

**Bosna i Hercegovina**

**Босна и Херцеговина**



**Sud Bosne i Hercegovine  
Суд Босне и Херцеговине**

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**Case No.: S1 1 K 006127 121 Krl**

**Date:                      Published                      14 September 2012**  
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**TRIAL PANEL**

**Composed of:**                      Judge Staniša Gluhajić, presiding  
   Judge Vesna Jesenković  
   Judge Šaban Maksumić

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

**v.**

**Dražen Mikulić**

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**VERDICT**

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

**Counsel for Accused: Attorney Damir Raguž**  
**Attorney Davor Martinović**

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Sarajevo, 14 September 2012

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

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting as a Panel composed of Judge Staniša Gluhajić, as the presiding judge, and Judges Vesna Jesenković and Šaban Maksumić, as the Panel members, with the participation of legal advisor Sabina Hota Čatović as the minutes-taker, in the case against the Accused Dražen Mikulić charged with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a) and (c), as read with Article 180(1) and Article 29 of the Criminal Code of BiH (CC of BiH), regarding the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ-21/05 of 16 August 2011 (amended on 23 August 2012), following a public and oral main trial that was in part closed for the public, in the presence of Prosecutor of the Prosecutor's Office of BiH Remzija Smailagić, the Accused Dražen Mikulić and his Attorneys Davor Martinović and Damir Raguž from Ljubuški, rendered and on 14 September 2012 publicly announced the following:

**V E R D I C T**

**THE ACCUSED:**

**DRAŽEN MIKULIĆ**, son of Drago and Marinka (née Arambašić), born in ... on 19 April 1972, residing in ..., JMBG /Citizen Identification Number/ ..., ethnicity ..., citizen of ... and ..., secondary school qualifications, retired (disability pension), average financial standing, married, father of three underage children, no other ongoing criminal proceedings,

**I**

**IS HEREBY FOUND GUILTY**

**Because:**

During the war in Bosnia and Herzegovina and the armed conflict between the HVO /Croat Defense Council/ and the ARBiH /Army of the Republic of Bosnia and Herzegovina/, as a member of the Military Police of the HVO at the Dretelj Prison (also known as the Dretelj Camp) in the territory of Čapljina Municipality, in the period between early July and late August 1993, he acted 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, inasmuch as

1. In late July 1993, together with other unidentified members of the Military Police of the HVO, at the prison known as the Dretelj Camp, he took detainee Enver Grebović outside the hangar – the room he was detained in, and physically ill-treated him by repeatedly hitting him heavily with rifle butts and pistols as well as punching and kicking him in the head and body. As a result, Enver Grebović started bleeding from his mouth, nose and head and fell down to his knees. At that point, Dražen Mikulić used a piece of a broken bottle and cut

Grebović on the chest, leaned over him, drank his blood and said “I’ve drunk Balija’s blood“, put him up against a door and fired a shot from a pistol above Grebović’s head. As a result, Enver Grebović was covered with blood and bruises and suffered great pain and fear.

2. In the period between late July and late August 1993, at the prison called Dretelj Camp, he ordered three unidentified detainees in the solitary cell-dungeon to come out and grab a power cable and then ordered several detainees-trusties to beat them, which the latter did by kicking and hitting them all over their bodies with sticks, due to which the detainees that had been brought out of the solitary cell suffered great pain.

**Therefore**, during the war in Bosnia and Herzegovina, by violating the rules of international law, he inhumanely treated the detained civilians by causing them to suffer great pain and fear,

**Whereby** he, under Section 1 of the Verdict, committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina, and under Section 2 of the Verdict, the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) as read with Article 180(1) of the Criminal Code of Bosnia and Herzegovina,

## II

So the Court, for the criminal offense mentioned above, pursuant to Article 285 of the Criminal Procedure Code of Bosnia and Herzegovina (CPC of BiH) and by applying Articles 39, 42, 48 and 49 of the Criminal Code of Bosnia and Herzegovina

### **IMPOSES A SENTENCE OF IMPRISONMENT FOR A TERM OF six (6) years**

## III

Pursuant to Article 56 of the CC of BiH, the time the accused spent in custody under a Court’s custody decision from 14 September 2012 onwards shall be credited towards the sentence of imprisonment.

## IV

Pursuant to Article 188(1) of the CPC of BiH as read with Article 186(2) thereof, the Accused Dražen Mikulić must reimburse the costs of criminal proceedings and a scheduled amount, to be determined by the Court in a separate decision.

Pursuant to Article 284(c) of the CPC of BiH, **the Accused Dražen Mikulić:**

### **IS HEREBY ACQUITTED OF THE CHARGES**

**That he:**

During the war in Bosnia and Herzegovina and the armed conflict between the HVO and ARBIH, as a member of the HVO Military Police at the Dretelj Prison (known as the Dretelj Camp) in the territory of Čapljina Municipality, during the period between early July and late August 1993, he acted 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, inasmuch as:

1. In early August 1993, at the prison known as the Dretelj Camp, the accused physically ill-treated detainee Semir Balavac by repeatedly hitting him heavily with a truncheon and by boot-kicking him in the head and body, after which Senad Bešić punched Balavac in the head, causing the latter to fall onto the ground and suffer great pain,
2. In July and August 1993, he, together with a number of unidentified members of the HVO Military Police, repeatedly ill-treated the detainees from the room called solitary cell-dungeon at the prison known as the Dretelj Camp during lunch time, by hitting them with a truncheon, a shovel, a chain, rifle butts and laths in the head and body, then he sprayed the detainees using pressurized water from a tank truck and caused the detainees to fall onto the concrete. Thereafter, he filled the solitary cell-dungeon the detainees were in with water from the tank truck until the water level was about five centimeters, causing the detainees to suffer great pain and fear,
3. In early August 1993, at the prison called the Dretelj Camp, he ill-treated underage detainee Emir Đulić by giving him two pieces of bare wire and ordering him to put them in his ears, which the latter did. The accused then hooked the wire onto a telephone set and turned a handle on the telephone set, thus producing electricity and electric shocks that caused underage Emir Đulić's body to shake, with blood coming out of his mouth, nose and ears, lose consciousness and fall onto the ground, suffer great pain and walk with difficulty.
4. In early August 1993, he, together with three unidentified HVO military police officers, at the prison known as the Dretelj Camp, ordered detainees Emir Repak and Senad Bešić to get into a fight, which they did. They repeatedly punched each other with clenched hands-fists in the head. In addition, Senad Bešić hit Emir Repak two times in the head with a wooden lath. As a result, Emir Repak fell to the ground and died due to injuries to the head and soft tissues.
5. In the period between late July and early August 1993, he, together with four unidentified members of the HVO, took detainee S3 out of the room called solitary cell-dungeon located at

the prison known as the Dretelj Camp on two occasions, and physically ill-treated him by repeatedly punching, kicking and hitting him with rifle butts and a wooden stake of about 1 m in size in the head, body and legs-soles, and once hitting him with a knife in his leg-foot, causing him to suffer great pain and fear.

**Therefore**, during the war in Bosnia and Herzegovina, by violating the rules of international law, he inhumanely treated, ill-treated and participated in the ill-treatment of the detained civilians – intentional infliction of physical and mental pain on the detained civilians, violation of bodily integrity, and ordered the detainees to get into a fight, which resulted in the death of one person, outrage upon personal dignity, humiliating and degrading treatment,

**Whereby he would have committed** the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a) and (c) as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina.

## VI

In relation to the acquitting part of the Verdict, the accused, pursuant to Article 188(4) of the CPC of BiH, is relieved of the duty to reimburse the costs of proceedings, and they shall be paid from within the Court's budget appropriations.

## VII

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

## REASONS

### I. CRIMINAL PROCEEDINGS

#### A. INDICTMENT AND THE MAIN TRIAL

1. The Prosecutor's Office of Bosnia and Herzegovina has issued Indictment No. KTRZ-21/05 of 16 August 2011 (confirmed on 24 August 2011) charging Dražen Mikulić with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(a) and (c) as read with Article 29 and Article 180(1) of the Criminal Code of Bosnia and Herzegovina. The accused was charged with unlawful treatment of Bosniak civilians detained at the Dretelj Camp in the summer of 1993 during the war in Bosnia and Herzegovina and the armed conflict between the Army of the Republic of Bosnia and Herzegovina (Army of RBiH) and the Croat Defense Council (HVO).

2. On 20 September 2011, the Accused Dražen Mikulić pleaded not guilty to the criminal charges covered by the Indictment, and the case was referred to a trial panel.

3. Pursuant to Article 233 of the CPC of BiH, issues relevant to the main trial (judicial economy) were considered at a pre-trial hearing held on 3 November 2011. The main trial commenced on 8 November 2011 by reading out the Indictment and by the presentation of Prosecution and Defense opening arguments.

4. The Prosecution noted in its opening argument that the evidence to be presented at the main trial would corroborate the factual allegations in the Indictment. The Defense availed itself of the opportunity to present its opening argument, and Defense Counsel contended that the historical context of the events is indisputable and that there was indeed an armed conflict between the HVO and the Army of R BiH in July and August 1993. It is also indisputable that the Dretelj Prison was poorly organized, totally unfit for the stay of detainees, that there was no food, that it was overcrowded and that it was no place for people to stay in. However, Dražen Mikulić was an ordinary soldier at the time, he was 20 years old, and he had no influence on the conditions in the prison. The Defense argued that it is indisputable that Mikulić was a member of the Military Police since 15 June 1992, but that it was not true – as alleged in the Indictment – that he held the rank of lieutenant or first lieutenant or that he had any command duties.

5. According to the Defense, it was important to note that the Dretelj Complex included the Dretelj Prison and barracks of the Dretelj Military Police. The Defense argued that the accused was at the Dretelj Complex only on three occasions in July and August, visiting the Military Police barracks but not the prison: in early July, when he returned the equipment issued; then on 12 July, when he was urgently called and immediately deployed to Mostar (Heliodrom site), and the third time on 15 August, after sick leave, when he was sent home in anticipation of establishment of a new head office. Defense Counsel said that the Defense would show that the accused was in Split, Republic of Croatia, on 11 July 1993, while on 15 July 1993 he was wounded while evacuating wounded comrades and that he could have only been on sick leave during the month that followed.

6. Counsel further argued that none of the witnesses identified Dražen Mikulić during the investigation, adding that it was possible that someone was using someone else's identity. In particular, Counsel maintained that none of the interviewed witnesses identified the accused during the investigation, but what was indicative is that all 18 witnesses, regardless of their level of education or age, uttered the same sentence : „... *this isn't to say that I wouldn't recognize him if I saw him...*“ Accordingly, Counsel requested that the identification of the accused, if requested by the Prosecution in the courtroom, be done strictly in accordance with the CPC rules, and not to have the accused sitting in between two defense attorneys wearing robes.

7. In order for the Trial Panel to get to know the location referred to in the Indictment and at trial, the Panel and the parties to the proceedings visited the location of the former prison known as the Dretelj Camp on 2 December 2011.



8. On 7 March 2012, during the Prosecution case, a status conference was held to hear submissions from the parties about the possibility of changing the order of presentation of evidence, due to a delay in organizing a video conference link to examine two Prosecution witnesses living in the United States of America. Defense Counsel opposed the proposed change of order of presentation of evidence, as it was not in accordance with the Defense alibi concept. The Court accepted Defense arguments, adjourning the hearing and ordering that further activities be taken to overcome the video conference link witness examination problem. The trial resumed on 23 March 2012 and witnesses were examined on that day.

9. The Prosecutor's Office of BiH issued an Amended Indictment on 17 July 2012, and the Defense raised an objection. The Prosecution again amended the Indictment on 23 August 2012. As the Defense had no objections to the newly amended Indictment, the Court accepted it and conducted the proceedings accordingly.

10. The evidentiary proceedings were completed on 23 August 2012, whereupon the Prosecution and the Defense presented their closing arguments.

## **B. PROCEDURAL DECISIONS**

### **(a) Decision to close session for the public during a portion of trial**

11. Pursuant to Article 235 of the CPC of BiH, the public was excluded from the main trial for the purpose of protecting personal particulars of witnesses. The public was excluded for a short period of time as the presiding judge entertained a Prosecution motion on protective measures for witnesses S1, SH-1, S2 and S3.<sup>1</sup>

12. The Court refused Prosecution's motion to exclude the public during the examination of Witness S1 at the hearing of 23 December 2011. The Prosecution petitioned the Court to exclude the public in order for the witness to testify without pressure. The Court found that statutory requirements were not met, and the witness himself, having heard the presiding judge's explanation, stated that the public may be present in courtroom.

### **(b) Granting protective measures to witnesses**

13. Upon a Prosecution motion, and after hearing the witnesses in person, the Court granted protective measures to witnesses S1, SH-1, S2 and S3, protecting the witnesses' personal particulars. By deciding to apply Article 3 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses (the Law on Protection of Witnesses), the Court has found that one witness is a witness under threat and a vulnerable witness (S3), while two

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<sup>1</sup> The public was excluded for a short period of time at the hearings of 23 December 2011, 26 January 2012 and 2 February 2012.

witnesses are witnesses under threat (S2 and S1).<sup>2</sup> The protective measures were granted in accordance with Article 13(1) of the Law on the Protection of Witnesses.

14. Specifically, Witness S2 stated at the hearing held on 2 February 2012 that he had previously given evidence in a number of Dretelj Camp cases and that he has already received threats to abandon his testimony, and he believed that disclosing his personal particulars in public would cause problems to him and his family. The Defense raised no objections with respect to the protective measures sought for this witness. Witness S1 stated at the hearing held on 23 December 2011 that he felt unsafe and feared that he and his family could be in danger as a result of his testimony. The Court, having accepted the reasons presented by the witnesses, ordered that their identity be protected, including a ban on publication of their images in the media. Namely, the Court has found that both cases involve witnesses under threat, as the witnesses believed that there were reasonable grounds to fear that their personal security or the security of their families could be endangered as a result of their testimony.

15. Furthermore, at the hearing of 2 February 2012 the Court granted additional protection to Witness S3 within the meaning of Articles 3 and 9 of the Law on the Protection of Witnesses, by allowing the witness to testify from a separate video link room because this was a vulnerable witness who has been severely mentally traumatized by the events surrounding the criminal offense, thus enabling the witness to give evidence before the Trial Panel as completely and accurately as possible. Namely, the witness stated that he has been seriously traumatized by the events he had experienced at the Dretelj Camp, including, *inter alia*, at the hands of the accused; he is mentally unstable, he cannot sleep and has requested psychiatric help. In addition, he noted that, as a Bosniak, in the town he and his family are living he may be exposed to danger or harassment by individuals who are of the same ethnicity as the accused. The Defense objected, finding the arguments raised by the Prosecution and the accused to be insufficient, as there is no proof of any direct threat by the accused.

16. In addition to protecting the personal particulars of Witness SH-1, a ban on publishing the witness's image in public was ordered at the hearing of 26 January 2012. This witness enjoyed the same measures while giving evidence before the ICTY because it was determined that he was a witness "exposed to danger or risk". The measures remained in effect in this case in line with the obligation laid down in Rule 75(F)(i) of the Rules of Procedure and Evidence of the ICTY (RoPE) that "once protective measures have been ordered in any proceedings before the Tribunal, such protective measures shall continue to have effect *mutatis mutandis* in any other proceedings before the Tribunal or another jurisdiction unless and until they are rescinded, varied or augmented in accordance with the procedure set out in this Rule."

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<sup>2</sup> Article 3 of the Law on the Protection of Witnesses (1): "**A witness under threat** is a witness whose personal security or the security of his family is endangered through his participation in the proceedings, as a result of threats, intimidation or similar actions pertaining to his testimony, or a witness who has reasonable grounds to fear that such a danger is likely to result from his testimony. (2) **A vulnerable witness** is a witness who has been severely physically or mentally traumatized by the events of the offense or otherwise suffers from a serious mental condition rendering him unusually sensitive..."

(c) **Testifying via video conference link**

17. The Court granted Prosecution's motion to have witnesses Emir Đulić and Enver Grebović examined via video conference link from the United States of America, because the witnesses stated that due to the large distance and personal problems they could not come to the court and could not specify when they would be able to appear before the court. Given the uncertainty and difficulties associated with the arrival of the witnesses, the need for an efficient trial with as few postponements as possible, observing the adversarial principle and allowing parties to the proceedings to present their evidence, and the presiding judge's duty that the subject matter is fully examined, the Court has found that the motion is justified.

(d) **Resumption of the adjourned main trial**

18. Pursuant to Article 251(2) of the CPC, the main trial recommenced at the hearing of 23 March 2012 because more than 30 days elapsed since the most recent hearing (16 February 2012). As the parties gave their consent, the Indictment was not read out again and the evidence was not presented again. The parties agreed that the previous testimony of the witnesses and experts given at the main trial be used, so the evidentiary procedure resumed. For the same reasons, the main trial recommenced at the hearing of 23 August 2012, with the proceedings resuming in the same fashion: with the consent of the parties, without reading the Indictment or presenting the evidence anew.

**C. EVIDENTIARY PROCEDURE**

19. The Court examined 18 Prosecution witnesses, as follows: Almir Dedić, Hamzo Tabaković, Semir Balavac, Admir Sakoč, Mirhet Đuherić, Hasan Šoše, Mehmed Kovačević, Mustafa Dizdar, protected witness S-1, Mirsad Pejak, Elvir Đulić, protected witness SH-1, Mustafa Repak, Ahmet Isaković, protected witness S-2, protected witness S-3, Emir Đulić and Enver Grebović.

20. The Prosecution presented and tendered into evidence the documentary evidence listed in the *Annex* to the Verdict (*Annex* is an integral part of the Verdict), and examined forensic expert Hamza Žujo, MD.

21. Defense witnesses included Marinko Sosa and Mario Udovičić (alibi witnesses). The Accused Dražen Mikulić gave evidence as well, and the Defense tendered into evidence the documentary evidence listed in the *Annex* to the Verdict.

22. The Court's evidence included the examination of Witness Safet Ratkušić and re-examination of witnesses Semir Balavac, Mirhet Đuherić and Almir Dedić, for the purpose of clarifying facts that remained unclear. The Court's documentary evidence is listed in the *Annex* to the Verdict.

23. The Court considered the witness interview records tendered in the case file

pursuant to Article 273(1) of the CPC of BiH only insofar as there was a discrepancy between a witness interview record and a main trial testimony, as indicated by either the Prosecution or the Defense.

24. The Defense opposed the use of records of interview of witnesses Elvir Đulić (T-17) and Ahmed Isaković (T-19) on the grounds that the witnesses were interviewed as part of the investigation in another case, involving another suspect. The Court refused the objection, finding that the witnesses were interviewed with respect to the same event they testified about, so the use of their statements at trial was in accordance with the law.

25. Article 15 of the CPC of BiH refers to the principle of free evaluation of evidence.<sup>3</sup> The Court has carefully assessed all the presented evidence. Focusing on the evidence the Court relied on while rendering its decision, their assessment will be given in the Verdict's section explaining the factual and legal analysis of the charges against the accused.

#### **D. CLOSING ARGUMENTS**

##### **a. Prosecution**

26. In its closing argument, the Prosecution commented on the presented evidence (witness testimony and documentary evidence) that, in Prosecution's view, unequivocally shows that the Accused Dražen Mikulić, as a member of the Military Police of the HVO, ill-treated and participated in the ill-treatment of Bosniak detainees in the solitary cell-dungeon of the Dretelj Camp, Čapljina Municipality, in the period July-August 1993, as indicated in the Amended Indictment's operative part, whereby he committed the criminal offense of War Crimes against Civilians.

27. The Prosecution noted that the existence of an armed conflict between the HVO and the Army of RBiH and the existence of a state of war has been corroborated by documentary evidence – the Decision of the RBiH Presidency of 20 June 1992 declaring a state of war, and the Decision of the RBiH Presidency of 20 June 1995 abolishing the state of war, as well as testimony by witnesses at trial confirming the existence of a conflict between the HVO and the Army of RBiH at the relevant time.

28. In relation to Count 1 of the Indictment – ill-treatment of Enver Grebović – the Prosecution commented on the testimony of the aggrieved party Enver Grebović and other witnesses, arguing that the witnesses confirmed in their testimony that the Accused Dražen Mikulić committed the criminal acts referred to in this Count of the Indictment.

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<sup>3</sup> Article 15 of the CPC of BiH provides that "... the existence or non existence of facts shall not be related or limited to special formal evidentiary rules".

29. In relation to Counts 2 and 3 of the Indictment – ill-treatment of detainee Semir Balavac and other detainees who experienced great pain and fear, and the conditions inside the camp – the Prosecution commented on numerous witness statements. In the Prosecution's view, the witnesses were consistent, clear and coherent in their testimony. The Prosecution also pointed to the evidence unequivocally confirming the identity of witnesses and the aggrieved party Semir Balavac.

30. Furthermore, in relation to Count 4 of the Indictment charging the accused with the ill-treatment of underage Emir Đulić, the Prosecution noted that the witness-aggrieved party gave a convincing testimony about the horrors of ill-treatment at the Dretelj prison by soldiers. Witness SH1 also testified about the ill-treatment, and this witness, according to the Prosecution, removed any doubts about the identity of the perpetrator of the ill-treatment, namely the Accused Dražen Mikulić.

31. In particular, the Prosecution specifically commented on Count 5 of the Indictment and the death of Emir Repak resulting from the order of the Accused Dražen Mikulić that detainees Emir Repak and Senad Bešić get into a fight, which they did, and Senad Bešić hit Emir Repak in the head with a wooden lath, causing the death of Emir Repak. The Prosecution pointed out the claims substantiated by witnesses who confirmed the criminal act referred to in this Count of the Indictment, especially eyewitness Mirsad Pejak who identified the Accused Dražen Mikulić in the courtroom. In relation to Count 6 of the Indictment charging the accused with the physical ill-treatment of S3, the Prosecution commented on the testimony of the aggrieved party S3 who gave evidence about his ill-treatment by the Accused Dražen Mikulić.

32. The Prosecutor's Office of BiH assessed the credibility of Defense witnesses in its closing argument, as follows. Witness Mario Udovčić testified about the wounding on 15 July 1993. The Prosecution challenged it by producing a protocol of the Čapljina Health Center, showing that on that day Witness Mario Udovčić was registered as receiving medical assistance. Witness Marinko Sosa offered an alibi for Dražen Mikulić for 2 August 1993. During cross examination, the witness denied ever being convicted, but the Prosecution refuted that denial by obtaining evidence of a case in Zagreb in 1989 in which the witness was fined. Moreover, according to the Prosecution, medical records for Marinko Sosa obtained from the Split Hospital suggest that he was treated in that hospital starting from 3 August 1993, but leave a dilemma about the witness's mode of transportation from Grude (where he was on 2 August 1993) to Prozor (where he arrived on 3 August 1993) during the state of war. In relation to the testimony of the Accused Dražen Mikulić, the Prosecution submits that the Defense offered alibi for a total of three days, as follows: 15 July 1993, 2 August 1993 and 11 August 1993.

33. Finally, the Prosecution petitioned the Court to find the accused guilty as charged and sentence him in accordance with the law.

#### **b. Defense**

34. In their closing argument, defense counsel Davor Martinović and Damir Raguž

challenged the allegation that the Accused Dražen Mikulić committed the offense charged. In that regard, defense counsel made a detailed analysis of the Indictment that included an assessment of witness testimony, Prosecution's documentary evidence and, finally, an analysis of Defense witnesses and documentary evidence. In that respect, defense counsel's analysis adhered to ICTY's standards applicable to *a priori* determination of accused's identity and the issue of identity of the perpetrator(s) of offense. On the subject of the accused's identity, the Defense alleged that no Prosecution witness knew Dražen Mikulić prior to July and August 1993 or saw him before or after the referenced time period. Witnesses' information about the accused's identity is indirect. As regards the accused's physical appearance, the witness testimony is diametrically opposed and arbitrary.

35. At the very outset, the Defense pointed to several relevant formal-legal issues. First of all, the Defense argued that the accused's position in the case has been conditioned by the prejudice that any member of the HVO who had an establishment post in the vicinity of Dretelj necessarily participated in the tortures that occurred there. Next, the Defense commented on the time constraints regarding applicability and the principle of prohibition of retroactive application of criminal code; that is, the CC of BiH of 2003 cannot be applied in the case in question to the events in Dretelj. The Defense further objected to the failure to carry out basic actions aimed at obtaining evidence, namely, crime scene investigation or reconstruction. Moreover, the Defense complained about the manner of conducting the investigation by SIPA agent Safet Ratkušić, also a detainee at Dretelj, which is best illustrated by the testimony of Witness Hamza Tabaković. In the Defense view, the actions of the investigators are supported by the Bosnian authorities. Defense Counsel additionally complained about the manner of identification of the accused by Defense witnesses at trial.

36. As regards the time of perpetration of the offense charged, that time being 25 July 1993 and 2 August 1993, according to the aggrieved parties' accounts, the acts occurred ten days after the accused was wounded (15 July 1993). In that regard, the Defense referred to the report by expert Hamza Žujo, MD. The expert alleged that the injuries were visible to third parties and hindered movement.

37. On the subject of analysis of all counts of the Indictment, the Defense contends that the majority of witness statements are confusing and contradictory, while the Court took a view in *Tomić and Jošić* that the determination of guilt on the basis of a single witness testimony is possible only if the testimony is clear and indisputable and corroborated by other witnesses. To wit, in relation to Count 1 of the Indictment, the Defense referred to its analysis of witness testimony, focusing on the aggrieved party Enver Grebović. According to the Defense, the aggrieved party's description of the accused lacks details, while essential portions of his testimony are not corroborated by other witnesses examined.

38. In relation to Count 2 of the Indictment, the Defense argues that the time when the event in question occurred is not specified; according to the Defense, an analysis of the aggrieved party's testimony suggests that the event took place on 2 August 1993. This is of particular importance because the accused has an iron-clad alibi for that day. As for Witness Semir Balavac's testimony, the Defense argues that it is inconsistent and that Mr. Balavac

changed it during the proceedings.

39. In relation to Count 3 of the Indictment, the Defense claimed that according to witness accounts the Accused Dražen Mikulić is not responsible for the power cable and tank truck incidents, that the evidence against the accused is inconsistent and contradicts other testimony.

40. Commenting on Count 4 of the Indictment, the Defense stressed that the aggrieved party Emir Đulić and his brother Elvir Đulić, direct witnesses to the event in question, ruled out any link between the Accused Dražen Mikulić and that event, and that the testimony by Witness SH1 is the only thing linking the accused to this count. According to the Defense, this witness could not adequately confirm the accused's identity.

41. With respect to Count 5 of the Indictment, the Defense analyzed three witness statements and noted that an ordinary soldier could not have possibly had the authority to issue any order. As for Witness Mustafa Dizdar's testimony, it is rather confusing, and the witness gave this testimony under the influence of narcotics. Witness Mirsad Pejak's testimony is contradictory to the testimony given by other witnesses and the investigative statement. As for the testimony of Mustafa Repak, father of Emir Repak, the Defense alleged that during the investigation he provided the names of some other people as the ones who gave the order, without mentioning Dražen Mikulić.

42. Finally, in relation to Count 6 of the Indictment, the Defense assessed the credibility of testimony by Witness S3. According to the witness himself, he is mentally unstable and has troubles remembering, and there are discrepancies between his investigative statement and the trial testimony. The Defense paid special attention to the testimony by Witness Ahmet Isaković, an eyewitness to the event in question, who said that Dražen Mikulić was not in that group at all. Referring to this count, the Defense urged the Panel to consider the fact that he had an iron-clad alibi for the time of the event.

43. At the end of its closing argument, the Defense submitted that during the evidentiary proceedings the Prosecution failed to prove a single count of the Indictment alleging charges against the accused. For that reason, the only petition made by the Defense is that the Court should acquit the Accused Dražen Mikulić of the charges.

## **II. APPLICABLE LAW**

44. As regards the applicable law, considering the time of perpetration of the crime, the Court accepted the Prosecution's legal qualification of the crime and convicted the accused of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c).

45. Taking into consideration the time of perpetration of the crime and the provisions of the substantive law in effect at the relevant time, the Court holds that two statutory principles are relevant: the principle of legality and the principle of time constraints regarding applicability.

46. Article 3 of the CC of BiH defines the principle of legality, namely, criminal offenses and criminal sanctions shall be prescribed only by law, and no punishment or 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. In addition, Article 4 of the Criminal Code of BiH (Time Constraints Regarding Applicability) provides 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; 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 apply.

47. Article 7(1) of the European Convention also stipulates the principle of legality. Pursuant to Article II(2) of the Constitution of BiH, the European Convention on Human Rights shall have priority over all laws of BiH. Moreover, this provision of the European Convention stipulates a general principle prohibiting imposition of a heavier penalty than the one that was applicable at the time the criminal offense was committed, but it does not stipulate the application of the most lenient law.

48. Article 4a) of the CC of BiH provides that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, “was criminal according to the general principles of international law.”

49. Article 7(2) of the European Convention stipulates the same exception, reading that Paragraph 1 of the same Article “...shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.” (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 a successor of Yugoslavia, has ratified this Covenant).

50. This allows for derogation from the principles laid down in Articles 3 and 4 of the CC of BiH (and Article 7(1) of the European Convention) and from the application of the Criminal Code in effect at the time when the crime was committed.

51. The Court notes that the criminal offense the accused has been found guilty of was criminal according to customary international law and therefore falls under the “general principles of international law” as laid down in Article 4a) of the Law on Amendments to the CC of BiH, as well as “general principles of law recognized by civilized nations” as laid down in Article 7(2) of the European Convention. Accordingly, the CC of BiH can apply to the case in question pursuant to the cited provisions.

52. Furthermore, the fact that the criminal acts listed in Article 173 of the CC of BiH can be found in the code in effect at the relevant time period – Article 142 of the CC of SFRY – suggests that the criminal offenses were punishable under the then applicable criminal code, further corroborating the Court’s conclusion regarding the principle of legality.

53. Finally, the application of the CC of BiH is additionally justified by the fact that the prescribed punishment is more lenient than the death penalty that was in force at the time



when the criminal offense was committed, which satisfies the principles of time constraints regarding applicability and the application of the more lenient law to the perpetrator.

54. The foregoing is in line with the position taken by Section I of the Appellate Division of the Court of BiH in *Abduladhim Maktouf* (KPŽ 32/05 of 4 April 2006) and *Dragoje Paunović* (KPŽ 05/16 of 27 October 2006). The Constitutional Court of Bosnia and Herzegovina has considered this issue in the appeal filed by A. Maktouf (AP 1785/06) and held the following in its decision dated 30 March 2007: „68. *In practice, legislation in all countries of former Yugoslavia did not provide a possibility of pronouncing either a sentence of life imprisonment or long-term imprisonment, as often done by the International Criminal Tribunal for the former Yugoslavia (the cases of Krstić, Galić, etc.). At the same time, the concept of the SFRY Criminal Code was such that it did not stipulate either long-term imprisonment or life sentence but death penalty in case of a serious crime, or a 15-year maximum sentence in case of a less serious crime. Hence, it is clear that a sanction cannot be separated from the totality of goals sought to be achieved by the criminal policy at the time of application of the law.*“ „69. *In this context, the Constitutional Court holds that it is simply not possible „to eliminate“ the more severe sanction and apply only other, more lenient sanctions, so that the most serious crimes would in practice be left inadequately sanctioned.*“

55. Moreover, at the time when the crimes were committed, Bosnia and Herzegovina as a successor state of SFRY was a signatory to all relevant international conventions on human rights, customary international law and criminal law.<sup>4</sup>

56. Furthermore, the customary status of criminal responsibility for war crimes against civilians and individual responsibility for war crimes committed in 1992 has been confirmed by the UN Secretary General<sup>5</sup>, the International Law Commission<sup>6</sup>, as well as the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)<sup>7</sup>. The referenced institutions have determined that criminal responsibility for war crimes against civilian population constitutes a peremptory norm of general international law, *ius cogens*<sup>8</sup>. Therefore, it is beyond dispute that war crimes against the civilian population in 1992 constituted a part of customary international law. This conclusion has been supported by a Study on customary international humanitarian law<sup>9</sup> prepared by the International Committee of the Red Cross. According to that Study, „serious violations of international humanitarian law constitute war

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<sup>4</sup> In particular: Genocide Convention (1948); Geneva Conventions (1949) and Protocols thereto (1977); Slavery Convention (amended in 1956); Convention on the Elimination of All Forms of Racial Discrimination (1966); International Covenant on Civil and Political Rights (1966); Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968); Apartheid Convention (1973); Convention on the Elimination of All Forms of Discrimination Against Women (1979); UN Convention Against Torture (1984).

<sup>5</sup> Report of the UN Secretary General Pursuant to Paragraph 2 of Security Council Resolution 808 of 3 May 1993, paras. 34-35 and 47-48.

<sup>6</sup> International Law Commission, Commentary on the Draft Code of Crimes against the Peace and Security of Mankind (1996)

<sup>7</sup> ICTY Appeals Chamber, *Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, para. 151; ICTY Trial Chamber judgment in *Tadić* of 7 May 1997; paras. 618-623.

<sup>8</sup> International Law Commission, Commentary on the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

<sup>9</sup> Jean-Marie Henchaerts and Luise Doswald-Beck, Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005, p. 568 ff.

crimes“ (Rule 156), “individuals are criminally responsible for war crimes they commit“ (Rule 151) and “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects“ (Rule 158).

57. According to the principle of universal jurisdiction, customary international humanitarian law is obligatory for every state in the world, regardless of whether a state ratified appropriate international legal instruments or not. Every state has an obligation to prosecute or extradite (*aut dedere aut judicare*) any person suspected of violating customary international humanitarian law.

58. Principles of international law recognized by the UN General Assembly Resolution 95 (I) (1946) and by the International Law Commission (1950) pertain to the “Nuremberg Charter and the judgment of the Tribunal“, and, accordingly, to war crimes in general. „Principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal“, adopted by the International Law Commission in 1950 and delivered to the General Assembly, enunciate in Principle I: “Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment“. Principle II states: “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.“

59. For those reasons, the criminal offense of war crimes against civilian population should be categorized into “general principles of international law“ referred to in Articles 3 and 4a) of the CC of BiH. That is why it is beyond dispute, regardless of whether it is regarded from the viewpoint of customary international law, law of treaties or the “principles of international law“, that war crimes against civilian population constituted a crime at the relevant time period, that is, the principle of legality is satisfied in terms of both *nullum crimen sine lege* and *nulla poena sine lege*.

60. For the reasons mentioned above, the Court has concluded that it is necessary and justifiable to apply the Criminal Code of BiH to the case in question.

61. The prescribed punishment falls within the special minimum sentence prescribed by the Criminal Code of Bosnia and Herzegovina, and one could logically infer from that aspect that the trier of fact could have favored application of the CC of SFRY in the instant case by taking into consideration the prescribed punishment as the only factor determining the code chosen by the trier of fact. However, one should bear in mind that the trier of fact, pursuant to Article 165(2) of the CPC of BiH, at the deliberation and voting session, first voted whether the accused committed the crime (and, if so, which one) and whether he was criminally responsible, meaning that it was at that moment that the trier of fact decided on the application of the criminal code, and only thereafter, having decided on this previous question, it voted on the punishment. Even if the decision on the punishment had included the decision on the application of one of the two criminal codes, the Panel has found, for the reasons mentioned

above, that the CC of BiH would again be applicable.

### **III. COURT FINDINGS – CONVICTING PART OF THE VERDICT**

62. During the evaluation of the evidence, the Court has evaluated every piece of evidence, individually and collectively, and based on such an evaluation it made the conclusion as to whether a fact was proven. The evidence not specifically included in the reasons to the Verdict, in view of the Court, was not legally relevant for the determination of the state of facts, for which reasons the Court did not evaluate or justify such evidence.

#### **A. ELEMENTS OF THE CRIMINAL OFFENSE OF WAR CRIMES AGAINST CIVILIANS**

63. In line with the Indictment, the Accused is charged with the War Crimes against Civilians, in violation of Article 173(1)a) and c) of the CC BiH, which in the relevant part reads:

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

**a)** Attack on civilian population, settlement, individual civilians or persons unable to fight, which results in the death, grave bodily injuries or serious damaging of people’s health;

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

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

64. The following elements of the criminal offense of War Crimes against Civilians stem from the legal definition:

- The act of perpetrator has to be committed in violation of the rules of international law;
- Violation has to be committed in time of war, armed conflict, or occupation;
- Act of perpetrator has to be related to war, armed conflict, or occupation;

- Perpetrator has to order or commit the act;

(a) **Act of perpetrator has to be committed in violation of the rules of international law**

65. The Accused Dražen Mikulić is charged, under the Indictment, with War Crimes against Civilians in violation of Article 173(1)a) and c) of the CC BiH, that is, acting in violation of Article 3(1)a) and c) of the Geneva Convention Relative to Protection of Civilians in Time of War of 12 August 1949 (Geneva Convention), which in the relevant part 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:

persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, 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.”

66. To establish the violation of the rule of international law, it is essential to establish at whom the violation was directed and/or whether the act was directed against the special category of population protected by Article 3(1) of the Geneva Convention and/or person who does not take active part in hostilities, including members of the armed forces who laid down their weapons and those placed *hors de combat*.

67. Regardless of the fact that some of the victims and witnesses, at the moment of deprivation of liberty, were members of one party to the conflict, that is, the Army of RBiH, until that moment an HVO ally, it stems from the testimony of the witnesses that they were mainly arrested at their homes or streets, that they were unarmed, that they did not offer any resistance, and that they were in civilian clothes. The Court therefore arrives at a conclusion that they were people placed *hors de combat* due to the arrest. Thus, the witness Mustafa Repak stated that the Bosniaks and Croats were together on the defense lines, and that his son Emir Repak, a member of the Army BiH, was with them, and that once the armed conflict between the Army BiH and the HVO started all Bosniaks were arrested. His son used his days off and he could not report back to the Army BiH, but rather stayed at home and hid until 4 August 1993, when the Muslim population was expelled from Stolac. Men, including his son,

were detained in the Koštana hospital ("Bone disease hospital") in Stolac, and were next day taken to the Dretelj camp. Witness Mirsad Pejak was a member of the Army BiH, when he was arrested on 2 August 1993, dressed in civilian clothes and unarmed, together with his wife and children and other Stolac residents, after which the women and children were taken to Buna, and the able-bodied men to Dretelj.

68. The victim S3 stated that he was a member of the Army R BiH, and that, once the conflict between the HVO and the Army R BiH broke out, he hid in his house where he was arrested, in civilian clothes, on 14 July 1993, by two HVO uniformed members who took him to the Koštana hospital, from where he was taken to the Dretelj camp. Witness S2, who was arrested on the same day, has a similar account of the event. Witness S1 stated that he was a member of the HVO until 1 July 1993, when he fled to the forest, and was arrested on 13 July 1993 when he tried to cross into the territory under the control of the Army BiH.

69. Upon the breakout of conflict, a large number of Bosniaks, HVO members, were detained in the Dretelj camp. Majority of them were also arrested in their homes, in civilian clothes, unarmed, whereas some of them were arrested while on duty, that is, at the defense lines. The Court concluded that they are people who did not take active part in hostilities, then those who laid down their weapons and those placed *hors de combat* due to the arrest. So, the victim Semir Balavac stated that he was arrested on 1 July 1993 in Stolac, though an HVO member. At the moment of his arrest at the defense lines, he wore a uniform and was armed. The members of the military police who arrested him disarmed him and other Muslim members of the HVO and took them all to the Reinforced Steel Plant in Stolac. He stated that a collective center was set up there and that some five to six hundred people, all of them Muslims, were brought there, and were later on transported on trucks to the Dretelj camp, where, having arrived, they were ordered to take off their uniforms and remain only in the underwear and slippers, in which they spent the several following months.

70. Also arrested on the same day was Almir Dedić, who gave evidence that he was a member of the HVO and that he was arrested in his house in the village of Višići, taken in front of the school, and then, together with other Muslims, escorted to the Dretelj camp. Witness Hamzo Tabaković also gave evidence that he was arrested on 1 July 1993, in the early morning hours, in his house in the territory of the Čapljina municipality, as a member of the engineering battalion of the HVO, and in a group of twenty Muslims he was transported on a truck to the Dretelj camp. On the same day, Admir Sakoč was also arrested in his house in the territory of this municipality. He stated that at the time of his arrest he was a member of the HVO. Witness Mirhet Đuharić stated that HVO members arrested him in Čapljina, that he was a civilian and that he was taken to the Dretelj camp. Witness Hasan Šošić stated that he was also arrested on 1 July 1993 in his house and taken to the Dretelj camp.

71. Witness Mehmed Kovačević said that on 1 July 1993, as a member of the HVO Stolac Battalion, he used his days off in the house of his parents in Dubrave, when all the men in his house were arrested, such as himself, his father and the older brother, and all the Muslim men from the neighborhood, who were transported to the bus stop and then further to the Dretelj camp. Witness Mustafa Dizdarević gave evidence that on 1 July 1993 he managed to escape the massive arrests of Muslims by HVO soldiers,<sup>21</sup> but that he was arrested in the second raid on

28 July 1993 in the cellar of his house, where he was in hiding together with his children and neighbors, and was taken to the Dretelj camp.

72. Some of the victims were not at all members of any armed unit, but were people who did not take active part in hostilities, including the victim Emir Đulić who stated that he was less than eighteen when he was arrested in the village of Pješivica, Stolac municipality, in early August. The following people were arrested with him: his father Alija Đulić, brother Elmir Đulić, cousins Azem Đulić, Haso Đulić, SH1, and all the other men from the village. His brother Elmir Đulić stated that he was not a member of any army, that he was arrested in civilian clothes on 2 August 1993, after the persecution of civilians in the villages of Pješivica and Kaplan started. The able-bodied men were separated at one of the checkpoints, including himself and his brother Emir Đulić, who were then escorted to the Koštana hospital in Stolac and then further on to the Dretelj camp. Witness SH1 was arrested with them, and he stated that he was juvenile at the time, that he was unarmed and in civilian clothes.

73. Victim Enver Grebović stated that he used to live in Gacko before the war, and that he was detained on 1 June 1992 in the Gacko camp, then in the camp in Bileća, and after he was exchanged he came to the village of Višići, where his family was, and where he was arrested on 1 July 1993 by the uniformed HVO soldiers, not known to him, who were beating him during the arrest before the present underage children and his mother. He stated that he was a civilian at that time, and that following the arrest he was taken to the Dretelj camp.

74. Based on the evidence of these witnesses, the Court found as proven that the witnesses, victims Enver Grebović, Semir Balavac, Emir Đulić, Emir Repak, S3, and the other prisoners in the Dretelj camp were individuals who did not take active part in hostilities, and as such they fall into the category of people protected by the aforementioned provision of the Geneva Convention.

75. Moreover, the Court also found that, at the time of commission, these protected people had a status of civilians, which satisfied the essential element of the criminal offense of War Crimes against Civilians in violation of Article 173 of the CC BiH. The definition of a civilian and civilian population is also given in Article 50 of the Protocol Additional I to the Geneva Convention of 12 August 1949 relative to the Protection of Victims of International Armed Conflict of 8 June 1977, which provided that a civilian is any person who does not belong to one of the categories of persons referred to in Article 4(A) (1), (2), (3) and (6) of the Third Geneva Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

76. In *Prosecutor v. Tihomir Blaškić*, No. IT-95-14-A dated 29 July 2004, paragraph 113, the ICTY Appeals Chamber pointed that members of organized resistance groups, provided that they are commanded by a person responsible for his subordinates, that they have a fixed distinctive sign recognizable at distance, that they carry arms openly, and that they conduct their operations in accordance with the law and custody of war, cannot claim civilian status.

77. Considering the fact that the majority of the Dretelj prisoners were originally deprived of liberty in their homes, without offering any resistance, that they wore civilian clothes at the

moment of arrest, the Court found, irrespective of the fact that some of them were until that moment members of the armed forces of one of the parties to the conflict, that they were not prisoners of war as they had not been captured during the combat operations nor did they offer any military resistance to the advancing enemy, nor were engaged in any military activity. Some of the prisoners were arrested at the frontline, but they were, at the moment of the arrest, members of the HVO, that is, of the very party to the conflict which arrested them, so that these individuals should not be treated as those taking part in the hostilities. Thus, the Court found that, at the relevant time, these individuals had the status of protected persons under the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Article 3(1) of the IV Geneva Convention).

78. Thus, considering the definition of the notion “civilian”, which explicitly stated that civilians are all those who do not take active part in hostilities and are not members of armed forces, it is clear that the persons, listed in the Indictment as victims, were civilians and that they were not members of the enemy armed forces in any way, and/or they did not take part in the hostilities directed against the party to which the Accused was affiliated (HVO), which means that they enjoy protection under international law. According to the rules of international law, injuries inflicted upon life, bodily and personal integrity, and particularly degrading and humiliating acts, are particularly forbidden with respect to this category of persons.

79. Having reviewed the Prosecution case file – List of Prisoners, Čapljina, Internal Document, drafted by the HVO Defense Department, the Court found that the list contains the names of all prisoners in the Dretelj camp and the facility in which they are quartered, including the names of underage persons, and that the prisoners were not differentiated in line with the rules for the qualification of prisoners of war and civilians, which means that all the prisoners had the same status (T-33).

80. Considering everything stated above, it is apparent that the criminal acts listed in the enactment clause of the Verdict, committed by the Accused, which will be elaborated further in the text, were in violation of the rules of international law, that is, Article 3(1)a) and c) of the Geneva Convention, and as such punishable under Article 173 of the CC BiH, which provided that such treatment of civilians in time of war or armed conflict is the criminal offense of War Crimes against Civilians.

(b) **Violation has to be committed in time of war, armed conflict, or occupation:**

81. Article 173 of the CC BiH provides that the criminal offense has to be committed in violation of the rules of international law in time of war, armed conflict or occupation. As the Panel found that the acts of the Accused satisfy the elements of violation of international law and/or that they are in violation of Article 3(1)a) and c) of the Geneva Convention, applicable to the armed conflict that does not have the character of international conflict, the Panel found that the courts, both national and international, concluded that this Article applies not only to internal conflicts, but also to those with international character. To this end, the Court, in this specific case, did not engage in defining the character of the armed conflict, given that it was established that it had happened in BiH, at the time relevant to the Indictment, given that

Article 173 of the CC BiH itself does not require that the character of the conflict has to be identified, whether internal or international.

82. There is an armed conflict whenever the states apply armed force or if there is an extended armed violence applied between the state authorities and organized armed groups or between such groups within a state. As already stated, in terms of Common Article 3 of the Geneva Conventions, the nature of this armed conflict is of no relevance. Namely, it is of no importance whether a serious violation occurred within the context of international or internal armed conflict, if the following requirements were met: violation has to constitute infringement of the rules of international humanitarian law; the provision has to be of the customary nature or if it is a part of law of treaties, the required conditions have to be met; violation has to be serious and/or it has to constitute a violation of a provision which protects important values, and violation has to encompass grave consequences for the victim, and violation has to encompass individual responsibility of the person committing violation.

83. During the trial the Panel clearly established the fact that the state of war was declared at the relevant period and in the relevant territory, that is, there was an armed conflict, which clearly stems from the statements of witnesses, both for the prosecution and the defense, who gave their evidence, and the documentary evidence reviewed by the Panel. It is the fact that there was a state of war at the time of commission of the offense in subject, which is confirmed by the Republic of Bosnia and Herzegovina Presidency Decision to declare the state of war dated 20 June 1992.<sup>10</sup> All the prosecution and the defense witnesses testified about the armed conflict between the forces of the Army of RBiH and the HVO during the relevant period.

84. At the beginning of the trial, the Defense pointed out that this fact is irrefutable and added that there was no need to present any special evidence to this effect to prove this element of the criminal offense. Hence, the parties to the proceedings agreed about the armed conflict, and the Court, considering the abovementioned testimony of the witnesses, found that there was an armed conflict between the warring parties of the HVO and the A RBiH in the territory of BiH, including the territory of the Čapljina municipality, where the Dretelj camp was located, and in which the incriminating acts were committed, as included in the Indictment and the enactment clause of the Verdict.

(c) **The act of perpetrator has to be related to the war, armed conflict or occupation;**

85. The third element allows for the differentiation between the criminal offenses committed during the war or armed conflict in terms of the fact that not all the crimes committed in that period can be automatically treated as war crimes. International jurisprudence has firmly established that in order to treat an offense as a war crime, there has to be a nexus with the war or armed conflict, that is, the acts of the Accused have to be “closely related to the war, armed conflict”. This close relation does not necessarily mean that combat operations have to be indeed pursued in the territory where the offenses were committed. The ICTY Appeals Chamber found in *Tadić* that: „international humanitarian law applies in the whole territory of

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<sup>10</sup> T-24 – RBiH Presidency Decision to declare the state of war (*Official Gazette of RBiH*, dated 20 June 1992).



the warring States or, in the case of internal conflicts, the whole territory under the control of a party, whether or not actual combat takes place there, and it continues to apply until a general conclusion of peace is reached; or, in the case of internal conflicts, a peaceful settlement is achieved.”

86. Moreover, “the armed conflict or war need not have been causal to the commission of the crime, but the existence of war or an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”.<sup>11</sup>

87. Having evaluated the presented evidence, the Court concluded that the acts of the Accused were significantly related to the war events. Namely, the Accused, at the time of commission of the criminal offense, was a member of Croat armed formations, more specifically of the military police of the Croat Defense Council. The status of the Accused himself as a member of the Croat armed forces, that is, military police, was never contested during the trial, but the Defense contested that the Accused had a rank of Lieutenant or Senior Lieutenant.

88. The fact that the Accused Dražen Mikulić was a member of the HVO MP during the relevant period also stems from the consistent testimony of the prosecution witnesses, who used to see the Accused in the Dretelj camp, in his HVO MP uniform and in the company of other HVO soldiers, as well as the evidence of the Accused himself, given both during the investigation and at the trial.

89. The Court accepted the testimony of those witnesses in this part, given that they are consistent among all the witnesses and in line with the documentary evidence, reviewed by the Court, such as: VOB-2 Form for the Accused (T-26); List of members of the MP Čapljina 3<sup>rd</sup> Battalion 3<sup>rd</sup> Company for the period between 9 May and 1 June 1993 (T-28), List of members of the HVO MP 5<sup>th</sup> Battalion, 3<sup>rd</sup> Company, 2<sup>nd</sup> Platoon (T-29); and the List of salaries for the HVO MP members in June 1994 (T-30).

90. Based on the aforementioned, it clearly follows that the Accused Mikulić was a member of the HVO military police as of 15 June 1992, including the relevant period in July and August 1993. It also stems from the consistent testimony of the prosecution witnesses who used to see the Accused in Dretelj, the Accused himself, and the List of HVO MP members of the 3<sup>rd</sup> Company, 2<sup>nd</sup> Platoon (T-29), that the MP 2<sup>nd</sup> Platoon, including the Accused Dražen Mikulić, was stationed in the barracks in Dretelj, situated next to the prison facilities in Dretelj.

91. The incriminating acts committed by the Accused, to the detriment of the victims, further elaborated in the wording of the Verdict, were not justifiable by the military necessity. The Accused used his position of a member of an armed force in a conflict and the position of the victims, civilians in the Dretelj prison, to commit the incriminating acts, and the Court thereby finds that in this specific case there is a clear *nexus* between the war or armed conflict

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<sup>11</sup> ICTY Appeals Chamber in the case of *Kunarac et al.*, Para. 102.

and the criminal offense. Also, the Accused committed the acts, of which he was found guilty, aware of the circumstances, and the Court arrives at a conclusion that the armed conflict indeed influenced the ability and the decision of the Accused to commit the given criminal offense, including the manner in which it was committed.

(d) **Perpetrator has to order or commit the criminal offense**

**(i) Count 1 – ill-treatment of the prisoner Enver Grebović**

92. Based on the presented evidence, the Court found beyond any reasonable doubt that the Accused Mikulić, in late July 1993, together with other unidentified members of the HVO MP, in the prison Dretelj, took a prisoner Enver Grebović in front of the hangar, where they physically abused him by hitting him several times with the rifle butt, pistol, hands, and kicking him in his head and body, of which blows Enver Grebović bled from his mouth, nose and head, and, after he fell on his knees, the Accused Mikulić cut him with the glass of a broken bottle across his chests, then leaned over him and started drinking his blood and told him that he just drank *balija's* blood, and then pressed him against the door and fired a bullet over Grebović's head, as a result of which Grebović was all beaten up, covered with blood, suffering great pain and fear.

93. The Court found such a state of facts to have existed based on the consistent evidence of several prosecution witnesses, particularly the testimony of the victim Enver Grebović, and witnesses Mirhet Đuherić, Almir Dedić, Admir Sakoč, Hamzo Tabaković, Hasan Šoše, and others.

94. The witness, victim Enver Grebović, stated in reference to the event in question that on or about 25 July 1993 he was in the hangar in the Dretelj camp, in the left corner, next to the entrance, when, at around 23:30 hours, Vide Palameta a.k.a. Dugi, armed with a semiautomatic rifle, and Dražen Mikulić, armed with a pistol, entered the hangar looking for people from Gacko. They walked from one prisoner to another and asked for their names and surnames and their respective places of origin. Once it was his turn, Grebović did not want to say that he was from Gacko but he told them that he was from Tjentište, to which Mikulić replied that it had been a place of partisans and he took him in front of the hangar, where they started beating him.

95. He stated that Dražen was facing him, while the other one was behind him, so that once one would hit him from one side the other would hit him from the other, turning him around. Dražen Mikulić beat him up with his hands, kicked him and dealt him blows in his head, and Vide Palameta with his hands and semiautomatic rifle in his legs, until he could not stand on his feet any more. Grebović received more than one hundred blows, of which his entire body was black and blue. He fell only once, as he tried throughout this time to remain on his feet, believing that if he fell his head would be more exposed to the blows. At one moment, due to the beating, his zygomatic bones cracked, and he started bleeding from his mouth and nose, and he hit the street light pole. On that occasion, Dražen Mikulić took a piece of glass from some bottles and cut him across his chests, by the left breast. He told him to bow down and put his head on the knees, after which Dražen drank his blood and shouted: "*I have drunk*

*balija's blood.*" He asked him if he had any children, and after Enver responded that he had a six-year-old daughter and a two-year-old son, Dražen told him "*There is an heir then.*" He pressed him against the door to the hangar and fired a bullet from the pistol above his head. Then, he told him to go inside the hangar and say that Dražen spared his life, which he did. He believes that the ill-treatment continued for about thirty five minutes.

96. After this, he could not move or get out of the hangar for seven days, and due to high fever and lack of water he was forced to drink his own urine. While these two soldiers were beating him, he could see that two other prisoners were taken out of the other hangars and beaten up. He did not know from before the abovementioned individuals - Dražen Mikulić and Vide Palamenta, and he heard their names from other people in the camp, who recognized the two. He stated that he remembers the Accused Mikulić as a person of an average height and dark hair, that he limped a bit, and the others told him, as soon as he regained his consciousness, that his name was Dražen Mikulić.

97. Witness Mirhet Đuherić stated that he was in the same hangar with prisoner Enver Grebović whom they called Gačanin, who had been first detained in Bileća, in a Serb camp. The victim Grebović told him in the camp that they used to beat him up while in detention in Bileća. He described the event in question in a way that the HVO military police officers from the western part of Herzegovina entered the hangar during the night, and then walked from one prisoner to another, asking for their places of origin. Grebović told them that he was from Gacko, and Dražen Mikulić took him in front of the hangar together with his colleagues. Witness Đuherić pointed out that a long time went by since that event and that he cannot with certainty claim whether he observed this event through the window on the hangar or whether he stepped out in front of the hangar as a duty prisoner, but he emphasized that he could see the entire event "quite nicely". There were street lights outside. He saw the beating of the victim Grebović, and that he fainted and that they assisted him to regain consciousness, and that Dražen approached him, leaned over him, drank his dropping blood and said "*I have drunk balija's blood*". They were punching and kicking the witness, and ultimately the Accused Mikulić took his pistol out, pressed Grebović against the door and fired a bullet above his head, which made everyone shudder. He added that Grebović was "horribly beaten up", "that he moaned and lied there" for several days, so that they were bringing him food to the hangar. He was totally covered with blood, his eyes were closed, and his mouth and nose were bleeding. He stated that during the beating of Grebović, the Accused Dražen "stood out".

98. Witness Đuherić pointed out that he volunteered on or about 21 July 1993 to work on the water tank and to do the dishes, so that he came out of the hangar and enjoyed a different status compared to other prisoners. He pointed out that he heard from the beginning that the Accused Mikulić was notorious for spreading fear and that the other soldiers called him Dražen, and that he sat with those men and talked, and that is how he heard his name. He added that the entire camp knew when the Accused Mikulić was coming, as he was notorious for taking part in incidents. He believes he saw him for the first time during this event with Grebović. During his stay in the Dretelj camp, he saw him about a dozen times. They talked one night. He described him as a dark complexion man, young, nice, some 175 to 180 cm tall. He could not identify him on the photo-board shown to him during the investigation, but he saw

him in the corridor of the court, prior to the hearing, standing by one column at the entrance, and Mikulić took a shelter behind the column once he saw him. He recognized him at that time. The same witness identified the Accused in the courtroom.

99. Witness Almir Dedić stated that he witnessed the ill-treatment of Enver Grebović a.k.a. Eko in late July or early August in the Dretelj camp. He pointed out that he was in the same hangar with Grebović and that most of the ill-treatment occurred when the HVO was losing in the battlefield or if any of their soldiers got killed. On this critical day, the Accused Mikulić together with two or three of his colleagues, wearing camouflaged uniforms, came to their hangar and introduced himself as Dražen Mikulić, HVO soldier, an extremist. They were looking for particular people, asking where they came from. While describing this event, the witness stated that Dražen Mikulić and two other soldiers and the prisoner known as Trebinjac ill-treated Enver Grebović, that this took place around 21:00 or 21:30 hours, near the entrance door to the hangar, while he was some two meters away from that spot. There were street lights around. He added that they beat him up with everything and anything, that they were kicking him, beating him with hands, knees, rifle butts, and boots, all over his body, head, back, and stomach. This beating continued for about half an hour, and Dražen Mikulić was kicking him for about ten minutes while he had his military boots on. After that, Grebović was completely blue and blood-soaked. Then, Mikulić took a broken bottle and cut him under his throat and said "*look at me drinking balija's blood*", and pressed his lips to drink the blood, and then he gave him a cigarette to eat and made him drink urine from a jerry-can to which all the prisoners urinated. Grebović was bleeding from his nose and his zygomatic bones were broken.

100. Witness Hamzo Tabaković stated that, during this critical event, Enver Grebović, also known as Gačanin, was ill-treated, as well as two other prisoners from the hangar – Avdo Spahić and Sulejman, who were taken out one by one. This event took place in late July or in early August, and he saw it through the window of the hangar. This event began with Dražen Mikulić entering the hangar together with several members of the military police, who ordered the prisoners to get up and stand in a circle, and then they asked loudly people from Gacko to come out. All the prisoners in the hangar got up. The witness pointed out that he was some 10 meters from the entrance door, that Enver Grebović was in his vicinity, and the person identified as Dražen Mikulić walked from one prisoner to another and asked for their names and place of origin. Having reached Grebović, he stated that he was from Foča and that that was his family name, to which Mikulić responded that it was a place of partisans and that he should come out. He took him in front of the hangar, closing the door behind them, but not completely. He could only partly see the event through the window. There were street lights outside and he saw Mikulić punching Grebović in his face, after which they tried to put Grebović in an upright position, and then he heard a voice saying: "*I have drunk balija's blood*". He believes that it was Mikulić's voice, given that he had seen him a moment ago beating Grebović. He had heard a shot in front of the hangar before Grebović returned. Inside the hangar, he saw Grebović soaked in blood, all over his head and chests, with his zygomatic bones cracked; he saw bruises in his back, lower back and other parts of his body, but mostly in the back. He saw Mikulić on two occasions during his stay in the Dretelj camp, on the relevant day and the following day when he showed up, before lunch, to see the people who

had been previously ill-treated. He did not hear that critical night that the Accused introduced himself when he entered the hangar, but some of the camp inmates said later on that he did. Camp inmates who were with him in the hangar kept saying that Mikulić's name was "this or that", and the name of Dražen was among them. When this was over, someone looked at the watch and stated that it was past midnight.

101. Witness Admir Sakoč stated that he heard from other prisoners that Dražen Mikulić used to ill-treat prisoners, take them out and beat them up together with some other HVO members. He also heard from other prisoners that on two occasions Mikulić used to take out a prisoner, known as Eko Grebović, from the hangar in which he was detained. He does not know the reason why the soldiers, who took him out, "had it in for him". He heard from the camp inmates that he had been beaten with rubber buttons, wooden sticks, that Dražen Mikulić drank his blood saying that he had drunk *balija's* blood. He saw the injuries on Eko while he was in the hangar. The witness pointed out that he was detained in the hangar between late July and early August, and that he did not witness when Eko was taken out of the hangar, but rather he has heard of it. He also pointed out that, given his location, he could not see the soldiers who entered the hangar.

102. Witness Hasan Šoše stated in his evidence that he heard stories from other prisoners, while he was detained in the Dretelj camp, that Mikulić had beaten up someone and drunk his blood. The same witness stated that he was not in the same hangar with Enver Grebović.

103. Having considered all these statements, the Court found beyond any reasonable doubt that this critical event took place in late July 1993, given that the witness-victim Enver Grebović was quite precise as to the time of this relevant event, pointing out that it took place on or about 25 July 1993, and his testimony was corroborated by the evidence of the eye-witnesses Almir Dedić and Hamzo Tabaković, who were also consistent that the ill-treatment of the victim Grebović took place in late June or early August 1993. Given that the witness Grebović was the only victim in this event, and that he was rather specific concerning the time of commission, which coincides with the times offered by the witnesses Dedić and Tabaković, the Court accepted his evidence as reliable and found that the event indeed took place in late July 1993.

104. The fact that the victim Enver Grebović was a prisoner in the Dretelj camp was also a clear fact for the Court, including that he was in one of the hangars during this relevant period. These facts stem from the testimony of the witness-victim Enver Grebović himself, given in a convincing manner, and the consistent testimony of the other witnesses who pointed out that they were detained in the same hangar with Enver Grebović – witnesses Almir Dedić, Mirhet Đuherić, Hamzo Tabaković, and Admir Sakoč. All these witnesses clearly and convincingly stated that they were detained in the same hangar with the victim Enver Grebović, and to that end provided their exact location in the hangar in relation to the exit door and in relation to the victim Grebović, consistently pointing out that they saw the injuries on the body of the victim Grebović following his ill-treatment by the HVO military police.

105. Witnesses Almir Dedić, Mirhet Đuherić and Hamzo Tabaković consistently pointed out that they saw this event, as they were detained in the same hangar with the victim

Grebović. Witness Mirhet Đuherić claimed that Zlatko Alagić and Ado Alagić were also imprisoned in the same hangar. To remove potential ambiguities from the testimony of the witnesses, the Court called again the witness Almir Dedić, who made it very clear that the witness Mirhet Đuherić was also with him in the hangar of the Dretelj camp during this relevant period, whom he knew from before, as well as witness Hamzo Tabaković, a relative of his wife, as well as the Alagićs – Ado and Bari, whose first name he does not know, who slept next to Ado. It was found during the proceedings, based on the evidence provided by the witness Đuherić, that Bari was Zlatko Alagić's nickname.

106. Such consistent statements given by witnesses Đuherić, Dedić, Sakoč and Tabaković were fully corroborated by the documentary evidence, tendered into the case file, such as the List of prisoners in the Dretelj camp, per facility where they were accommodated, drafted by the HVO Defense Department. A review of the list shows that inside the same hangar Admir Sakoč (No. 33), Almir Dedić (No. 72), Enver Grebović (No. 179) and Hamzo Tabaković (No. 187), as well as Zlatko Alagić and Ado Alagić (Nos. 271 and 272), were positioned to the left of the water tap, for which reason the Court gave credence to their testimony.<sup>12</sup>

107. The Accused Dražen Mikulić stated in his testimony, given at the trial, that his unit was deployed in Dretelj, but that he visited the Dretelj compound on three occasions only – in the July-August period, more specifically he was in the barracks of the military police, not in the prison: in early July when he returned his military equipment, on 12 July when he was urgently called to the barracks and immediately dispatched to Mostar, the area of Heliodrom, and finally on 15 August after his sick leave, when they sent him home to wait for the establishment of the new head office. Also, the Accused stated that on 11 August 1993 he was in Split, Republic of Croatia, and that on 15 August 1993 he was injured while he was evacuating his injured fellow combatants and spent the following month on sick leave. In this way, the Defense argued that the Accused, over this relevant period, did not at any time enter the Dretelj camp, but rather was on sick leave from 15 July to 15 August 1993 at his family house in the village of Tiholjina, Grude municipality, and that he waited there for his new assignment.

108. Namely, the Accused stated that on 15 July 1993 he set off with his unit from Heliodrom in Mostar to a combat mission to destroy the ARBiH defense line at Bišća polje, that is, in Gnojnice, which resulted in a large number of casualties, more specifically in numerous killed and injured HVO soldiers. During this operation, he was evacuating his injured fellow colleagues and combatants Mario Udovičić and Ivica Eljug, and while he was evacuating another HVO soldier, a shell landed in his vicinity so that he was injured and immediately transferred to the war hospital in Grude, and from there to a home treatment. During the sick leave, Marinko Sosa, a brigade commander from Grude, came to visit him on 2 August 1993 and brought him a package with supplies and 500 DM. The Accused pointed out that he was aware of the existence of a prison in Dretelj, that he used to see people in prison when he visited the barracks and knew that Bosniaks were imprisoned there, but did not go there, did not contact any of the imprisoned Bosniaks, and did not know any of the prisoners. He could

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<sup>12</sup> T-33 List of prisoners – Čapljina, internal document.

not fathom why his name should be mentioned by any of the prosecution witnesses, and he does not know of their intentions and whether anyone used his identity and falsely introduced himself to those people. He added that there are many people in Herzegovina with the family name Mikulić, and that HVO lists of the military police members contain the names of others with the same family name (Mikulić), who served in other units, whom he never met at the frontline. He pointed out that soldiers from other units also came as reinforcement to Čapljina.

109. During the evidentiary proceedings, in order to prove these claims made by the Accused when he testified as a witness, the Defense presented their evidence: witnesses Mario Udovičić and Marinko Sosa, and tendered the following documentary evidence: Records on the killed/injured soldiers from the 5<sup>th</sup> Battalion 3<sup>rd</sup> Company (O-2); Record on the injured soldiers from the HVO 5<sup>th</sup> Battalion (O-3); Medical documents for the witness Mario Udovičić (O-8); Discharge letter for the witness Marinko Sosa issued by the Hospital in Split (O-9); Medical documents for Marinka Mikulić, mother of the Accused (O-11); Decision to grant the right to personal disability issued to the name of the Accused Dražen Mikulić (O-12); and Suspect Examination Record for Dražen Mikulić, No. KT RZ 21/05 (O-14).

110. Witness Marinko Sosa confirmed in his evidence that on 2 August 1993, as a commander of the HVO brigade in Grude, he visited the injured Dražen Mikulić in his family house in Tiholjina, and on that occasion gave him 500 DM and some food and other supplies, which is the assistance given to all the injured HVO soldiers from Grude, regardless of the unit in which they served. There was no decision in writing to give this support to the Accused Mikulić, and also the Accused Mikulić did not have to sign any receipt when he took over this support. He could see on that occasion that Dražen walked with difficulties and that he limped. This witness pointed out that he remembers this date because of the fact that he was injured on the following day, 3 August 1993, at the frontline in Uskoplje, which is when he was transferred to the Split hospital.

111. Witness Mario Udovičić stated in his evidence that he was, together with Dražen Mikulić, in the HVO military police, until the HVO operation against the ARBiH in Gnojnice, Mostar municipality, on 15 July 1993, when he was injured. On that occasion, one shell landed close to him, when he sustained injuries, and the Accused Dražen Mikulić helped him get to the ambulance. He was then transferred to the hospital in Grude, and then discharged for house treatment. As of spring 1993, his unit was stationed in the barracks in Dretelj. After his injury, he saw the Accused Mikulić for the first time sometimes in late August, when he saw him limping.

112. The Court, based on the testimony of the Accused Dražen Mikulić and the witnesses Mario Udovičić and Marinko Sosa, found beyond a doubt that the Accused was injured in the place of Gnojnice – Bišća polje on 15 July 1995. The Court found this fact also based on the documentary evidence tendered into the case-file, that is, the documentation which suggests that the Accused sustained injuries while he tried to evacuate the killed and the injured

soldiers after the shelling on 15 July 1993 in Bišća polje, and that he was treated in the Health Center in Grude.<sup>13</sup>

113. The Prosecution evidence related to the medical documentation issued by the Head Dr. Antunović on 15 July 1993 suggests that this fact is irrefutable. The documentation shows that the Accused Mikulić was admitted for his injuries, sustained at the frontline, caused by the explosion and detonation of a shell, that he had several hematomas on his head and body, and several lesions on both knees, and several lacerations. The doctor recommended a one-month sick leave.<sup>14</sup>

114. As for the injuries sustained by the Accused, the forensic expert in medicine Dr. Hamza Žujo gave his evidence at the trial, having drafted his findings and opinion.<sup>15</sup> In his opinion, the expert Hamza Žujo stated that the Accused Mikulić, on the relevant day, sustained injuries in the form of lesions on both knees, head and body, which in their totality amount to light bodily injuries. As a potential cause for the lesions and lacerations on both knees, the expert stated that they could be inflicted by pieces of the metal body of the shell. Lesions on the head and body were inflicted once the body fell on a hard surface. This expert witness believes that 15 days is a sufficient period for the wounds on the knees to heal, and for the hematoma on the body to disappear. Also, based on the medical documentation, the Accused was able to walk. At the trial, the expert witness Dr. Hamza Žujo maintained his findings and opinion, and pointed out that the Accused was able to walk immediately after he had sustained his injuries, though with difficulties due to skin tension. He did not have to carry any aids to assist him in walking, but the walking was accompanied by pain, and problems in walking were obvious. Yet, after 15 days from the injuries, he could walk without any impediment. The expert witness stated that, based on the medical documentation, only his skin sustained injuries but no ankle, which suggests that the pain was of no strong intensity. The Court fully accepted the findings and opinion of the forensic expert in medicine, Dr. Hamza Žujo, finding that it was drafted objectively, professionally, and with good quality on the basis of relevant medical documentation, and also in line with the rules of profession.

115. It was already specified in the reasons to the Verdict that the witness-victim Enver Grebović stated that the event in question took place on or about 25 July 1993, and the witnesses Almir Dedić and Hamzo Tabaković also stated that the event took place in late July or in early August 1993. Considering the fact that none of the witnesses who gave their evidence specified the date of the event, and that all three witnesses agreed that the ill-treatment of the prisoner Grebović took place in late July, the Court, based on their evidence, found that the relevant event took place in late July 1993. Considering that the Accused, according to the findings and opinion of the forensic expert in medicine, Dr. Hamza Žujo, was able to walk immediately after he sustained injuries, and that his status of health improved

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<sup>13</sup> O-2 Records on the killed/injured persons, Operative Zone Southeastern Herzegovina, 5<sup>th</sup> Battalion 3<sup>rd</sup> Company, no date; and O-3 Records on the killed/injured HVO military police officers, Mostar 4 December 1993.

<sup>14</sup> T-21-A Medical documentation related to the Accused Dražen Mikulić.

<sup>15</sup> T-21 Findings and Opinion provided by the forensic expert Dr. Hamza Žujo, No. KT-RZ-21/05 dated 25 March 2011.



over the following fifteen days until full recovery, the Court finds that the Accused Mikulić, in late July 1993, was in a position, despite his injuries, to visit the Dretelj prison.

116. The Court has also considered the testimony of the witness Mirhet Đuherić, who had a status of a semi-free prisoner, given that he could move around the prison compound, who stated that he saw the Accused for the first time during this event. The Court has also particularly evaluated the evidence of the victim Enver Grebović, who responded to the direct question of the Defense counsel if he observed any particular physical feature on the individuals he named Mikulić and Palameta that could make them easily identifiable, saying that on the relevant day he saw that the Accused Mikulić was slightly limping, which coincides with the findings and the opinion of the expert witness in medicine, Dr. Hamza Žujo, that a slight impediment while the Accused was walking could be observed.

117. Analyzing the testimony of witnesses related to persons who ill-treated the victim Grebović, the Court found that the witnesses Grebović, Dedić, Đuherić, Tabaković, Sakoč and Šoše stated consistently that the Accused Mikulić, together with the other HVO military police members, took part in the ill-treatment of the victim Grebović.

118. Witness-victim Grebović stated that he himself did not know the Accused, but that he heard from other prisoners, as soon as he regained consciousness, that Dražen Mikulić was among those who ill-treated him. He described him as a person of a medium height and dark hair, and added that he only saw him then and never again. Witness Almir Dedić also stated that he did not know the Accused from before, but pointed out that one of the soldiers introduced himself by saying *"I am Dražen Mikulić, HVO soldier, an extremist"*. Giving his description, he stated that he was about 180 centimeters tall and that he was perhaps one meter away from him when he asked people from Gacko to step forward. Given that the witness is about 190 centimeters tall, he estimated that the former was about 10 centimeters shorter than him. The witness believes that the Accused was of a medium built, with dark hair and about 22 or 23 years of age. Witness Hamzo Tabaković described the Accused as a person of a dark complexion and hair, young, short hair, about 175-180 centimeters tall. He did not know him from before either, but added that he was with a group of camp inmates in a lower part of the hangar and that he heard, while he was asking for people from Gacko, that someone of the HVO soldiers called for Dare, to which this soldier turned around and went towards the door. The rumor was that his name was Dario or Mario Mikulić, and some seven to eight days later people in the camp said his name was Dražen.

119. As already stated, witness Mirhet Đuherić enjoyed a somewhat different status in the camp compared to other prisoners, given that he worked at the water tank and washed the dishes. This witness pointed out that he was "semi-free", and that he used to sit outside the hangar with the military police officers. Describing the ill-treatment of the prisoners, he stated that a group of military police officers from West Herzegovina stood out and that they all feared one man – Dražen Mikulić. Asked how he could know who Dražen Mikulić was, the witness responded that the police officers called one another by their names, and that they called him Dražen. He remembers his family name of Mikulić, given that he remembers a communist official from the old system with the same family name Mikulić. He added that he was on fair terms with the military police officers in the camp, including Mikulić, that he talked to him

and Mikulić never beat him up, but that Mikulić spread fear and that everyone was on alert whenever he was on duty. He stated that the Accused Mikulić had a nice face, that he was young, and that he was a “bloke” and that he found it strange that such a guy could do such things, that he saw the Accused in the corridor before the trial and that he immediately recognized him.

120. Witnesses Admir Sakoč and Hasan Šoše did not eye-witness this event, but they all stated consistently that they heard in the camp that the Accused Mikulić had drunk Grebović’s blood, or as the witness Šoše stated that Mikulić had beaten up someone and drunk the blood of a camp inmate, originating from Gacko.

121. The Court accepted as authentic the consistent statements made by these witnesses. Individual discrepancies in the testimony of these witnesses, such as the place of origin of the Accused, the different names provided by witness Tabaković during the investigation and at the trial, and by witness Šoše who stated that his name was Dragan, were not of decisive relevance to suggest that it might be a different person, given that even these two witnesses clearly and repeatedly stated that the family name of the person concerned was Mikulić. Namely, having reviewed the List of members of the 5<sup>th</sup> Battalion, 3<sup>rd</sup> Company, located in Dretelj, it may clearly be seen that only Dražen Mikulić was a military police officer in this unit and that there was no other person in the unit with the family name Mikulić or the first name Dražen. Moreover, it is a well known fact that military personnel more frequently address one another by the family name, rather than by the given name.

122. Considering such testimony of these witnesses, who consistently mentioned the name of the Accused Mikulić, as a participant in the event of ill-treatment of the victim Grebović, the Court did not accept the allegations made by the Defense that someone else used a false identity, that is, the identity of the Accused. To that end, the Defense argued that no prosecution witness recognized Dražen Mikulić during the investigation, which is true, but the Court considered that the witnesses Grebović, Đuherić, Dedić and Tabaković described the Accused during the investigation, and their description is basically correct.

123. Witness Hasan Šoše also described in great detail how the Accused used to come at this relevant time to the prison in Dretelj, and added that the Accused Mikulić personally, together with another HVO soldier, took him to surrender his pistol, hidden under the bricks of his house. This event took place in early August, more specifically on 3 or 4 August 1993. On the way out of the camp, someone called the person who accompanied him “*Mikulić, Mikulić*”, and upon their return to the camp, the witness stated that Aničić asked him about a pistol and that he responded that Mikulić had taken it, after which Aničić called Mikulić by his family name to bring him the pistol, given that he considered it his spoil. The witness pointed out that the Accused did not ill-treat him on the occasion, and he described the Accused as a person at least 15 kilograms lighter than himself, acknowledging that he weighed about 90 kilograms at the time. He said that he resembled the person sitting in the middle, wearing suit and tie, pointing at the Accused. The review of the documentary evidence suggests that Ivan Aničić

was one of the commanders in the Dretelj camp.<sup>16</sup> The Court accepted the testimony of the witness Hasan Šoše, given that it was consistent, clear and convincing, and in line with the above specified evidence and with the evidence given by other witnesses who testified about Mikulić's presence in the Dretelj camp.

124. In relation to the time the Accused spent in the Dretelj camp during the relevant period, in addition to the above specified witnesses, other prosecution witness also gave their evidence. It stems from the testimony of the majority of those witnesses that they are aware of the name Dražen Mikulić, a military police officer, and that people mentioned this name in the camp.

125. As for the event described in Count 1 of the amended Indictment, the Court found beyond any reasonable doubt that the Accused Mikulić, together with other unidentified HVO military police officers, entered the hangar in the Dretelj camp, where the victim Grebović was detained, took the victim out of hangar and ill treated him, together with the others, by way of hitting him with rifle butts and pistols, by punching and kicking him heavily in his head and body. On that occasion, the Accused Mikulić cut the chests of the victim Grebović with pieces of broken glass, leaned over him, drank his blood and said "I have drunk *balija's* blood," and then pressed him against the door to the hangar and fired a bullet from the pistol above the victim's head.

126. Such a state of facts clearly stems from both the testimony of the victim Enver Grebović, who in great detail and convincingly described the course of the event in which he was ill-treated, and from the testimony of the witnesses Mirhet Đuherić, Hamzo Tabaković, and Almir Dedić, who eye-witnessed the event and gave consistent statements in reference to the important and decisive facts surrounding the ill-treatment of the victim Grebović, both cumulative and in line with the statement of the victim Grebović, for which reason the Court gave credence to their testimony. Namely, the victim Grebović stated that on this relevant night the Accused Mikulić entered the hangar armed with a pistol, and that he asked for people from Gacko. The witness pointed out that they walked from one prisoner to another and asked for their full names and the place of origin, so that once it was his turn the witness responded that he was from Tjentište, after which the Accused Mikulić explained that it was a partisans place, and then took him out in front of the hangar where they started beating him.

127. The witness Mirhet Đuherić also stated in his testimony the fact that the Accused Mikulić, together with the other members of the military police, entered the hangar that relevant night and asked the prisoners for their full names and places of origin. He further stated that the HVO military police officers, including Mikulić, entered the hangar, "walked from one detainee to another" and asked the prisoners for their places of origin, and once the victim Grebović responded that he was from Gacko, the Accused Mikulić and his fellow colleagues took him in front of the hangar and beat him up. The witness Almir Dedić also pointed out that on that occasion the Accused Mikulić, together with the other members of the military police,

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<sup>16</sup> T-32 HVO camps in Herzegovina – Gabela, Čapljina.

entered the hangar and asked for certain people and where they came from. Witness Hamzo Tabaković stated that he was standing near the victim Grebović in the hangar on that relevant occasion and saw the Accused Mikulić and several other military police officers entering the hangar, asking for people from Gacko. On that occasion, the Accused Mikulić walked from one prisoner to another and asked for their names and place of origin, so that once he reached Grebović he said that he was from Foča. Mikulić told him that Foča is a partisans place and ordered him to step forward, and then took him in front of the hangar. All these witnesses claimed in their testimony that the event took place in the evening hours. Witnesses Mirhet Đuherić, Hamzo Tabaković, and Almir Dedić were consistent in their statements that street lights were on in front of the hangar that night. Analyzing the statements of these witnesses, which are almost identical and accepted by the court as truthful, the Court reached a clear conclusion that the Accused Mikulić, on that critical occasion in the prison known as the Dretelj camp, took the prisoner Enver Grebović in front of the hangar, that is, out of the room in which he was imprisoned.

128. The Court has also considered the testimony of the witness Almir Dedić in the part in which he stated that the HVO ill-treated the prisoners most severely if they were losing in the battlefield and/or if any of their soldiers got killed. To that end, a prosecution exhibit was entered into the case file – the SIPA Regional Office Mostar Official note dated 11 April 2012, which suggests that on 15 July 1993 there were extensive combat operations in the territory of Gnojnice – Carski vinogradi – Vineyard, and the witness Mario Udovičić was injured in the place of Gnojnice. The Gacko Battalion “Šargan”, on behalf of the Army BiH, covered this area as its area of responsibility.<sup>17</sup>

129. Witness Safet Ratkušić, SIPA investigator, confirmed at the trial that he personally drafted and signed this Official Note, and pointed out that he gathered this information from people who were in Mostar during the war, and from other SIPA colleagues who told him that an extensive military operation took place in Gnojnice on 15 July 1993, and that the Gacko battalion “Šargan” was deployed there, whose commander was Suad Đanković a.k.a. Sudo. Witness Ratkušić pointed out that he was aware that the Gacko Battalion covered that zone of responsibility, and that the HVO had had combat operations in the area. He learned all that in late 1993, when he was in the area above Gnojnice, from his friends and relatives, who lived in the area at that time.

130. Considering the fact that the testimony of the witness Mario Udovičić and the Accused Mikulić, including the tendered medical documentation issued to their names respectively, suggests that two of them, as members of the HVO forces, took part in this military operation in the area of Gnojnice on 15 July 1993, and were injured there, the Court finds that the Accused Mikulić shared a personal motive to seek prisoners from Gacko in the Dretelj camp, given that members of the Gacko Battalion, on behalf of the Army BiH, took part in this armed conflict.

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<sup>17</sup> T- 42 SIPA Official Note No. T-16-12/3-1-04-2-SZ-122/12 dated 11 April 2012.

131. The Court has also considered the fact that the witness Hamzo Tabaković stated that, in addition to the victim Grebović, the prisoners Avdo Spahić and a person known as Sulejman were also taken out of hangar that night. Review of the List of Prisoners in Čapljina (T-33) suggests that Sulejman Čustović was imprisoned in the same hangar as the victim Grebović and witness Tabaković, and that he is also from Gacko, like Grebović, while Avdo Spahić is from the municipality of Ljubinje.

132. In reference to the act of ill-treatment, the witness-victim Grebović stated that two persons beat him up, that the Accused was in front of him, and that Dražen Mikulić punched and kicked him, and hit him with a pistol in his head, while the other person was punching and kicking him, and hitting him with a semiautomatic rifle in his legs. He received more than one hundred blows on the occasion, they were beating him for as long as he could stay on his feet. During the ill-treatment he fell once, and as a result of the beating both of his zygomatic bones were broken, and he bled from the nose and mouth. The witness-victim pointed out that on that occasion Dražen Mikulić took a piece of glass from a broken bottle and cut him in his chests, then ordered him to kneel down and put the head on the knees, so that he drank his blood and shouted “I have drunk *balija’s blood*.” Then he pressed him against the door to the hangar and fired a bullet from pistol above his head. He thinks that the ill-treatment continued for about 35 minutes.

133. In reference to these circumstances, the witness Đuherić, eye-witness to the event, stated that several persons were kicking and beating up the victim Grebović, among whom the Accused Mikulić stood out, as a result of which the victim fainted. He said that at one point the Accused approached Grebović, leaned over him and started drinking the dropping blood, and said “*I have drunk balija’s blood*,” after which Mikulić took his pistol, pressed Grebović against the door and fired a bullet above his head.

134. Witness Almir Dedić stated too that he saw several persons beating the victim Grebović “with everything and anything”, kicking and hitting him with hands, knees, rifle butts, boots, all over his body, that the beating continued for about half an hour, and that the Accused Mikulić was also beating him with his boots on. On that occasion, the Accused took a broken bottle and cut Grebović under his throat, then pressed his lips to drink blood and said “*Look at me drinking balija’s blood*”.

135. As for the ill-treatment, witness Hamzo Tabaković stated that he partly observed this event and saw when the Accused Mikulić, in front of the hangar, hit Grebović in his face with his hand. Also, at the moment when they put him into an upright position, he heard someone saying “*I have drunk balija’s blood*”, and he only assumes that it was Mikulić’s voice, given that he saw a moment ago that Mikulić was beating him. This witness pointed out that he had also heard one shot in front of the hangar just before Grebović returned to the hangar.

136. Witnesses Admir Sakoč and Hasan Šoše, who did not see the event, said in their testimony that they had heard from others in the camp that the Accused Mikulić had ill-treated Grebović. Witness Sakoč stated that he heard that Mikulić had drunk Grebović’s blood, saying that he had drunk *balija’s blood*, and witness Šoše also confirmed that he heard that Mikulić

“beat someone up” and drank a prisoner’s blood.

137. Considering the statements of these witnesses, particularly the eye-witnesses, the Court finds that their statements about the relevant facts related to the ill-treatment of the victim Grebović were consistent and complementary, for which reasons the Court took them as authentic. This primarily relates to the fact that the Accused Mikulić, together with other members of the HVO military police, took part in the ill-treatment of the victim Grebović by way of beating him with a rifle butt, pistol, hands, and kicking him in his head and body, that the Accused cut him across his chests with a piece of glass and then drank his blood, and stated “I just drank *balija*’s blood,” and fired a bullet above the victim’s head, that the victim fell on his knees, completely beaten up and soaked in blood, that his mouth, nose and head were bleeding.

138. As for certain discrepancies in the statements of these witnesses, related to the number of persons who participated in the ill-treatment of the victim, and the identity of those other persons who ill-treated the victim, the Court did not find them important for the establishment of the identity and the acts of the Accused Mikulić in this event. It clearly ensues from the testimony of these witnesses that during this critical event, apart from the victim Grebović, other prisoners too were taken out of the hangar in the Dretelj camp, and that several HVO members participated in the ill-treatment, for which reason it is understandable that different witnesses remember minor details differently, which, ultimately, is not of decisive importance for the correct establishment of the state of facts related to the acts committed by Mikulić.

139. These discrepancies in the testimony of the witnesses also include the dilemma whether the door to the hangar was opened or completely or partly closed during the ill-treatment of the victim Grebović, about which the witnesses gave different answers. The eye-witness Đuherić could not clearly state whether he saw this event from the outside or through the window on the hangar, but he added that he could clearly see it. Witness Tabaković stated that he saw this event only partly, through the window on the hangar, and witness Dedić claimed that he was close to the door and saw the event through the door. These witnesses gave consistent accounts that the windows on the hangar were broken at that time, that the event took place in front of the hangar on the side where the door and windows were, and that there were streetlights in front of the hangar so that they could clearly see the entire event. It is also undisputed that the door of the hangar was quite big, made of iron, and none of the witnesses stated that it was locked once Grebović left the hangar.

140. Witnesses Đuherić, Tabaković, and Dedić described this event very convincingly, in great detail, and in a manner in which eye-witnesses to an event may describe it, for which reason the Court finds that they did not learn about this event from others, and that they did not merely reproduce somebody else’s observations. None of these witnesses suffered grave physical or mental harm from Mikulić in the Dretelj camp, for which reason these witnesses did not have any personal motive to fraudulently incriminate Dražen Mikulić for the acts charged under this count. Witness-victim Grebović, who has been living in the USA for many years now, stated that he could not remember any of these witnesses who testified about his ill-treatment, who basically confirmed his testimony in reference to the important facts in all

relevant aspects.

141. As for the consequences the victim suffered during this ill-treatment by the Accused Mikulić and other HVO military police officers, based on the statements of the victim, as well as consistent statements of the witnesses Đuherić, Tabaković, Dedić, and Sakoč, the Court found that the victim sustained multiple blows with the rifle butt, pistol, hands and kicks all over his body and head, as a result of which the victim fell on his knees, bled from the mouth, nose and head, and also sustained lacerations on his chest.

142. The victim himself stated that he was not able to walk for seven days or leave the hangar because of the injuries, and due to the high fever and lack of water he had to drink his urine. Witness Đuherić confirmed that the victim Grebović sustained multiple injuries, that he was beaten up “beyond belief,” that he was moaning for several days and lied on the ground so that others had to bring him food to the hangar. This witness stated that Grebović’s eyes were closed up, and that he bled from the nose and face. Witness Dedić described Grebović’s injuries in a way that he was completely beaten up and soaked in blood, that he bled from nose, and had his zygomatic bones were broken, while witness Hamzo Tabaković pointed out that Grebović had blood on his chest and head, broken zygomatic bones, bruises on his back, lower back and other parts of his body. Witness Admir Sakoč claimed too that he saw the injuries on the victim Grebović in the camp.

143. Considering the multiple injuries of the victim, as consistently pointed out by the witnesses, and the fact that he was completely beaten up all over his body as a result of the ill-treatment, that he bled from his nose, mouth, and head (broken zygomatic bones), and the testimony of the victim and the witness Đuherić that he could not get up and go to take his meal for days after this beating, the Court finds that he suffered huge pain due to the beating and violent actions of the Accused and other HVO military police officers. The victim stated that he was afraid during the ill-treatment that he could fall down, as he believed that his head would be even more exposed to the blows. The firing from pistol also served to intimidate the victim, which the witness Đuherić described as stressful. All this, together with the established fact that the Accused Mikulić at one moment leaned over him to drink victim’s blood, stating “I have drunk *balija*’s blood,” clearly suggest that the victim suffered not only physical but also mental harm and pain. By these acts, the Accused Mikulić violated Article 3(1)a) and c) of the Geneva Conventions, given that he inflicted physical injuries on the victim Grebović and harmed his personal integrity, that is, treated him with in an insulting and humiliating manner.

144. The victim Enver Grebović stated in his testimony that he was arrested and taken to the Dretelj prison as a civilian. Based on the documentary evidence from the ICTY archive related to particulars of the victim, tendered into the case file, it may also be seen that at the time of arrest he was not a member of any military unit and that the HVO military police arrested him in his house on 1 July 1993. Considering this fact, being arrested as a civilian, he enjoyed protection under Article 3(1)a) and c) of the Geneva Convention Relative to the Protection of Civilians in Time of War of 12 August 1949. On the other hand, the Accused was a member of the HVO during this relevant period, that is, of the HVO military police, and as such he used to come to the Dretelj prison, next to which there was his military police barracks. The acts he committed were clearly carried out during the armed conflict between the HVO and the

ARBiH, and the Accused had knowledge, considering the place of commission and the fact that the victim was imprisoned in the hangar, that the victim enjoyed protection under Article 3 of the 1949 Third Geneva Convention.

**(ii) Count 2 – The ill-treatment of prisoners “on the power cable”**

145. Evaluating the presented evidence, the Court found beyond any reasonable doubt that the Accused Mikulić, in the period between late July and late August 1993, in the prison known as the Dretelj camp, ordered three unidentified prisoners to come out of the solitary and grab a power cable, and prisoners on duty to beat them, which they did by kicking them and hitting them with sticks all over their bodies, as a result of which the prisoners from the solitary suffered great pain.

146. Based on the presented evidence, the Court found that there were several facilities in the Dretelj camp, in which the prisoners were held, such as several hangars, tunnels, while the prisoners named one facility a solitary or dungeon. Though the number of persons imprisoned in this facility, according to the consistent testimony of witnesses, varied between forty and sixty, the facility was named a solitary due to the fact that it was above the hangar and without any windows, and the Court verified this fact during the inspection of the site. Also, the documentary evidence, tendered into the case file, suggests that this facility was known as a solitary.<sup>18</sup>

147. In reference to this event, the witness Mirhet Đuherić testified and stated that on one occasion Dražen took out three prisoners and three prisoners on duty, himself included, and forced the three prisoners to stand between two pylons, on the power cable connecting them, and told other prisoners to beat them, which the two prisoners on duty did, whereas he could not do it. He was explicit that Dražen ordered them to beat the prisoners, using the words he can never forget: “....now, you can beat them, you do not see your wives and children because of them...”.

148. The Court gave credence to the witness Mirhet Đuherić, as he was the eye-witness to this event. The witness Đuherić testified convincingly and clearly about this event, and consistently from the very beginning, and his testimony is exactly the same in important facts as the statement given during the investigation. Namely, at the trial and during the investigation, the witness Đuherić stated that he witnessed the ill-treatment of the prisoners from the solitary, ordered by Mikulić, in a way that he ordered three prisoners from the solitary to grab a wire, stretched between two pylons, and then told the prisoners on duty, known to him, whom he identified, to beat them, whereupon these two prisoners on duty did that, while he stood aside and did not beat them. Two days later, he met Mikulić again in the camp compound, and Mikulić gave him a pack of cigarettes and told him that he had “opened his

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<sup>18</sup> T-33 List of prisoners in Čapljina, internal document.



eyes,” and the witness never saw him again beating the prisoners, and soon thereafter Mikulić left the camp and the witness never saw him again in Dretelj.<sup>19</sup>

149. Witness Đuherić stated that this event took place in the midst of the day, but he could not remember the date, given that he stated that he somehow lost the sense of time. He only thinks that this event could have taken place after he worked on a water tank in August 1993. Given that the witness Đuherić could not specify the time of this incriminating event, the Court accepted the allegation from the Indictment that it was between late July and late August 1993. Another reason for this is that the Court found that the Accused was in the camp in late July (as found in the reasoning of Section 1 of the enactment clause of the Verdict), and also the Accused himself stated that as of early September he assumed a new duty, which is in line with the testimony of the witness Đuherić, who stated that soon after this event the Accused Mikulić left the camp and the witness did not see him again.

150. As already stated in the Verdict, the witness Đuherić had a different status in relation to other prisoners, given that he was “trusty (on duty)”, and as such he had an opportunity to talk to military police officers, including the Accused Dražen Mikulić. He remembered well his family name as he remembers the last name of a communist with the family name of Mikulić. Witness Đuherić stated that they all wanted to be on good terms with the Accused, that he had an opportunity to talk to the HVO military police officers and that he learned from them a number of names of the HVO military police officers who served in the Dretelj camp, so that he listed some of them, such as Ivica Nikolić, Mlikota, Jukić. As for the relevant event under this section in the enactment clause of the Verdict, the witness had no dilemma that the military police officer who ordered him and two other prisoners on duty to beat the prisoners was indeed Dražen Mikulić, and also that he talked to him on that occasion. More specifically, he added:

“...well, I know I told him I could not. I asked him what it would be like if I had an opportunity to beat you, something like that. He really did not do anything to me, he did not even touch me, he let me go. But it was such an ugly scene, just to see that, it was bad to experience it, that someone makes you beat your own people, or at least to try to make you or something like that. That, that, it is so difficult to even remember that...”

151. According to the witness Đuherić, the military police officer who ordered this ill-treatment, spoke an ikavian dialect when he told the prisoners on duty “*well, you can beat them now, you cannot see your wives and **children** because of them ...*”. During the trial, in his testimony as a witness, the Accused spoke in both ijekavian and ikavian dialects, so that among other things he stated at one point in time “*in that **area**, the area of responsibility is a wider notion*”, which furthermore corroborates the conclusion by the Court that the witness Đuherić, together with the two prisoners on duty, received the order from none other than the Accused Mikulić to beat the prisoners from the solitary.

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<sup>19</sup> Witness Examination Record No. 17-1273-94/06 dated 11 May 2006.

152. Other prisoners also experienced ill-treatment “on the power cable” in the Dretelj camp, and the wire was near the solitary at that time. Dr. Mehmed Kovačević also testified about that type of ill-treatment, and the Court gave credence to this witness. He stated that he was transferred to the solitary after some fifteen days spent in the hangar, and the condition there were much worse than in the hangar. There were occasions when, during the beating of prisoners at lunchtime, one of the military police officers would pick a stone and hit the prisoners. The prisoner who was hit had to come out “on the power cable” placed between two sticks, and the electricity ran through the wire. The objective was to see who could remain longer on his feet. He added that the military police officers once took him “on the power cable” in front of the solitary, and also Senad Bešić, who was a mentally ill person. They gave Bašić a rubber hose and ordered him to beat me with that hose, until he gets tired. This was always carried out by groups of several military police officers, who would exercise karate moves on the prisoners and beat them with objects like a rubber hose, stick of walnut or ash branches. Witness Mustafa Dizdar also confirmed that the prisoners were hit with stones as a way to select prisoners in the solitary to be ill-treated and molested.

153. Describing the way in which the prisoners were beaten up on that relevant occasion, witness Đuherić stated that the prisoners on duty “ripped off a wood-like plant which grew nearby” and beat them up with that and kicked them for some fifteen to twenty minutes. The Court finds, considering the object with which the prisoners were beaten, the duration of ill-treatment, and the fact that two persons – prisoners on duty participated in it, that the victims suffered great pain.

154. Witness Đuherić did not know the names of prisoners who were on that occasion taken on the power cable and beaten up, so that the Court could not identify the victims. However, the Court finds that they were civilians in terms of the above specified provisions of the Geneva Conventions, based on which, in case of doubt, persons have to be considered civilians.<sup>20</sup>

155. By giving orders to other prisoners – prisoners on duty, which he gave as a military police officer, to act as previously described, the Accused Mikulić acted in violation of Article 3(1)a) of the IV Geneva Convention, considering that the victims were subjected to physical harm, as well as injuries of their personal integrity.

## **B. INDIVIDUAL RESPONSIBILITY**

156. Considering everything stated above, the Court found that in this specific case the following underlying acts satisfied the criminal offense under Article 173(1)c), that is, that the acts of which the Accused was found guilty (ill-treatment of the prisoner Enver Grebović and the order to beat the prisoners “on the power cable”) were committed in violation of international law, that the violation was committed in time of war and/or armed conflict and in relation to it, and that the Accused Dražen Mikulić, with his acts described in Section 1 of the

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<sup>20</sup> See part of the Verdict A-(a): Act of the perpetrator has to be committed in violation of international law.

enactment clause of the Verdict, including his order given to other persons to beat the prisoners, as described in Section 2 of the enactment clause of the Verdict, inhumanely treated the prisoners by inflicting upon them great pain and fear, whereby he committed this criminal offense (*actus reus*).

157. Furthermore, the Court found *mens rea* reflected in the knowledge of the Accused that his acts constitute a criminal offense; he was aware of his offense and the fact that as a result of his acts a forbidden consequence would be an outcome (inflicting on a person a grave bodily or mental harm and fear and injuries of the bodily integrity), and his conduct suggested that he wanted such a consequence (intent), so that he bears criminal responsibility for the offense committed in terms of Article 180(1) of the CC BiH, which in its relevant part provides that a person who *orders or commits* a criminal offense under Article 173 of the CC BiH is individually criminally responsible for the commission of that criminal offense.

158. The Accused committed the criminal offense referred to in Section 1 of the enactment clause of the Verdict as a co-perpetrator, together with other persons (Article 29 of the CC BiH), while he acted as the perpetrator in the commission of the criminal offense referred to in Section 2 of the enactment clause of the Verdict.

### **C. SENTENCING**

159. Adjudicating on the punishment, the Court evaluated all the circumstances applicable to the Accused Mikulić, which affect the punishment, as provided in Article 48 of the CC BiH, particularly the degree of criminal responsibility (offense committed with intent), degree of endangering and violation of the protected value, and the circumstances surrounding the commission. In meting out the punishment, the Court considered the following mitigating circumstances: his prior conduct, no prior convictions, personal and family circumstances, that he is married and father of three juvenile children, that he behaved properly during the trial, and that he was a rather young person at the time of commission of these offenses. Concurrently, the Court did not find any aggravating circumstances. Considering all the mitigating circumstances applicable to the Accused, which in their totality amount to particularly mitigating circumstances, with no aggravating circumstances, the Court, having applied Article 49 of the CC BiH, reduced the punishment below the statutory minimum and sentenced the Accused to a term of imprisonment of six (6) years, which is proportionate to the gravity of the offense and the resulting consequences, finding that this reduced term of imprisonment will achieve the purpose of punishment, both at the general and the individual level.

160. Pursuant to Article 56 of the CC BiH, the time the Accused spent in custody, based on the Court of BiH Decision to order custody following the pronouncement of the Trial Verdict dated 14 September 2012, shall be credited towards the imposed punishment, and it shall run as of the day of the delivering of the Decision and continue for as long as custody is applicable.

## IV. COURT'S FINDINGS

### ACQUITTAL

#### (i) Count 1 – Abuse of prisoner Semir Balavac

161. Under Count 2 of the Indictment (Section 1 of the operative part of the Acquittal) the Prosecution charged the Accused with the following: In early August 1993, in the prison known as the Dretelj camp, he physically abused the prisoner Semir Balavac by kicking and beating him with a baton several times against his head and body, whereupon Senad Bešić punched him in the head, as a result of which he fell on the ground in great pain.

162. Based on the presented evidence, the Court could not find beyond a reasonable doubt that the Accused Mikulić physically abused the injured party Balavac, in the manner as described in the Indictment. Primarily, given that at the relevant period of time there were two prisoners in the solitary cell with the name of Semir Balavac, the Court had to establish if the witness Balavac who testified in this case was actually the injured party who had been abused in the Dretelj camp. Bringing into connection the evidence given by witnesses who testified that the prisoner Semir Balavac whose brother was a member of the Army of BiH was the one who had been abused, and the testimony of the witness Semir Balavac who confirmed that his brother was a member of the Army of BiH, as well as the inspection of documentary evidence-list of prisoners in Dretelj showing that the injured party Semir was much older than his namesake, the Court found beyond any doubt that the witness Semir Balavac who testified in these proceedings was exactly Semir Balavac who was injured by the criminal offence according to the Indictment.

163. Furthermore, it was established beyond any doubt that HVO members physically abused the witness Semir Balavac during his stay in the camp. This unequivocally follows from the testimony of witnesses SH-1, Kovačević, Isaković and Pejak who, as previously noted, testified that a probable reason for such a treatment was the fact that Semir Balavac's brother was a soldier in the Army of BiH. When asked about the prisoner Semir Balavac, Doctor Kovačević stated that he knew two persons by that last name, one of whom received an extremely bad treatment because his brother Nusret was a famous soldier in the Army of R BiH.

164. However, none of these witnesses confirmed that they saw the Accused Mikulić beating Semir Balavac. Witness SH-1 stated that the injured person Semir Balavac was beaten, that other prisoners from the solitary cell were beaten too, but he did not recognize the persons who had beaten him. Witness Ahmet Isaković also stated that Semir Balavac was abused in the camp and that Semir „*would not fall down for more than half an hour*“, but this witness too said that he could not see who did the beating, because “every day others would come.” Witness Mehmed Kovačević said that Semir Balavac was taken out on several occasions; he was abused and the consequence of abuses were multiple fractures of ribs; however this

witness did not state that it was the Accused Mikulić who abused the injured party.

165. The witness–injured person himself gave several statements about the event, both during the investigation and the main trial. Furthermore, he testified about his physical abuse which happened on the same day as the relevant incident and is hence connected thereto in terms of space and time, in the case before the Cantonal Court in Mostar against the Accused *Petar Matić* et al. Analyzing his previous statements and his testimony given at the main trial, the Panel noticed that the witness lacked consistency, and that he gave different accounts during the main trial and during the investigation.

166. In his testimony during the main trial he stated that upon his arrival in Dretelj on 1 July 1993 he was placed in one of the two tunnels where he stayed until 2 August 1993, which is when he was taken to lunch by the HVO member Vido Palamenta, and separated together with Edin Đulić, Medin Kaplan and another prisoner, and taken to a facility near the prison gate where several HVO members (Ante Krešić and others) beat him up, as a consequence of which he was all covered in blood; on this occasion they put some salt into his mouth. On the way back he was the only one who was separated from the group and left with “the group from the solitary cell”. He stated that during the relevant incident he saw the prisoners going for lunch from the solitary cell where he joined those prisoners; Dražen Mikulić, whom he never saw before that, took him over and started beating him together with Senad Bešić a.k.a. Trebinjac, by rushing towards him and kicking him in the ribs with a boot, and when he fell down he started beating him with a baton. Mikulić and Senad Bešić hit him there several times with their boots and baton in the head and ribs, whereupon he lost his consciousness. At the time he did not know that the person who beat him was named Mikulić, rather he learned that from other prisoners later on the same day of 2 August. He stated that he remembered that day because it was the first day when he came to the solitary cell; he had been beaten already and was “hardly alive” when Mikulić “kicked him with a boot”, so it was his worst day in Dretelj.

167. In his first testimony given in 1997, in the case v. the Accused *Petar Matić, Ante Krešić and others*, he noted that on 2 August 1993 Krešić particularly tortured him, when Vide Palamenta took him out of the solitary cell.<sup>21</sup>

168. In the next statement he gave to the State Investigation and Protection Agency in 2006 he stated that from 13 to 15 July the prisoners received no food or water for three days. He further stated that a police officer with a nickname „Dugi“ brought him together with three other prisoners to the hangar and handed them over to Krešić, where Mikulić took them over and abused and beat them with a baton in the head, whereupon Dugi placed them in the solitary cell. Mikulić and Bešić received them in the solitary cell where they beat them up. Upon the arrival of Palamenta (Dugi) they would stop the abuses waiting for new orders.<sup>22</sup>

169. During the testimony at the main trial against the Accused Petar Matić in 2007, the injured party Semir Balavac described the events that took place on the relevant day, noting

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<sup>21</sup> O-4 – Witness examination records for Semir Balavac, dated 6 May 1997.

<sup>22</sup> T-6 – Witness examination records for Semir Balavac, No. 17-12/3-9306, dated 11 May 2006.

that after the incident with Krešić he was placed in the solitary cell all covered in blood, where he spent three days and three nights without any water or food.<sup>23</sup>

170. Bringing into mutual connection the aforementioned statements, it is clear that the witness Balavac is mixing up some incidents in terms of space and time. He once said that the incident when he was covered in blood took place on 2 August 1993, whereas the other time he put it in the context before the incident when he had not eaten or drunk for three days, between 13-15 July; other witnesses noted this fact about food and they were consistent in saying that they received no food or water for a few days in mid July 1993. Additionally, from his 1996 statement it follows that the torture took place after he was brought to the solitary cell, while later on he put the incident in the context before his arrival at the solitary cell.

171. In his statement given during the investigation before the Prosecutor's Office of BiH, the injured person said that Mikulić gave him a hard kick with a boot in the loins and beat him several times with a baton in the head, and that Bešić kicked him several times in the back, which is different from his testimony at the main trial when he said that Trebinjac (Senad Bešić) punched him only once in his ears.<sup>24</sup>

172. Even during the testimony at the main trial the witness was contradictory about some details, both during the direct and cross examination. When the Trial Panel members asked him questions, he first noted that Mikulić and Bešić beat him several times for around 15 minutes each time, whereupon he fainted, whereas later on, when asked by the Court, he stated that Mikulić did not beat him much, it lasted for 6-7 minutes and he did not lose his consciousness.

173. The witness was summoned again to testify at the main trial as the Court's witness, and when asked by the Court if Mikulić was the only police officer who was present or if there were others as well, he said: *„Well, there were several of them probably, there must have been several, but I did not see anything, and I could not see anything as I was covered in blood.“*

174. According to him the abuse took place during the lunch, that is, while 7-8 prisoners were eating. When asked by the court if they could see the incident he replied: *„I do not know which prisoners had lunch at the time, I do not know if they were allowed to watch the incident“*

175. Similarly, when he testified later on, his description of the gravity of injuries also became disputable, so he denied that he had fallen unconscious, noting *„I did not faint literally,...it was sort of falling on the ground, staggering a little and then back on your feet.... Fracture of ribs occurred later by a soldier from Konjic.“*

176. The foregoing clearly shows that there are discrepancies in the testimony of the injured person Balavac, some of which are important to establish the identity of the perpetrator. When asked if he could see well which person beat him, the injured person noted that he did not as he was covered in blood. When asked if somebody else saw the incident, in his first statement

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<sup>23</sup> O-5 – Main trial record, Mostar Cantonal Court, No. K—7/01, dated 10 December 2007.

<sup>24</sup> T-5- Witness examination record for Semir Balavac, No. KT-RZ-21/05, dated 8 July 2010.

he said that nobody saw it, while in his second statement he said that some may have seen that, but he did not know if they saw it. When asked who told him that it may have been Mikulić, since prisoners could not see that and he himself did not know if somebody else saw the incident, witness Balavac said that he did not know who could see it or who told him. During the main trial he said that on the same day when he was beaten on the premises designated for lunch he heard that it was Mikulić who did it, while during the investigation before the Prosecution of BiH he said that he did not know Mikulić, but learned his first and last name later on.

177. None of the examined witnesses confirmed that they had seen the incident when Mikulić and Bešić beat Balavac. Witness Kovačević said that he learned about Mikulić in the camp, but he did not confirm the testimony of the injured person Balavac that the Accused Mikulić beat him together with Trebinjac. Witness S-1 also stated that he knew Semir Balavac, and that he was detained together with him in the solitary cell, but he had not seen when they abused him and beat him. This witness also knows that on one occasion Balavac returned to the solitary cell all black and blue, and he heard that they had connected the field phone inductor to his ears, but this witness indicated that on that occasion he was beaten by persons whom Semir had known from before, and he linked this to the case against some other persons prosecuted before the Mostar Cantonal Court.

178. Furthermore, the Panel took into account the fact that according to the description of the injured party the incident took place between two hangars where they used to have lunch, when around 40 prisoners from the solitary cell were at lunch, and previously he had passed by the hangar covered in blood, however none of the prisoners whom the Prosecution examined as witnesses said they had seen this incident.

179. Apart from that, the Court, while evaluating the credibility of the testimony of witness Semir Balavac, also evaluated his testimony concerning other incidents on which he testified, which are related to the Accused Mikulić, and found that the testimony of this witness in its relevant parts is contradictory to the testimony of other witnesses about the same events, and it was also inconsistent with his previous statements. During the main trial, witness Balavac said that the Accused Mikulić would bring his friends in front of the solitary cell, military police officers or HVO members, who would open the door, pick three or four corpulent persons and take them in front of the solitary cell where there was a livewire in front of which “you would kneel and they would kick you with their boots, beat you with batons, put a pistol in your mouth“, and throughout this time Mikulić was there with them. Witness noted that on one occasion he was taken to the power cable and they put some sand into his mouth, but he did not see if the Accused hit him on that occasion. Furthermore he said that whenever the Accused brought his friends around he would unlock and lock the solitary cell, *„take [the detainees] away and once the job is done he would lock them back in the solitary cell“*, and that the Accused was present during such an abuse, but he did not take part in the beating.

180. At the hearing to which the Court summoned witness Balavac in order to clarify some issues, the witness, with respect to the livewire incident, gave a considerably different statement, saying that two HVO soldiers beat him while on the power cable, that he saw the Accused that day at lunchtime only, and that <sup>47</sup> the Accused was not present when he was

abused that day, he did not hear that the Accused ordered those soldiers to beat him, while the unknown soldiers unlocked the door to the solitary cell themselves, but he did not see who locked the door later.

181. During the investigation before the BiH Prosecutor's Office, with respect to the livewire incident, the injured party Balavac said that the Accused would bring his friends on a few occasions when he would take the prisoners out, and that he took him out on two occasions and ordered them to bend over the power cable while he would order his friends to start beating them, which they did; they would first put a pistol into his mouth, whereupon they would kick him with legs-boots in the head and body and then they would put a handful of sand into his mouth and order him to keep it in his mouth for a couple of hours until they come back. However, during the main trial, when clarifying the incident concerning the pistol in the mouth, the injured person said that the incident was not related to the power cable, rather it took place in front of all the prisoners from the solitary cell, and there were around forty of them, he offered a pistol to them and said „*kill yourselves, there is no life for you.*“

182. The Panel concluded that in this way the injured party Balavac gave considerably different accounts of the same event, where he first indicated the participation of the Accused in this incident, and later he changed his testimony, as he changed other details concerning the Accused. The Court also finds that the injured party differently described the incident concerning the pistol during the investigation and the main trial, while none of other witnesses-prisoners from the solitary cell, who testified in this case before the Court, confirmed that.

183. The Court was also mindful of the fact that during the presentation of photos during the investigation, witness Semir Balavac was not able to recognize the Accused, from among the presented photos of several persons, as a person who abused him during the incident. The Court did not accept as reliable the identification of the Accused during the trial in the courtroom, as it does not represent part of the identification process, rather a part of the testimony of the witness, bearing in mind the manner of the identification, that is, the witness stated that the Accused looked „a bit nicer than in the photo,“ which, according to the Court, was not convincing.<sup>25</sup>

184. Witness Mustafa Dizdar and witness Mirsad Pejak stated that they heard during their stay in the camp that Mikulić inflicted injuries on the injured person Balavac. Witness Dizdar could not say just how long he was in the solitary cell, noting that he had arrived in the Dretelj camp on 4 August 1992, and that soon thereafter he was transferred to the infirmary. The same witness stated that Semir Balavac told him in the camp that Mikulić had beaten him. However, this witness also stated that he knew the underage Emir Đulić and that Emir was subjected to a massacre, which he could not see it as he was facing the wall, and that Emir told him that he had got into a fight. Witness Dizdar further noted that Emir was in the same unit in the camp as him, and “it was an execution unit and an example as to how to intimidate others in Dretelj.” Witness Dizdar also stated that during his stay in the infirmary he personally

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<sup>25</sup> T-5 Witness examination record for Semir Balavac, No. KT-RZ-21/05, dated 8 July 2010;  
T-4a- Excerpt from CIPS photographs record.



learned from witness S-3 that Mikulić stabbed him with a knife in his leg. During the proceedings, these statements of witness Dizdar were denied by the injured party Emir Đulić and S-3, given that Emir Đulić stated that he had been in another prison facility all the time, that is, in the hangar, and that he was once abused with electric shocks, while witness S-3 stated that the Accused Mikulić did not inflict injury on his leg with the knife. Upon the inspection of camp inmates in Dretelj, one can see that witness Dizdar stayed in the infirmary, while the injured party Emir Đulić stayed in the hangar. Taking into account that this witness did not see the incident at issue, that his testimony concerning other persons and other witnesses was denied by the injured persons themselves, the Court did not accept witness Dizdar's testimony as reliable in the part where he said he heard from Balavac at the time of his stay in the camp that Mikulić had beaten him.

185. Witness Mirsad Pejak stated that he came to the Dretelj prison on 3 August 1993 in the group with Emir Repak, and that he was together with the injured Balavac in the solitary cell. He noted that the injured person Balavac was abused in the camp. When the court asked him just how he was abused, the witness responded that he had scars on his back from a rifle barrel, that he told him on the occasion that Mikulić had beaten him, and that he showed him the scars on the back, which he personally saw. He furthermore stated that he had known the injured person since their childhood as they grew up together. He learned of Mikulić from a doctor in the infirmary, who left the same day when Repak was killed; when he left the infirmary he was transferred to another hangar. The Court did not give credence to the testimony of this witness, given that his statement that Balavac, when showing his scars on the back from the rifle barrel, said that Mikulić had beaten him, is contrary to the testimony of the injured party Balavac himself, who did not say in his testimony that Mikulić ever hit him with a rifle barrel. The injured person Balavac noted that Mikulić had not beaten him much, that he suffered no consequences thereof, and that later on when people from Konjic had beaten him they broke his ribs and his nerve popped out. Furthermore, Semir Balavac stated that on the occasion at issue Ante Krešić and other HVO members beat him the most, which resulted in his being covered in blood, while during the investigation before the Prosecutor's Office of BiH he noted that Ante Krešić hit him several times in the back with a meter-long iron rod.

186. Witnesses Dizdar and Pejak, just like the injured party Balavac, come from the Stolac Municipality. Witness Pejak stated that he had known the injured party since his childhood, while in his statement given during the investigation witness Dizdar provided the names of injured persons who could help him. Taking into account these circumstances, as well as the fact that they stayed in the solitary cell only briefly, witness Pejak only a day or two, and that they testified about numerous events concerning the abuse of prisoners from the solitary cell, which has not been corroborated with any other evidence, the Court finds that their testimony about the foregoing circumstances was not reliable or authentic.

187. It is obvious that this count of the Indictment, apart from a number of potential witnesses (given that it was a camp and that the action did not take place in an isolated part of the facility, rather it occurred in the open space between hangars), is based only on the testimony of one witness, and that no other evidence about this was presented to corroborate

the testimony of the injured person Balavac, to the extent sufficient for the Court to find beyond a reasonable doubt that the incident occurred in the way the injured person described it, that is, that the Accused undertook the acts charged against him under the same count of the Indictment.

188. According to the international criminal courts jurisprudence, the Trial Panel has a discretionary right to decide if the circumstances in a case require corroborating evidence.<sup>26</sup>

189. According to the jurisprudence of the Appellate Panel of the Court of BiH defined in the *Vuković et al.*, the decision on culpability could not be considered as unfair if based on the testimony of only one witness, but only if that testimony is sufficiently convincing and logical and consistent with all other pieces of evidence, and if the decision which is based on that evidence is the only possible and reasonable conclusion in the case.

190. In this case the Court finds that the testimony of witness Semir Balavac was not of such a quality as to draw a reliable conclusion on the circumstances in the case at issue under Count 2 of the Indictment, and it was particularly insufficient for the Court to conclude beyond any reasonable doubt only on the basis of such a testimony that the Accused Mikulić together with Bašić took part in the perpetration of the crime. Consequently, taking into account the foregoing, the Panel applied the principle of *in dubio pro reo*, and acquitted the Accused of the acts charged against him under Count 2 of the Indictment.

191. Pursuant to the quoted legal principle, in the absence of evidence, under Article 284c), as read with Article 3, of the Criminal Procedure Code of BiH, the Court rendered an acquittal under this Count of the Indictment which charged the Accused with the criminal offence of War Crimes against Civilians, in violation of Article 173(1)c) of the CC of BiH.

**(ii) Count 2 – Abuse of prisoners at lunchtime and releasing on them a strong jet of water from a water tank**

192. Count 3 of the Indictment, apart from the abuse of prisoners on the power cable (for which the Accused was convicted under Section 2 of the Convicting part of the operative part of the Verdict), the Accused was also charged with two other completely different incidents, precisely with the beatings of prisoners from the solitary cell at lunchtime, as well as the abuse of prisoners with a strong jet of water from a water tank and filling the solitary cell with water from a water tank, where prisoners then had to stay for days. Although the Indictment described all three events under a single count, the Panel separated these events, considering that this count consisted of three separate, unrelated factual circumstances, with different

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<sup>26</sup> *Appeal Judgment in Kajelijeli*, Paragraph 170, quoting the Appeal Chamber Judgment in *Niyitegeka*, Paragraph 92 („The Appeals Chamber maintains its position that the Trial Chamber has the best position to evaluate the probative value of evidence, and may, depending on their assessment, rely on the testimony of only one witness in order to prove a certain material fact“). Appeals Chamber Judgement in *Gacumbitsi*, Paragraph 72, quoting the Appeals Chamber Judgment in *Semanza*, Paragraph 153.

factual events according to space and time. With respect to these charges, the Court could not, based on the presented evidence, find beyond any reasonable doubt the responsibility of the Accused, so taking into account that these were separate and completely different events, the Court rendered acquittal for these two different acts.

a. Abusing prisoners at lunchtime

193. With respect to the beating of prisoners from the solitary cell at lunchtime, the Prosecution presented several pieces of evidence, specifically the examination of witness Samir Balavac, Doctor Mehmed Kovačević, Mustafa Dizdar, Mirsad Pejak and protected witnesses S-1, S-2, S-3, SH-1.

194. Witness Semir Balavac, who came to the solitary cell in early August 1993, stated that the prisoners from the solitary cell would have lunch only after the prisoners from the hangar had finished theirs; while leaving the solitary cell for lunch, they would stand against the wall of the hangar, while military police officers would come and beat them with handles, chains and other items. During his shift, the Accused Mikulić would stand at the door of the solitary cell and beat every prisoner who would enter the solitary cell with a baton in the head, and if any prisoner would pass by faster the Accused Mikulić would bring him back and beat him with a baton on the head again. He stated that he saw Mikulić in the camp twenty to thirty times and that nobody was spared of beatings during his shift.

195. With respect to the incident, witness Mehmed Kovačević stated that military police officers would regularly beat the prisoners from the solitary cell while they were at lunch, with metal rods and walnut tree branch. They would go out in groups of eleven prisoners for a meal a day, which they would eat from bowls placed in the middle of the asphalt track, and when they finished their meal they had to lie down on the hot asphalt. The bowls from which they ate were not washed, and prisoners from the solitary cell were the last to get meals. Thereafter another group of eleven prisoners would go to lunch. Prisoners who finished were lined up against the wall with their hands above their heads, and military police officers would beat them all over their bodies, and the same procedure would be repeated with the next eleven prisoners. The witness described this as ritual beatings. Of the thirty days that he spent in the solitary cell, only five or six times were they not beaten at lunchtime, and there were two military police platoons that would take turns in following the same regime. He stated that Dražen Mikulić was among the police officers who beat them, that is, the witness stated that all police officers beat them, and there was no exception among them, nobody stood at the side, because "it was a difficult job to beat 60 people every day, while there were five or six police officers in one shift." The same witness remembers Mikulić in relation to two other events, specifically that he put a pistol into Mirza Čokleta's mouth, and that after the death of Omer Kohnić he said that all prisoners should be slaughtered.

196. Witness Mustafa Dizdar stated that military police members would beat them at lunchtime, that Mikulić "was frequently mentioned in relation to these events," but that at the time he did not know Mikulić, whose name he learned from other prisoners. When asked how Mikulić looked like, the witness responded "how could I know, when everything

happened while we were in a group.” The witness does not know how many times the Accused was in one such group, because he feared for his own life and then “he did not look who was there any more,” and he thought that Mikulić was there “when the Emir Repak problem occurred,” which is related to the incident described in a separate count of the Indictment.

197. Witness Mirsad Pejak stated that he came to the Dretelj camp on 3 August 1993 in the afternoon hours, and was in the solitary cell with other prisoners every day until October 1993; they were abused at lunchtime, among others by Dragan Mikulić, who kicked him and other prisoners, whose name he learned from other prisoners whom he had found upon arrival, but later on he was specific in saying that he learned his name in the infirmary from Doctor Enes from Neum. He noted that three military police officers and the person by the nickname Trebinjac abused him in the camp as soon as he arrived. This witness stated that his ribs were broken in the Dretelj camp, because he was beaten every day *“and then he was beaten by Mikulić and Trebinjac and Mijo, each and every one of them.”* Witness Pejak stated that he was transferred to the infirmary when Emir Repak fell over him and died; that he stayed in the infirmary for seven days, and that after the infirmary he was placed in hangar No. 4, where he did not see the Accused Mikulić any more, but only Mijo.

198. Witness S1 stated that at the relevant time he was in the solitary cell, that prisoners were beaten when they would go out for lunch, that one black-haired police officer, who guarded them the most and who he heard in the camp was named Mijo, stood with one big stick in front of the entrance of the solitary cell and every time they would go out to eat, on their way in or out, they had to stand in front of him to be hit and only then could they pass through. Thus, every time before they would go out to the field to eat they would be beaten up. As to the asphalt track where they would have lunch, the witness stated that they would be beaten on the track by whoever would pass by, they would just hit them and go away. He stated that the Accused Mikulić saw him once or twice while in the camp, and that he neither heard nor saw that he beat anyone. On 15 August 1993 he went for lunch when one of the HVO members and Bunda Trebinjac beat him so much that his ribs and teeth were broken and he was taken to the infirmary, where he remained until the camp was disbanded.

199. Witness S-3 stated that he was in the Dretelj solitary cell until mid July 1993 and that the prisoners from the solitary cell were abused when going out for lunch, that they were kicked with legs and boots, and that they were mostly beaten by Trebinjac whom they called Bunda, as well as the police from Konjic, and they were also beaten on their way out to lunch, when they would be beaten with a wooden rod or stick on the back, but he did not see who was beating them because they had to get out quickly, almost run, and thus they would sometimes hit him sometimes not. This witness claimed that the Accused also physically abused him during another incident.

200. Witness S-2 stated that he had been in the solitary cell since mid July 1993, and that prisoners were physically abused almost every day, both at lunchtime as well as before and after the lunch. The witness stated that they were mistreated by persons wearing uniforms with the HVO insignia, and that rumors were spread that those things were done by some people from Konjic. These prisoners were beaten<sup>52</sup> with laths, chains, batons, rifle butts and so

on. He further noted that he did not know anyone who took part in the abuse by his first or last name, and that he did not know who beat them as they had to face the hangar wall, and their hands were held on the back of their heads. He stated that he did not know the Accused Mikulić.

201. Witness SH-1 stated that the guards beat prisoners who left the solitary cell for a meal using rifles, kicked and punched them, but he did not recognize any of the HVO members or military police officers who did it. He noted that he saw Mikulić only when he abused Emir Đulić, which is related to another incident.

202. Taking into account the aforementioned statements of the witnesses, the Court found beyond any reasonable doubt that at the relevant time, July-August 1993, HVO members abused the prisoners from the room called the solitary cell while they were at lunch in the Dretelj camp. All witnesses who were examined about this circumstance during the main trial were consistent in their statements about this abuse. Furthermore, the consistent testimony of these witnesses shows that the prisoners from the solitary cell were abused in a way that the HVO members beat them with batons, chains, laths, rifle butts all over their bodies. The testimony of the examined witnesses reveals that the prisoners were beaten at lunchtime over a long period of time, and that many HVO members took part in the beatings.

203. Witness Kovačević claims that two military police platoons took part in the abuse, taking turns while following the same regime, that is, all military police officers beat them, there was no exception among them and nobody stood by the side, because it was “a difficult job to beat 60 people every day, while there were five or six police officers in a shift.” Furthermore, witness S-1 claims that on the track where they would have lunch, the prisoners from the solitary cell would be beaten by whoever would come by, they would beat them and walk away. Witness S-3 stated that the Konjic police beat them the most, and the same was noted by witness S-2 as well. It follows from the testimony of witness SH-1 that the military police and HVO members beat the prisoners from the solitary cell.

204. With respect to the Accused Mikulić, of all the examined witnesses, witness Semir Balavac specifically noted that, every time during his shift when people would come back from lunch, the Accused Mikulić stood at the door of the solitary cell and would beat every prisoner who would enter the solitary cell with a baton in the head, and if any of the prisoners would pass by quickly the Accused Mikulić would bring them back and beat them with a baton in the head again. He stated that he saw Mikulić in the camp some twenty or thirty times and that nobody was spared the beating.

205. However, none of the examined witnesses confirmed these statements of witness Semir Balavac that the Accused beat every prisoner in front of the solitary cell door, after lunch. Contrary to the testimony of Balavac, Prosecution Witness S-1, who was detained in the solitary cell of the Dretelj camp at the same time like witness Balavac, stated that another person, one Mijo, stood with one big stick in front of the entrance of the solitary cell and would beat the prisoners every time they would go out to eat; when going in or out he would beat the prisoners, so they would be beaten all the way until they reached the track where they would eat. Witness S-3 too stated that the prisoners were beaten up when going out for lunch,

when they would be beaten with a wooden rod or stick on the back, but this witness did not see who beat them since they had to get out very quickly, almost run, so sometimes he would be beaten and sometimes not.

206. Witness Kovačević stated that military police officers would beat them all over their bodies while they were at lunch, which he described as ritual beatings, noting that Dražen Mikulić was one of the police officers who beat them. However, the same witness remembers Mikulić only in relation to two other events that are not the subject of this Indictment. Witness Dizdar also noted that the Accused Mikulić was mentioned to have participated in the beatings of prisoners from the solitary cell at lunchtime, however this witness stated that he did not know Mikulić, and that he learned his name from other prisoners. When asked how Mikulić looked like, the witness replied: *"how could I know that when all of this took place while in the group."* The witness does not even know how many times the Accused was in such a group, adding that he was concerned as to what would happen to him.

207. Witness Pejak Mirsad was the only witness of all examined witnesses who said that he was abused every day at lunchtime, *inter alia* by Mikulić Dragan, who kicked him and other prisoners. However, with respect to this witness, the Court noticed that he, as he himself stated, spent only a day or two in the solitary cell, and that he learned the name of Dragan Mikulić in the infirmary from Doctor Enes from Neum, and that after the infirmary he was transferred to another hangar, where he no longer saw the Accused Mikulić, but only Mijo. In his testimony witness Pejak kept mentioning the name of Dragan, although the Accused's name is Dražen, and the Court had in mind that this witness stated that on his first day in the camp he was beaten by unknown HVO military police members and the person by the nickname Trebinjac. It was not until the following day at lunchtime that there was an incident resulting in the death of the injured party Repak, which will be separately reasoned in Section 4 of the Acquittal. It was with this injured party that witness Pejak arrived in the Dretelj camp in the afternoon hours, and, according to witness Pejak, he was transferred to the infirmary together with Repak, because after Trebinjac dealt a blow with a lath in Repak's head Repak fell on him. The Court could not establish when the Accused Mikulić kicked this witness at lunchtime and how this witness linked the Accused with the abuse of prisoners from the solitary cell at lunchtime, if he learned the name of the Accused only after he left for the infirmary. The Court finds unconvincing the statement of this witness that Mikulić abused him a few times at lunchtime, given that witness Pejak stayed in the solitary cell but for a short period of time, whereupon he did not see the Accused any more. Upon inspection of the list of prisoners in the Dretelj camp, the Court found that witness Pejak was indeed admitted to the infirmary, but this list does not include any doctor by the name of Enes from Neum.

208. Based on the presented evidence the Court could not find beyond any reasonable doubt the existence of the acts of the Accused concerning the abuse of prisoners from the solitary cell at lunchtime, that is, whom exactly the Accused beat, how many times and with what. The Indictment did not specify these elements, that is, the Indictment does not include a clear specification of the Accused's acts in that regard, which is necessary in order to establish his criminal responsibility; rather it describes the event in a way that the prisoners from the solitary cell were abused on several occasions by the Accused who, together with the other

unidentified HVO military police officers, hit them with different objects in the head and body.

209. Bearing in mind the foregoing, in the absence of evidence, pursuant to Article 284c) in conjunction with Article 3 of the CPC of BiH, with respect to these acts of abusing prisoners at lunchtime as referred to in Count 3 of the Indictment charging the Accused with the criminal offence of War Crimes against Civilians in violation of Article 173(1)c) of the CC of BiH, the Court rendered the Acquittal.

b. Abuse of prisoners with a strong jet of water from a water tank and filling the solitary with water

210. With respect to the incident under Count 3 of the Indictment that the Accused Mikulić released on the prisoners a strong jet of water from a water tank, which made the prisoners fall on the concrete floor, filled the solitary cell where the prisoners were held with water from the water tank up to approximately 5 cm of height, the following witnesses were examined during the main trial: Semir Balavac, Mirhet Đuherić, Mehmed Kovačević, and witness S-2.

211. Witness Mirhet Đuherić stated that as a prisoner in the Dretelj camp he volunteered to be in charge of the water tank in the camp on or about 21 July 1993, and since hygienic conditions in the camp were bad, and the prisoners would relieve themselves in bags and bottles, which they threw out the window, he, together with other persons who were in charge of the water tank, would wash and clean it away. There were instances when prisoners would fall during their bath due to the strong jet of water. It is not known if anyone ordered such bathing or cleaning. Furthermore, he added that working together with him at the water tank were Zlatan Alagić a.k.a. Bari and a driver by the name of Mladen Tadić. He does not know how much time he spent operating the water tank, noting that he worked there for twenty or twenty five days. As a trusty, he was in charge of a fire-hose, so he would climb on the water tank and raise the hose above to make a shower, but if a trusty in the boot would step on the gas, a jet of water would become so strong that it would push him back as well, while the prisoners would fall down; some of the prisoners drank too much water and would get sick, and others would faint or get injured. With respect to the solitary cell, witness Đuherić stated that on one occasion he “bathed” prisoners from the solitary cell and the room was filled with water and he saw prisoners wading through the water in the solitary cell. While working at the water tank, he did not see any military police officer working at the water tank, nor did he see any military police officers after he left to work in the kitchen working at the water tank. Witness Đuherić was adamant in saying that he never saw the Accused Mikulić at the water tank, nor did he ever hear that he was at the water tank at all or that he bathed prisoners with a hose. After he stopped working at the water tank, Zlatan Alagić a.k.a. Bari and one prisoner, Bosniak, who used to work at fire-service, continued this job.

212. Witness S2 stated that the prisoners from the solitary cell bathed twice with water from the water tank, once on the track and the other time in front of the solitary cell, when they filled in the room with ankle-deep water, around 5-6 cm high. When they were hosed, he and other prisoners fell due to the strong jet. He does not know the persons who bathed them and filled

the solitary cell with water.

213. Witness Semir Balavac stated that *“water tank was brought by one civilian, ... but it was not a civilian... this police officer Mikulić, he did it”*. The same witness noted that the Accused Mikulić let the water inside, allegedly to clean the solitary cell. He would fill the solitary cell with 40-50 cm high water, and prisoners had to sleep in there, that is, “remove the water outside” in order to be able to sleep there. He further said that this incident may have happened on or about 15 August in front of the hangar. Mikulić would tell them then to drink water from the water tank, whereupon he would hose them, causing them to fall five to six meters back, people would “fly through the air”. Furthermore, he stated that this event was attended by everyone in the solitary cell and that all prisoners in the solitary cell could see it. Bathing from the water tank happened once or possibly twice; he does not know who drove the water tank on the occasion, but he remembers that Mikulić was there once.

214. Witness Kovačević stated that camp inmates who were assigned to work at the water tank would allegedly wash the space inside the solitary cell with a hose, whereupon five centimeters of water would remain inside as there was no drainage, so they would spend days laying in human excrement, as the prisoners would relieve themselves in one corner of the solitary cell. The water tank was driven by one camp inmate from Čapljina, “so when they were in a good mood, they would lift the hose in the air to make a sort of shower and to make it pleasant, whereupon they would direct a jet of water at the prisoners and knock them down.” He stated that this is how they treated prisoners from the solitary cell on two or three occasions.

215. Taking into account the foregoing testimony of witnesses, the Court established based on their consistent testimony that at the relevant time, during their stay in Dretelj, or more precisely in the room called the solitary cell, during the washing of the camp a strong jet of water under the pressure from a water tank was released on the prisoners from the cell, causing the prisoners to fall down on the concrete floor, and the solitary cell in which the prisoners were held was filled with water from the water tank up to around 5 cm.

216. All examined witnesses described this event consistently, their statements were consistent and supplemented one another, due to which the Court accepted them in the context of the event. However, the Court could not find beyond any reasonable doubt that it was the Accused Mikulić who directed a jet of water at the prisoners and filled the solitary cell with water, given that only witness Balavac stated that he saw Mikulić performing the foregoing acts, while the other witnesses never confirmed it in their testimony.

217. Primarily, witness Đuherić who worked at the water tank for a long period at the relevant time, for twenty or twenty five days, and who subsequently remained there as a trusty since he was transferred to the kitchen, clearly stated that at the time when he worked at the water tank he did not see the Accused Mikulić at the water tank. He also knew which persons continued to work at the water tank after he left, and those did not include the Accused Mikulić. The same witness stated that he personally took part in the acts of “bathing” prisoners from the solitary cell and filling the solitary cell with water, but Mikulić did not participate in that, nor did he ever hear or see that the Accused Mikulić did it. The Court noted that the



reasoning of the verdict found that during his stay in the camp Đuherić had met Mikulić, so that there is no doubt that this witness would have remembered his involvement at the water tank.

218. Witness Kovačević, who was present as a prisoner when the prisoners from the solitary cell were sprayed with a jet of water and when the solitary cell was filled with water, also claimed that camp inmates did that, which is in agreement with the testimony of witness Đuherić. This witness also met the Accused Mikulić in the camp, due to which the Court believes that he would have recognized the Accused at the water tank had he been there and had he indeed undertaken the activities described in the Indictment. Witness S-2 could not say who undertook the activities referred to in the Indictment, and the only witness who implied Mikulić as a person who undertook those acts was witness Semir Balavac.

219. Analyzing all the evidence presented during the main trial concerning the event at issue, the Court concluded that releasing a jet of water on the prisoners from the solitary cell and filling the solitary cell with water in July and August were conducted relatively rarely. Witness Đuherić thinks that he washed the solitary cell and “bathed” prisoners in front of the solitary cell only once; witness Balavac noted that it was once or possibly twice; witness S-2 stated that bathing in front of the solitary cell happened only once, and the other time it happened at the location where they used to have lunch; while witness Kovačević stated that it happened two or three times without specifying if the washing and bathing happened on the same location every time.

220. All witnesses examined about this circumstance, save Đuherić, at the relevant time had been in the solitary cell for a long period of time, and witness Đuherić himself spent almost entire relevant period in the Dretelj camp. Given that, according to the testimony of witness Balavac, this act was attended by almost all prisoners from the solitary cell, which means that it was attended by dozens of prisoners, while the other examined witnesses from the solitary cell, including witness Đuherić, did not confirm the presence of the Accused in this incident, that is, that Mikulić undertook the acts charged against him. Consequently, in the absence of the other evidence to support the testimony of Balavac, taking into account the existence of exculpatory evidence (testimony of witness Đuherić), the Court could not establish the criminal responsibility of the Accused for this criminal offence, so, pursuant to Article 284c) in conjunction with Article 3 of the CPC of BiH, the Court acquitted him of these charges under Count 3 of the Indictment whereby he was charged that by filling the solitary cell with water and releasing a strong jet of water on the prisoners from a water tank he committed the criminal offence of War Crimes against Civilians, in violation of Article 173(1)c) of the CC of BiH.

### **(iii) Count 3 – Abuse of underage Emir Đulić**

221. Under Count 4 of the Indictment the Accused was charged that in early August 1993, in the prison known as the Dretelj camp, he abused the underage prisoner Emir Đulić as he placed two livewires around his head and ears and connected the livewires to a telephone, whereupon he turned the handle on the telephone and thus produced electricity, and due to

these electro-shocks blood poured from the mouth and ears of the underage Emir Đulić, he lost consciousness and fell on the ground.

222. With respect to this Count of the Indictment, the Prosecution presented evidence by hearing the witness, injured person Emir Đulić, his brother Elmir Đulić, and witnesses SH-1 and Mehmed Kovačević.

223. The injured party Emir Đulić stated that upon his arrest, he, his father, brother, witness SH-1 and other men from his village, many of whom also with the last name Repak, were all brought to Dretelj, and after he got off the truck he was lined up with other civilians who were brought there, on which occasion HVO soldiers asked every and each of them what their name was and how old they were, and separated the underage on one side, and adults on the other. When he said that he was not full eighteen yet, the soldier did not trust him as he looked older than his peers. He took him out and brought him some twenty meters away in front of the others and gave him two wires to put on his ears, and when he did so, the soldier turned the electricity on and off, causing him to start shaking. It lasted for about five to ten minutes, and he started bleeding from his mouth, nose and ears. The first time when electricity was turned on he stood on his feet, but the second time he fell on his knees as he could not endure it. Another HVO soldier approached and had a quarrel with the one who had turned the electricity on and said: *"What the hell are you doing, he is just a child"*, after which he helped him, gave him some water to drink and washed his face in order to make him come around because he once lost his consciousness. He could not see what the soldier held in his hands, but he saw that it was some kind of an instrument that he turned, whereupon he no longer knew where he was, due to the shock. He stated that his brother, who was an adult, was left behind him then, and that witness SH1 was also there when they separated them, but whether he was still behind him at the point when this incident happened he does not know. Later he was constantly dizzy and could hardly walk, so everyone helped him to get out and eat.

224. Witness/injured party Emir Đulić stated that he did not know the soldier who abused him, apart from the impression that he was young and tall, around 1.80 or 1.85 cm tall, and that he never learned what his name was, nor did he make any effort to find that out. Presently, he feels no consequences of the abuse, although it was difficult for him to walk for the first seven days, whereas once or twice, among others, witness SH-1, with whom he shared the same hangar until his departure from the camp, helped him on his way out for lunch.

225. Thereafter, he would see witness SH-1 during his visits to Bosnia, adding that he did not discuss the incident with witness SH-1 either in the camp or later. The witness/injured party also stated that the same soldier who put livewires to his ears came to his hangar on two occasions when he asked where he was, so he had to get up and come forward, and the soldier said that if he had not come forward he would have come again and put livewires to his ears again.

226. Witness Elmir Đulić (the brother of the injured party) stated that upon their arrival in Dretelj, on 4 August 1993, HVO soldiers started questioning them in order to make them say which army they were members of. On that occasion there was his father, his brother and

other people with the last name of Đulić from the village and witness SH-1. His brother Emir, like witness SH-1, was underage at the time. One HVO soldier came and told his brother Emir: *"We will see now if you are an underage."* Then he connected a telephone cable to his ears and pulled a handle, causing his brother to start "bending and crying", whereupon another soldier came by and said they should immediately let him go, and he gave him some water to drink. It lasted for some five to ten minutes. He watched this incident standing at one to three meters distance, whereupon adult men were taken to one hangar, and the underage to another. He stated that he did not know which soldier abused his brother and that he did not see that soldier in the Dretelj prison, nor did he learn the name of Dražen Mikulić while he was in the Dretelj camp. He discussed this incident after he left the camp with his brother who had never told him which sergeant abused him, but mostly spoke about the fear he felt on that occasion.

227. Witness SH1 stated that upon their arrival in Dretelj on 4 August 1993, they were received by the HVO military police, which lined them up and started separating the underage and elderly who were over sixty from the able bodied men, which was an operation led by the camp warden Tomo Šakota. He was in the group with the underage, together with the injured party Emir Đulić and Azer Đulić, when they started taking their particulars. Emir and he did not have their ID cards, but only their medical records, and since Emir looked much older they told him that he lied that he was just seventeen. A military police officer told him *"Confess!"*, and Emir replied that he would not. He stood behind Emir at half a meter distance from the scene. Thereafter the military police officer said: *"Mikulić-elektroschok"*, whereupon a soldier in a uniform approached with an inductor telephone and two telephone wires which he put on Emir's ears. When he pulled the telephone handle, Emir fell unconscious, started bleeding from his mouth and ears, so he was forced to say that he was an adult. The soldier who fixed the wires to his ears was once addressed as *"Mikulić"*, and the other time as *"Dražen, get some water"*. Thereafter Emir would lose consciousness for two to three times a day and could not eat so he would carry him. He did not see Mikulić after this incident and he would not be able to recognize him, as he only remembers that he was ten centimeters shorter than him, that he was young, brown-haired and did not have blue eyes.

228. Witness Mehmed Kovačević stated that he knew that Đulić was subjected to torture, and that he told him that they put some electric shocks to his ears, but as a doctor he did not administer aid because electric shocks do not leave lasting consequences and if his heart does not stop during the shock, the body would completely regenerate.

229. Based on the foregoing evidence the Court found beyond a reasonable doubt that the incident in question occurred in early August 1993, in the Dretelj camp, as witnesses Emir Đulić, Elmira Đulić and witness SH-1 confirmed in their testimony, which shows that they were arrested together in early August and brought to the Dretelj camp.

230. Furthermore, based on the consistent testimony of these witnesses the Court found beyond any doubt that immediately upon arriving in the Dretelj camp the injured person Emir Đulić who was underage at the time was physically abused. The injured person stated that he was born in 1975, and he described the manner in which an error was made when his date of birth was entered; this was confirmed by<sup>59</sup> witnesses Elmira Đulić and witness SH-1 in

their testimony, when they noted that the injured person Emir was underage back then. The fact that the injured person Emir Đulić was placed in the same hangar with other underage persons also follows from the List of Prisoners in Dretelj, for internal use, where one can see that there were many underage persons with him in the same hangar, including witness SH-1.

231. Based on the consistent testimony of the injured person Emir and witness SH-1, as well as witnesses Elmir Đulić and Mehmed Kovačević, it was found beyond any doubt that on that occasion Emir Đulić was abused in the way that one HVO soldier gave him two livewires and ordered him to put those on his ears, whereupon the soldier connected the wires to the telephone and turned the telephone handle and thus produced electricity, which caused electric-shocks. The witness/injured person and witness SH-1 were consistent in their statements that these shocks caused bleeding from the mouth, nose and ears of the injured person, so he lost consciousness and fell on the ground. The Court also found, and it follows from the testimony of the injured person himself, that due to this abuse the injured person Emir suffered great pain and fear.

232. However, based on the presented evidence, the Court could not beyond any reasonable doubt establish that none other than the Accused Mikulić Dražen was the soldier who committed these abuses. Further, the very witness/injured party Emir Đulić said that he did not know who abused him on that occasion. Elmir Đulić stated the same, and he is the brother of the injured party and was present when the abuse took place, which he watched from the immediate vicinity. Only witness SH-1 stated that the Accused Mikulić committed the abuse, since he heard that the soldier who put wires to the ears of the injured person Emir was once addressed as "*Mikulić*", and the other time as "*Dražen, get some water*".

233. This statement of witness SH-1 that other persons mentioned the first and last name of the Accused was not confirmed by either the injured person or his brother Elmir Đulić. Therefore, apart from the testimony of witness SH-1 that the abuse was carried out by the person addressed as Mikulić, no other supporting piece of evidence has been presented before the Court to corroborate that it was the Accused Mikulić who committed the above criminal offence.

234. The Court took into account the fact on which the witnesses Emir Đulić, Elmir Đulić and SH-1 were consistent, more precisely that several men from their village were arrested and brought to Dretelj together, including father, brother, uncle and many other relatives of the injured person with the last name Đulić. It is also indisputable for the Court that the relevant incident took place in front of the persons who were brought there, and all of whom knew the injured person Emir. Therefore the Court could not unreservedly give credence to witness SH-1 in the part where he said that on the relevant occasion he heard the first and last name of the Accused as the soldier who carried out abuse, since neither the injured person nor his brother heard that name, nor can it be seen from the presented evidence that any of the other persons present there told the injured person or his closest relatives that they heard the name of the soldier who abused him, nor did the witness SH-1 himself.

235. The injured person stated himself that before the abuse he was separated from the group and was some twenty meters away, and that he did not know where SH-1 was at

that point, and he also stated that during his stay in the hangar the person who abused him came to the hangar twice and inquired about him, which is why he had to stand up and come forward. During the proceedings, based on the consistent testimony of witnesses Emir Đulić, Elvir Đulić, witness SH-1, including the documentary exhibit – List of detained persons in Dretelj, it was found beyond any doubt that the injured persons Elvir Đulić and witness SH-1 were in the same hangar until the injured party left the camp. However, in his testimony witness SH-1 did not mention that the Accused Mikulić came to the hangar, but on the contrary he stated that he never saw the Accused Mikulić in the camp again.

236. Taking into account the foregoing facts, particularly the testimony of the injured person and his brother who attended the incident, the Court finds that it cannot establish that the Accused Dražen Mikulić committed the criminal offence solely on the basis of the testimony of witness SH-1 in the part where the first and last name of the Accused were mentioned, and hence in the absence of other supporting evidence, pursuant to Article 284 c) and the principle of "*in dubio pro reo*", the Court acquitted the Accused of the charges that he committed the acts under this count of the Indictment whereby he was charged with the criminal offense of War Crimes against Civilians, in violation of Article 173(1)c) of the CC of BiH.

#### **(iv) Count 4 – Abuse and death of prisoner Emir Repak**

237. Under Count 5 of the Indictment, the Prosecution charged the Accused that in early August 1993, together with three unidentified HVO military policemen, he took out of the prison known as the Dretelj camp prisoners Emir Repak and Senad Bešić and ordered them to beat each other, which they did and exchanged a number of blows to the head, whereupon Senad Bešić hit Emir Repak twice with a wooden lath on his head, due to which Repak fell on the ground and eventually died of brain and soft tissue injuries.

238. During the main trial several Prosecution witnesses were examined about this count of the indictment: Mirsad Pejak, S-3, S-2, Semir Balavac, Mehmed Kovačević, Ahmet Isaković, SH-1, Mustafa Dizdar, Mirhet Đuherić, Mustafa Repak, as well as an expert witness in forensic medicine, Dr. Hamza Žujo.

239. Witness Mirsad Pejak stated that Emir Repak was his neighbor from Stolac and that they were arrested together and detained in the solitary cell in Dretelj. Describing the relevant incident he stated that it happened after lunch, on the track in front of the hangar where the prisoners from the solitary cell sat in one line, when Mikulić ordered that Repak and Trebinjac punch each other, that is, engage in boxing. After they engaged in fist fight, Mikulić told them to stop and Repak was returned to the line and sat next to him. In this fight nobody fell or noticed that Repak sustained any injuries from that fight. It was three or four minutes before Trebinjac went somewhere in the back and took a lath with nails from a palette and hit Repak on the head with it, whereupon Repak fell on him. He stated that on that occasion there were two other soldiers with Mikulić, and when describing Mikulić he said that he was shorter than him, black-haired and skinny and that he beat him as well. After the fight between Repak and Trebinjac he fainted when Repak fell on him, since his collar bone was broken from before, as well as one side of the ribs, and was taken to the infirmary where he spent 7 days and was

thereupon transferred to another hangar and did not see Mikulić any more. He learned of Mikulić's first and last name during his stay in the infirmary from Doctor Enes from Neum. The witness stated that he heard later on that Repak died that day.

240. During the main trial the witness was presented with his statement given during the 2006 investigation before the State Investigation and Protection Agency, where the witness stated: „...the *HVO military police forced Emir Repak and Trebinjac to beat each other*.“ When asked to explain these differences, witness Pejak replied that he described what he had seen, that he could remember other things if necessary, and that SIPA investigator did not ask him if Mikulić was there.

241. Witness S-3 stated that Repak arrived in the camp on or about 4 August 1993, and that this incident occurred when they left the solitary cell for lunch and were facing the wall. That is when he heard noise, Trebinjac and Repak were fighting, he heard the cheering „*kill him, the fat one*“, fatso was Repak's nickname, but he could not see anything. When they returned to the solitary, with the corner of his eye he saw Repak laying unconscious. He said that of the military police at the spot there were the Accused Dragan Mikulić, Vide Palamenta, Krešo Rajić, Mijo Brada and others, around 10 to 15 HVO members, and he saw the Accused at the point when they were coming down from the solitary cell to the track. He learned the first and last name of the Accused later on when they were released; they talked and somebody said that this is what his name was, and he saw him in the camp for three or four times, specifically twice when he was beaten by him and once in the infirmary.

242. During cross-examination, witness S-3 was presented with his statement given to the State Investigation and Protection Agency in 2006, in which the witness claimed that he had been beaten by the Accused Mikulić and other HVO members, and that between 2 August and 25 August 1993 he stayed in the infirmary, whereupon the witness explained that he maintained his statement given at the main trial that he went to the infirmary on 5 or 6 August, because Repak arrived there on 4 August and this is how he remembered that he actually went to the infirmary later.

243. Witness S-2 stated that his cousin Emir Repak was brought to the Dretelj camp on 4 August 1993, that he had already been beaten in the Koštana hospital in Stolac and that he arrived there already covered with blood, and that on the same day upon his arrival he was taken out for lunch and picked to engage in a fight with Senad Bašić a.k.a Trebinjac. Trebinjac executed the order of the men in uniform who ordered that the two of them should beat each other. Witness S-2 stated that he could not see the incident since he was lined up with other prisoners against the wall with their heads facing the wall. He heard that Emir Repak refused to engage in the fight, so the persons in uniform started beating him and told him that they would beat him dead unless he engaged in the fight. „Rumor has it“ that Emir hit Trebinjac who fell down, and, „according to people from the hangar who were able to see that,“ one of the men in uniform passed a lath to Trebinjac, whereupon Trebinjac hit Emir Repak on the back of his head and Repak fell down, and later he learned from one person in the infirmary that Repak had died before he reached the infirmary. The witness stated that he did not know who ordered that the two of them should engage in a fight. He heard laughter of soldiers who told Emir that if he did not engage in the fight they<sup>62</sup> would beat him up bad, and later he heard

blows and them saying to Trebinjac „*he is stronger than you*“. All soldiers who took them from the solitary cell were there. He does not know the Accused Dražen Mikulić in person or by sight.

244. Witness Semir Balavac stated that in early August they brought Emir Repak to the Dretelj camp and they chose to „subject him to sadistic abuse“, since he was corpulent and fat. At the place where they had lunch they started beating him until he fell down, and Bešić then hit him with a hard object in the head, and he fell into a coma, never to wake up again, that is, he died on the day of his arrival in Dretelj. This witness stated that he had been two-three meters away from Repak when he was killed, and he did not see which of the HVO police officers set up Senad Bešić to beat Repak, since he did not dare raise his head, so he does not know if Mikulić was present or not. He stated that the prisoners could only hear but not see what was going on.

245. Witness Mustafa Dizdar stated that Emir Repak was his relative, that Repak got hurt behind his back, after he was ordered to have a fight with Senad; he did not see a lot because he was facing the wall and could only hear screams. He stated that the fight „*was ordered by Dražen, by Goja, all of them in the group, there were all sorts of things.... There was also Krešo Rajić over there, as some sort of a leader.*“ When asked by the Prosecutor to tell the truth if Dražen Mikulić ordered the fight, the witness replied „*I do not know anything*“.

246. Witness SH-1 stated that he had known Repak since before the war, that his father was a famous hair-dresser, and that he was a corpulent guy. He stated that Repak came to Dretelj camp on 4 August 1993, on the same day when he arrived, and that he was forced to have a fight with Trebinjac. Repak initially declined to fight, but when he was forced to defend himself he knock down Trebinjac on the ground with two punches. Trebinjac then took a wooden lath that was next to him and hit Repak twice on the head, causing Repak to fall down, after which Repak was taken to the infirmary and eventually succumbed to the wounds. Witness SH1 stated that he watched the event through the hangar window, at 30 to 40 meters distance, but that he did not recognize any of the then-present HVO members, that is, military officers, nor did he hear the order that they should beat each other.

247. Witness Ahmet Isaković stated that he watched the incident through the hangar's window, that he could see everything but he could not hear it. He stated that there were a couple of military police members including Krešo Rajić, Vido Palamenta and two others whom he could not see well, since they turned their backs to them, who forced Repak Emir and Senad Bašić a.k.a. Trebinjac to engage into boxing. Repak was stronger and inflicted a couple of blows to knock down Trebinjac, whereupon a military police officer handed a lath to Trebinjac and he got up to his knees and hit Repak with it on the back of his head. Repak fell down and did not get up any more, so they took him to the infirmary where he died. He stated that he could not hear the order that they should beat each other.

248. Witness Mirhet Đuherić stated that he watched this incident while standing at around ten-meters distance since at that point he was near the kitchen. He did not see how the fight started, and a rumor among the camp inmates was that Mikulić talked Trebinjac, who was mentally instable, into the fight. The same witness stated that he did not remember that

the Accused Mikulić was present when the fight took place. He saw that the two of them got laths and that Repak tried to avoid the fight, and that Trebinjac hit him twice with the lath in the head, following which Repak fell down and was carried into the infirmary. The witness stated that by the appearance one could see that Repak died, and later on, after an hour or two he heard that he had succumbed to the wounds.

249. Witness Dr. Mehmed Kovačević stated that he knew Emir Repak from Stolac and that he was one of the three victims who died in the camp. He said that an interrogation of prisoners was carried out that day, and Repak thought that nothing would happen to him if he said that he was a hair-dresser in the Army, which he indeed was. When the police officers heard this they brought Senad Bašić a.k.a. Trebinjac and Bundo, who was a mental patient, to engage in boxing with Repak. During their fight, a military police member gave a lath to Senad to beat Repak, and when Repak fell on the asphalt road he hit him with a lath on the head, which, according to him, was lethal. Since Repak did not move, he was taken to the infirmary where doctors established his death. The witness stated that he watched this event standing at five or seven meter distance, that it took place on the track where they had lunch, but he could not say which police officers were there, since he could not remember everyone. Furthermore, he said that he was shortsighted and that he would leave his glasses before leaving the solitary cell to prevent them from being broken.

250. Witness Mustafa Repak, father of the late Emir Repak, stated during the main trial that he arrived in the Dretelj camp on 30 July 1993, and was put in a tin hangar, while his son Emir came to the same camp a few days later. He said that he did not see his son in the camp, and that he only learned of his fate in February 1994. He said that he was told that Emir had been arrested on 4 August 1993, together with other inhabitants from the village, and was then taken to the Koštana hospital in Stolac, whereupon, on the following day, 5 August 1993, he was taken to the solitary cell in Dretelj. During lunchtime, according to eye-witnesses, Krešo Rajić, Vide Palamenta, Dražen Mikulić and all the guards who were there incited one junkie Senad Bašić a.k.a. Trebinjac into a fight with Emir, so one of them pushed a stick towards Trebinjac to hit Emir with, which Trebinjac took and hit Emir in the head causing Emir to fell down. During cross examination, the witness was presented with his testimony given to the State Investigation and Protection Agency in 2010, where the witness stated that as far as he learned, his son Emir was transferred from the Koštana hospital on 4 or 5 August 1993 to the Dretelj camp, where on the same day he was taken out to the camp compound, when Krešo Rajić and Vide Palamenta ordered Senad Bešić and Emir to engage in boxing. Explaining the discrepancy between the two statements, witness Mustafa Repak stated that he learned about Dražen Mikulić after 2010, which will be confirmed by the witness who would come and testify immediately after him, namely witness Ahmet Isaković.

251. Expert witness in forensic medicine Dr. Hamza Žujo gave his evidence about Emir Repak's injuries and the cause of his death. He performed the exhumation of Emir Repak's mortal remains. During the medical examination, the corpse was reduced to skeleton and no injuries were found on the bones. The expert did not rule out the possibility that there may have been an injury to the brain tissue when the head was hit, which might have been the immediate cause of death. During the exhumation, all bones of the injured person were found,



and according to the expert witness had the injured person Repak sustained a blow on his head with the lath with a nail sticking out, such a blow would have left injuries on the skeletal system, whereas no such injuries were not found during the exhumation. The Court accepted the Findings and Opinion of the expert witness in forensic medicine Hamza Žujo as objective and professional, and presented in accordance with the rules of profession.

252. Upon inspection of the Register of Deaths issued to the name of Emir Repak, it was found that Emir Repak, son of Mustafa, died on 5 August 1993.

253. Based on the consistent statements of the above witnesses the Court found beyond any doubt that in early August 1993, in the Dretelj prison, there was a fight between the injured party Emir Repak and Senad Bešić a.k.a. Trebinjac, that the fight started following the order of the HVO military police members and that during the fight Senad Bašić hit Emir Repak with a wooden lath in the head, causing Emir to fall on the ground and eventually succumb to the wounds.

254. All the above witnesses gave consistent evidence that the relevant incident occurred in early August 1993 in the Dretelj camp, in a location where all prisoners had lunch, on which occasion there was a fight between Emir Repak and Senad Bašić a.k.a. Trebinjac or Bunda, and the Court accepted this. Furthermore, all witnesses examined on these circumstances gave consistent evidence that members of the HVO military police were present there on the occasion, and that the fight occurred after the military police members ordered the two to engage in a fight. With respect to the death, all witnesses were consistent in saying that Repak died after he was taken to the infirmary, whereas witness Dr. Kovačević noted in that regard that Repak was not moving at all and was taken to the infirmary where doctors pronounced him dead. The expert witness in forensic medicine did not rule out the possibility that the blow with a lath in the head resulted in the injury to the brain tissue and that the inflicted injury was the immediate cause of death. Taking into account that witnesses were present when this incident occurred, and that all of them learned later on of the death of the injured party, the Court accepted their testimony in the part where they claimed that the injured party died at the relevant time, particularly because the expert in forensic medicine did not rule out this possibility.

255. Taking into account that the Indictment alleged that the Accused Mikulić together with three other unidentified HVO military soldiers issued the order to fight, the Court particularly analyzed the testimony of the witnesses examined in relation to this fact. In that regard a number of witnesses, including S-3, who was present and who is a relative of the injured party Repak, then Semir Balavac who said that at the location of incident he did not see Mikulić and did not know who incited prisoners to fight, SH-1 who could not recognize any of the military police officers, Mirhet Đuherić, who also watched this fight but could not recall if Mikulić had been there and witness Kovačević who was also an eyewitness to the incident, could not remember which of the police officers issued the order to prisoners to engage in the fight and was present there throughout.

256. With respect to the presence of the Accused Mikulić in this fight and his issuing the order to prisoners to engage in the fight, witness Ahmet Isaković stated that of the

military police officers present there he recognized Krešić and Palamenta; there were two other military police officers there whom he could not see as they had their backs turned towards him. Witness Mustafa Repak stated during the investigation that he heard from others that Krešić and Palamenta ordered that his son Emir and Senad Bešić get into the fight, and at the main trial he also implied Mikulić as a person who issued the order, noting that he heard of Mikulić after 2010 and that witness Isaković could confirm it. However, witness Isaković, who testified on the same day as Mustafa Repak, claimed that apart from Krešić and Palamenta he did not recognize anyone else, so he did not confirm witness Repak's allegations, which is why the Court did not accept the testimony of witness Mustafa Repak in the part where he said that the order to fight was issued by the Accused Mikulić.

257. Witness Mustafa Dizdar claimed that he had not seen much as he was facing the wall, he only heard some shrieks. He first stated that *„the order to engage in the fight was issued by Dražen, Goja, all of them; there was a group with everyone; there was Krešo Rajić there as some sort of a ring-leader.. “*, and later on he said he did not know anything about the order. Taking into account the testimony of this witness, the Court did not accept it as authentic, since the witness gave different statements on essential facts. Witness Dizdar did not see the relevant incident noting that he was facing the wall all the time. When asked by defense counsel who exactly had killed Repak, the witness replied that HVO members killed him, a group of three or four were beating him, but he himself did not see that. He said that he had given his statement based on the testimony and account of others from the hangar (Salko Marić, Šaćir Elezović and others). Apart from that, his account of the events, according to which military police officers beat Repak with rifle butts, is completely contradictory to the testimony of all other witnesses who were consistent in saying that Emir only had a fight with Senad Bešić, who eventually hit him with a lath in the head. Furthermore, the Court concluded that the same witness first indicated that he heard the name of Dražen Mikulić from the people in the solitary cell but he could not remember who told him this, whereas later on he said that he heard about Mikulić from the cooks who would come to the infirmary, so when asked who he heard it from the witness replied that he did not remember anything else. Based on the foregoing, the Court did not accept as convincing and authentic the testimony of this witness about the circumstances under this count of the Indictment.

258. Witness S-3 also noted that he did not watch the relevant incident, and that it happened when they left the solitary cell to go for lunch while they were facing the wall. He noted that at the spot there were the Accused Dragan Mikulić, Vide Palamenta, Krešo Rajić, Mijo Brada and others, around 10 to 15 HVO members, and he saw the Accused only at the point when they got out of the solitary cell to the track. He learned the first and last name of the Accused later on when he was released, when they talked and when he learned his name from somebody. The Court concluded that the witness did not indicate that he heard the order that Repak and Bašić should get into a fight. Taking into account that the witness said that he did not see the incident as he was facing the wall, the Court could not accept his testimony in the part where he named all the persons who were present there. Furthermore, the same witness claims that there were ten to fifteen HVO members there, which is also contradictory to the testimony of other witnesses who claimed that the number was much lower. It has remained unclear to the Court based on what exactly Witness S-3 claimed that the Accused Mikulić was present there,

since he learned about him only after he left the camp.

259. Witness Mirsad Pejak was the only one who stated that he had personally seen and heard that the Accused Mikulić ordered Repak and Bašić to get into the fist-fight, which they did, however the testimony of this witness is largely contradictory to the testimony of other witnesses who were examined on this circumstance. It was only witness Pejak who claimed that during the fight prisoners from the solitary cell sat with their backs towards the faces of persons engaged in the fight, while other witnesses from the solitary cell stated that on the occasion they were standing. Witnesses from the solitary cell, Mustafa Dizdar, S-2, and S-3, claimed that they could not see this incident as they were facing the wall, while witness Balavac said that he did not dare raise his head.

260. The testimony of witness Pejak differs from the testimony of other examined witnesses in the part where he noted that after the fist-fight the Accused Mikulić ordered Repak and Bašić to stop beating each other, which they did, whereupon Repak, without any injuries to his body sat next to him, and that Senad Bašić approached Repak from behind his back three to four minutes later and hit him in the head with a stick from which a nail was sticking out. None of the examined witnesses described the incident in the above way, but all witnesses claimed that they had seen or heard Bašić hit Repak with a lath in his head in the course of the fight, and they also stated that Repak was standing at that particular moment, except for witness Balavac who stated that it was only after Repak fell on the ground that Senad Bašić hit him with the stick in the head.

261. With respect to the manner in which Bašić got hold of the lath, many witnesses, including Kovačević, Isaković, S-2, Đuharić, claimed that one of the police officers who were present there gave Bašić a lath or pushed it over to him with his leg, while witness SH-1 stated that the lath was already near Bašić, whereas Pejak was the only one who claimed that some three or four minutes after the fight stopped Bašić came with a lath and hit the injured person in the head, who at the time was sitting next to him. Furthermore, none of the examined witnesses confirmed Pejak's statement that after receiving a blow the injured Repak fell on Pejak. Witness Pejak stated that the stick had a nail and he connected it with the deadly consequence. However, according to the expert witness in forensic medicine, Dr Hamza Žujo, during the exhumation and examination of mortal remains of the injured party Repak, there were no traces on the skull which would indicate that the injured party received a blow with a lath with a nail sticking out of it, because it would have left permanent injuries to the skeletal system, which the expert did not find.

262. Bearing in mind numerous discrepancies between the testimony of witness Pejak and the other examined witnesses about the relevant incident, the Court did not accept the testimony of witness Pejak as sufficient to find based thereon the criminal responsibility of the Accused Mikulić for the acts charged in this Count of Indictment, so in the absence of other evidence which would unequivocally show that it was none other than Mikulić who ordered the fight between the prisoners Repak and Bašić, which had a fatal outcome, pursuant to Article 284c) in conjunction with Article 3 of the CPC of BiH, the Court acquitted the Accused of the charges that he committed the criminal offence of War Crimes against Civilians, in violation of

**(v) Count 5 – Abuse of prisoner S-3**

263. Under Count 6 of the Indictment, the Accused Mikulić was charged that in the period from late June to early August 1993, together with four unidentified HVO members, he twice took prisoner Emir Pelja out of the prison known as the Dretelj camp and they abused him physically by kicking and hitting him with hands and rifle butts, and with an approximately 1-meter-long wooden stick several times in his head, body and soles of his feet, and once with a knife in his leg-foot, due to which he suffered great pain and fear.

264. With respect to this count of the Indictment, the following witnesses were examined, during the main trial: the injured party S-3, as well as witnesses Semir Balavac, S-1, Ahmet Isaković, Mehmed Kovačević and Almir Dedić.

265. The injured party S3 stated that after the arrest on 14 July 1993, he was taken to the Koštana hospital in Stolac where he spent one night, and the following day he was taken to the Dretelj camp. Immediately upon arrival in Dretelj and after he got off the truck he was abused by one young person wearing a black sleeveless shirt, and subsequently by other persons next to a wall, and thereupon he was placed in a solitary cell. Concerning the incident described in this count of the Indictment, he stated that in late July or early August, in the evening hours, four or five or six HVO members arrived there, including a person who he learned upon leaving the prison was named Mikulić Dražen, and they told him: „*Army member, get out!*“ He did not know who said it, and when he went outside, one of them had a hat, the other one had like a black hat, two were military police officers, including Dražen, and they all started beating him with boots, batons, fists and with a one-meter-long stick, whereupon they put a livewire to his feet and started beating him in the soles. One of those other HVO members then took a knife and he felt a stab in his left leg, after which he was put in the solitary cell. On the following day, five or six of them, including Mikulić, came again at the same time; he was called out again, and when he went out they started beating him with a stick, spat on him and questioned him as to how long he was in the army, whereupon he was thrown in the solitary cell again. After his leg was infected, he was taken four-five days later to the infirmary where he stayed for some fifteen days. Mikulić came to the infirmary two or three days later and told him “*You will go up again, just you wait..*“.

266. Witness S-3 explained that this incident was preceded on the same day by a roll call on the track in front of the hangar, when Mikulić said that all those who were members of the Army should come forward. He did not come forward and went immediately in the opposite direction, but somebody called him „*Army member, come back,*“ which Mikulić heard and said „*So you are in the Army then.*“ This is why, when he heard somebody in front of the solitary cell calling „*Army member, get out!*“, he thought they were referring to him, which is why he stepped outside.

267. The Defense presented the statement which this witness gave to the State Protection and Investigation Agency in 2006, where he stated that on one occasion five soldiers, none of

whom he knew, took him out of the cell and beat him up severely; one of them threatened to slaughter him and kicked him, and then they brought him back to the solitary cell. When asked by the Defense why he did not mention Mikulić's name back then, the witness replied that he did not know, that he forgot that back then, but that he was sure that Mikulić was there.

268. He stated that other prisoners from the solitary cell could hear when somebody called him „*Army member get out!*“ During the main trial, witness S-3 stated that he was transferred to the infirmary on or about 5-6 August 1993 and stayed there until 17 or 18 August 1993. After he was presented with the same statement from the investigation where he claimed that he came to the infirmary on 2 August and stayed there until 25 August 1993, the witness explained that he maintained his statement from the main trial since he remembered that the injured party Repak arrived there on or about 4 August, and since he was present when the abuse took place, he surely went to the infirmary after that incident.

269. Witness S-3 stated that he did not know what Mikulić's name was while he was in the camp, but only learned it later on after his release, after a half a year or one year, somebody told him his first and last name. He stated that he could not say specifically how he learned his first and last name, but he learned it. The witness said that he did not ask anyone in the solitary cell if any prisoner knew the persons who abused him. When the Court asked him to explain how he later establish connection between the person he said was Dragan Mikulić and the person who participated in his abuse on the power cable, the witness replied that he did it based on his physical appearance, that is, that others have told him that he had beaten them too, but that he did not know who exactly told him that. After this incident he did not see Mikulić ever again.

270. During the main trial the witness stated that the Accused had brownish hair and was around 180 cm tall, that he was wearing a multi-colored uniform, and that he was around 20 or 22. When the Prosecutor asked him if he saw that person in the courtroom, the witness said that he was sitting in the courtroom in-between two lawyers, and when asked by the defense counsel how he knew that they were lawyers, the witness said that he followed some sort of logic. Furthermore, he later added that he recognized the Accused by his eyes. During the investigation before the BiH Prosecutor's Office, the witness was presented with photos of several persons for identification of the Accused, on which occasion the witness S-3 said that he was not able to identify many people even from his neighborhood after 15 years, let alone the Accused whom he had seen briefly three or four times.

271. Witness Semir Balavac said that upon arrival in the solitary cell he found S3 there, who, two or three days later showed him the wound on his leg, on which occasion the witness/injured party S-3 said that Mikulić stabbed him in the toe, which later got infected.

272. Witness S1 stated that he knew witness S3 who had a grill-stand and music before the war, so he had money. At the beginning, Vide Palamenta, Durovac and others collected jewelry, money, and wallets from prisoners, while in early August, witness S-3 had the money he hid by sewing them in, so when he went out on the track he was beaten up because he had stashed the money, so he was not able to get out for breakfast for a day or two. The witness

stated that he did not know who beat witness S-3 back then.

273. Witness Ahmed Isaković stated that they watched the abuse of prisoners from the solitary cell just before the lunch through the hangar window every day. He stated that there was an instance when they beat a man for more than half an hour but they could not knock him down so they finally stabbed him in the feet, and it was witness S-3. The witness stated that he did not know who beat them on the occasion, because they would take turns, new ones would come and the old ones would go away.

274. Witness Mehmed Kovačević stated that he knew witness S-3 and that he was abused just like everyone else. He said that witness S-3 had one specific leg injury, which was sustained when somebody stabbed him in the toe. Witness Kovačević stated that he remembered that injury, it was ugly, and witness S-3 often complained and cried because of that wound, and asked him to help him as a doctor. He said that he did not see who inflicted the injury, nor did he remember that witness S-3 ever told him who had abused him.

275. Witness Mustafa Dizdar stated that he knew witness S-3, that he was in the solitary cell with him and that he came back to the infirmary later on, all beaten and stabbed. He said that witness S-3 told him that Dražen Mikulić was the one who stabbed him.

276. Witness Almir Dedić stated that he was in the hangar in Dretelj and that he knew witness S-3 whom he did not see in the camp. He noted that he did not see when witness S-3 was beaten, but he heard in the Dretelj camp that „*Dražen and his crew*“ abused him. He heard the rumor in late September 1993 when other prisoners started arriving in their hangar in whose vicinity food was distributed.

277. Analyzing the presented evidence with respect to this count of the indictment, the Court, based on the consistent statements of all examined witnesses, found beyond any doubt that witness/injured party S-3 was in the Dretelj camp at the critical time and was placed in the solitary cell of this camp. Furthermore, based on the testimony of witness S-3, witness Mehmed Kovačević, witness Ahmet Isaković, S-1, Mustafa Dizdar, Semir Balavac and Ahmet Dedić, whose testimony the Court accepted in that part, it follows that the injured party S-3 was abused in the Dretelj camp. Based on the consistent testimony of witness S-3, Ahmet Isaković, Mustafa Dizdar, Mehmed Kovačević and Semir Balavac, it also transpires that the injured party S-3 was stabbed in the foot. However, apart from the injured witness S-3 who described the event in the same way as it is described in the Indictment, none of the other examined witnesses confirmed the allegations made by witness S-3.

278. Witnesses Balavac, Kovačević, Dizdar and Dedić stated that they were not present there during the incident and therefore did not know particular facts about it, while witnesses S-1 and witness Ahmet Isaković stated that they watched the abuse of the injured party S-3, but their statements differed both mutually and with respect to the injured party S-3. Witness S-1 stated that in early August, which corresponds to the time the injured party referred to, the injured party S-3 was severely beaten on the track because he had stashed some money, and consequently he did not go out for lunch for two days, while witness Isaković stated that before the lunch S-3 was abused for half an hour, and when they could not knock him down they

stabbed him in the foot.

279. The Court stated that the injured party S-3 said that he was abused in front of the solitary cell on the livewire, and that both times he was abused in the early evening hours, which shows that these three witnesses gave different accounts of events. Neither of the two witnesses (S-1 and Isaković) saw who abused the injured party S-3, which the other examined witnesses did not see either. Witness Balavac stated that he heard from the injured party in the solitary cell that Mikulić had inflicted injuries on him, which the Court did not accept since the injured party himself stated that some other person had stabbed him and that he learned of Mikulić only after he was released. Witness Mustafa Dizdar also claimed that the injured party told him that Mikulić had inflicted on him leg injuries, and for the same reasons the Court did not accept this either. Witness Dedić said that it was only in late September that he heard accounts from other prisoners that Mikulić with his team had abused witness S-3, but he did not specify who said so, hence his testimony is not credible.

280. The Court also had in mind that the injured person S-3 gave different statements regarding facts on which he testified. During the investigation in 2006, the injured person claimed at the beginning that he did not know any officer who beat him up when he was stabbed in the leg, whereas later on he stated that the Accused Mikulić and one „Žutalj“ were among them. The person with the nickname of „Žutalj“ was not mentioned later at all. Additionally, during the examination before the State Investigation and Protection Agency, he stated that he learned of the name of Dražen Mikulić in the Dretelj camp from other camp inmates from Western Herzegovina, whereas during the investigation before the Prosecutor's Office he claimed that he heard from other HVO members in the Dretelj camp that it was Mikulić's name, whereas during the main trial he stated that it was only half a year or one year later after his release that he learned of Mikulić's name from other camp inmates. The Court finds that in describing the above incident the injured party stated that he was beaten by 4-6 persons, one of whom stabbed him.

281. Witness/injured party S-3 could not recognize the Accused during the investigation when presented with several photos, including the photo of the Accused, and his statement during the main trial that he recognized the Accused sitting between two lawyers and that he recognized him by the eyes was not sufficient for the Court, given that the injured party gave his statement from a separate room, wherefrom he watched the Accused through a video camera – video image, which was similar to the identification during the investigation, while at the main trial the Accused was the only person in the courtroom wearing plain clothes. The Court also finds that at the main trial the injured person gave a description which to a certain extent corresponds to the description of the Accused, however according to the opinion of the Court most of the soldiers who do not stand out by any particular physical features which would distinguish them from others could be described in that way, as noted by witness Kovačević who stated that Mikulić did not have enough distinguishable outer characteristics and features based on which he would stand out from the others.

282. Taking into account that the testimony of the injured person about some facts, particularly about the identification of the Accused, was not consistent, and that the witness did not know the Accused from before, and that<sub>71</sub> he provided no convincing reasons as to how

he linked the Accused to one of the persons who abused him, in the absence of other supporting evidence on the participation of the Accused in the relevant incident, pursuant to Article 284(c) of the CPC of BiH, and applying the *in dubio pro reo* principle, with respect to these acts under this count of the indictment charging the Accused with the criminal offence of War Crimes against Civilians, in violation of Article 173(1)c) of the CC of BiH, the Court rendered an acquittal.

## **V. DECISION ON COSTS**

283. Pursuant to Article 188(1) of the CPC of BiH, in conjunction with Article 186(2) of the law, with respect to the Conviction the Accused shall cover the criminal procedure costs and the scheduled amount, which shall be determined by the Court in a separate decision, while the costs pertaining to the Acquittal, pursuant to Article 189(1) of the CPC of BiH, shall be covered from within budgetary appropriations.

## **VI. RULING ON THE CLAIMS UNDER PROPERTY LAW**

284. Pursuant to Article 198(2) of the CPC of BiH, the Court referred the injured parties to pursue their claims under property law in a civil suit, given that the information obtained during the criminal proceedings does not provide a reliable basis for a complete or partial adjudication in this respect.

**Record-taker**

**Legal advisor:**

**Sabina Hota Čatović**

**PRESIDENT OF THE PANEL**

**JUDGE**

**Staniša Gluhajić**

**LEGAL REMEDY:** An appeal from this Verdict may be filed with the Appellate Panel of Section I of the Court of Bosnia and Herzegovina within 15 (fifteen) days as of the day of receipt of a written verdict hereof.

\*An appeal must be filed with this Court in a sufficient number of copies.



## VII. ANNEX (LIST OF DOCUMENTARY EVIDENCE)

### 1. PROSECUTION EVIDENCE

No.	Name	Date of presentation
T-1	Witness Examination Record for Almir Dedić, No. 17-12/3-105/06, 18 May 2006, (examined by SIPA investigator Regional Office Mostar,)	08.11.2011.
T-2	Witness Examination Record for Almir Dedić, No. KT-RZ-21/05, 8 July 2010, (examined by the Prosecutor's Office of BiH)	08.11.2011.
T-3	Witness Examination Record for Hamza Tabaković, No. 17-12/3-95/06, 11 May 2006, (examined by SIPA investigator, Regional Office Mostar)	08.11.2011.
T-4	Witness Examination Record for Hamza Tabaković, No. KT-RZ-21/05, 12 July 2010, (examined by the Prosecutor's Office of B-H) S- Annex with evidence No.T-4- sketch of the hanger made by witness Hamza Tabaković at the hearing of 8 November 2011.	08.11.2011.
T-4 a	Excerpt form CIPS record of photos	08.11.2011.
T-5	Witness Examination Record for Semir Balavac, No. KT-RZ-21/05, 8 July 2010,	29.11.2011.
T-6	Witness Examination Record for Semir Balavac, No. 17-12/3-93/06, 11 May 2006,	29.11.2011.
T-7	Witness Examination Record for Admir Sakoč, No. KT-RZ-21/05, 12 July 2010	29.11.2011.
T-8	Witness Examination Record for Admir Sakoč, No. 17-12/3-98/06, 12 May 2006	29.11.2011.
T-9	Witness Examination Record for Mirheta Đuharić, No. 17-12/3-94/06, dated 11 May 2006	07.12.2011.
T-10	Witness Examination Record for Mirheta Đuharić, No. KT-RZ-21/05, 5 July 2010	07.12.2011.
T-11	Witness Examination Record, No. 17-12/3-94/06, 11 May 2006	07.12.2006.
T-12	Witness Examination Record for Mehmed Kovačević, No. KT-RZ-21/05, 9 July 2010	13.12.2011.
T-13	Witness Examination Record for Mehmed Kovačević, No. 17-12/3-92/06, 11 May 2006	13.12.2011.
T-14	Witness Examination Record for Mustafa Dizdar, No. 17-12/3-110/06, 26 May 2006	13.12.2011.
T-15	Witness Examination Record for Azem Žuštra, No. 17-12/3-129/06, 8 June 2006	23.12.2011.
T-16	Witness Examination Record for Mirsad Pejak, No. 17-12/3-1-139/06, 12 June 2006	19.01.2012.
T-17	Witness Examination Record for Elvir Đulić, No. KT-RZ-21/05, 9 November 2010	19.01.2012.
T-18	Witness Examination Record for SH-1, dated 6 July 2010	26.01.2012.
T-18 A	Witness Examination Record for SH-1, dated 10 May 2006	26.01.2012.
T-19	Witness Examination Record for Ahmet Isaković, No. T20 0 KTRZ 0000127 08, 11 October 2010	26.01.2012.
T-20	Witness Examination Record for Mustafa Repak, No. 17-13/3-1-04-29-97/10, 10 August 2010	26.01.2012.

T-21	Finding and opinion of certified forensic expert Dr. Hamza Žujo, specialist in forensic medicine, No. KT-RZ-21/05, of 25 March 2011	02.02.2012.
T-21 A	Medical Report for Dražen Mikulić	02.02.2012.
T-22	Witness Examination Record for S-3, 7 July 2010	02.02.2012.
T-22 A	Witness Examination Record for S-3, 8 May 2006	02.02.2012.
T-23	Witness Examination Record for S-2, 13 October 2010	02.02.2012.
T-24	Decision proclaiming a state of war, published in the Official Gazette of the Republic of Bosnia and Herzegovina No. 7, 20 June 1992	16.02.2012.
T-25	Unit Personal File to the name of Dražen Mikulić	16.02.2012.
T-26	A VOB-2 form to the name of Dražen Mikulić	16.02.2012.
T-27	A VOB-1 form, where under No.33 the Accused Dražen Mikulić is listed	16.02.2012.
T-28	List of members of the 3rd company of the 3rd battalion of the military police in Čapljina who were in Mostar between 9 May and 1 June 1993	16.02.2012.
T-29	The fifth battalion of the HVO HZ HB Military Police	16.02.2012.
T-30	Wages for June 1994 – Administration Military Post Ljubuški	16.02.2012.
T-31	Data from the criminal record No. 02-2-4/3-50-70/06, dated 28 April 2006	16.02.2012.
T-32	HVO camps in Herzegovina – Gabela, Čapljina	16.02.2012.
T-33	List of prisoners – Čapljina, internal use	16.02.2012.
T-34	List of prisoners arrested on 1 July 1993	16.02.2012.
T-35	List of weapons registered in the Brigade warehouse „Bregava“	16.02.2012.
T-36 A	On-site inspection record, Higher Court in Mostar, No. Kri: 32/97, dated 27 April 1998	16.02.2012.
T-36 B	Excerpt from Register of Deaths issued to the name of Emir Repak, No. 02-15-IV-558/1, dated 17 August 2010	16.02.2012.
T-36 C	Witness examination record – expert dated 20 August 1998	16.02.2012.
T-37	List of persons released from Gabela and transferred to Jablanica on 19 October 1993	16.02.2012.
T-38	List of prisoners who were released and transferred to Mostar LB during the period 20-22 December 1993	16.02.2012.
T-39	List of costs of BiH Prosecutor's Office, No. KT-RZ-21/05, dated 16 August 2010	16.02.2012.
T-40	Grude Police Administration Certificate, No.02-2-5/3-12-3/12, dated 10 April 2012	19.04.2012.
T-41	Delivery Information, Čapljina Health Center, No. 04-37-263/12, dated 11 April 2012	19.04.2012.
T-42	Official Note by the State Investigation and Protection Agency, No.T-16-12/3-1-04-2-SZ-122/12, dated 11 April 2012	19.04.2012.
T-43	Official Note by the Administration of VP, Crime Prevention Department in Čapljina, dated 22 July 1993	26.04.2012.
T-44	Daily Report by the Command of the 3rd company of the 3rd Battalion of the VP Čapljina, No. 02-4/3-06/4-12-210/93, dated 3 July 1993	26.04.2012.
T-45	Number of detainees on 5 August 1993, Dretelj barracks	26.04.2012.
T-46	Daily Report by the Command of the 3 <sup>rd</sup> Company of the 3 <sup>rd</sup> Battalion, VP Čapljina, No. 02-4/3-06/4-12-219/93, dated 12 July 1993	26.04.2012.
T-47	Correspondence by the State Protection and Investigation Agency, No. T-16-12/3-1-04-2-225-19/10, dated 11 April 2012	10.05.2012.

## 2. Defense's evidence

Number	Name	Date of presentation
O-1	CD – Grebović Enver, witness of genocide, 13 August 1998	19.04.2012.
O-2	Information on the killed/wounded, OZ South-East Herzegovina, unit of 3 <sup>rd</sup> Company, 5 <sup>th</sup> Battalion, no date	19.04.2012.
O-3	Information on casualties, members of the HVO Mostar Military Post, 4 December 1993	19.04.2012.
O-4	Witness Examination Record for Semir Balavac, dated 6 May 1997	19.04.2012.
O-5	Main Trial record of court hearing, Mostar Cantonal Court, No. K—7/01, dated 10 December 2007	19.04.2012.
O-6	Verdict in case No. 07 0 K 000205 09 K 2 Matić Petar et al., Mostar Cantonal Court, dated 6 November 2009	19.04.2012.
O-7	Verdict in case No. 07 0 K 000205 10 Kz Matić Petar et al, the Supreme Court of the Federation of BiH, dated 7 April 2010	19.04.2012.
O-8	Medical documentation for Witness Mario Udovičić, Grude hospital, dated 12 January 1994	19.04.2012.
O-9	Discharge Letter from Clinical Center Split for Witness Marinko Sosa	19.04.2012.
O-10	Certified copy of the Driving License for the Accused Dražen Mikulić, issued by the Ministry of Interior of the West-Herzegovina Canton, Ljubuški	19.04.2012.
O-11	Medical documentation for the mother of the Accused, Marinka Mikulić	19.04.2012.
O-12	Decision of the Grude Municipality, Service for Homeland Veterans, No. 10-02-41-583/07, dated 7 August 2007	19.04.2012.
O-13	Command on extraordinary promotion into rank of the FBiH Army, No. 04-34-2-4245/05, dated 21 April 2005	19.04.2012.
O-14	Suspect Questioning Record, for Dražen Mikulić in BiH Prosecutor's Office, KT-RZ-21/05, dated 18 November 2010	19.04.2012.
O-15	Report of the State Investigation and Protection Agency, No. T-16-12/3-1-04-2-225-IZ/10, dated 11 April 2012	10.05.2012.

## 3. Court's evidence

**S1** - Medical documentation for Marinko Sosa, delivered by KBC Split, Service for General, legal and Personnel Affairs, Class 500-02/12-01/299, number:2181-147-02/MK-12-2, dated 1 June 2012, received by the Court on 7 August 2012, **introduced as exhibit on 14 June 2012.**<sup>27</sup>

<sup>27</sup> Enclosed with the documents: -History of illness; -List of temperatures; -Receipt on items handed over; -Anesthesia; - Bio-chemical tests; -Referral for transfusiology tests; -Findings 2x; -Protocol copies