



**THE COURT OF BOSNIA AND HERZEGOVINA**

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**Case No.:** S 1 1 K 005760 11 KRi

**Date Delivered:** 25 May 2011

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

**PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA**

v.

**ENES HANDŽIĆ**

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**VERDICT**

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

Slavica Terzić

**Counsel for the Accused Enes Handžić:**

Lead Counsel Fahrija Karkin,

Co-counsel Saša Ibrulj

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

The Court of Bosnia and Herzegovina, Section I for War Crimes, composed of Judge Davorin Jukić as the Presiding Judge, Judge Darko Samardžić, and Judge Patricia Whalen as members of the Panel, with the participation of Legal Adviser Emira Hodžić as the record-taker, in the criminal case number **S1 1 K 005760 11 KrI** against the Accused Enes Handžić for the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), in conjunction with Article 180(1) and (2) and Article 29 of CC of BiH, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina, number KT-RZ 162/05 of 7 December 2005, confirmed on 11 December 2007 and amended on 26 April 2011, following deliberation and acceptance of a plea agreement between the Prosecutor's Office of BiH and the Accused Enes Handžić dated 26 April 2011, and a hearing for the pronouncement of the criminal sanction, in the presence of the Prosecutor of the Prosecutor's Office of BiH, Slavica Terzić, the Accused Enes Handžić, his lead counsel, attorney Fahrija Karkin and co-counsel, attorney Saša Ibrulj, rendered and pronounced the following:

## **V E R D I C T**

### **THE ACCUSED:**

**ENES HANDŽIĆ**, father's name Mehmed, mother's name Paša nee Jeleč, born on 5 February 1960 in Donji Vakuf where he has his permanent residence at bb /no number/ Stara Travnička Street, ID Number 0502960191760, Bosniak by ethnicity, BiH citizen, literate, economist by occupation - B.S.Ec., married, father of two minor children, completed military service in Sarajevo in 1985/1986, registered in military records of the Ministry of Defense - Department of Defense of Donji Vakuf, no prior convictions, currently at liberty subject to certain prohibiting measures pursuant to a decision of the Court of Bosnia and Herzegovina,

## IS FOUND GUILTY

### **Inasmuch as:**

During the war in Bosnia and Herzegovina and at the time of an armed conflict between the HVO [Croat Defense Council] and the Army of the Republic of Bosnia and Herzegovina (ARBiH) in Bugojno, in the period from 18 July 1993 to late October 1993, and after members of the HVO laid down their arms and surrendered to members of the ARBiH, Bugojno SJB [Public Security Station] and Bugojno Defense Staff, which at the time of the conflict belonged to the Joint Command of the ARBiH Bugojno contrary to the rules of military organization of the ARBiH, in a garage of a privately-owned house in the settlement of Donjići, the Marxist Center - Nuns' Cloister, *Vojin Paleksić* Elementary School, *Slavonija DI [Wood Industry]* Furniture Showroom, Bugojno Culture and Sports Center, Health Center – War Hospital in Bugojno, *FC Iskra Stadium* Camp and on the premises of the Bugojno BH Bank, as Assistant Security Commander of the 307th Brigade of the ARBiH before, during and after the conflict in Bugojno until approximately late October 1993, as a superior to the Military Police of the 307th Brigade of the ARBiH over which policemen he had effective control, as a commanding officer of the ARBiH authorized by the War Presidency of the Bugojno Municipality, the Commander of the 307th Brigade and the Commander of the *West* Operations Group to issue permits for taking the incarcerated persons of Croat ethnicity to perform forced labor at the frontlines around Bugojno, and as an authorized commanding officer responsible for conducting investigations on behalf of the 307th Brigade in cases of perpetration of criminal offenses by members of the 307th Brigade and for filing criminal reports with the competent District Military Prosecutor's Office in Travnik, he violated Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, inasmuch as he issued the permits for taking the incarcerated Croats to perform forced labor although he knew and was aware that such conduct was prohibited; and failed to prevent the prohibited taking of detainees to perform forced labor at the frontlines to consolidate the ARBiH positions where the detainees' lives were in danger; and failed to caution the other commanding officers of the ARBiH that such conduct was prohibited and unlawful; and, knowing that members of the 307th Brigade Military Police subordinate to him and other members of the ARBiH undertook unlawful acts against the Croat detainees and that they tortured and killed the detainees, he failed to take necessary and reasonable measures to prevent the commission of the referenced criminal offenses against the incarcerated Croats and to punish the military policemen subordinate

to him – perpetrators of criminal offenses and other members of the ARBiH, that is, to investigate cases of perpetration of such offenses, although he knew that they were committed, and to file criminal reports with the competent District Military Prosecutor's Office in Travnik. Thus, during the specified period he did the following:

## **I. In the settlement of Donjići in Bugojno**

1. During the period from 23 July 1993 to 26 July 1993, after more than 50 persons of Croat ethnicity, including civilians and members of the 1<sup>st</sup> Battalion who laid down their arms, surrendered to members of the ARBiH, Bugojno Defense Staff and Bugojno SJB, all of which at that time belonged to the Joint Command of the ARBiH Bugojno contrary to the rules of military organization of the ARBiH, and after they were incarcerated in the garage of a private house in the settlement of Donjići, the military policemen of ARBiH's 307<sup>th</sup> Brigade subordinate to him and other members of the ARBiH, including Alija Osmić, Amer Karagić, Mirsad Merdžanić, Admir Ramić, Eso-Esad Halilović a.k.a. Megi and Elvedin Šabić, physically and mentally abused the detainees by punching, kicking and beating them with police batons, blunt objects and rifle butts inside and in front of the garage, and by allowing Bosniak civilians and other members of the Bugojno ARBiH to abuse them in the same way all over their bodies, and even beat Mario Glišić and Ivica Keškić with a steel rim of an automobile tire. The following persons were thus abused, some repeatedly: **Mario Glišić, Vlatko Kapetanović**, the only one who was handcuffed and over whose head and body water was poured, **Witness A, Ivica Keškić, Zdravko Križanac, Ivan Kapetanović, Ivica Lozančić, Miroslav Fabulić, Ivo Kujundžić, Darko Jurić**, and others. In that manner they inflicted severe physical and mental pain and suffering and visible bodily injuries upon the detainees, while **the Accused Enes Handžić**, knowing that the detainees were being tortured in the referenced manner, failed to conduct an appropriate investigation against his subordinates – military policemen and other ARBiH members and failed to file a criminal report against them for the commission of the referenced acts with the competent District Military Prosecutor's Office in Travnik;

## **II. In the Marxist Center – Nuns' Cloister**

2. On 26 July 1993, after the Croat detainees were transferred from the garage of a private house in the settlement of Donjići to the premises of the Marxist Center - Nuns' Cloister in Bugojno, his

subordinates -- members of the Military Police, including policeman Alija Osmić, as well as others, beat up **Mario Glišić, Ivica Keškić and Vlatko Kapetanović** on the premises of the Marxist Center by punching, kicking and hitting them with blunt objects all over their bodies, inflicting on them severe physical and mental pain and suffering and visible bodily injuries. The military policemen threw the beaten-up Vlatko Kapetanović into the trunk of a black Mercedes parked there and drove him in the vicinity of the settlement of Guvna, where they killed him. **The Accused Enes Handžić**, although he knew that the detainees were being tortured in the referenced manner by the military policemen subordinate to him and that Vlatko Kapetanović was killed by the military policemen subordinate to him, failed to conduct an appropriate investigation against these policemen and the other ARBiH members and failed to file criminal report against them for the commission of the referenced acts with the competent District Military Prosecutor's Office in Travnik,

**2.a)** On 30 July 1993, pursuant to the powers vested in him by his superiors, **the Accused Enes Handžić**, knowing that it was a prohibited act toward detainees, allowed the military policemen subordinate to him to take out of the **Marxist Center – Nuns' Cloister** a group of detainees to collect the bodies of the killed Bosniaks, dig graves and bury the bodies in the settlement of Vrbanja, Bugojno Municipality, which the policemen indeed did by selecting a group of detainees in the Marxist Center, including **Mario Zrno**, and taking them **to the settlement of Vrbanja** where the detainees collected the bodies, dug graves and buried the bodies, on which occasion members of the ARBiH Bugojno, together with Bosniak civilians present there, physically and mentally abused the detainees, including **Mario Zrno**, by punching, kicking and beating them with pickaxes, shovels and other blunt objects and stones all over their bodies, thus inflicting on them severe physical and mental pain and suffering, while the military policemen were watching it all not stopping the attackers although the policemen were armed and obliged to prevent these attacks being in charge of the detainees, whereupon **Mario Zrno** succumbed to the numerous blows and inflicted injuries on the same day, **while the Accused Handžić Enes**, knowing that Mario Zrno was killed, failed to conduct an appropriate investigation against the military policemen subordinate to him who participated in the commission of the referenced acts and other ARBiH members, and failed to file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik,

### **III. In the *Slavonija DI* Furniture Showroom in Bugojno**

**3.** During the period from 24 July 1993 until about mid-August 1993, on the premises of the

*Slavonija DI* Furniture Showroom in Bugojno where around 150 Croats were incarcerated, including civilians and the HVO members who laid down their arms and surrendered to members of the ARBiH, Bugojno Defense Staff and Bugojno SJB, which during that entire period belonged to the Joint Command of the ARBiH Bugojno contrary to the rules of military organization of the ARBiH, the military policemen subordinate to him allowed other members of the ARBiH and Bugojno SJB to enter the premises of the Furniture Showroom whereupon, together with other members of the ARBiH and Bugojno SJB, they took detainees out of the basement premises of the Showroom or roll-called the detainees to get out of the basement whereupon they physically and mentally abused them by punching, kicking and hitting them with metal objects, police batons and other blunt objects all over their bodies, inflicting severe physical and mental pain and suffering upon them. Thus, they took out or called out and abused the following persons, some repeatedly: **Zrinko Alvir, Miroslav Marijanović, Dragan Brečić, Franjo Košak, Jadranko Gvozden, Ilija Dujmović, Niko Džaja, Jozo Andžić, Milenko Behara, Ilija Udovičić, Stipo Udovičić, Josip Čubela, Stipica Zelić, Stjepko Maros, Ozren Gvozdenović, Perica Jarčević, Ivica Vukadin, Ante Vukadin, Witness D and Mladen Havranek** who succumbed to the injuries sustained during the abuse. **The Accused Enes Handžić**, although he knew that the detainees were being tortured in the referenced manner and knowing that Mladen Havranek was killed, failed to take necessary and reasonable measures to prevent and punish the military policemen subordinate to him who participated in the torture of the detainees and the killing of Mladen Havranek and who enabled other members of the ARBiH and Bugojno SJB to do so, and failed to conduct an appropriate investigation against these persons who participated in the commission of the referenced act and to file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik,

#### **IV. In *Vojin Paleksić* Elementary School in Bugojno**

4. During the period between late July 1993 and about mid-August of the same year, Croats were incarcerated in the gym of the *Vojin Paleksić* Elementary School in Bugojno, including civilians and HVO members who laid down their arms and surrendered to members of the ARBiH, Bugojno Defense Staff and Bugojno SJB, which at the time of the surrender of the referenced persons belonged to the Joint Command of the ARBiH Bugojno contrary to the rules of military organization of the ARBiH, and **the Accused Enes Handžić**, pursuant to the powers vested in him by his superiors and knowing that it was a prohibited act toward detainees, allowed members of the ARBiH and the military policemen subordinate to him to take the Croat detainees out of the school and lead them to the place of Prusac for forced labor that lasted for several days and implied



consolidation of the ARBiH combat positions and digging trenches and communication trenches and performing different other works for the needs of the ARBiH, during which the detainees' lives were endangered. Niko Džaja, Jadranko Gvozden, Drago Žulj, Stipica Zelić, Frano Jezidžić, Zoran Galić, Ivica Kajić, Darko Bošnjak, Ante Markulj, Miće Visković, Miroslav Dilber, Mihovil Strujić and others were taken away in that manner, while in the same period members of the ARBiH Bugojno, including a number of military policemen, on the premises of the referenced school physically and mentally abused the detainees by taking them out of the gym in which they were detained, or calling the roll in order for them to come out, and then punching, kicking and striking them with rifle butts and other blunt objects all over their bodies in a classroom of the school thus inflicting upon them severe physical and mental pain and suffering. In this way the following persons were abused, some of them repeatedly: Frano Jezidžić, Mario Subašić, Miroslav Fabulić, Ivan Keškić, Dragan Erkapić, Miroslav Dilber, Ozren Gvozdenović, Niko Džaja, Anto Akrap and other detainees, whereas detainee Oleg Boričić a.k.a. Olja had his leg broken during the beating, while Kazimir Kaić was tortured in the same manner but in the schoolyard of the *Vojin Paleksić* Elementary School. **The Accused Handžić Enes**, although he knew that the detainees were being tortured in the referenced manner, failed to conduct an appropriate investigation against the military policemen subordinate to him who participated in the commission of the referenced acts as well as other ARBiH members, and to file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik, hence in the referenced period [translator's note: as rendered in the original text],

**4.b).** During the same period as in the previous Count, members of the Military Police subordinate to him, together with a member of the ARBiH and another person, took detainee Mario Subašić out of the *Vojin Paleksić* Elementary School and killed him in the region of Guvna, whereupon on the same day they took out of the *Šipad* building just across from the Bugojno MUP [Ministry of the Interior] detainee Vinko Ivković and killed him in the immediate vicinity of the place where they had killed Mario Subašić before. **The Accused Handžić Enes**, although he knew that detainees Vinko Ivković and Mario Subašić were killed and that the military policemen subordinate to him participated in their killing, failed to conduct an appropriate investigation against the military policemen subordinate to him as well as other ARBiH members and to file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik,

## V. In the Culture and Sports Center – KSC in Bugojno

5. In the second half of July 1993, after Vlatko Kapetanović had been taken out of the Marxist Center, the Accused Enes Handžić ordered two members of the Military Police of the 307<sup>th</sup> Mountain Brigade of the ARBiH to take detainee Ivica Keškić a.k.a. Ivan from the Marxist Center to the premises of the KSC, where the Military Security Service of the ARBiH 307<sup>th</sup> Brigade and the Military Police of the ARBiH 307<sup>th</sup> Brigade were based prior to moving into new premises, and bring him to his office. The policemen did so and one of the policemen struck Ivica Keškić several times in Enes Handžić's presence, thus inflicting suffering on the detainee. **The Accused Enes Handžić** saw that the subordinate policeman was beating the apprehended Ivica Keškić, but failed to take necessary and reasonable measures to prevent him from doing it and failed to punish him for that. He also failed to conduct an appropriate investigation against the policeman who committed the referenced act and to file a criminal report against him for the commission of the referenced criminal act with the competent District Military Prosecutor's Office in Travnik,

5.b) During the period between 27 August 1993 and about 10 September 1993, members of the Military Police and the Military Security Service of the ARBiH 307<sup>th</sup> Brigade subordinate to him, incarcerated and held on the KSC premises Milenko Begić and Zdravko Kezić, the injured members of the 52<sup>nd</sup> Home Guard Regiment of HVO's 4<sup>th</sup> Brigade, *Stjepan Radić*. On that occasion they interrogated Milenko Begić and Zdravko Kezić about the HVO frontlines, HVO membership and HVO armament, whereupon, after the completed interrogations and return to the premises they were detained in, the MP members repeatedly abused detainees Milenko Begić and Zdravko Kezić by beating, kicking and striking them with blunt objects all over their bodies although they were wounded, thus inflicting on them severe physical and mental pain and suffering, and around 10 September 1993, they took them under escort to the camp at the FC *Iskra* Stadium and detained them there. **The Accused Handžić Enes**, although he knew that the detainees were being tortured in the referenced manner, failed to take necessary and reasonable measures to prevent and punish the military policemen subordinate to him who participated in the torture of the detainees and failed to conduct an appropriate investigation against these persons and to file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik,

## VI. In the Health Center – War Hospital in Bugojno

6. On 8 September 1993, during the medical treatment of detainees Stjepan Cvijanović and Milenko Kasalo due to injuries sustained during the abuse by members of the ARBiH, and the medical

treatment of the other injured Croat detainees at the Health Center – War Hospital Bugojno, members of the ARBiH used to storm into the sickroom where the referenced injured detainees were and abuse them physically and mentally, punched, kicked and beat them with rods, pistols and blunt objects all over their bodies, and they pulled a drain out of Stjepan Cvijanović's wound forcing him to drink a liquid from the drain, thus inflicting upon them severe physical and mental pain and suffering. **The Accused Enes Handžić**, although he knew that the detainees were tortured in the Health Center in the referenced manner, failed to take necessary and reasonable measures to punish the referenced ARBiH members as he did not conduct an appropriate investigation against them and did not file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik,

## **VII. In the FC *Iskra* Stadium camp in Bugojno and BH Bank in Bugojno**

7. During the period between the establishment of the camp at the FC *Iskra* Stadium in August 1993 to mid [*sic*] 19 March 1994, members of the Bugojno ARBiH and the civilian authorities of the Bugojno Municipality, Bugojno Defense Staff and Bugojno SJB, pursuant to a decision of the War Presidency of the Bugojno Municipality, incarcerated in the camp at the FC *Iskra* Stadium in Bugojno more than 300 Croat men, including civilians and HVO members who laid down their arms and surrendered to members of the ARBiH, Bugojno Defense Staff and Bugojno SJB, which at the time of their surrender belonged to the Joint Command of the ARBiH Bugojno contrary to the rules of military organization of the ARBiH. The men were detained on unfit premises in which the standards of hygiene were beneath the dignity of any man and in which they did not have sufficient food, water and necessary medical care. During the period between 18 August 1993 and about mid-October 1993, **the Accused Enes Handžić**, pursuant to decisions of the War Presidency of the Bugojno Municipality, the Commander of the *West* Operations Group and the Commander of the 307<sup>th</sup> Brigade, was authorized to allow the MP members subordinate to him and other ARBiH members to take the detainees out of the camp and to forced labor in Bugojno where they cleaned the streets, cut wood for the needs of members of the Bugojno ARBiH and did different other manual jobs, or to take them, for the purpose of consolidating the combat positions and digging trenches and communication trenches for the needs of the ARBiH, to the frontlines held by the ARBiH against the Army of Republika Srpska and the HVO in the direction of Donji Vakuf, Gornji Vakuf/Uskoplje and Kupres. Therefore, Enes Handžić, in accordance with the powers vested in him by his superiors and knowing that it was a prohibited act toward the detainees, allowed members of the ARBiH and the military policemen subordinate to him to take the Croat detainees out of this camp and take them to perform forced labor on the frontlines in the places of Podripci,

Sabljari, Pajić Polje, Donja Hrasnica, Gornja Hrasnica, Pirići, Duratbegović Dolac and other places. At these places the detainees consolidated the ARBiH combat positions, dug trenches, communication trenches and dugouts, and, as there was a lot of shooting at these places, they were used as "human shield". During these works a number of detainees, including Miroslav Zelić, sustained bodily injuries and when they were returned to the camp they were not provided with adequate medical care, while detainees Davor Jezidžić and Željko Tabaković were killed while performing labor. At the same time a great number of detainees were physically and mentally abused in the camp by camp guards or other ARBiH members, including the military policemen subordinate to him, who were allowed by the guards to enter the camp only to beat the Croat detainees. The detainees would be taken out of the premises on which they were detained into the Stadium's corridor, open stands or on the pitch where the guards and members of the ARBiH Bugojno, including the military policemen, punched, kicked and beat them with blunt objects all over their bodies, whereby strong physical and mental pain and suffering were inflicted upon them. The following persons were abused in such way: Dragan Erkapić, Niko Visković a.k.a. Koni, Mario Glišić, Marko Gunjača, Milenko Kasalo, Gordan Raić, Željko Spremo, Mario Miloš, Zdravko Kezić, Milenko Begić, Ivica Lozančić, Ilija Dujmović, Željko Lozić, Miroslav Fabulić and other detainees. **The Accused Enes Handžić**, although he knew that the detainees were tortured in the referenced manner, failed to take necessary and reasonable measures to prevent their torture, failed to conduct an appropriate investigation against the ARBiH members and the military policemen subordinate to him who participated in the commission of the referenced act and failed to file a criminal report against them for the commission of the referenced criminal offenses with the competent District Military Prosecutor's Office in Travnik. During the same period, **the Accused Enes Handžić** ordered and allowed military policemen of the 307<sup>th</sup> Brigade to take some detainees from the camp for interrogation at the premises of the BH Bank in Bugojno, where the Military Police of the 307<sup>th</sup> Brigade was based after having left the KSC premises. The detainees included Miroslav Dilber, Ante Markulj, Dragan Miličević, Perica Kovačević, Zoran - Zoro Galić a.k.a. Šprajco, Zdravko Juričić, Niko Zlatunić, Nikica (father's name Dragutin) Miloš, Nikica (father's name Jozo) Miloš, Perica Crnjak, Branko Crnjak, Ivo Miloš and Dragan Erkapić. He also ordered and allowed members of the Military Police of the 307<sup>th</sup> Brigade to bring from the forced labor in Prusac to the same premises of the BH Bank for interrogation the following persons: Niko Džaja, Mihovil Strujić, Jadranko Gvozden, Željko Miloš, Frano Jezidžić and Stipica Zelić. The MP members punched, kicked and beat with blunt objects the apprehended detainees on the BH Bank premises, thus inflicting upon them severe physical and mental pain and suffering. Detainees Nikica (father's name Jozo) Miloš a.k.a. Kardelj, Perica Kovačević and Jadranko Gvozden

succumbed to these injuries on the BH Bank premises. Pursuant to the order received from the Bugojno Municipality War Presidency that the detainees who were considered to be extremists should be separated from the other detainees from Bugojno and taken to the locality of Ravno Rostovo, the Military Police Commander, together with other military policemen, took detainees Miroslav Dilber, Ante Markulj, Dragan Miličević, Zoran - Zoro Galić a.k.a. Šprajco, Zdravko Juričić, Niko Zlatunić, Nikica (father's name Dragutin) Miloš, Perica Crnjak, Branko Crnjak, Ivo Miloš, Dragan Erkapić, Niko Džaja, Mihovil Strujić, Željko Miloš, Frano Jezidžić and Stipica Zelić to the Motel at Ravno Rostovo where a unit of the 7<sup>th</sup> Muslim Brigade was based and detained them there. Detainee Željko Miloš was the only one who managed to escape during the transportation to Ravno Rostovo and thus survive, while the other taken detainees were killed and their mortal remains have not been found to date. **The Accused Enes Handžić**, although he knew that the detainees on the premises of the BH Bank were being tortured by the military policemen subordinate to him and that Nikica (father's name Jozo) Miloš a.k.a. Kardelj, Perica Kovačević and Jadranko Gvozden were killed in that torture, failed to take necessary and reasonable measures to prevent and punish the military policemen subordinate to him who participated in the torture of the detainees, failed to conduct an appropriate investigation against the referenced military policemen, and failed to file a criminal report against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik.

**Therefore**, during the war in Bosnia and Herzegovina and during the armed conflict between the HVO and the ARBiH, violating the rules of international humanitarian law, more specifically, Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, he participated in the forcing of detainees to perform labor by approving, pursuant to the powers vested in him by his superiors, the taking of the detainees to forced labor where the detainees' lives were endangered and where many of them were tortured and some even killed; he failed to take necessary and reasonable measures to prevent the killings and torture of the detainees committed by the Military Police members subordinate to him and other ARBiH members, although he knew of the perpetration of the referenced acts; he failed to conduct appropriate investigations into the commission of the referenced acts, and he failed to file criminal reports against them for the commission of the referenced criminal acts with the competent District Military Prosecutor's Office in Travnik.

**whereby** the Accused Enes Handžić:

under sections **1, 2, 2a)** with respect to the torture and killing of detainee Mario Zrno; and under sections **3, 4, 4b), 5, 5b), 6 and 7** with respect to the torture at the *FC Iskra* camp and the **torture and killings of the detainees at the BH Bank**, committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, in conjunction with Article 180(2) of the CC of BiH,

under section **2a)**, with respect to forced labor; under section **4**, with respect to forced labor; and under section **7**, with respect to forced labor, committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(f) of the CC of BiH, in conjunction with Article 180(1) and Article 29 of the CC of BiH.

**therefore**, pursuant to the quoted provisions and Articles 39, 42, 48 and 49 of the CC of BiH, **the Court**

## **SENTENCES**

### **HIM TO THE PRISON SENTENCE OF 8 (eight) YEARS**

Pursuant to Article 56(1) of the CC of BiH, the time the Accused Enes Handžić spent in custody from 16 April 2007 to 19 February 2009 and from the time of his apprehension under the Decision of the Court of BiH ordering him into custody after the pronouncement of the Verdict on 25 May 2011 until the time of his committal to serve the sentence, shall be credited towards the sentence of imprisonment.

Pursuant to Article 188(4) of the CPC of BiH, the Accused shall be relieved of the duty to reimburse the costs of criminal proceedings, which costs shall be paid from the Court budgetary appropriations.

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

## REASONING

### I. PROCEDURAL HISTORY

1. On 7 December 2007, the Prosecution filed an Indictment number KT- RZ 102/05 against Enes Handžić and Senad Dautović, which was confirmed on 11 December 2007. The referenced Indictment charged Enes Handžić with having committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a), (c), (e) and (f) of the CC of BiH, War Crimes against the Wounded and Sick in violation of Article 174(1)(a) and (b) of the CC of BiH, War Crimes against Prisoners of War in violation of Article 175(1)(a) and (b) of the CC of BiH, as read with Article 180(1) and (2) and Article 29 of the CC of BiH.
2. After the case was forwarded to the Trial Panel on 23 January 2008, for the purpose of judicial economy and efficiency, the Panel rendered a decision to join the proceedings against Enes Handžić and Senad Dautović with the proceedings conducted concurrently against the Accused Nisvet Gasal and Musajb Kukavica, considering that a part of the factual account contained in the two Indictments against the referenced persons was identical and that there existed an objective nexus between them, that is, both Indictments charge several persons with having participated in the criminal acts related to the same event, and that the Prosecution planned to present the same evidence with regard to both Indictments.
3. Thereupon, on 6 February 2008, the main trial against all four accused commenced. During the main trial, both the Prosecution and the Defense presented their cases. On 26 April 2011, following the presentation of evidence by the defense for the Accused Enes Handžić and before the completion of the evidentiary proceedings, the Prosecution filed with the Court an amended Indictment against the Accused Enes Handžić and a Plea Agreement entered into by the Prosecution and the Accused Enes Handžić.

## II. PLEA AGREEMENT

### A. PLEA AGREEMENT PURSUANT TO ARTICLE 231 OF THE CPC OF BiH

4. In the course of the deliberation, the Panel verified all the facts as stipulated in Article 231(6)(a) through (e) of the CPC of BiH. First and foremost, on 4 May 2011, a hearing was held to consider the plea agreement between the Prosecutor's Office of BiH and the Accused Enes Handžić, which he signed in the presence of his Defense Counsel Fahrija Karkin. In order to clarify all the circumstances of the Agreement which the Panel needed for rendering a decision, several more hearings were held at which the Panel asked the parties to provide further information. This particularly concerned the supplement to the statement of the Accused which he made to Prosecution in his capacity as a witness, pertaining to the Bugojno events, including additional information on the aggrieved parties and clarification of the activities taken by the Prosecution with regard to the Ivandića House locality, due to the suspicion that bodies of some of the victims mentioned in the Indictment had been transferred there.

5. With regard to the above, upon a motion by the Prosecution, the Panel excluded the public from one part of the hearing, to which neither the defense nor the Accused objected. In that respect, observing the principle of a public trial and the right of the aggrieved parties on one hand, and recognizing the reasons raised by the Prosecution on the other, the Panel excluded the public only in a necessary part of the trial which referred to the information important to the agreement deliberation process.<sup>1</sup>

6. During the deliberation about the Agreement, the Panel found that the Agreement had been entered into voluntarily, consciously and with understanding, that the Accused was aware that by the Agreement he entirely admitted his guilt for the offense he had been charged with, that he was aware of the factual description of the offense and legal qualification thereof, and that, by the

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<sup>1</sup> Exclusion of the public pertained to the information which, if disclosed during the deliberation about the plea agreement, could have threatened the activities which the Prosecutor's Office of BiH had taken or intended to take upon obtaining information which the Accused Enes Handžić provided in his statement.



Agreement on the Admission of Guilt, he waived his right to a trial, and his right to appeal the criminal sanction imposed.

7. The Panel found that the Accused was also informed of the possible consequences of the Agreement, including the satisfaction of the claims under property law and reimbursement of the expenses of the criminal proceedings, as well as under the Agreement he undertook the obligation to testify about the events during the period 1992 – 1995 or any other period of time, whenever asked to do so by a judicial or legal authority.

8. Also, in rendering a decision, the Panel was mindful of the interests and rights of those aggrieved in this case, and checked if the Prosecution enabled the aggrieved parties to raise claims under property law, as it was the obligation of the Prosecution to inform the aggrieved parties accordingly and also the obligation of the Court to make sure that that had been done. In this regard, the Panel took notice of the 29 April 2011 Minutes which indicates that there was a meeting of the Steering and Supervisory Boards of the Association of the Families of Fallen and Missing Defenders of the Homeland War and representatives of the Prosecutor's Office of BiH. At this meeting the attendees were informed of their rights to file claims under property law. The Minutes noted that the aggrieved parties who could not attend the meeting had been contacted by telephone. The Minutes indicate that all of the aggrieved parties raised claims under property law. The Panel also reviewed the Minutes of 16 May 2011, made on the premises of the Prosecutor's Office of BiH during the meeting of the Prosecutor's Office of BiH, the aggrieved parties and representatives of the Missing Persons Institute of BiH, which was held upon the order of the Trial Panel. The Minutes clearly indicate that the families of the victims stated in the Indictment were informed of all the circumstances of the referenced Plea Agreement. They were informed of the circumstances pertaining to the site at which Perica Kovačević, Gvozden Jadranko and Miloš Nikica a.k.a. Kardelj had been executed. They received all the information which the Prosecutor's Office of BiH possessed about the further fate of the bodies of these three victims.

9. With regard to the proposed sanction, pursuant to Article 231(6)(d) of the CPC of BiH, the Panel primarily had to determine if the criminal sanction agreed upon complied with the statutory scope. In this specific case, an imprisonment sentence ranging from 5 to 10 years was agreed upon and the parties left to the Court the decision on the appropriate sentence within this proposed range. For the criminal offense of War Crimes against Civilians, the CC of BiH stipulates the sentence of imprisonment of 10 years as the legally prescribed minimum sentence for that criminal offense. Pursuant to Article 231(3) of the CPC of BiH, in case of a plea agreement, the Prosecution may

also propose the punishment of imprisonment below the legally prescribed minimum, however, s/he must be mindful of the limits for the reduction of punishment for every specific criminal offense. Considering that the proposed range in this specific case is not lower than 5 years in prison, it complies with Article 50 of the CC of BiH which stipulates limits of the reduction of punishment.

10. Based on the foregoing, the Panel accepted the Plea Agreement as the Plea Agreement satisfied all legally prescribed requirements.

11. Pursuant to Article 231(7) of the CPC of BiH, the Accused Enes Handžić made a statement that was entered into the record by which he expressed his contrition and apologized to the victims and their families, emphasizing his regret for the pain of the aggrieved parties.

## **B. EVIDENCE PRESENTED**

12. Being satisfied that the Accused was entirely aware of all legal consequences of the Agreement, pursuant to Article 231(6)(b) of the CPC of BiH, the Panel examined if there existed sufficient evidence on the guilt of the Accused. It therefore asked the Prosecution to elaborate and present evidence on which the Indictment is grounded. The Prosecution presented 23 pieces of evidence corroborating the amended Indictment, and noted that she adhered to all evidence tendered during the main trial. The parties do not dispute any of the presented pieces of evidence, and the Accused had no objections whatsoever in that regard.

### **1. Prosecution Witnesses**

13. The following witnesses for the Prosecution were examined: Miroslav Zelić, Marko Gunjača, Gordan Raić, Franjo Vejić, Drago Žulj, Ivica Klarić, Stipica Džapić, Ivan Kapetanović, Ivica Topić, Mario Franić, Nikica Marković, Ivo Kujundžić, Nikolić Jadranka, Ištuk Željko, Željko Miloš, Salkić Zijad, Mario Glišić, Ivica Keškić Jasmnika Šečić, Josip Lukić, Berislav Džalto, Milenko Begić, Zdravko Kezić, Miroslav Marijanović, Dražen Vučak, Stipo Vučak, Milenko Kasalo, Dragan Boškić, Stjepan Radoš, Bosiljka Kasalo, Zoran Pocrnja, Mirko Tomljenović, Slaven Brajković, Ilija Udovičić, Alvir Zrinko, Vlatko Brnas, Josip Kalaica, Josip Čubela, Ivica Gunjača,

Anto Kapetanović, Ivo Mršo, Gvozden Slava, witness A, Dragan Kasalo, Sabahudin Gazić, witness B, Jozo Tomas, Ozren Gvozednović, Ivica Đikić, Ljuban Živko, Viktor Maros, Asim Balihodžić, witness D, Berislav Jezidžić, Zoran Gvozden, Janko Ljubos, Ilija Dujmović, Tomislav Turalika, Božo Križanac, Damir Grgić, Damir Kolovrat, Rade Marjanović, Sead Talić, Semir Osmić, Stjepan Cvijanović, Nevzudin Kero, Zahid Karagić, Bahrija Milanović, Admir Slipac, Dragan Nevjestić, Zahid Jusić, Nijaz Habib, Kaić Kazimir, Velić Mirsad, Nebić Suljo, Vinko Pavić, Ivković Jasmin, Bernes Gavranović, Alen Slipac, Željko Lozić.

## **2. Defense Witnesses**

14. A list of witnesses for the Accused Enes Handžić: Dževad Mlačo, Selmo Cikotić (examined as a witness for the defense and as the Court witness), Enes Šehić, Edin Čorhusić, Nermin Aliefendić, Memnun Mustajebogvić, Halid Manjušak, Mirsad Šutković, Merdžad Đugum, Hidajet Vinčević, Hidajet Jašarević, Jasmina Mešić, Lejla Gurbeta Mlačo, Muhamed Donlić, Senad Alkić, Reuf Balihodžić, Haris Haznadarević, Azrudin Sukara, Sabahudin Gazić.

## **3. Documentary Evidence for Prosecution and Defense**

15. For easier reference, all pieces of documentary evidence that were presented and taken into account by the Panel when deciding on the Plea Agreement, are listed in ANNEX A which constitutes an integral part of the reasoning of the Verdict.

## **4. Conclusion**

16. Based on all of the foregoing, the Panel found that the Prosecutor offered sufficient evidence on the guilt of the Accused Enes Handžić and that the acts of the Accused included all elements of the criminal offense of War Crimes against Civilians; specifically, at the time and in the manner as described in the operative part of the Verdict, the Accused committed the criminal offence of War Crimes against Civilians in violation of Article 173(1)(c) and (f) of the CC of BiH, in conjunction with Article 180(1) and (2) and Article 29 of the CC of BiH, of which the Court, accepting the Plea Agreement, found him guilty.

### **C. CLOSING ARGUMENT OF PROSECUTION AND DEFENSE**

17. At the hearing for consideration of the criminal sanction, the Prosecutor stood by the proposed length of punishments ranging from 5 to 10 years in prison. The Prosecution chose a punishment that is more lenient than the one prescribed as the legal minimum of 10 years for the criminal offense of War Crimes against Civilians because, according to the Prosecution, the Accused was co-operative, which resulted in the recovery of human remains. The Accused was willing to publicly apologize to the victims and agreed to testify in any other case the Prosecution requests. This obligation he undertook in the Agreement itself. The Prosecution pointed out in the end that the proposed length of imprisonment would achieve the purpose of punishment, serve justice and contribute to the increased quality of coexistence in the area of Bugojno.

18. The Defense for the Accused moved the Court to accept a sanction closer to a term of imprisonment of 5 years given that no aggravating circumstances existed on the part of the Accused, while on the other hand there existed particularly mitigating circumstances, specifically the age of the Accused at the time when the criminal offense was perpetrated, the fact that he is a father of underage children, that he was never prone to committing criminal offenses, and that, by making the Agreement, he contributed to establishing the truth concerning the events in Bugojno in the incriminated period.

## **III. SUMMARY OF LAW**

### **A. APPLICABILITY OF THE CRIMINAL CODE OF BOSNIA AND HERZEGOVINA**

19. By signing the Plea Agreement, the Accused Enes Handžić pleaded guilty to the charges of the criminal offense of War Crimes against Civilians in violation of Article 173 of the Criminal Code of Bosnia and Herzegovina.

20. The Court applied the law stated in the Agreement, being predominantly guided by the principle of legality under Article 3 of the CC of BiH that stipulates that criminal offenses 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 offense by law or international law, and for which a punishment has not been

prescribed by law. The offense the Accused Enes Handžić is found guilty of was indeed prescribed as a criminal offense at the time when the criminal offense was perpetrated, therefore it was also punishable under the then applicable law. Specifically, the criminal acts listed under Article 173 of the CC of BiH can be also found in the law that was in force during the relevant period – at the time when the criminal offense was perpetrated, specifically in Article 142(1) of the Criminal Code of Socialist Federal Republic of Yugoslavia.

21. Taking into account that the above mentioned criminal offense is stipulated in both laws, the Panel has compared the prescribed punishments under both laws, given that although Article 4 of the CC of BiH stipulates that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, it also stipulates that if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

22. The principle of legality is also stipulated in Article 7(1) of the European Convention on Human Rights (ECHR). The ECHR has priority over all other laws of BiH pursuant to Article 2(2) of the Constitution of BiH. This provision of the European Convention contains a general principle prohibiting a more severe punishment than the one that was applicable at the time when the criminal offense was perpetrated, however it does not stipulate that the most lenient law shall be applied.

23. In this respect, the Panel finds the application of the CC of BiH acceptable given that the prescribed punishment stipulated in the CC of BiH is in any case more lenient than the death penalty that was in effect at the time when the criminal offense was perpetrated, which satisfies the principle of time constraints of criminal law or the application of a more lenient law to the perpetrator.<sup>2</sup>

24. Furthermore, one should also take into account Article 4a) of the CC of BiH stipulating that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any

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<sup>2</sup> This position of the Court is consistent with the position taken in the Verdict of Section I of the Appellate Division of the Court of BiH pronounced against *Maktouf*, KPŽ 32/05 (Court of BiH), Second Instance Verdict, 4 April 2006; *Paunović*, KPŽ 05/16 (Court of BiH), Second Instance Verdict, 27 October 2006; this position was also confirmed by the decision of the Constitutional Court of Bosnia and Herzegovina, AP -178 5/06, 30 March 2007.

act or omission which, at the time when it was committed, was “criminal according to the general principles of international law”.

25. Also, Article 7(2) of the ECHR provides the same exception on condition 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 the general principles of law organized by civilized nations.”<sup>3</sup>

26. This provides for a possibility to depart, under the stipulated conditions, from the principles established in Articles 3 and 4 of the CC of BiH (as well as Article 7(1) of the ECHR) and thus from the application of the criminal law that was applicable at the time of perpetration, and to apply a more lenient law in the proceedings conducted for the offenses constituting the criminal offenses according to international law.

27. The criminal offense of War Crimes against Civilians the Accused is charged with constitutes a criminal offense also according to customary international law and therefore it also falls within “the general principles of international law”<sup>4</sup> as stipulated in Article 4a) of the Law on Amendments to the CC of BiH, and “general principles of law recognized by the community of nations” stipulated in Article 7(2) of the ECHR, thus the CC of BiH can be applied in this case on the grounds of these provisions as well.

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<sup>3</sup> See also Article 15(1) and (2) of the International Covenant on Civil and Political Rights that contains similar provisions. The State of Bosnia and Herzegovina as one of the successor states of Yugoslavia has ratified this Covenant.

<sup>4</sup> Customary law status of criminal responsibility for crimes against humanity and war crimes against civilians and individual responsibility for war crimes committed in 1992 is confirmed by the UN Secretary General, the International Law Commission, as well as by the jurisprudence of the International Criminal Tribunal of the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR). These Institutions have established that criminal responsibility for crimes against humanity and war crimes against civilians constitutes an imperative standard of international law or *jus cogens*. Therefore, it seems indisputable that crimes against humanity and war crimes against civilians in 1992 constituted part of customary international law. This conclusion is also confirmed in , Jean-Marie Henckaerts and Louise Doswald –Beck, *Customary International Humanitarian Law*, International Committee of the Red Cross (2005).

## **B. WAR CRIMES AGAINST CIVILIANS**

### **1. Introduction**

28. The Prosecution alleges that the Accused committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)c) (killings and torture) and f) (forced labor), which reads:

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

...

c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), ....'

f) Forced labor...

...

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

29. The Prosecution further alleges that these offences were committed in violation of Article 3(1)a) and c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, dated 12 August 1949. Article 3 is common to all four Geneva Conventions and referred to as "Common Article 3".

30. Article 3(1) of the Geneva Convention reads:

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

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

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

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

...

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

....

31. Common Article 3 contains “the fundamental humanitarian principles which underlie international humanitarian law as a whole”<sup>5</sup>. Common Article 3 is also widely recognized as being a foundation of customary international humanitarian law.<sup>6</sup> These fundamental rules are a minimum which apply to all conflicts, no matter if they are of international or non-international in character.<sup>7</sup>

## 2. General Elements

32. Article 173 of the CC of BiH requires that certain elements be met for the conduct of the Accused to constitute a war crime against civilians. The Panel recalls that in its First Instance Verdict of *Novak Đukić*, X-KR-07/394, 12 June 2009,<sup>8</sup> it held all war crimes have to meet the following criteria. These general elements are:

- a. The conduct must be in violation of rules of international law in time of war, armed conflict or occupation;
- b. The violation must take place in time of war, armed conflict or occupation;
- c. The act must be related to the state of war, armed conflict or occupation;
- d. The accused must order or perpetrate the act.

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<sup>5</sup> *Prosecutor v. Delalić et al*, IT-96-21-A, Judgment, 20 February 2001 (“*Delalić Appeal Judgment*” – also known as the “*Čelibići Appeal Judgment*”), para. 143.

<sup>6</sup> International Court of Justice, *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America (Merits))*, Judgment of 27 June 1986, para. 218; *Prosecutor v. Tadić*, IT-94-1, Decision by the Appeals Chamber on the Defense Motion for Interlocutory Appeal on Jurisdiction, para. 98 and 129.

<sup>7</sup> *Delalić Appeals Judgment*, para. 143.

<sup>8</sup> *Đukić*, X-KR-07/394 (Ct. of BiH), First Instance Verdict (“*Đukić First Instance Verdict*”), 12 June 2009, para. 160. Affirmed on appeal: *Đukić*, X-KRŽ-07/394 (Court of BiH), Second Instance Verdict (“*Đukić Second Instance Verdict*”), 6 April 2010.



(a) The conduct must be in violation of rules of international law in time of war, armed conflict or occupation

33. The source of law of the Court of BiH is domestic law, and the Panel is rendering its verdict based on Article 173 of the CC of BiH. However, Article 173(1) states that the Accused must act in violation of *rules of international law*. Article 2(b) of Additional Protocol I<sup>9</sup> defines rules of international law as “the rules applicable in armed conflicts set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict”.

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

35. Based on this the Accused Handžić incurred individual criminal responsibility for the offences of killings, torture, and forced labor. The Panel notes BiH is bound by Common Article 3 pursuant to the customary laws of secession,<sup>10</sup> and the Accused was therefore bound to obey them. Furthermore, Common Article 3 applies to both international and non-international armed

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<sup>9</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

<sup>10</sup> Ratified by the SFRY on 11 June 1979. See Bosnia and Herzegovina’s Declaration of Succession of 31 December 1992, where it declared that it had become party to the Geneva Conventions and the Additional Protocols as the date of its independence, 6 March 1992.

conflicts,<sup>11</sup> and the Court of BiH has repeatedly found that the parties to the conflict in Bosnia were bound by Common Article 3.<sup>12</sup>

36. The Panel emphasizes that one need not have had specific knowledge of the existence of these international norms. It is sufficient that one violate these norms. It is never necessary that one have the ability to define the legal qualifications of his crime, only that he have notice that his actions and intentions are criminal. It is for the Panel to determine the crime then committed.<sup>13</sup> One must, however, have the specific *mens rea* applicable to the underlying offence he is charged with to be found guilty, whether he is found guilty as a perpetrator or as one ordering.

37. In order to establish that rules of international law have been violated in the specific case, it is necessary to establish that the action was aimed against a protected category of persons protected under Article 3(1) of the Fourth Geneva Convention. According to the definition of the protected category under Article 3(1), it is “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*”.<sup>14</sup>

38. In this particular case, the Accused Enes Handžić committed the criminal offense against members of the HVO who laid down their arms, and the civilians who surrendered together with members of the 1<sup>st</sup> Battalion in the village of Donjići, in other words against the persons who took no active part in the hostilities.

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<sup>11</sup> See, e.g., Fourth Geneva Convention, Art. 3 (“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions...”). See also International Court of Justice, *Case Concerning the Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America (Merits))*, Judgment of 27 June 1986, para. 218; *Damjanović and Damjanović*, X-KR-05/107 (Ct. of BiH), First Instance Verdict, 18 June 2007 (“*Damjanović and Damjanović* First Instance Verdict”), p. 13 (noting that Common Article 3 binds “all parties in any kind of conflict, whether internal or international”).

<sup>12</sup> See, e.g., *Đukić* First Instance Verdict, paras. 155 and 163; *Kovać*, X-KR-08/489 (Ct. of BiH), First Instance Verdict, 10 July 2009 (“*Kovać* First Instance Verdict”), p. 27; *Hodžić*, X-KR-07/430 (Ct. of BiH), First Instance Verdict, 29 June 2009 (“*Hodžić* First Instance Verdict”), para. 10.

<sup>13</sup> *Đukić* First Instance Verdict, para. 165. See also *Andrun*, X-KRŽ-05/42 (Ct. of BiH), Second Instance Verdict, 19 August 2008 (“*Andrun* Second Instance Verdict”), p. 15: The Appellate Panel has held that it is not necessary “that the perpetrator knows or intends to violate an international norm”, but rather, “it is sufficient that his conduct objectively constitutes a violation of the rules of international law”.

<sup>14</sup> See Commentary to Article 3 of Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War of 12 August 1949, Sub-paragraphs (1) and (2) – Extent of obligation, p. 38.

(b) The violation must take place in time of war, armed conflict or occupation

39. Article 173 of the CC of BiH requires that the offence be committed in time of war, armed conflict or occupation. It does not require that the conflict be either internal or international in nature. According to the ICTY Appeals Chamber, an “armed conflict is said to exist whenever there is a resort to armed forces between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”.<sup>15</sup>

40. When considering the Agreement, the Panel has taken into account all the elements of the crime the Accused is charged with, and in order to establish the existence of war and an armed conflict the Panel has taken into account the presented evidence such as documentary evidence including the Decision on the Declaration of the State of War<sup>16</sup>. During the main trial, almost all the witnesses testified about the circumstances surrounding the existence of the armed conflict; they precisely described all the details pertaining to the conflict between the ARBiH and the HVO, all of which was also confirmed by the Accused. The Panel notes this fact has not been challenged by the parties during the proceedings.

41. Therefore, based upon the relevant legal provisions and the evidence contained in the case-file, the Panel concludes there existed an armed conflict between members of the ARBiH on the one side and the HVO on the other side existed in the territory of Bosnia and Herzegovina including the area of Bugojno during the period considered in the Indictment

(c) The act must be related to the state of war, armed conflict or occupation

42. The third element of Article 173(1) of the CC of BiH is that there must be a nexus between the act of the Accused and the armed conflict. Indeed, “[t]he armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit the crime, his decision to

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<sup>15</sup> *Dukić* First Instance Verdict, para. 170 citing *Prosecutor v. Kunarac et al* IT-96-23/1-A, Judgment, 12 June 2002 (“*Kunarac et al* Appeals Judgment”), para. 56.

<sup>16</sup> T-464 (Decision on the Declaration of the State of War).

commit the crime, the manner in which it was committed or the purpose for which it was committed”<sup>17</sup>.

43. Several factors can determine the existence of a nexus between the act of the Accused and the armed conflict. Factors may include whether: (i) the perpetrator was a combatant;<sup>18</sup> (ii) the victim was a noncombatant;<sup>19</sup> (iii) the victim was a member of the opposing party;<sup>20</sup> (iv) the act served to further an ultimate military goal;<sup>21</sup> and (v) the perpetrator committed the act as part of his official duties.<sup>22</sup> In addition, courts may consider whether the conflict played a substantial role in the perpetrator’s ability to commit the crime, his decision to commit it, his purpose in committing it, or the manner in which he committed it,<sup>23</sup> although the armed conflict need not have a *causal* connection to the crime.<sup>24</sup> Importantly, the offense need not be geographically close to the hostilities or conflict, as the acts generally need only occur within the territory or a party to the conflict.<sup>25</sup> Finally, the crime need not occur at the exact time hostilities are occurring.<sup>26</sup>

44. The Accused was the Assistant Commander for Security in the 307<sup>th</sup> Brigade of the ARBiH in the relevant period, and as a result he was superior to the Military Police of the 307<sup>th</sup> Brigade of the ARBiH. He had authorization to issue approvals for taking the prisoners away to perform forced labor, which he did. On the other hand, in his capacity of a responsible military officer in the 307<sup>th</sup> Brigade, he had an obligation to conduct investigations in the case of perpetration of criminal offenses by his subordinates and file criminal reports with the relevant Military District Prosecutor’s Office in Travnik. However, although the Accused was aware of the acts perpetrated by his subordinates, he failed to take necessary and reasonable measures to prevent the perpetration of those criminal offenses against the prisoners and punish his subordinated police officers, the perpetrators of criminal offenses and other members of the ARBiH, or to conduct investigations in case of perpetration of such criminal offenses and file criminal reports with the relevant Military District Prosecutor’s Office in Travnik, although he was aware of the perpetration of such offenses.

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<sup>17</sup> *Dukić* First Instance Verdict, para. 175 citing *Kunarac et al* Appeals Judgment, para. 58.

<sup>18</sup> *Damjanović and Damjanović* First Instance Verdict, pgs. 13-14; accord *Kunarac et al* Appeals Judgment, para. 59.

<sup>19</sup> *Damjanović and Damjanović* First Instance Verdict, p. 13; accord *Kunarac et al* Appeals Judgment, para. 59.

<sup>20</sup> *Damjanović and Damjanović* First Instance Verdict, p. 13; accord *Kunarac et al* Appeals Judgment, para. 59.

<sup>21</sup> *Damjanović and Damjanović* First Instance Verdict, p. 13; accord *Kunarac et al* Appeals Judgment, para. 59.

<sup>22</sup> *Damjanović and Damjanović* First Instance Verdict, p. 13; accord *Kunarac et al* Appeals Judgment, para. 59.

<sup>23</sup> *Damjanović and Damjanović* First Instance Verdict, pgs. 13-14; accord *Kunarac et al* Appeals Judgment, para. 58.

<sup>24</sup> *Damjanović and Damjanović* First Instance Verdict, p. 14; accord *Kunarac et al* Appeals Judgment, para. 58.

<sup>25</sup> *Damjanović and Damjanović* First Instance Verdict, p. 14; accord *Kunarac et al* Appeals Judgment, para. 57.

<sup>26</sup> *Damjanović and Damjanović* First Instance Verdict, p. 14; accord *Kunarac et al* Appeals Judgment, para. 57.

45. Based on the above, the Panel has concluded that the acts of the Accused is directly related to the armed conflict, and that his official duties during that period enabled the Accused to commit the above mentioned criminal offense which the Accused was aware of and which he was undoubtedly part of.

46. The Panel has inferred such a conclusion based on the confession of guilt of the Accused and the evidence adduced in the course of the proceedings.

(d) The accused must order or perpetrate the act

47. Finally, Article 173 (1) of the CC of BiH requires that the Accused either directly perpetrate the illegal act or order the said act.<sup>27</sup> The Panel emphasizes that this relates to the mode of liability of the Accused and does not constitute an element of the crime as such. The Prosecution alleged that the Accused committed these criminal offences in conjunction with Article 29, Article 180(1) and (2) of the CC of BiH. The Panel considers it unnecessary here to rule on the different modes of liability which can be imputed to an individual charged with war crimes against civilians pursuant to 173 of the CC of BiH, but will address it in the section D and IV. below.

### C. SPECIFIC CRIMES

48. As stated above, the Accused Enes Handžić is charged with the commission of the criminal acts stipulated in Article 173(1)f)- forced labor, in conjunction with Article 29 (co-perpetration) and Article 180(1) (individual criminal responsibility), and Sub-paragraph c)- killings and torture in conjunction with Article 180(2) (command responsibility) of the CC of BiH. Furthermore, the Accused is charged that these offenses were committed in violation of Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949. As the CC of BiH does not define these underlying offences, the Panel will have recourse to international law to interpret the applicable domestic provisions as these explicitly and specifically refer to international law.

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<sup>27</sup> *Dukić* First Instance Verdict, para. 179.

## 1. Killings

49. Common Article 3 expressly prohibits the murder of persons who are not taking an active or direct part in hostilities.<sup>28</sup> According to the ICTY, “murder” in violation of the laws and customs of war requires “the death of the victim as a result of an act of the accused, committed with the intention to cause death and against a person taking no active part in the hostilities”.<sup>29</sup> Thus, any act that constitutes a “killing” under Article 173 will violate international law if it also fits the definition of murder as a war crime.

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

1. The deprivation of life; and
2. the direct intention to deprive of life, as the perpetrator was aware of this act and wanted the act to be perpetrated.<sup>30</sup>

## 2. Torture

51. Common Article 3 expressly prohibits the torture of persons who are not taking an active or direct part in hostilities.<sup>31</sup>

52. Under ICTY jurisprudence, torture as a war crime consists of three elements:

1. the infliction, by act or omission, of severe pain or suffering, whether physical or mental;
2. the act or omission must be intentional; and
3. the act or omission must have occurred in order to obtain information or a confession, or to punish, intimidate or coerce the victim or a third person, or to discriminate, on any ground, against the victim or a third person.<sup>32</sup>

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<sup>28</sup> See, e.g., Fourth Geneva Convention, Art. 3(1)(a) (prohibiting “violence to life and person, in particular murder of all kinds...” against persons who are not taking an active part in hostilities).

<sup>29</sup> *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-A, Judgment, 17 December 2004 (“*Kordić & Čerkez*, Appeals Judgment”), para. 37.

<sup>30</sup> See *Trbić*, X-KR-07/386 (Ct. of BiH), First Instance Verdict, 16 October 2009 (“*Trbić* First Instance Verdict”), para. 177 and fn. 95.

<sup>31</sup> See, e.g., Fourth Geneva Convention, Article 3(1)(a).

53. The Court of BiH has adopted the ICTY's definition of torture as a war crime,<sup>33</sup> but also requires that at least one of the perpetrators "be a public official or must at any rate act in a non-private capacity, e.g. as a *de facto* organ of a State or any other authority-wielding entity."<sup>34</sup>

54. In evaluating whether the act or omission caused severe pain or suffering, the Court may consider the characteristics of the victim, such as physical or mental condition, age, sex, and position of inferiority.<sup>35</sup> Permanent injury is not required for a finding of torture.<sup>36</sup>

### 3. Forced Labor

55. Certain types of forced labor have been found to constitute cruel treatment in violation of Common Article 3. Although Common Article 3 does not expressly prohibit "inhuman treatment", it outlaws "cruel treatment" of persons not taking part in hostilities,<sup>37</sup> and the ICTY has made it clear that the terms "inhuman treatment" and "cruel treatment" are interchangeable for purposes of determining whether an act amounts to a war crime.<sup>38</sup> Indeed, in *Hodžić*, a Trial Panel held that the behavior amounting to "cruel treatment" under Common Article 3 "meet[s] the requirements of inhuman treatment" under Article 173 of the CC of BiH.<sup>39</sup> By the same token, any act that constitutes inhuman treatment under Article 173 will also constitute "cruel treatment" in violation of Common Article 3, and therefore be a violation of international law.

56. Inhuman treatment is not defined in the CC of BiH, but the jurisprudence of the Court of BiH and the ICTY offer significant guidance in this area. According to the Appellate Panel of the Court of BiH, inhuman treatment "encompasses all other offences that are not specifically prescribed under the criminal offence the Accused is pronounced guilty of", as long as the offense was equal in gravitas and seriousness to the other offences under Article 173, and the accused had

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<sup>32</sup> *Prosecutor v. Brđanin*, IT-99-36-T, Judgment, 1 September 2004 ("*Brđanin* Trial Judgment"), para. 481.

<sup>33</sup> *Andrun* Second Instance Verdict, p. 26.

<sup>34</sup> *Andrun* Second Instance Verdict, p. 27. See also *Hodžić* First Instance Verdict, para. 35.

<sup>35</sup> *Prosecutor v. Brđanin*, IT-99-36-A, Judgment, 3 April 2007, ("*Brđanin* Appeals Judgment"), para. 242.

<sup>36</sup> *Id.* (citing *Prosecutor v. Kvočka et al.*, IT-98-30/1-T, Judgment, 2 November 2001 ("*Kvočka et al* Trial Judgment"), para. 148).

<sup>37</sup> See, e.g., Fourth Geneva Convention, Art. 3(1)(a).

<sup>38</sup> See, e.g., *Prosecutor v. Naletilić and Martinović*, IT-98-34-T, Judgment, 31 March 2003, para. 246 ("[O]ffences of inhuman treatment and cruel treatment are residual clauses under Article 2 [grave breaches of the Geneva Conventions] and 3 [violations of the laws and customs of war] of the Statute respectively. Materially, the elements of these offences are the same"); *Prosecutor v. Kordić & Čerkez*, IT-95-14/2-T, Judgment, 26 February 2001, para. 265 ("'[C]ruel treatment' is 'equivalent to the offence of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions'").

the intention to cause an inhuman act.<sup>40</sup> Similarly, the ICTY Appeals Chamber has defined the elements of cruel treatment as a violation of the laws or customs of war, in relation to Common Article 3(1)(a) of the Geneva Conventions as:

1. an intentional act or omission...which causes serious mental or physical suffering or injury or constitutes a serious attack on human dignity;
2. committed against a person taking no active part in hostilities.<sup>41</sup>

57. To determine whether the acts reach the level of gravity and seriousness required for criminal responsibility, the Court may consider a number of factors, including: the scale and intensity of the treatment; its duration; actual bodily injury or intense physical and mental suffering; nature and context of the treatment; the sex, age, and state of health of the victim; and premeditation.<sup>42</sup> If an accused orders or otherwise participates in using, detainees to dig trenches and it either caused serious mental or physical suffering or injury, or constituted a serious attack on human dignity, then it will be established that these orders of an accused were such as to satisfy the definition of cruel treatment.<sup>43</sup>

58. For instance, forced labor may amount to cruel treatment when combined with other factors, such as poor conditions of detention.<sup>44</sup> In addition, the ICTY has held that “certain types of forced labour may amount to cruel and inhumane treatment if the conditions under which the labour is rendered are such as to create danger for the life and health of the civilians, or may arouse in them feelings of fear, and humiliation”, such as “placing them in life-threatening situations”.<sup>45</sup> The ICTY has also held that forced labor amounts to cruel treatment where the labor requires noncombatants to support military operations, including the digging of trenches, “against forces with whom those persons identify or sympathise”.<sup>46</sup>

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<sup>39</sup> *Hodžić* First Instance Verdict, para. 33.

<sup>40</sup> *Andrun* Second Instance Verdict, pgs. 36-37.

<sup>41</sup> *Delalić* Appeal Judgment, para. 424 .

<sup>42</sup> See also *Alić*, X-KRŽ-06/294 (Ct.of BiH), Second Instance Verdict, 20 January 2011 (“*Alić* Second Instance Verdict”), para. 107.

<sup>43</sup> See *Prosecutor v. Blaškić*, IT-95-14-A, Judgment, 29 July 2004 (“*Blaškić* Appeals Judgment”), , para. 596.

<sup>44</sup> *Prosecutor v. Aleksovski*, IT-95-14-1/A, Judgment, 24 March 2000 (“*Aleksovski* Appeal Judgment”), para. 158 and fn. 286.

<sup>45</sup> *Prosecutor v. Simić*, IT-95-9-T, Judgment, 17 October 2003 (“*Simić* Trial Judgment”), para. 91.

<sup>46</sup> *Blaškić* Appeals Judgment, para. 597.



59. Finally, forced labor that amounts to humiliating or degrading treatment may constitute a violation of the prohibition against “outrages upon personal dignity” found in Common Article 3,<sup>47</sup> so long as the resulting humiliation of the victim is “so intense that any reasonable person would be outraged”.<sup>48</sup> In fact, the ICTY has found that “the use of detainees as human shields or trench-diggers constitutes an outrage upon personal dignity”.<sup>49</sup> Therefore, depending on the type of labor and the attendant conditions, forced labor may constitute a violation of international law.

#### **D. INDIVIDUAL CRIMINAL RESPONSIBILITY**

60. In the Agreement, the Accused pleaded guilty to the offense he was charged with, however the Court is obligated to consider the validity of that confession and whether there exists sufficient evidence that results in his criminal responsibility.

##### **1. Co-perpetration (Article 29 of the CC of BiH)**

61. Article 29 of the CC of BiH provides:

If several persons who, by participating in the perpetration of a criminal offense or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offense, shall each be punished as prescribed for the criminal offense.

62. The Panel recalls from the *Rašević and Todović* First Instance Verdict a Trial Panel stated that in order to be guilty of co-perpetration under the terms of Article 29, the accused must either participate in the *actus reus* of the crime or take some act “by which as decisive contribution has been made” to the commission of the crime.<sup>50</sup> If an accused participated with others in the crime itself, provided there is the necessary *mens rea*, that is sufficient under Article 29 to find him a co-

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<sup>47</sup> See, e.g., Fourth Geneva Convention, Art. 3(1)(c) (prohibiting “outrages upon personal dignity, in particular humiliating and degrading treatment” against persons taking no active part in hostilities).

<sup>48</sup> *Kunarac et al.* Appeals Judgment, para. 162.

<sup>49</sup> *Prosecutor v. Aleksovski*, IT-95-14-1/T, Judgment, 25 June 1999 (“*Aleksovski* Trial Judgment”), para. 229.

<sup>50</sup> *Rašević and Todović*, X-KR/06/275 (Ct. of BiH), First Instance Verdict, 28 February 2008 (“*Rašević and Todović* First Instance Verdict”), p. 160.

perpetrator and punish him as a principle.<sup>51</sup> However, if he did “some other act” toward the perpetration of the crime, then that act must represent be “decisive” which creates a higher burden of proof on the Prosecution.<sup>52</sup> As the Commentaries to the CC of BiH explain, the evidence must establish that contributions of the accused to the commission of the crime were of such a character that “without which the offence would not be accomplished (at all or in a way as it is planned to be accomplished).”<sup>53</sup>

## **2. Individual criminal responsibility (Article 180(1) of the CC of BiH)**

63. Article 180(1) of the CC of BiH provides:

A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offense referred to in Article ..... 173 (War Crimes against Civilians)....., of this Code shall be personally responsible for the criminal offense.

64. The Panel recalls that Article 180(1) is derived from and is identical to Article 7(1) of ICTY Statute. Article 180(1) became a part of the CC of BiH after Article 7(1) had been enacted and interpreted.<sup>54</sup> Individual criminal responsibility will attach for “committing” in Article 7(1) (and hence also “perpetrated” in Article 180(1) of the CC of BiH) a crime “...where it is established that the accused himself physically perpetrated the criminal act or personally omitted to act when required to do so under law.”<sup>55</sup> The ICTY Appeals Chamber has held that Article 7(1) “...covers first and foremost the physical perpetration of a crime by the offender himself, or the culpable omission of an act that was mandated by a rule of criminal law.”<sup>56</sup>

65. The *actus reus* required for committing a crime is that “...the accused participated, physically or otherwise directly or indirectly, in the material elements of the crime charged through positive acts or, based on a duty to act, omissions, whether individually or jointly with others.”<sup>57</sup>

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<sup>51</sup> *Rašević and Todović* First Instance Verdict, p. 160.

<sup>52</sup> *Rašević and Todović* First Instance Verdict, p. 160.

<sup>53</sup> *Rašević and Todović* First Instance Verdict, p. 160 *citing* Commentaries to the CC of BiH, p. 174.

<sup>54</sup> *Trbić* First Instance Verdict, para. 205.

<sup>55</sup> *Prosecutor v. Blagojević and Jokić*, IT-02-60-T, Judgment, 17 January 2005, para. 694 *citing* *Prosecutor v. Tadić*, IT-94-1-A, Appeals Judgment, 15 July 1999 (“*Tadić* Appeals Judgment”), para 188.

<sup>56</sup> *Tadić* Appeals Judgment, para. 188.

<sup>57</sup> *Prosecutor v. Stakić*, IT-97-2-T, Judgment, 31 July 2003 (“*Stakić* Trial Judgment”), para. 439; *Prosecutor v. Limaj, et al*, IT-03-66-T, Judgment, 30 November 2005 (“*Limaj, et al* Trial Judgment”), para. 509; *Kvočka et al* Trial Judgment, para. 251.

The accused himself need not have participated in all aspects of the alleged criminal conduct.”<sup>58</sup> There can be several perpetrators who may be said to have “committed” the same crime if “...the conduct of each one of them fulfills the requisite elements of the definition of the substantive offence.”<sup>59</sup>

66. The requisite *mens rea* “...is that the accused acted with an intent to commit the crime...”<sup>60</sup> or, as in other forms of criminal participation under Article 7(1) he must have been aware of “the substantial likelihood that a criminal act or omission would occur as a consequence of his conduct.”<sup>61</sup>

### **3. Command Responsibility (Article 180(2) of the CC of BiH )**

67. Article 180(2) of the CC of BiH provides:

The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

68. The Trial Panel recalls in *Rašević and Todović* First Instance Verdict a Trial Panel stated the elements of Command Responsibility set out in the CC of Article 180(2) are identical to those recognized by customary international law at the time of the commission of the offenses.<sup>62</sup> These are:

1. The commission of a criminal act of the type set out in the applicable sections (which include genocide, war crimes and crimes against humanity).
2. The existence of a superior/subordinate relationship between the Accused and the perpetrators who carried out the criminal act.
3. The superior knew or had reason to know:

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<sup>58</sup> *Stakic* Trial Judgment, para. 439.

<sup>59</sup> *Prosecutor v. Kunarac et al*, IT-96-23-T & IT-96-23/1, Judgment, 22 February 2001 (“*Kunarac et al* Trial Judgment”), para. 390.

<sup>60</sup> *Limaj* Trial Judgment, para. 509.

<sup>61</sup> *Kvočka* Trial Judgment, para. 251; *Limaj* Trial Judgment, para. 509.

<sup>62</sup> *Rašević and Todović*, First Instance Verdict, pgs. 114-115. Affirmed on appeal: *Rašević and Todović*, X-KRŽ/06/275 (Court of BiH), Second Instance Verdict, 9 February 2009

- a. the subordinate was about to commit the crime; or
  - b. had committed the crime.
4. The superior failed to take reasonable and necessary measures to:
    - a. prevent the crime; or
    - b. punish the perpetrator of the crime.

69. The elements of command responsibility were already established in customary international law by April 1992.<sup>63</sup> The ICTY recognized this to be in the case in a series of decisions, beginning with the judgment the Trial Chamber rendered on 16 November 1998 in the *Celebici* case.<sup>64</sup>

#### **IV. INDIVIDUAL CRIMINAL RESPONSIBILITY OF THE ACCUSED**

70. When establishing the responsibility of the Accused for the criminal offense of War Crimes against Civilians, the Panel has taken into account that in this particular case the Accused is charged that by his acts as a co-perpetrator he took part in compelling the prisoners to perform forced labor, and that he is also responsible, as a superior, for the acts of torture and killings perpetrated by his subordinates. Based on the witness testimony and documentary evidence corroborating the confession of the Accused, the Panel has concluded that the Accused was the Assistant Commander for Security in the 307<sup>th</sup> Brigade of the ARBiH, specifically a military officer who had a superior role over military police officers of the 307<sup>th</sup> Brigade of the ARBiH subordinated to him. As such, he had authorization to issue approvals for taking the prisoners out of detention facilities, which he did, and as a result he decisively, together with other co-perpetrators, contributed to compelling the prisoners to perform forced labor, in which process their lives were endangered and some of them were tortured and killed. The Panel has concluded that he perpetrated those acts knowingly and intentionally.

71. In addition, based on the presented evidence, the Panel has established that the Accused, knowingly and intentionally, failed to take necessary and reasonable measures to prevent and

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<sup>63</sup> See *Rašević and Todović* First Instance Verdict, pgs. 113-115.

punish his subordinates, to conduct adequate investigation against the military police officers subordinated to him and other members of the ARBiH that took part in the perpetration of the criminal offenses of torture and killings of the prisoners, and to file a criminal report against them with the relevant Military Prosecutor's Office, although he was obligated to do so, and although he knew about the acts of his subordinates.

72. All the aforementioned leads to a conclusion that there exists sufficient evidence about the culpability of the Accused Enes Handžić in the manner as stated in the Indictment.

## V. SENTENCING

73. In terms of the criminal offense of War Crimes against Civilians the Panel considered a sanction which is necessary and consistent with the cited legal aims, including the relevant legal elements.

74. Ruling upon on the type and length of the criminal sanction against the Accused and appreciating the provisions related to the criminal sanction under the Plea Agreement concluded between the parties, the Panel has, first of all, found the proposed range of punishments acceptable, and it sentenced the Accused to imprisonment for a term of 8 years. Deciding on the punishment, the Panel has considered all the circumstances of the specific case, also taking into account the purpose of punishment, as well as all the circumstances that have impact on the magnitude of the punishment; it has also taken into account the fact that the punishment should meet the interests of justice and the aggrieved parties in the first place and protect and provide satisfaction to the victims. In this respect, it is necessary to strike a balance between the degree of the protected value on the one hand and the personality of the Accused as the perpetrator of the criminal offense on the other, and appreciate all the aggravating and mitigating circumstances on the part of the Accused.

75. The Panel has, in the first place, taken into account that the Accused, by pleading guilty, faces the consequences of the acts perpetrated by him, which is the key aspect of the Agreement. Furthermore, the Accused has expressed his willingness to cooperate, which is pointed out in the Agreement, and the first step is his giving a statement and a supplement statement in his capacity of

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<sup>64</sup> *Prosecutor v. Delalić et al.*, IT-96-21-T, Judgment, 16 November 1998 (“*Delalić et al* Trial Judgment” or also know as “*Celebici* Trial Judgment”), para. 343. *See also Rašević and Todović* First Instance Verdict, p. 115.

witness before the Prosecution. The Accused Enes Handžić has offered useful information that is helpful to the Prosecution in revealing the truth with respect to the persons that were involved in the incidents in Bugojno. He has also offered information concerning the scene of murders of certain individuals listed in the Indictment, and the fate of their remains, which particularly includes the recovery of human bones on the location of the house of Ivandić. Furthermore, making the Agreement itself positively resounded among the victims who, according to the Prosecution, welcomed Handžić's guilty plea and the Agreement itself. These are mitigating circumstances that the Court has taken into account. In addition, the Panel has considered that the Accused is a family man, father of two underage children, with no previous criminal record, while the Court has also taken into account the age of the Accused at the time when the criminal offense was perpetrated and general events in Bugojno in the relevant period; all these circumstances including the fact that the confession of the Accused has contributed to establishing the fate of the murdered persons constitute the particularly mitigating circumstances.

76. On the other hand, while meting out the punishment, the Panel has taken into account that the incidents the Accused is found guilty of occurred continually in the period of several months, taking also into account the status of the Accused as well as the fact that the acts of those against whom the Accused failed to take necessary and reasonable measures to be punished, were directed towards endangering the lives and bodies of persons as the most protected value; the intensity of endangering was demonstrated in different ways that actually resulted from inhumane treatment and eventually caused the death of a certain number of persons. The Panel has been guided by all these circumstances not to pronounce a minimum proposed punishment but the imprisonment for a term of 8 years.

77. Finally, the Panel concludes that the pronounced sanction is in proportion with the Agreement and the consequences that have resulted thereof, that it is appropriate and adequate for the personality of the Accused, and that it will achieve the purpose of sanctions stipulated in the law, in terms of special and general deterrence from the perpetration of criminal offenses.

78. Pursuant to Article 56(1) of the CC of BiH, the time that the Accused spent in custody commencing on 16 April 2007 until 19 February 2009, and the time commencing when he was deprived of liberty under the Decision of the Court of BiH to order custody upon pronouncement of the Verdict of 25 May 2011 until his committal to serve the sentence, shall be credited towards the imprisonment sentence.

## **VI. DECISION ON THE COSTS AND PROPERTY LAW- CLAIMS**

79. Pursuant to Article 188(4) of the CPC of BiH, upon examination of the evidence concerning the financial status of the Accused, he shall be relieved of the duty to reimburse the costs of the criminal proceedings, given that their payment would jeopardize the support of the Accused or of his family, therefore these costs shall be charged against the budget of the Court.

80. When referring the aggrieved parties to a civil action to pursue their possible claims under property law, the Panel has first of all taken into account that a longer period of time would be required to define the amount under each property claim, which would prolong the proceedings. It follows from the official notes made during the meeting between the Prosecutor and the aggrieved parties that the aggrieved parties themselves requested to be referred to a civil action to pursue their rights. Therefore, the decision was made pursuant to Article 198(2) of the CPC of BiH.

**RECORD-TAKER**

**PRESIDENT OF THE PANEL**

**LEGAL OFFICER**

**JUDGE**

Emira Hodžić

Davorin Jukić

**LEGAL REMEDY NOTE:** An appeal from this Verdict may be filed within 15 days as of the receipt of the written copy of the Verdict. No appeal lies from the Decision on the criminal sanction.

## VII. ANNEX A

### A. PROSECUTION DOCUMENTARY EVIDENCE

- T-1 Record of the examination of the witness Gordan Rajić of 21 April 2006, No 162/05
- T-2 Record of the examination of the witness Frano Vejić of 15 June 2006, No. KT-RZ-162/05
- T-3 Record of the examination of the witness Miroslav Zelić of 20 June 2006, No. KT-RZ-162/05
- T-4 Request for the recognition of the HVO disabled veteran status for Miroslav Zelić of 28 March 1997
- T-5 Medical findings under the name of Miroslav Zelić of 23 October 1993
- T-6 Medical findings under the name of Miroslav Zelić of 7 November 1993
- T-7 ICRC certificate under the name of Miroslav Zelić of 27 April 1994
- T-8 Finding and opinion of the Medical Board in charge of a check-up of persons covered by the Law on the rights of war veterans and members of their families under the name of Miroslav Zelić, Number: 1303/04 of 18 March 2005
- T-9 Finding and opinion of the Medical Board in charge of a check-up of persons covered by the Law on the rights of war veterans and members of their families under the name of Miroslav Zelić, Number: 835/05 of 27 March 2006
- T-10 Decision of the Central Bosnia Cantonal Administration for issues of veterans and disabled persons of the homeland war under the name of Miroslav Zelić, Number: R-03-41-6645/06 of 20 March 2006
- T-11 Certificate of the Travnik Defense Department under the name of Miroslav Zelić, Number: V21-41/1-10-03-219-234/04 of 3 December 2004



- T-12 Record of the examination of the witness Marko Gunjača Number: KT-RZ 162/05 of 14 June 2006
- T-13 Record of the examination of the witness Ivica Klarić Number: KT-RZ-162/05 of 26 June 2006
- T-14 Record of the examination of the witness Stipica Džapić Number: KT-RZ 162/05 of 23 June 2006
- T-15 Record of the examination of the witness Drago Žulj Number: KT-RZ 162/05 of 15 June 2006
- T-16 Record of the examination of the witness Ivica Topić Number: KT-RZ 162/05 of 22 June 2006
- T-17 Record of the examination of the witness Mario Franjić Number: KT-RZ 162/05 of 21 June 2006
- T-18 Request for the recognition of the HVO disabled veteran status for Ivan Kapetanović of 28 March 1997
- T-19 Decision of the Central Bosnia Cantonal Administration for issues of veterans and disabled persons of the homeland under the name of Ivan Kapetanovic Number: 02-41-10637/06 of 30 August 2006
- T-20 ICRC Certificate under the name of Ivan Kapetanovic of 4 April 2000
- T-21 Record of the examination of the witness Ivan Kapetanović Number: KT-RZ 125/07 of 9 April 2007
- T-22 Record of examination of the witness Milenko Kasalo of 4 July 2006, Number: KT-RZ-162/05
- T-23 Record of the examination of the witness Dragan Boškić of 7 August 2007, number KT-RZ-125/07, KT-RZ-162/05, KT-RZ-128/07
- T-24 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality Number: 02-41-3-1137/05 of 13 December 2005 under the name of Dragan Boškić
- T-25 Request for the recognition of the HVO disabled veteran status for Dragan Boškić of 28 August 1997
- T-26 Record of the examination of the witness Nikica Marković Number: KT-RZ 125/07, KT-RZ 162/05 and KT-RZ 128/07 of 9 August 2007

- T-27 Request for the recognition of the HVO disabled veteran status for Nikica Marković of 11 July 1996
- T-28 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality under the name of Nikica Marković, Number: 02-41-3-2849/04 of 28 November 2005
- T-29 ICRC Certificate under the name of Nikica Marković of 16 January 1995
- T-30 Certificate of the Travnik Defense Department under the name of Nikica Marković, Number: V21-41/1-10-03-219-222/04 of 3 December 2004
- T-31 Record of the examination of the witness Ivo Kujundžić Number: KT-RZ 162/05, KT-RZ 125/07 and KT-RZ 128/07 of 8 August 2007
- T-32 Certificate of the Travnik Defense Department, Number: V21-41/1-10-03-219-401/04 of 5 December 2004
- T-33 ICRC Certificate under the name of Ivo Kujundžić of 11 April 1994
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- T-55 Finding and opinion of the Medical Board in charge of a check-up of persons covered by the Law on the rights of war veterans and members of their families under the name of Stipo Vučak, Number: 869/05 of 3 April 2006
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- T-195 Decision under the name of Milica Kovačević of 22 May 1997
- T-196 Casualty Certificate for Perica Kovačević of 20 May 1997
- T-197 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality of 28 October 2005
- T-198 Certificate of the Travnik Defense Department of 23 November 2004
- T-199 Decision of the Bugojno Municipal Court establishing death of Zoro Galić of 5 March 1999

- T-200 Casualty Certificate for Zoro Galić of 27 June 1997
- T-201 Certificate of the Travnik Defense Department for Dragan Erkapić of 23 November 2004
- T-202 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality of 8 December 2006
- T-203 Decision of the Bugojno Municipal Court proclaiming Dragan Erkapić dead of 28 May 2001
- T-204 Casualty certificate under the name of Dragan Erkapić of 5 April 1997
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- T-206 Decision of the Bugojno Municipal Court proclaiming Ivo Miloš dead of 29 March 2006
- T-207 Certificate of the Travnik Defense Department for Ivo Miloš of 21 April 2006
- T-208 Casualty Certificate for Ivo Miloš of 30 January 1998
- T-209 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality of 22 January 2007
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- T-211 Decision of the Bugojno Municipal Court proclaiming Dragan Miličević dead of 7 February 2006
- T-212 Casualty certificate under the name of Dragan Miličević of 30 January 1998
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- T-217 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality of 29 April 2005
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- T-221 Decision of the Travnik Defense Department under the name of Miroslav Dilber of 23 November 2004
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- T-226 Decision of the Bugojno Municipal Court proclaiming Perica Crnjak dead of 10 May 2006
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- T-228 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality of 20 September 2005
- T-229 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Ankica Crnjak of 22 June 2006
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- T-232 Casualty certificate under the name of Perica Crnjak of 13 March 1997
- T-233 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Mara Džaja of 29 February 2005

- T-234 Certificate of the Travnik Defense Department under the name of Niko Džaja of 23 November 2004
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- T-236 Casualty Certificate under the name of Niko Džaja of 5 April 1997
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- T-239 Decision of the Bugojno Municipal Court establishing the day of death of Nikica Miloš of 31 December 2004
- T-240 Casualty Certificate under the name of Nikica Miloš of 4 November 1996
- T-241 Certificate of the Travnik Defense Department under the name of Frano Jezidžić of 23 November 2004
- T-242 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Mara Jezidić of 14 January 2005
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- T-251 Decision of the Bugojno Defense Department under the name of Stjepan Strujić of 20 March 1997
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- T-254 Casualty certificate under the name of Zdenko Batarilo of 16 February 1996
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- T-261 Finding and opinion of the Medical Board under the name of Mario Bodrušić of 17 March 2005
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- T-263 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Mario Bodrušić of 16 January 2006
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- T-265 Finding and opinion of the Medical Board under the name of Robert Bodružić of 21 June 2006

- T-266 Certificate of the Travnik Defense Department under the name of Robert Bodružić of 5 October 2004
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- T-268 Certificate of the Travnik Defense Department under the name of Slavko Brkanović of 5 October 2004
- T-269 Finding and opinion of the Medical Board under the name of Slavko Brkanović of 18 March 2005
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- T-279 Finding and opinion of the Medical Board under the name of Tomislav Knežević of 21 June 2006
- T-280 Finding and opinion of the Medical Board under the name of Tomislav Knežević of 29 June 2006
- T-281 ICRC Certificate under the name of Tomislav Knežević of 27 April 1994



- T-282 Certificate of the Travnik Defense Department under the name of Tomislav Knežević of 5 December 2004
- T-283 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Zdravko Ljubos of 22 June 2006
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- T-285 Finding and opinion of the Medical Board of 19 June 2006
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- T-287 Finding and opinion of the Medical Board for Zdravko Ljubas of 14 February 2005
- T-288 Finding and opinion of the Military Disability Board for Ljubas Zdravko of 30 November 1994
- T-289 ICRC Certificate under the name of Ljubas Zdravko of 28 December 1994
- T-290 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Marija Lozić of 21 November 2005
- T-291 Finding and opinion of the Medical Board for Marija Lozić of 4 January 2005
- T-292 Certificate of the Travnik Defense Department under the name of Marijo Lozić of 5 December 2004
- T-293 Finding and opinion of the Medical Board in revision for Marijo Lozić of 3 April 2006
- T-294 Finding and opinion of the Military Disability Board for Marijo Lozić of 7 December 1994
- T-295 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Hrvoje Lučić of 21 November 2005
- T-296 Certificate of the Travnik Defense Department under the name of Hrvoje Lučić of 5 December 2004
- T-297 Finding and opinion of the Medical Board for Hrvoje Lučić of 7 February 2005
- T-298 Finding and opinion of the Military Disability Board in revision for Hrvoje Lučić of 4 April 2006

- T-299 ID number 368923 under the name of Hrvoje Lučić
- T-300 Decision of the Cantonal Administration for issues of veterans and disabled persons of the homeland war for Maros Stipan of 24 April 2006
- T-301 Finding and opinion of the Medical Board for Stipan Maros of 4 April 2006
- T-302 Certificate of the Travnik Defense Department for Stipan Maros of 5 December 2004
- T-303 ICRC Certificate of 27 April 1994 under the name of Stipan Maros
- T-304 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Hrvoje Lučić of 9 December 2005
- T-305 Certificate of the Travnik Defense Department for Marko Mioč of 23 December 2004
- T-306 Finding and opinion of the Medical Board for Mario Mioč of 16 March 2005
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- T-308 Finding and opinion of the Medical Board for Anto Pocrnja of 8 June 2006
- T-309 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Anto Pocrnja of 9 December 2005
- T-310 Finding and opinion of the Medical Board for Anto Pocrnja of 17 March 2005
- T-311 Certificate of the Travnik Defense Department for Anto Pocrnja of 23 December 2004
- T-312 Finding and opinion of the Military Disability Board under the name of Ante Pocrnja of 21 December 1994
- T-313 Finding and opinion of the Medical Board for Josip Pocrnja of 14 December 2004
- T-314 Decision of the Municipal Service for General Administration, Social Activities and Local Communities of the Bugojno Municipality for Josip Pocrnja of 8 November 2005
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- T-22 Record of examination of witness *G* of 20 August 2009
- T-23 Record of examination of witness *H* of 22 October 2009

**B. DOCUMENTARY EVIDENCE OF THE ACCUSED ENES HANDŽIĆ**

- O-1/3 Military Personal File number 0705967191268 – Sabahudin Gazić
- O-2/3 Attachment 1: Command and Control Communications of the Military Police companies and Security Departments in the *West* Operations Group
- O3-/3 A sketch the expert witness Muslimović made during the examination
- O4-/3 A sketch the expert witness Muslimović made during the examination
- O-5/3 A sketch the expert witness Muslimović made during the examination
- O-6/3 A sketch the expert witness Muslimović made during the examination
- O-7/3 Attachment number: Structure and Command and Control Communications “Joint command of the Army of BiH, RBiH and Bugojno”
- O-8/3 Finding and opinion of the expert witness Fikret Muslimović
- O-9/3 Record from the 16<sup>th</sup> interim session of the Bugojno Municipality War Presidency of 26 July 1993

- O-10/3 Record from the 17<sup>th</sup> interim session of the Bugojno Municipality War Presidency of 28 July 1993
- O-11/3 Record from the 18<sup>th</sup> interim session of the Bugojno Municipality War Presidency of 29 July 1993
- O-12/3 Record from the 19<sup>th</sup> interim session of the Bugojno Municipality War Presidency of 10 August 1993
- O-13/3 Record from the 84<sup>th</sup> session of the Bugojno Municipality War Presidency of 17 August 1993
- O-14/3 Record from the 85<sup>th</sup> session of the Bugojno Municipality War Presidency of 1 August 1993
- O-15/3 Record from the 86<sup>th</sup> session of the Bugojno Municipality War Presidency of 25 August 1993
- O-16/3 Record from the 87<sup>th</sup> session of the Bugojno Municipality War Presidency of 8 September 1993
- O-17/3 Order of the War Presidency – Unified Command (UC) of the Army of BiH of 4 August 1993
- O-18/3 Decision of the Bugojno Municipality War Presidency and UC Bugojno Army of 4 August 1993
- O-19/3 Decision of the War Presidency of 10 August 1993
- O-20/3 Decision of the War Presidency number 01-119-19/93 of 16 August 1993
- O-21/3 Decision of the War Presidency number 01-119-84/93 of 16 August 1993
- O-22/3 Official note of the 307<sup>th</sup> Brigade Command, Security Body, number 307-13-1063/93 of 18 October 1993
- O-23/3 Official note of the 307<sup>th</sup> Brigade Command, Security Body, number 307-13-1023/93 of 12 October 1993

