well as actions and omissions of the co-accused in this case, amount to approving and agreeing to the joint criminal purpose and can be interpreted as a tacit acceptance of a criminal culture of uninhibited murder committed by the Accused themselves or by other HVO members or even committed due to cross or sniper fire during the forced labour.

1011. As previously mentioned, evidence is abundant when it comes to proving the practice of torture in the Vojno camp during the relevant period. Many witnesses confirm that they were punched, kicked, beaten, hit with hard objects by their captors. They were forced to beat each other, bang their heads against the wall and even administered electric shocks during their interrogation. This results not only from the testimony tendered by the surviving victims but also by eye witnesses. It seems that torture and beatings were rampant throughout the camp with detainees like Mustafa Čilić, Rasim Lulić, who had been unaccounted for from that very day, while Arif Omanović and Avdo Jelin died several days thereafter.

1012. Evidence of witness AA indicates that he was present when Emir Brekalo severely beat prisoners Mustafa Čilić and Rasim Lulić on two occasions that day. Witness AF also stated that he was beaten twice by Brekalo, Šunjić and Mihalj. Furthermore, witness Ramiz Bebanović stated that on one occasion Brekalo, Šunjić and Mihalj came to the garage and beat all the prisoners.

1013. These beatings, in which Brekalo participated, when coupled with the other torture and the beatings to which the prisoners of Vojno were regularly subjected to, are firmly indicative of a constant and consistent policy of prisoner mistreatment by those who were in control. Brekalo, having been a regular visitor to the camp and having, personally, participated in the severe beating of some of the prisoners, knew that very well.

1014. In the course of the proceedings it was proven beyond a doubt that many women were being raped in Vojno camp. Some of these women were repeatedly raped by several persons while others only on one or two occasions.

1015. Immediately upon her arrest, the underage witness L was raped by Brekalo in an apartment while her younger sister was in an adjacent room. After that, they took them to a house where she lost consciousness. Damir Brekalo raped her again that night threatening to kill her with a knife.

1016. Witness X, who is witness L's sister, also stated that after her arrest Damir Brekalo sadistically raped her.

1017. Witness C stated that she was taken to a house one night where Emir Brekalo and a soldier by the name of Marko waited for her. Brekalo and Marko forced her to oral sex and sexually humiliated her after he had forced her to drink alcohol. Witness D also described meeting Brekalo when on one occasion he entered their room together with Radić, Šunjić, Mihalj and two other persons; he introduced himself and told her to get out and leave her child behind. Brekalo raped her that night.

1018. The conviction of Brekalo for some of the charges of rape brought against him, and it is not premature to say so, coupled with the very credible evidence that Brekalo often provided women to co-accused Marko Radić and Dario Sušac (rapes of witnesses X, D) to be raped by them is, again, indicative of the common purpose planned by the perpetrators to submit their captives to humiliation, despair and ridicule. This conclusion is further strengthened by the fact that a number of HVO personnel have been mentioned in these proceedings as, allegedly, being accomplices to various rapes. For example, a soldier by the name of Ivan was ordered by Marko Radić to rape witness A. A soldier named Marko raped witness C. Witness AM was repeatedly raped by Accused Mirko Vračević. Witness B was raped by Dario Mihalj, Tomo Aničić, and soldiers Babo and Sergej. Mirko Bukara raped Witness E. Dragan Škobić raped witness J.

This Panel, therefore, concludes that rape was a part of the joint criminal plan and means of achieving the joint criminal purpose within which the perpetrators abused, humiliated and ridiculed female members of Bosniak ethnicity.

(i) Personal knowledge (mens rea) of Damir Brekalo

1019. The Accused Damir Brekalo personally knew of the existence of the organized system of abuse and its common purpose of persecuting civilian Bosniak population and, therefore, he is responsible for the systemic joint criminal enterprise and acts undertaken within it by himself and by other persons.

1020. Witnesses' accounts and numerous documentary exhibits constitute the evidence of knowledge on the part of all Accused including the Accused Brekalo about the system in which they all participated.

1021. The Accused Brekalo, as a member of the 1st Battalion and the Convicts Battalion *Ivan Stanić Ćićo*, was in a close relationship with Commander Marko Radić. Radić provided him with an apartment in the same street where he got himself one, too. From the beginning of the period relevant to the charges, Brekalo participated in the arrests and taking of people from Mostar to Vojno. He personally participated in the arrest of witnesses X and L (their mother and brother), and witnesses C and AD.

1022. In addition to arresting civilians that Damir Brekalo personally conducted, considering his frequent presence at Vojno camp, he could not have been unaware of other captured civilians, as

well as of men who were brought from Heliodrom to Vojno for the purpose of carrying out forced labour.

1023. Accused Brekalo entered rooms and premises in which the prisoners were quartered and he saw the conditions therein, he knew what they looked like, the quality of food they were getting, medical aid, personal hygiene conditions and the like. The Accused knew it all and yet did nothing to improve the conditions. On the contrary, by his conduct, he supported the situation and, by doing that, he made the situation even more difficult for the prisoners.

1024. Accused Brekalo knew that prisoners carried out forced labour as he was frequently present at the front-line and at other sites where the prisoners carried out labour.

1025. The Accused, Damir Brekalo, raped two underage girls (X and L) and, in addition to that, he took one of them to the Accused Radić. Brekalo also raped other female prisoners (D, F, C, as mentioned in the above text). With regard to the criminal acts which, according to the charges, the Accused personally committed or significantly contributed to their perpetration, the Panel notes that his activities in the offenses of rape and sexual violence are most numerous and characterized with a high level of inhumanity and brutal conduct, which is not only expressed in the act of rape itself but also in the humiliation, degradation and mistreatment of his victims.

1026. Bearing in mind such conduct, it is indisputable that the Accused committed the acts of rape with a direct intent and that he had knowledge of rapes committed by others in the pertinent period of time.

1027. During his frequent visits to the camp, the Accused Brekalo personally mistreated prisoners by beating them either in the prison or at the front-line where they carried out forced labour (beating of Čilić and Lulić). He used to be seen in and around the camp in the company of Accused Radić, Šunjić and Vračević, and he was in touch with the camp commander Mario Mihalj, too.

1028. The available evidence could not lead to the conclusion beyond any reasonable doubt that the Accused Brekalo personally participated in the killings of prisoners. However, bearing in mind his frequent presence in the camp, the killings could not have remained unknown to him. According to the available evidence, the Accused was present on several occasions at the front-line and in the camp while prisoners carried out forced labour. The death of prisoners who were exposed to cross and sniper fire while carrying out labour was a foreseeable consequence clear to anyone who brought them to Vojno, including the Accused Brekalo, and who sent them to carry out such dangerous labour. In addition, immediately after the killing of four prisoners (Začinović,

Kajtazi, Čorajević and Čakalović), Brekalo was seen washing his hands at the fountain in the immediate vicinity of the place where the killing happened, which is another indicator that the killings could not have been unknown to him and that he knew very well about them, especially the one that happened just before he washed his hands. The Panel concludes that he knew of other killings due to his close relation with other co-Accused and his frequent presence in the camp. All the aforementioned clearly entails that the Accused was very well aware of all killings that happened in the camp, that he knew that they were unlawful and yet did nothing to prevent them, which leads to a definite conclusion that he condoned them and even supported them by his presence and conduct.

1029. Bearing in mind all the aforementioned, the Panel undoubtedly concluded that the Accused Damir Brekalo knew of the nature and scope of the described criminal activities undertaken in the Vojno camp, such as the deprivation of liberty, incarceration, inhumane treatment, torture, beating, rape, sexual abuse and killing. Therefore, as a participant in the joint criminal enterprise, he is responsible for such acts that were part of the joint criminal plan and purpose.

(d) Mirko Vračević

1030. According to the military records submitted by the Ministry for War Veterans on 1 December 2008, Mirko Vračević was assigned to the Military Postcode 1520 from 30 June 1993 to 18 April 1996, while in the period from 30 June 1993 to 19 April 1994 he was a member of the First Battalion, Second Brigade, Mostar. The Military ID issued in the name of Mirko Vračević shows that he participated in the war as a member of the Military Postcode 1520 in the period from 30 June to 18 April 1996. Therefore, the said documents clearly entail that immediately after the outbreak of conflict between the ABiH and the HVO in Bijelo Polje, on 30 June 1993 Vračević was engaged in the First Battalion of the Second Brigade, which was commanded by Marko Radić at the pertinent period of time.

1031. Numerous accounts of witnesses confirm that Vračević was assigned as a guard in the Vojno camp. The Defence did not dispute it in the course of the proceedings but they maintained that Vračević did not make any decisions and that he only executed the orders of his superiors.

1032. The proffered evidence clearly entails that the Accused Vračević did not personally conduct unlawful arrests of civilians in Mostar and other places but his role is indisputable in keeping

Bosniak civilians imprisoned in Vojno in the conditions that were previously described. Witnesses Saja Ćorić, C, D, Ramiz Mačković, AL, Aziz Suljević, K, B, 152, D and others testified that Mirko Vračević met them upon their arrival in Vojno. Vračević introduced some of them to the “rules of conduct”, frisked them, and seized their personal belongings, while Aziz Suljević and Ramiz Mačković stated that Mirko was one of the soldiers who brought men/prisoners from Heliodrom through Đubrani to the Vojno camp.

1033. The Accused knew that the imprisoned persons were arrested and held in the Vojno camp against their will, that they have not been subject to any criminal charges or criminal proceedings in accordance with the law, and that they were brought there just because of their ethnic background.

1034. According to the available evidence, the Accused Vračević escorted the prisoners who were brought from Heliodrom or escorted them to the sites where they performed forced labour. He was usually present when the prisoners were selected for labour at the front-line. This was corroborated by the testimony of many witnesses. Witness Hamza Leto stated that on several occasions he saw Vračević requesting the prisoners for the purposes of forced labour, while witnesses Ramiz Mačković, 151, Saja Ćorić, B stated that Vračević personally took them to perform labour.

1035. As a guard in Vojno, the Accused knew that female detainees were used to clean, do the laundry and cook for the camp or for numerous military and police units of the HVO in that area.

1036. The Accused has never protested against the unlawful conduct and treatment of detainees. There was not a single piece of evidence proffered in the proceedings to show his attempt to help the detainees. Although he was just a guard, which the Defence never disputed, the consequences of the events that happened in his presence were foreseeable and he could have expected them to happen. His personal active participation in some of the offenses committed in and around the prison facility is just a confirmation that this Accused was part of the joint criminal enterprise, that he actively participated in the enterprise by the acts that he personally undertook and by his support to others in committing their acts as previously described (torture, killings, rapes and other committed by others).

1037. There is not a single piece of evidence showing his protest against such a treatment of prisoners or any attempt on his part to improve the situation and conditions. Despite the ongoing events in the camp, he continued to perform his task of a prison guard and was constantly present in the camp. Everyone knew him well and he was camp commander’s favourite guard, always assigned to escort prisoners to the beating or rape. He brought them back to the camp on almost every occasion.

1038. Ample evidence relative to the inhumane living conditions in the Vojno camp undoubtedly entails that Vračević was in a position to see on a daily basis the conditions in which prisoners lived and died. It was impossible not to notice the cramped rooms in which prisoners were held, lack of adequate means for a decent life, such as electricity and water, dirty rooms and lack of decent food, especially for children and elderly.

1039. In light of the aforementioned, it is clear that the Accused Vračević was in a position to know what was happening around him. Considering his low position and the state of his health, it would have been very easy for him to shy away from his military duties as a guard and convince his superiors of his unsuitability to perform any military service at all. This convinces the Court that Vračević willingly stayed on as a guard, thus approving, albeit tacitly, the common criminal purpose set up by the others. Having said this, the Panel finds him, as a member of the JCE, responsible for the criminal offenses of murder and rape committed not only by him but also by other persons within the common plan to further the system of abuse in the camp.

1040. Based on the evidence, the Panel concluded beyond any reasonable doubt that the Accused, Mirko Vračević shot and killed Asif Čakrama when transporting prisoners from Heliodrom to Vojno.

1041. However, this killing must not only be viewed in the context of a killing carried out by Vračević for which he has been held personally responsible, but must also be seen in relation to the particular conditions prevalent in camp Vojno at the time. One must remember the killing of a considerable number of detainees while performing maintenance works on the front lines. Also, one must remember the disappearance of two prisoners from the camp after they were severely beaten by Damir Brekalo and the killing of Salim Halilović by Mario Mihalj. One must remember the alarming and cold-blooded murder of four detainees because they were blamed for the death of a wounded HVO soldier. The Accused Vračević knew of these deaths and disappearances and, therefore, the killing of Čakrama, whilst in a drunken state, was only one murder of many that happened in and around prison, which, in the atmosphere of terror, could only enhance the esteem he craved from his peers.

1042. The Court has had occasion to examine Vračević's participation in the various instances of torture and beatings carried out in or around the premises of the Vojno camp. A number of instances immediately come to mind:

1043. Witness 152 stated that Mirko Vračević hit him with a rifle butt and provoked him by saying that he would slaughter him "just like he already slaughtered his aunt."

1044. Witness 153 described the event when Vračević entered the garage and called out Arif Omanović. He took Arif Omanović to Mihalj who beat him so severely that Arif was all misshapen. Immediately thereafter, Vračević took witness 153 to Mihalj who beat witness 153 for two hours and after that Vračević took him back to the garage. Witness 153 stated that on one occasion Vračević poked him with a bayonet at the same time when Mihalj subjected him to electric shocks.

1045. Witness D described the event when, upon their arrival in Vojno, Vračević offered a hand-grenade to her seventeen-month old daughter.

1046. Witness J stated that, upon her arrival in Vojno, Vračević placed a knife under her throat and said “The fox is brought to the furrier!”

1047. That Čilić and Lulić and witness AF were badly beaten was a known fact throughout the camp, which was attested to by a number of witnesses. That other witnesses were beaten, abused, punched, kicked or hit with rifle butts, usually when returning from the front lines, forced to beat each other and given electric shocks, was also a known fact.

1048. Not only is this Court satisfied that Vračević knew of all this, but it is also convinced that Vračević participated in these events in a willing and intentional manner, cognizant of what was going on and approving it.

1049. As mentioned previously, it was indisputably determined and reasoned that many women – prisoners in the Vojno camp – were raped.

1050. Having evaluated the proffered evidence, the Panel concluded that the Accused Vračević personally raped witness AM on a number of occasions.

1051. The criminal act of rape that the Accused committed must be read within the context of the prevailing conditions which existed at the time that the Vojno camp was in use. It seems that during the relevant time, a culture of abuse and humiliation of the female detainees was put in place by the persons holding them and that this culture of abuse and humiliation was rife throughout the period relevant to the charges.

1052. The raping of helpless and terrified women was almost a permanent task of the guards and soldiers. This conclusion is corroborated by repeated threats of Radić, Brekalo and others that “every Baliža woman will give birth to one Ustasha” and similar ones, which clearly entails that the rape of Bosniak women was systematic and constituted a part of the joint criminal plan. The

Accused Vračević willingly helped in the rapes committed by other men. It was proven that he took witnesses A and D to Marko Radić and witness E to Mirko Bukara for rape.

(i) Personal knowledge (mens rea) of Mirko Vračević

1053. In the reasoning of Mirko Vračević's participation in the joint criminal enterprise, the Panel already referred to his personal knowledge of the system of abuse and offense committed by him and by other perpetrators, but at this juncture the Panel will briefly state the facts which are the basis for the finding of Vračević's knowledge of committed offenses and his attitude towards the offenses and consequences thereof.

1054. The Accused, Mirko Vračević, knew of the organized system of abuse and the common purpose of persecuting Bosniak civilian population and is, therefore, responsible for the systemic joint criminal enterprise and acts within its scope taken by him and the acts taken by other persons.

1055. Witnesses' accounts, and numerous documentary evidence admitted in the case-file, some of which were stated above, constitute evidence of knowledge on the part of the Accused Vračević and other Accused of the system in which they participated.

1056. The Accused Vračević carried out the duty of the guard and was present in the Vojno camp on an almost daily basis, he was aware of all events and he personally participated in them. His frequent presence in the camp corroborates the fact that it was impossible for him not to know of the acts in which he did not participate. He participated in the taking of prisoners from Heliodrom, was very frequently present when new prisoners were brought to Vojno when the "rules of conduct" were conveyed to them, and when they were mistreated in the aforementioned manner. The Accused Vračević personally participated in the taking of prisoners to forced labour, torture, rape, murder.

1057. Bearing in mind the duty he performed, the Accused Vračević had the best knowledge of the conditions in which the detainees stayed. He entered rooms and premises in which the prisoners were quartered and he saw the conditions therein, he knew what they looked like, the quality of food they were getting, medical aid, personal hygiene conditions and the like. The Accused knew it all and yet did nothing to improve the conditions. On the contrary, by his conduct, he supported the situation and, by so doing, made the situation even more difficult for the prisoners.

1058. The Accused Vračević knew that prisoners carried out forced labour. He was present when prisoners were selected for forced labour, and on several occasions he personally took the prisoners to perform labour. Also, he was present when the prisoners were brought back to the prison after they performed forced labour. The Accused, therefore, knew of the forced labour, the purpose thereof and of the sites where such labour was performed.

1059. The Panel concluded beyond any reasonable doubt that the Accused Vračević personally participated in the torture, that is, physical abuse of Ramiz Mačković, 152, 153, while in other proven instances of torture Vračević stood out as a person who brought the prisoners to Mario Mihalj and Dragan Šunjić and was present while they tortured and beat them up. He committed inhumane acts against witness J (placing a knife under her throat) and witness's D child (offering her a hand-grenade). Additionally, Vračević stood out in the acts of humiliation, intimidation and threatening of prisoners, and by so doing he furthered and strengthened the prevailing atmosphere of terror and fear. All the aforementioned indisputably entails that the Accused knew of the torture and beating of prisoners.

1060. Vračević personally raped witness AM. He took witness E to Mirko Bukara who then raped her. As a guard, he knew that women were taken out by night, raped and sexually abused. He saw those female detainees on a daily basis and he could have concluded that they were raped by the way they looked. According to the aforementioned, the conclusion is reached that in addition to personally raping witness AM, the Accused Vračević knew of rapes and sexual abuse of other female detainees committed by other soldiers.

1061. Based on the available evidence, the Panel found that the Accused Vračević killed the prisoner Asif Čakrama. Furthermore, considering his presence in the camp, the other murders that were committed could not have remained unknown to him. The Accused Vračević personally brought prisoners from Heliodrom for the purpose of forced labour. As a guard he was responsible for their security. Bearing in mind that the prisoners performed forced labour on the front-line, exposed to cross-fire, their death was a foreseeable consequence to all those who brought them to Vojno and those who had the task of guarding them, which was one of the duties of the guards, including Vračević. The heinous murder of four prisoners (Kajtazi, Čorajević, Čakalović and Začinović) happened in the prison compound and, therefore, the Accused Vračević could not have been unaware of it.

1062. The Panel finds that, given his position, Vračević could not have prevented the crimes against prisoners, but nevertheless he could have distanced himself or at least tried to alleviate the

consequences of the established camp system. But, the acts that he committed (murders, torture, rapes, inhumane acts) lead to the conclusion that the Accused did not have any intention to try to prevent those crimes; on the contrary, by his own criminal acts he proved to be an active and knowing participant of the system of abuse and thus significantly contributed to the functioning and maintaining of the camp system.

1063. This leads to an indubitable conclusion that the Accused, Mirko Vračević, knew of the nature and scope of the described criminal activities undertaken in the Vojno camp, such as unlawful deprivation of liberty, incarceration of innocent civilians, inhumane treatment, torture, beating, rape, sexual abuse and killing. Therefore, as a participant in the joint criminal enterprise, he is responsible for all those acts.

VIII. ACQUITTING PART OF THE VERDICT

1. Rape of witness AG

1064. In the course of the proceedings it has not been possible to establish that during her stay in the Vojno camp protected witness AG was raped three times by Marko Radić himself, and that she was also raped by the Accused Dragan Šunjić and Damir Brekalo.

1065. Count 4 (d) accuses Marko Radić of having personally raped AG for three times during her three-month detention in the Vojno camp. The indictment, under charge 5, charges the accused, under command responsibility, with the same rape as well as with having participated in a system of persecution, in which rapes and sexual abuses of several witnesses are alleged, amongst which is the rape of AG who was, allegedly, raped by Dragan Šunjić, Damir Brekalo, Mario Mihalj and other unidentified soldiers.

1066. Count 11 accuses Dragan Šunjić of having personally raped AG in the Vojno prison facility as an act of participation in a system of persecution which consisted of the rape and abuse of several witnesses. Count 12 accuses him of being responsible for this rape committed by Marko Radić, Damir Brekalo, Mario Mihalj and other unidentified soldiers, describing this accused as being responsible of this rape as a deputy commander or as having participated in the system of persecution.

1067. Count 18 (c) accuses Damir Brekalo of having personally raped AG during her three-month detention period in the Vojno Camp. Count 19 accused him of being responsible for the rape of AG committed by other soldiers or guards, as having aided and abetted in its commission, or as having participated in a system of persecution in which this rape is included.

1068. Count 31 accuses Mirko Vračević of being responsible for the rape of AG committed by Marko Radić, Dragan Šunjić, Damir Brekalo, Mario Mihalj and other unidentified soldiers. He is also charged of having planned, committed, instigated or aided and abetted this rape as participation in a system of persecution.

1069. One can, therefore, ascertain that several modes of liability are ascribed to the various accused.

(i) A personal and direct liability, as participation in the joint criminal enterprise of persecution and maltreatment. This is a personal commission of the rape which is part and parcel of the planned persecution and is charged against the accused Marko Radić, Dragan Šunjić and Damir Brekalo.

(ii) A non-personal and direct liability for the rape as committed by others which amounts to an omission for aiding and abetting. This concerns only Damir Brekalo and Mirko Vračević.

(iii) A non-personal and direct liability for the rape committed by others as an omission and contributing to the participation of all the accused in the joint criminal enterprise⁸⁶ of persecution and maltreatment. This specific mode of perpetration requires a strict definition of the planned common purpose⁸⁷ and that the perpetrators of the rape must be willing and cognizant participants in a planned JCE⁸⁸, with specific reference to the particular “mens

⁸⁶ *Prosecutor v Krnojelac*, No. IT-97-25-A, *Judgement* (17 September 2003) at para. 117: “... this participation need not involve commission of a specific crime under one of those provisions (murder, extermination, torture, rape, etc.), but may take the form of assistance in, or contribution to, the execution of the common plan or purpose”; *Prosecutor v Kvočka et al*, No. IT-98-30/1-A, *Judgement* (28 February 2005) at para. 112: “A co-perpetrator in a joint criminal enterprise need not physically commit any part of the *actus reus* of the crime involved. Nor is the participant in a joint criminal enterprise required to be physically present when and where the crime is being committed.”

⁸⁷ *Prosecutor v Krnojelac*, No. IT-97-25-A, *Judgement* (17 September 2003) at para. 116: “...Using the concept of joint criminal enterprise to define an individual’s responsibility for crimes physically committed by others requires a strict definition of common purpose.”

⁸⁸ *Prosecutor v Limaj et al*, No. IT-03-66-T, *Judgement* (30 November 2005) at para. 667, fn 2264: In its rulings concerning joint criminal enterprise, the Appeals Chamber referred to crimes committed by “one or more [participants in the common design]” and “other members of the group”, thereby making it clear that only

rea”⁸⁹ necessary for the commission of this offence under this mode of liability and one which is totally distinct from that required in the mode of liability defined under the terms “aiding and abetting”⁹⁰, which we have discussed before.

(iv) A non-personal and indirect liability for a rape committed by others in the form of an omission, on the part of a commanding officer or superior, for not having prevented the crime or punished the perpetrators who are his subordinates when he had the responsibility to do so. This charge has been brought against Marko Radić and Dragan Šunjić.

1070. This witness did not give evidence “viva voce” either before the Trial Panel or the Second-Instance Panel. The Prosecution proposed and the Court accepted that the various statements given by this witness during the investigative process be exhibited in lieu of such oral testimony.

1071. Dr. Alma Bravo-Mehmedbašić confirms that witness AG suffered extreme traumatising as a result of the repeated rapes she was subjected to throughout her illegal detention. Because of this bitter experience she is suffering from severe post traumatic stress disorder⁹¹ and is unable to appear to testify before this Panel.

1072. In her statement witness AG relates that, after her unlawful capture on 2 September 1993, she was raped on a daily basis during her entire detention of three months in the Vojno prison facility. All in all, she only avoided being raped for five days throughout the entire three month period.

crimes committed by one or more participants in such an enterprise may give rise to liability of other participants.

⁸⁹ *Prosecutor v. Tadic*, No. IT-94-1-A, *Judgement* (15 July 1999) at para 229; *Prosecutor v Vasiljevic*, No. IT-98-32-A, *Judgement* (25 Feb 2004) at para. 102: In the case of aiding and abetting, the requisite mental element is knowledge that the acts performed by the aider and abettor assist the commission of the specific crime of the principal. By contrast, in the case of participation in a joint criminal enterprise, i.e. as a co-perpetrator, the requisite *mens rea* is intent to pursue a common purpose.

⁹⁰ *Prosecutor v Limaj et al*, No. IT-03-66-T, *Judgement* (30 November 2005) at para. 510; *Prosecutor v Kvočka et al*, No. IT-98-30/1-A, *Judgement* (28 February 2005) at para. 90: “Co-perpetration in the context of a joint criminal enterprise differs from aiding and abetting. Where the aider and abetter only knows that his assistance is helping a single person to commit a single crime, he is only liable for aiding and abetting that crime. This is so even if the principal perpetrator is part of a joint criminal enterprise involving the commission of further crimes. Where, however, the accused knows that his assistance is supporting the crimes of a group of persons involved in a joint criminal enterprise and shares that intent, then he may be found criminally responsible for all the crimes committed as part of that common purpose as a co-perpetrator.”.

⁹¹ Testimony of Dr. Alma Bravo-Mehmedbašić.

1073. Witness AG indicates Marko Radić to be one of the men to have raped her and that he did so for three times. She describes him as the Commander of the 1st Bijelo Polje Battalion Vrapčići. He also threatened her seven year-old daughter who was detained in the camp with her⁹².

1074. Witness AG relates that she was first raped immediately after her interrogation by Mario Mihalj⁹³ when Marko Radić and Dragan Šunjić allegedly ordered her and five other young women to undress. They were humiliated because the soldiers who were present insulted them with the word “Balija”⁹⁴. AG identifies Dragan Šunjić as one of the soldiers who raped her.

1075. She also relates that whilst being taken to the command post which was situated in the Vojno camp, she was raped in turn by three or four men, including Dragan Šunjić. She further relates that Mario Mihalj was taking money from various soldiers for which he would provide them with women.⁹⁵

1076. The Prosecution is of the opinion that the statements given by AG during the investigation of this crime can be substantiated and corroborated through the oral evidence presented by them during the course of these proceedings. Witness C is one of these witnesses and she states that among the female prisoners being illegally held at the Vojno camp, witness AG was one of those who was daily subjected to the cruellest of treatment because she was, constantly, being taken out at night with people not knowing where she was being taken to. This was public knowledge in the whole camp⁹⁶.

1077. Based on the presented evidence, the Panel concluded beyond any reasonable doubt that witness AG was repeatedly raped by a number of HVO soldiers during her imprisonment in the Vojno camp, which ensues from the evidence of several witnesses, as reasoned in detail under the “Rapes” Section. However, with regard to the issue as to whether she was raped personally by Marko Radić, Dragan Šunjić and Damir Brekalo it should be noted that none of the examined witnesses confirmed that, and that the witness herself did not mention them at all as persons who had raped her in her statement before the investigative judge of the Higher Court in Mostar but she

⁹² Torture: *Lelek Željko*, X-KR-06/202, First Instance, May 25, 2008, p. 36. Physical threat created terrible suffering and feelings of helplessness in the victims. *Id.* See also Exhibit T-96-A, p. 4.

⁹³ A determination of consent can be based on context; on the concept of « Coercive environment », see *Kunarać*, Appellate Judgment, 12 June 2002, paras. 128–129.

⁹⁴ See Exhibit T-96, p. 3, Statement of Witness AG given to ICTY investigator, Persecution: *Lelek Željko*, X-KR-06/202, First Instance, May 25, 2008, pp. 46-47. The Accused in this case ordered two women to remove their clothes and referred to them as “bulas,” which indicated discriminatory intent. *Id.*

⁹⁵ Exhibit T-96-A, p. 5

⁹⁶ Testimony of Witness C, 27 September 2007 at 3:53:04 of the audio recording.

mentioned that for the first time in her statement to the ICTY investigators. However, unlike the other parts of her evidence, those allegations (about these three Accused being the perpetrators of the act of rape) have not been corroborated by the evidence of other witnesses or any other piece of evidence.

1078. In view of the foregoing, and considering that the statements of witness AG were admitted into the case-file without the possibility for cross-examination, and further considering the principle that this Panel had to apply according to which a conviction cannot be founded only on the statements of a witness who was not cross-examined, the Accused Radić, Šunjić and Brekalo were acquitted of the charges that they personally raped witness AG.

1079. However, the aforementioned could not lead to the acquittal of the Accused relative to the rapes of witness AG committed by other persons within the joint criminal enterprise. The acts of rape follow not only from the statements of witness AG but also of numerous other witnesses, as elaborated in the text above. Those allegations of witness AG have been confirmed - corroborated by other evidence and accepted as objective and accurate, and in that segment the Verdict is founded on all of them and not just on the statement of witness AG. Therefore, the Accused have been found guilty of those acts of rape on the basis of the JCE because those acts (rapes by unidentified soldiers) are the result of the joint criminal design and plan against detained Bosniak civilians and were committed within the scope of the joint criminal enterprise. Thus, the Accused Radić, Šunjić, Brekalo, as well as the Accused Vračević, are responsible on this ground.

2. Killing of Enes Nurko

1080. All the Accused (Marko Radić in Count 2 (g), Dragan Šunjić in Count 8 (b), Damir Brekalo in Count 15 and Mirko Vračević in Count 28) have been charged with the killing of Enes Nurko. Although this charge has been proffered against all of them, it is suspected that it was, directly, committed only by the accused Dragan Šunjić.

1081. This Court shall take into consideration and examine the testimony of the witnesses produced by the Prosecution during the proceedings.

1082. Witness 154 testifies that he, together with Džemal Sabitović, his brother, and Aziz Dautbegović were, that day, taken under HVO escort to the frontline to assist in the fortification of bunkers⁹⁷. On their return to Vojno Camp, where they were being detained, while carrying the body of Džemal Sabitović who had been hit and killed on the front-line whilst performing the tasks which his captors had ordered him to carry out, they encountered a group of HVO soldiers who had just captured a combatant earlier in the day⁹⁸. This unknown person was made to join the other detainees on their way to the Camp. Although it results that no positive identification of this had been made at the time, it was said that this person's name was Enes Nurko.

1083. On arrival at the camp, and before the prison command post, the person was approached by Dragan Šunjić and engaged in conversation by him⁹⁹. He recounts how Dragan Šunjić entered the command post to make a call. Although the witness could not see Dragan Šunjić holding on the telephone, he was able to hear him clearly talking, using common telephone etiquette words like "hello".

1084. Dragan Šunjić finished his telephone conversation and came out of the command post carrying a Kalashnikov in his hand. He approached the unknown person and without further ado fired and shot this person from point blank range, once in the face and two in the chest¹⁰⁰. This person was killed immediately. The witness was standing only 2-5 meters away from where this man was killed¹⁰¹. Dragan Šunjić ordered one of the men present to shine a torch light on the body to make sure that the person was dead¹⁰². Together with other prisoners, witness 154 assisted in the burial of the bodies of both this person and Džemal Sabitović, who were buried in the same grave, separated by stones¹⁰³ on a site which had, previously, also been used for burials¹⁰⁴.

1085. Aziz Dautbegović confirms "in toto" the testimony of witness 154, including the capture, by HVO soldiers. That combatant, rumour had it, was named Enes Nurko. He confirms that this person was ordered to accompany them back to Vojno Camp.

⁹⁷ Testimony of Witness 154, at 36:40 of the audio recording.

⁹⁸ Testimony of Aziz Dautbegović, at 39:09 of the audio recording.

⁹⁹ Testimony of Witness 154, at 1:03:11 of the audio recording.

¹⁰⁰ Testimony of Witness 154, at 31:39 of the audio recording; Testimony of Aziz Dautbegović, at 40:20 of the audio recording; 1:05:45. This was done without provocation and without any further discussion from and with Nurko Enes

¹⁰¹ Testimony of Aziz Dautbegović, at 41:45 of the audio recording; Testimony of Witness 154, at 31:39 of the audio recording.

¹⁰² Testimony of Witness 154, at 31:39 of the audio recording.

¹⁰³ Testimony of Witness 154, at 34:39 and 56:34 of the audio recording.

1086. Dautbegović relates how this person was talked to by Dragan Šunjić outside the command post and how Dragan Šunjić went inside the command post where the witness hears him talking loudly on the phone to an unknown individual. When Dragan Šunjić terminated this conversation and returned to where the person was still waiting, carrying a Kalashnikov weapon in his hand, he fired, three times, at this person, instantly killing him without any discussion from him. This witness was 2-5 meters away at the time. He assisted in the burial of the body and that of Džemal Sabitović, approximately 50m from their detention location.

1087. Junuz Halilović is not an eye-witness, as were the two witnesses preceding him, but contributes that he had assisted in the burial of the two bodies in a location which already contained a number of other graves.

1088. Whilst the body of Džemal Sabitović was identified and exchanged on the 10th of April 1994¹⁰⁵, that of “Enes Nurko” never was, even though the mentioned witnesses claim that it was buried in the same grave as that of Džemal Sabitović.

1089. According to the Prosecution, it is not necessary to obtain an official death certificate as definite evidence of an occurred death in order to convict the Accused of murder. Furthermore, it is only the Municipality where a person was born that can produce a valid death certificate and in this specific case it is not known where “Enes Nurko” was, in fact, born. The Prosecution also referred to the Brđanin case where the ICTY provided that¹⁰⁶:

“since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of a body as proof of death. In *Krnjelac* case¹⁰⁷, the Trial Chamber held that proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. The Trial Chamber added that a victim’s death may be established by circumstantial evidence provided that the only reasonable inference is that the victim is dead as a result of the acts or omissions of the accused.”

1090. Therefore, the Prosecution is of the opinion that there is no need of further evidence concerning this allegation, because three witnesses saw Enes Nurko alive and saw him being shot by Dragan Šunjić. The Prosecution points out that these same witnesses buried him and the Trial

¹⁰⁴ Testimony of Aziz Dautbegović, at 1:04:00 of the audio recording; Testimony of Witness 154, at 38:00 and 56:34 of the audio recording.

¹⁰⁵ See Exhibit T-19-A. See also Death Certificates of Sabitović Džemal, (Exhibits T-26, T-26-A).

¹⁰⁶ *Prosecutor v. Radoslav Brđanin, Judgment*, Case No. IT-99-36-T. Ch II 1 September 2004, para 383. See also *Prosecutor v. Tadić*, Trial Judgment, Case No. IT-94-1-T, T Ch. II 7 May 1997, para 240.

Panel had accepted their testimony as credible and reliable, because they describe the same event identically and convincingly, consistent in every essential detail.

1091. The Defence cites the accepted principle of “*in dubio pro reo*” as its primary defence, arguing that the body of Enes Nurko has never been identified or even recovered and that, therefore, the Court can never be certain of the identity of the person allegedly shot and killed by Dragan Šunjić that day.

1092. To confuse the matter even further is the fact that a dead body with the name of Nijaz Nurko, rather than Enes Nurko, does exist.

1093. Having evaluated the presented evidence and bearing in mind the arguments of both parties, this Panel concluded that the Prosecution has not succeeded in proving the killing of Enes Nurko beyond all reasonable doubt.

1094. The indictment brought against the Accused by the Prosecution charges Šunjić with the murder of a person bearing the name of Enes Nurko. It was therefore, the duty of the Prosecution to prove, beyond reasonable doubt, that the person allegedly killed by Dragan Šunjić in front of eye-witnesses, was, in fact, a person by the name of Enes Nurko. The Prosecution has been specific and clear in its charges, by naming the person allegedly killed. By doing that, the Prosecution limited the subject of review to the question as to whether or not Enes Nurko was indeed killed, although this level of specificity was not required in view of the fact that for the criminal offence of Crimes against Humanity the name of the victim is irrelevant because this criminal offense has a different definition in terms of the protected value than the criminal offense of Murder (humanity and not a specific person). The Prosecution could have specified this killing as a killing of an unknown person given the lack of birth and death certificates for Enes Nurko.

1095. Considering that the Prosecution strictly focused on the person by the name of Enes Nurko, the Panel was in no position to have a different determination regarding the killed person as it would violate the right of the Accused to a defence as the Defence was guided by the Prosecution charges and focused only on Enes Nurko and not on any other killed person.

1096. The Panel concludes that the Prosecution has failed to provide sufficient evidence to justify its allegations on the killing of Enes Nurko. It has failed to provide reliable witnesses or documents to establish the identity of this unfortunate individual at his moment of capture. It has not even

¹⁰⁷ *Prosecutor v. Krnojelac*, Trial Judgment, Case No. IT-97-25-T, T. Ch, II, 15 March 2002, para 326.

produced an identifiable body as being that of Enes Nurko, the person whose killing the Accused are being charged with.

1097. It follows that this Panel cannot determine with certainty the identity of the person who was allegedly shot by Dragan Šunjić, although it does not once doubt that he did kill someone on that day.

1098. Even though the Prosecution has never claimed that the body found and labelled with the name of Nijaz Nurko (Official Note NN-105)¹⁰⁸ is, in fact, that of Enes Nurko, it should be noted that it could not have been accepted because this body met its death because of the throat being slit, whilst, according to the witnesses, Enes Nurko was shot to death from Kalashnikov into his head and chest.

1099. It is for the aforementioned reasons why this Panel cannot convict the Accused for the killing of Enes Nurko. On the contrary, the Panel was mindful of the *in dubio pro reo* principle and had to acquit the Accused Dragan Šunjić of the charges under Count 8b) that

„In early January 1994, in the Vojno prison facility, he personally deprived detainee Enes Nurko of life by shooting at him from an automatic rifle at point-blank range; he fired one bullet into his face and two in his chest and killed him on the spot.“

1100. Therefore, based on the proffered evidence, the Panel could not conclude beyond any reasonable doubt that a person called Enes Nurko was deprived of life in the manner and at the time as described in the charges against the Accused Šunjić. The evidence proffered by the Prosecution to that effect is flawed and contradictory in the part relative to the identity of the person deprived of life. It should be noted that the Prosecution even failed to obtain a death certificate to show that a person called Enes Nurko indeed died, as well as a birth certificate to show that the person existed in the first place, which was legitimately raised by the Defence for the second-Accused throughout the proceedings.

1101. Considering the fact that the killing of Enes Nurko by Šunjić has not been proved by the proffered evidence, the killing of Enes Nurko could not be included in the acts (a number of killings) for which other Accused could be held responsible under the JCE. Consequently, the name of Enes Nurko had to be omitted from the list of persons killed, that is, the part of the factual description which lists all names of persons who were killed. This however does not affect the

¹⁰⁸ Exh T-19-B

existence of the offense under Article 172(1)h) as read with a) as that offense has been undoubtedly established in relation to numerous other prisoners who have been mentioned above on several occasions.

IX. SENTENCING

1. Met ing out the sentence

1102. In determining the sentence to be imposed with respect to each Accused, the Panel analyzed their degree of liability, conduct before the court, motives, personality, possible commutation of the sentence, as well as the purposes of deterrence and rehabilitation. Below is the extensive reasoning of the principles that guided the Panel in meting out the sanction.

1103. The Panel primarily considered Article 2 of the CC of BiH when meting out the sanction for the criminal offense of Crimes against Humanity committed by the Accused within a systemic joint criminal enterprise aimed at persecuting Bosniaks in the period from July 1993 to March 1994 (relative to Accused Marko Radić, Damir Brekalo and Mirko Vračević) and in the period from August 1993 to March 1994 (relative to the Accused Dragan Šunjić). Article 2 of the CC of BiH prescribes that the type and the range of a criminal sanction shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, and other basic values which determine the purpose of the criminal legislation to protect certain individual and general values, as well as to determine the manner in which such protection is realized (Article 48 of the CC of BiH). In addition, the sanction must reflect the gravity of the offense.

1104. In that context, the elements should be considered which pertain to the said purpose and the issue of direct and indirect victims of the respective criminal offenses - prisoners of the Vojno camp, members of their families and community, as well as the participation of the Accused in the commission of the criminal offenses.

1105. People of Bosniak ethnic background were direct victims of the criminal system within which they were unlawfully detained and held in inhumane conditions, tortured, murdered, raped and sexually abused. The suffering directly inflicted upon these victims had wide repercussions

resulting, at the same time, in the suffering of their family members and their community. The suffering is still present and is reflected in various consequences of torture that the prisoners were subjugated to during their stay at the Vojno prison.

1106. The sanction must be proportional to the degree of suffering and must be meted out so as to deter the perpetrator and other potential perpetrators from the commission of the same or similar criminal offenses. In that regard, the law stipulates two purposes in relation to the person convicted of a criminal offence: to deter the perpetrator from perpetrating criminal offences in the future (Articles 6 and 39 of the CC of BiH); and rehabilitation (Article 6 of the CC of BiH). Rehabilitation is a purpose stipulated by the Criminal Code and also by Article 10(3) of the International Covenant on Civil and Political Rights which reads as follows:

‘The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.’

Article 39 of the CC of BiH stipulates the general purpose of punishment as follows:

- (a) to express the community’s condemnation of a perpetrated criminal offence,
- (b) to deter the perpetrator from perpetrating criminal offences in the future and to prompt his rehabilitation,
- (c) to deter others from perpetrating criminal offences, and
- (d) raise the awareness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators.

Meting out the sentence for the perpetration of the specific criminal offense is linked to achieving the purpose of sentencing.

1107. Considering the purpose of the general and special deterrence, the Panel took into account ‘all the circumstances bearing on the magnitude of punishment’ as stipulated in Article 48(1) of the CC of BiH and evaluated them in their totality.

(a) Accused Marko Radić

i. Degree of liability

1108. Based on the adduced evidence, the Panel concluded that Marko Radić participated in the establishment of the Vojno camp, and although he is not convicted under the command responsibility it should be noted that he was *de facto* superior to the personnel of the Vojno camp. Considering his position of the First Bijelo Polje Battalion Commander, and later the Commander of the *Ivan Stanić Čičo* Sabotage Unit and finally the Second Brigade Commander, the Accused Radić had an effective control over the personnel and guards in the Vojno camp, as well as over Brekalo, as a soldier in his unit, and he had a *de facto* and *de iure* possibility to prevent crimes committed against prisoners. However, despite that possibility the Accused Radić was also involved in the commission of criminal offenses and so he committed rapes (among them, he raped an underage person), ordered the detentions and perpetrated other inhumane acts.

1109. When determining the sentence to be imposed upon him, the Panel considered his commanding role and position and the way he exercised it in Vojno as factors in aggravation.

(ii) Conduct and personal circumstances of the Accused before the fact

1110. According to the available information, the Accused was a respectable teacher before the war, he worked in a school and had no prior criminal record. These factors have been considered in mitigation.

(iii) Circumstances surrounding the commission of the offense

1111. The circumstances surrounding the commission of the offense show that the Accused was not only in a position, by his role and function, to control the system established in the Vojno camp within which the acts that amount to the Crimes against Humanity were committed, but he also directly and personally implemented that system. By doing that, he decisively influenced other

people's awareness inasmuch as he encouraged and instigated other soldiers to freely commit various misdeeds against prisoners. The manner in which he personally committed the offenses as determined by this Verdict, and particularly the brutalizing of female prisoners during the rape, among them even an underage girl, and the manner in which he substantially contributed to the offenses committed by others but for which he was also responsible as a participant in the joint criminal enterprise, are factors that have been considered in aggravation.

1112. As already reasoned in this Verdict, the Accused shared the intent in persecuting Bosniak civilians in the manner described above. Sexual abuse of witness X who was only 15 years old, the speech he delivered on the exchange which included threats to the prisoners not to talk, telling them he would cross to that side very soon and force them (Bosniaks) all the way up to Tuzla, the question that he put to witness F 'Would you give birth to one Ustasha?' and his comment 'You will all give birth to one,' suggest a high level of hatred expressed because of the ethnic and religious background of the prisoners, and are factors that the Panel has considered in aggravation.

(iv) Circumstances after the fact

1113. Radić started a family after the war and got three children who are underage and sustained by him, which has been considered in mitigation.

(v) Personality of the Accused

1114. The Panel does not have any special evidence about the Accused's personality except for what he demonstrated during the commission of the offense and the circumstances after the commission of the offense, which has been discussed above.

(vi) Reduction of punishment as stipulated in the Criminal Code

1115. The Panel is satisfied that there are no reasons as set under Article 49 of the CC of BiH to mete out the sentence below the statutory limit.

(vii) Deterrence and rehabilitation

1116. The length of imprisonment and the time spent in prison as a punishment for the crimes constitute justified means of deterrence in most cases. The perpetrator is given an opportunity to consider the consequences that the victims have suffered as a result of his acts, to ponder on the mistakes he made in the past and redeem himself for his criminal acts.

(viii) Sentence

1117. In deciding on the type and length of the criminal sanction in terms of Article 48 of the CC of BiH and in consideration of the relevant 'circumstances bearing on the magnitude of punishment' as stipulated by Article 48(1), based on the aforementioned reasons the Panel took into account all mitigating and aggravating factors. The extent of violation of the protected values has been elaborated in the introductory part to the section on sentencing, and therefore will not be reiterated at this point. The factors that the Panel considered in mitigation include his earlier life and the fact that he did not have a criminal record, his family situation and the fact that he sustains three underage children. The factors that the Panel considered in aggravation include the long duration of the difficult situation, the state powerlessness and fear on the part of the camp inmates, a large number of victims, circumstances surrounding the offenses committed by the Accused Radić (multiple rapes and sexual abuse of an underage girl), as well as offenses committed by other perpetrators, the position of the Accused as a superior in the entire area of Vojno including the camp, and the way in which he used his position and his attitude towards the prisoners.

1118. Bearing in mind the established state of facts and the consequences, the Appellate Panel found the Accused guilty and imposed on him a long-term imprisonment sentence of twenty-one (21) years, finding that this sentence is a proportional and adequate punishment for the crimes he committed. The Panel is satisfied that this sentence will have a sufficient influence on the Accused not to commit criminal offenses in the future, and that this would meet the special purpose of deterrence. The Panel is further satisfied that the pronounced sentence will raise citizens' awareness of the danger of criminal offenses (general deterrence) and the fairness of punishing the perpetrators.

(b) Accused Dragan Šunjić

(i) Degree of liability

1119. Based on the adduced evidence, the Panel is satisfied that Dragan Šunjić personally participated in the unlawful imprisonment of several dozens of Bosniak civilians, women and children, in the prison facility in Vojno. As a *de facto* deputy warden he had powers and control over the conditions prevalent in the prison and the persons working there, and therefore he was responsible for the prisoners who were held there. The prison warden Mario Mihalj was his superior, as well as Marko Radić as the Commander of the 1st Battalion and later as the Commander of the entire 2nd Brigade.

1120. Considering the function that he held, the Panel is satisfied that Šunjić had an effective control over the guards who guarded the prisoners and was in a position to influence soldiers who arrived in the prison compound not to commit crimes. Furthermore, Šunjić brought detainees from Heliodrom to Vojno, who were then used to carry out forced labour, and in that part he was responsible for them. In addition, it was established in the course of the proceedings that the Accused Šunjić personally participated in the commission of several offenses which amount to Crimes against Humanity, such as torture and other inhumane acts, and he participated in other criminal acts by his omissions to prevent crimes that others committed against the prisoners, and by his conduct he encouraged and supported crimes committed by others within the systemic joint criminal enterprise. By his acts, the Accused Šunjić substantially contributed to the system of abuse by supporting and furthering it.

1121. The factors relative to his position and role in Vojno, as well as the manner in which he exercised them, the Panel has considered in aggravation.

(ii) Conduct and individual circumstances of the Accused before the fact

1122. According to the data in the case-file, Dragan Šunjić was a secondary-school student in Sarajevo before the war, he resided at a dormitory and did not have a prior criminal record, and therefore his conduct at that period of time has been considered in mitigation.

(iii) Circumstances surrounding the commission of the offense

1123. The circumstances surrounding the commission of the offense show that the Accused was in a position to influence the guards and soldiers not to commit crimes which were committed within the system established in the Vojno camp. However, by his acts he personally carried out and furthered the system of abuse of prisoners by instigating and encouraging other soldiers to do the same. The Accused committed all these acts with a direct intent. The Panel found that Dragan Šunjić stood out in a number of the committed acts and especially in torturing and beating of prisoners, and their mental and physical mistreatment. Although the motive is not linked with the intent, the Panel has found that the Accused possessed the intent in a form of hatred against the ethnic group of Bosniaks, which was stirred up by others but also by the fact that his brother Marinko Šunjić was taken captive by the Army of BiH and in around three months of his incarceration he was wounded while carrying out forced labour.

1124. Bearing in mind the aforementioned, the Panel has considered in aggravation the manner and circumstances surrounding the commission of the criminal offense of Crimes against Humanity, numerous and persistent acts of torture and beating particularly specific for the Accused Šunjić.

(iv) Circumstances after the fact

1125. The Cantonal Court in Mostar had rendered a final Verdict finding the Accused Šunjić guilty of the criminal offense of Attempted Murder and he served that sentence. This factor has been considered in aggravation.

1126. The Accused Šunjić got married after the war, started a family, and got three children who are underage and sustained by him. These factors have been considered in mitigation.

(v) Personality of the Accused

1127. The Panel does not have any special evidence about the Accused's personality except for what he demonstrated during the commission of the offense and the circumstances after the commission of the offense, which has been discussed above.

(vi) Reduction of punishment as stipulated in the Criminal Code

1128. The Panel is satisfied that there are no reasons as set under Article 49 of the CC of BiH to mete out a sentence below the statutory limit.

(vii) Deterrence and rehabilitation

1129. The length of imprisonment and the time spent in prison as a punishment for the crimes constitute justified means of deterrence in most cases. The perpetrator is given an opportunity to consider the consequences that the victims have suffered as a result of his acts, to ponder on the mistakes he made in the past and redeem himself for his criminal acts.

(viii) Sentence

1130. In determination of the type and length of the criminal sanction in terms of Article 48 of the CC of BiH and in consideration of the relevant "circumstances bearing on the magnitude of punishment" as stipulated by Article 48(1), based on the aforementioned reasons the Panel took into account all mitigating and aggravating factors. The extent of violation of the protected values has been elaborated in the introductory part to the section on sentencing, and therefore will not be

reiterated at this point. The factors that the Panel has considered in mitigation are: his very young age at the time of commission of the offense (he was twenty-one), his family situation and three children sustained by him. The factors that the Panel has considered in aggravation are: his position as deputy commander of the camp and the manner in which he used this position, his brutality against prisoners, numerous acts committed by him personally and the circumstances surrounding the commission thereof.

1131. The Appellate Panel found the Accused guilty and imposed on him a sentence of sixteen-year imprisonment (16) finding that this sentence is a proportional and adequate punishment for the crimes he committed. The Panel is satisfied that this sentence will have a sufficient influence on the Accused not to commit criminal offenses in the future, and that this would meet the special purpose of deterrence. The Panel is further satisfied that the pronounced sentence will raise citizens' awareness of the danger of criminal offenses (general deterrence) and the fairness of punishing the perpetrators.

(c) Accused Damir Brekalo

(i) Degree of liability

1132. Damir Brekalo, as a member of the 1st Battalion and the *Ivan Stanić Čičo* sabotage unit personally participated in the arrest and unlawful imprisonment of several dozens of Bosniak civilians, women, children and elderly, as well as in taking male prisoners from Heliodrom for the purpose of forced labour. Upon the order issued by Radić, Brekalo conducted arrests as of July and took civilians to the Vojno camp. The powers of Brekalo and his free access to the Vojno prison originated from his close relationship with Marko Radić and resulted in numerous criminal acts that he personally committed. It was established in the course of the proceedings that the Accused Brekalo personally participated in the commission of several acts that amount to the criminal offense of Crimes against Humanity such as rapes, torture, imprisonment, and other inhumane acts. It was further established that by his conduct he approved of and instigated others to commit the same acts within the systemic joint criminal enterprise.

1133. The manner in which the Accused Damir Brekalo used his powers and his right to come to the Vojno prison and contact the detainees, and the brutality he demonstrated, are factors that have been considered in aggravation.

(ii) Conduct and individual circumstances of the Accused before the fact

1134. Brekalo was a family man with underage children, without a prior criminal record before the war and thus his conduct and behaviour in this period of time are factors that have been considered in mitigation.

(iii) Circumstances surrounding the commission of the offense

1135. Having examined the adduced evidence, the Panel is satisfied that the Accused Damir Brekalo personally acted with intent and committed the acts of torture, rapes, abuse, and other inhumane acts. During the period in which the Vojno camp was operational, by his acts Brekalo carried out and furthered the system of abuse of prisoners, which instigated and encouraged other soldiers and prison staff to commit various acts of crimes against humanity against prisoners.

1136. The manner in which the Accused Brekalo committed these acts is a factor that the Panel has considered in aggravation. The Accused Brekalo stood out by his brutality and absence of any compassion to the women whom he raped, especially the underage girls X and L. The rape of underage girls is a factor that the Panel has considered in aggravation.

1137. As reasoned above, the Accused carried out persecution of Bosniak prisoners with intent, as this crime is defined under law and described in the reasoning of the Verdict. In the course of the proceedings it was pointed out that Damir Brekalo's family suffered by the acts of their fellow Bosniaks and that his father was mistreated because of his loyalty to the HVO in as much as Bosniaks forced him to carry a bell in Bijelo Polje and say that he was a traitor of the Muslim people. In mid-September the Accused Brekalo changed his name from Emir into Damir. Although it is indeed illogical that Brekalo insulted prisoners because of their ethnic and religious background, considering that he belonged to that ethnic group up until September, the fact is that he humiliated detainees and arrested persons exactly on the ground of their ethnicity and in an utterly

brutal manner, saying to them that ‘every Muslim man should be killed, and all Muslim women from 7 to 77 years of age raped.’ Such conduct of the Accused Brekalo has been considered in aggravation.

(iv) Circumstances after the fact

1138. After the commission of the said criminal offenses, the Accused Brekalo also committed the criminal offense against the public safety of persons and property in violation of Article 308(3) of the CC of FBiH and was convicted by the Basic Court Mostar to a four-month imprisonment. This factor has been considered in aggravation. The Accused Brekalo has also been convicted by a final Verdict of the Basic Court Mostar for the criminal offense of rape and sentenced to a five-year imprisonment, but the proceedings have been on a re-trial and are still ongoing.

1139. During the war Brekalo suffered a major head injury, which caused him health problems, which can be alleviated by an operation. Such health condition of the Accused is a factor that the Panel has considered in mitigation.

(v) Personality of the Accused

1140. The Panel does not have any special evidence about the Accused’s personality except for what he demonstrated during the commission of the offense and the circumstances after the commission of the offense, which has been discussed above.

(vi) Reduction of punishment as stipulated in the Criminal Code

1141. The Panel is satisfied that there are no reasons as set under Article 49 of the CC of BiH to mete out a sentence below the statutory limit.

(vii) Deterrence and rehabilitation

1142. The length of imprisonment and the time spent in prison as a punishment for the crimes constitute justified means of deterrence in most cases. The perpetrator is given an opportunity to consider the consequences that the victims have suffered as a result of his acts, to ponder on the mistakes he made in the past and redeem himself for his criminal acts.

(viii) Sentence

1143. In determination of the type and length of the criminal sanction in terms of Article 48 of the CC of BiH and in consideration of the relevant “circumstances bearing on the magnitude of punishment” as stipulated by Article 48(1), based on the aforementioned reasons the Panel took into account all mitigating and aggravating factors. The extent of violation of the protected values has been elaborated in the introductory part to the section on sentencing, and therefore will not be reiterated at this point. The factors that the Panel considered in mitigation include his clean pre-war record, his family situation, that is, the fact that he is a father of five, and also his health condition. The factors that the Panel considered in aggravation include the manner in which the Accused used his position when arresting and taking Bosniak civilians to prison, his brutality and treatment of prisoners, and numerous offenses he committed (multiple rape of underage girls, sexual violence, torture, imprisonment, mistreatment).

1144. The Appellate Panel found the Accused guilty and imposed on him a sentence of twenty-year imprisonment (20), finding that this sentence is a proportional and adequate punishment for the crimes he committed. The Panel is satisfied that this sentence will have a sufficient influence on the Accused not to commit criminal offenses in the future, and that this would meet the special purpose of deterrence. The Panel is further satisfied that the pronounced sentence will raise citizens’ awareness of the danger of criminal offenses (general deterrence) and the fairness of punishing the perpetrators.

(d) Mirko Vračević

(i) Degree of liability

1145. Based on the evidence adduced, the Panel is satisfied that Mirko Vračević, as a member of the 1st Battalion and a guard in the Vojno camp, acted in contravention of his obligation to guard and protect prisoners, and actively participated in maintaining the system of abuse in the camp, supported and furthered the system of abuse by his acts in as much as he allowed others to committed misdeeds against prisoners, and personally participated in the acts of torture, rapes and other inhumane acts, and even killed one prisoner.

1146. In determination of the sentence to be imposed on him, the Panel considered his position and role in the Vojno camp as an aggravating factor.

(ii) Conduct and individual circumstances of the Accused before the fact

1147. Vračević had no prior record before the war, he was a family man, he had children and so his conduct and behaviour in that period of time are factors that the Panel has considered in mitigation.

(iii) Circumstances surrounding the commission of the offense, motive

1148. The adduced evidence shows that the Accused Mirko Vračević personally acted with a direct intent and carried out and furthered the system of abuse of prisoners, and within that system committed the acts of torture, rape, murder, abuse, in an utterly brutal, insulting and humiliating manner.

1149. The manner in which the Accused Vračević committed these acts is a factor that the Panel has considered in aggravation.

(iv) Circumstances after the fact

1150. The Accused Vračević did not commit any criminal offenses after the war. Available medical documents and numerous reports of expert witnesses show that the Accused has many health difficulties. In addition, the Panel also considered his old age and the fact that he is now 66. The Panel has considered these factors in mitigation.

(v) Personality of the Accused

1151. The Panel does not have any special evidence about the Accused's personality except for what he demonstrated during the commission of the offense and the circumstances after the commission of the offense, which has been discussed above.

(vi) Reduction of punishment as stipulated in the Criminal Code

1152. The Panel is satisfied that there are no reasons as set under Article 49 of the CC of BiH to mete out a sentence below the statutory limit.

(vii) Deterrence and rehabilitation

1153. The length of imprisonment and the time spent in prison as a punishment for the crimes constitute justified means of deterrence in most cases. The perpetrator is given an opportunity to consider the consequences that the victims have suffered as a result of his acts, to ponder on the mistakes he made in the past and redeem himself for his criminal acts.

(viii) Sentence

1154. In determination of the type and length of the criminal sanction in terms of Article 48 of the CC of BiH and in consideration of the relevant “circumstances bearing on the magnitude of punishment“ as stipulated by Article 48(1), based on the aforementioned reasons the Panel took into account all mitigating and aggravating factors. The extent of violation of the protected values has been elaborated in the introductory part to the section on sentencing, and therefore will not be reiterated at this point. The factors that the Panel considered in mitigation include his clean record before and after the war, his current health condition and his age. The factors that the Panel considered in aggravation include his position of a guard in the camp who had an obligation to protect prisoners from others, the manner in which he used his position and powers against the prisoners, persistent numerous acts of rape, murder, inhumane acts and torture.

1155. Considering all aggravating and mitigating circumstances existent in the case of Accused Vračević, the Panel finds that the sentence of twelve-year (12) imprisonment is a proportional sentence.

X. DECISION ON CUSTODY

1156. Pursuant to Article 56 of the CC of BiH, the time the Accused Marko Radić, Dragan Šunjić and Damir Brekalo spent in custody from 2 June 2006 onwards shall be credited towards the pronounced sentence of imprisonment. The time during which the Accused Mirko Vračević was deprived of liberty from 19 December 2006 to 22 December 2006 shall be credited towards his sentence of imprisonment.

XI. DECISION ON THE COSTS OF THE PROCEEDINGS

1157. Pursuant to Article 188(4) of the CPC of BiH, the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević are relieved of the duty to reimburse the costs of the proceedings considering that the Accused Marko Radić, Dragan Šunjić, and Damir Brekalo have

been in custody for a rather long period of time now, and that the Accused Vračević is a pensioner, wherefore the Panel estimated that this obligation would jeopardize the support of the Accused and their families. The Panel recalls that the earlier decision regarding the costs of the proceedings issued as part of the first-instance Verdict was not challenged by either party, and therefore this Panel reached the identical decision in this regard.

XII. DECISION REGARDING THE CLAIMS UNDER PROPERTY LAW

1158. Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, all injured parties are instructed to pursue their claims in a civil action considering that the fact-finding in order to determine the amount of the claims would be time consuming and would protract these proceedings. Since the proceedings have lasted rather long, the Panel decided to instruct the parties to pursue their claims in a civil action.

1159. In the course of the main trial, a certain number of injured parties did not even file their claims under property law. Anyhow, persons entitled to file claims under property law can pursue their claims in a civil action.

RECORD-KEEPER

Tanja Curović

PRESIDING JUDGE ON THE PANEL

JUDGE

Mirza Jusufović

LEGAL REMEDY: No appeal lies from this Verdict.