

**Bosna i Hercegovina**

**Босна и Херцеговина**



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

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**Case No.: S1 1 K 005528 11 Kri**

**Date: Pronounced on: 13 January 2014**  
**Written copy sent on: 18 April 2014**

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**Trial Panel:**

**Minka Kreho, Presiding Judge**  
**Ljubomir Kitić, Judge**  
**Željka Marenić, Judge**

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

**v.**

**Veselko Raguž and**  
**Ivo Raguž**

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**VERDICT**

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

**Counsel for the Accused Veselko Raguž: Branko Karadeglić, Attorney from Čapljina**  
**Counsel for the Accused Ivo Raguž: Marko Raguž, Attorney from Stolac**

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

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## IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, in the Panel comprised of Judge Minka Kreho as the Presiding Judge, and Judges Ljubomir Kitić and Željka Marenić as members of the Panel, with the participation of Legal Advisor Emil Pinkas as the record-taker, in the criminal case against the Accused Veselko Raguž and Ivo Raguž, charged with the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (d) and (e), as read with Article 180(1) and (2) and Article 29 of the Criminal Code of Bosnia and Herzegovina, deciding upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number: T 20 0 KT RZ 0000436 05 of 23 August 2011, having held a main public hearing (partly closed to the public) in the presence of the Prosecutor of the Prosecutor's Office of BiH, Remzija Smilagić, the Accused Veselko Raguž and his Defense Counsel Branko Karadeglić, and the Accused Ivo Raguž and his Defense Counsel Marko Raguž, rendered and on 13 January 2014 publicly announced the following:

### VERDICT

**The Accused: VESELKO RAGUŽ a.k.a. Veso**, son of Stjepan, born on 6 July 1965 in the village of Pješivac, Stolac municipality, place of residence: ..., Personal ID ..., ... by ethnicity, citizen of ... and ..., electrical technician, secondary school of economics completed, indigent, there is no other pending criminal proceeding against him,

**and**

**The Accused: IVO RAGUŽ**, son of Fabijan, born on 11 May 1965 in Stolac, resident of ..., Personal ID ..., ... by ethnicity, citizen of ... and ..., languages and interpretation secondary school completed, senior tax officer, indigent, no other criminal proceedings pending against him,

**Pursuant to Article 284(c) of the Criminal Procedure Code  
of Bosnia and Herzegovina**

## ARE HEREBY ACQUITTED OF THE CHARGES

That:

Between early July and late August 1993, in Stolac and Čapljina, during the wartime in Bosnia and Herzegovina and the armed conflict between the Croat Defense Counsel (HV) and the Army of RBiH (ARBiH), Veselko Raguž as the Commander of the IV Battalion of the *Knez Domagoj* HVO Brigade, and Ivo Raguž as a member of the IV Battalion of the *Knez Domagoj* HVO Brigade, acted in violation of Article 3(1)(a) and (c), Article 27(1) and Article 49 of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949, in as much as Veselko Raguž ordered, aided and abetted, or directly participated in the unlawful abduction and detention of Bosniak civilians, removal of Bosniak women and children, and ordered, aided and abetted or directly participated in the physical abuse, torture and inhuman treatment of detained civilians, that is, neither prevented nor punished such acts committed by members of his Battalion or by other members of the HVO over whom he had effective control, despite being aware of those acts, and Ivo Raguž participated in the physical abuse of the detained civilians, thus:

### I Veselko Raguž

1. In July and August 1993, in the territory of Stolac municipality, along with members of the IV Battalion and units from other Battalions, the Neum Battalion and V.P. HVO Battalion, assigned to it, unlawfully deprived the liberty of all Bosniak civilian men in their houses, including: Esad Šuta, Osman Obradović, Mustafa Repak, Mustafa Gerin, Ibro Selimić, Meho Bucman, Ismet Ratkušić, Esad Ratkušić, Šefik Ratkušić, Nusret Hajdarović, Ibro Hajdarović, Šerif Hajdarović, Zulfo Hajdarović, Almir Hajdarović, Halil Hamzić, Suad Boškailo, Samir Kaplan, Murat Kaplan, Medin Kaplan, Selvedin Kaplan, Admir Kaplan, Alija Kaplan and others, loaded them onto trucks allocated in advance, thereupon transported and unlawfully detained them at the *Koššana* Hospital (Bones Hospital) in Stolac, where Bosniaks from the Stolac municipality were brought and detained on a daily basis, some of whom were detained at the Dretelj and Gabela camps in the Čapljina municipality, expelled women and children from their homes and transported them, by in advance assigned trucks and buses, to a site near Blagaj, and forced them to cross on foot

to the territory held by the Army RBiH.

2. On 13 July 1993, in the village of Crnići, Stolac municipality, along with members of the IV Battalion, unlawfully arrested and detained around 1,500 civilians on the premises of the *Branko Šotra* Elementary School, including the Bosniak women, children and elderly, namely: Zijada Humačkić, Fata Kaplan, Aiša Kaplan, Esmā Kaplan, Muhiba Balavac, Đulsa Balavac, Adisa Balavac, Indira Bešo, Šaćira Pirić, Alija Hajdarović, Zijo Vukičević, Senad Balavac, Zijo Balavac, Merima Đulić, Fatima Tuće, Indira Šetka and others, subjected them to unbearable living conditions, with insufficient food and water supply, and insufficient living space, and thus, on the evening hours of this very day, upon Veselko Raguž's order, transported by trucks Alija Hajdarović, Zijo Vukičević, Senad Balavac, Zijo Balavac and others, and detained them on the premises of the *Koššana* Hospital, physically abused Alija Hajdarović and Senad Balavac, and on the following day, transported and detained them at the Dretelj camp.
  
3. On 15 July 1993, Muhiba Balavac and Đulsa Balavac were singled out by unidentified members of the IV Battalion, taken from the *Branko Šotra* Elementary School and detained on the premises of the *Koššana* Hospital for interrogation. On 16 July 1993, Veselko Raguž ordered that these women, along with several other women from the *Branko Šotra* Elementary School, come with him by car, drove them to the village of Prenj, and subjected them to inhuman treatment by requesting them to take a letter to the Bosniak men in attempted hiding, fearing that they would be arrested, and urge them to surrender; acting upon his order, these women were, all the time, exposed to the firing by members of the IV Battalion who escorted Veselko Raguž; whereupon these women were brought back to the premises of the Elementary School, held there for seven days, and thereupon removed to other detention sites, such as the Kaplan and Đulići mahala, and the Correctional Facility, and thereafter forcibly taken to a site near Blagaj, and expelled to the territory held by the ARBiH.
  
4. On 13 July 1993, in the afternoon hours, in the place of Masline, Stolac municipality, a number of unidentified members of the IV Battalion of the *Knez Domagoj* HVO Brigade, armed with automatic rifles, surrounded and detained the

following civilians: Witness S-1, Salko Alihodžić, Remzo Šuta, Hamza Šuta, Halil Palikuća, Hasan Ćatić, Ibro Klarić, Hadžo Klarić, Fadil Razić, Bećir Šuta and Musair Klarić, who had been hiding in the woods with the intent to reach Blagaj and the territory held by the ARBiH, disarmed and ordered them to take the M6 roadway, at the Masline-Hodovo-Stolac-Čapljina intersection; when Veselko Raguž approached them with several unidentified members of the HVO, they questioned and physically abused these men, punching and kicking them, hitting them with rifle butts in their head and body, whereupon unidentified HVO members, acting upon Veselko Raguž's order, drove them by truck and detained them on the premises of the *Košтана* Hospital, where they were subjected to further physical abuse, and thereupon transferred and detained at the prison facilities known as Dretelj and Gabela, in the Čapljina municipality, and at the Heliodrom facility, in the Mostar municipality, where they were held for around five months.

5. On 13 July 1993, in the *Košтана* Hospital in Stolac, in an office upstairs, he interrogated Remzo Šuta, attempting to force his confession, ordered two unidentified members of military police force to hit him, which they did, repeatedly punching him with their closed fists in his head and body, and all over his neck, as a result of which he suffered severe pains.
6. On 14 July 1993, in the morning hours, in the village of Jasoč, Stolac municipality, in front of Spaso Obradović's house, where Senad Šetka, Mirsad Žujo and others had been detained, he ordered Senad Šetka and Mirsad Žujo to come out and sit in two vehicles make "Golf", whereupon Veselko Raguž and unidentified members of the HVO drove and detained them on the premises of the *Košтана* Hospital, and on the same day, in the *Košтана* Hospital, together with unidentified members of the HVO, repeatedly physically abused them, in order to force their confession by hitting them with their rifles, punching them with closed fists, kicking and hitting them with baseball bats all over their bodies, as a result of which they suffered severe pains.

## **II Veselko Raguž and Ivo Raguž, together**

1. In early August 1993, at the Dretelj camp, in the territory of Čapljina municipality,

where hundreds of Bosniak civilians had been unlawfully detained, along with Anto Krešić and a number of unidentified members of the military police force, they participated in the interrogation and physical abuse of the detained civilians: Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, by calling them one by one to enter a tin-made garage located within the camp perimeter, in order to force their confessions, repeatedly kicking them with their legs in military boots, and punching them with their closed fists in their head, body and legs, whereupon Ante Krešić connected their ears and hands to an electric current circle via inductor telephone, and manually activated it in order to produce electric current, which passed through the bodies of the injured persons, as a result of which they fell to the ground shaking and suffering severe pains and sustaining injuries to their bodies with bleeding; and when Semir Balavac started bleeding from his mouth and nose, Ivo Raguž put a handful of salt in his mouth and nose, due to which he suffered even greater pains.

Therefore, during the war in Bosnia and Herzegovina and the armed conflict between the HVO and the ARBiH, violating the rules of international law, Veselko Raguž ordered, aided and abetted, or directly participated in the unlawful abduction and detention of Bosniak civilians, removal of the Bosniak women and children, ordered or directly participated in the physical abuse of detained civilians, that is, neither prevented nor punished such actions committed by members of his Battalion, or other members of the HVO over which he had effective control, despite being aware of such acts, and Ivo Raguž participated in the physical abuse of the detained civilians,

Whereby they would have committed:

**The accused Veselko Raguž** under Section I-1, 2, 3, 4, 5 and 6 and Section II-1, the criminal offense of War Crimes against Civilians under Article 173(1)(c), (d) and (e), as read with Article 180(1) and (2) and Article 29 of the CC of BiH,

**The accused Ivo Raguž** under Section II-1, the criminal offense of War Crimes against Civilians under Article 173(1)(c), as read with Article 180(1), and Article 29 of the Criminal Code of Bosnia and Herzegovina.

Pursuant to Article 189(1) of the CPC of BiH, the costs of criminal proceedings under Article 185(2)(a) through (f) of this Code, as well as the necessary expenses and remuneration of the Defense Attorney will be paid from within the budget appropriations of the Court.

Pursuant to Article 198(3) of the CPC of BiH, the injured parties shall be instructed to pursue their claims under property law in a civil action.

## **R E A S O N I N G**

### **II. PROCEDURAL HISTORY**

#### **A. INDICTMENT AND OPENING OF THE MAIN TRIAL**

1. The Indictment of the BiH Prosecutor's Office No. T20 0 KTRZ 0000436 05 of 23 August 2011, confirmed by the Preliminary Hearing Judge of this Court on 5 September 2011, charged the accused Veselko Raguž and Ivo Raguž with having committed the criminal offenses, namely Veselko Raguž the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c), (d) and (e), as read with Article 180(1) and 2) and Article 29, and Ivo Raguž 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.

2. After the confirmation of the Indictment, at the plea hearing held on 19 October 2011, the accused Veselko Raguž and Ivo Raguž plead not guilty on all counts of the Indictment.

3. Once the Accused pled not guilty, pursuant to Article 229(4) of the CPC of BiH the Preliminary Hearing Judge referred the case record to the Panel to order a main trial.

4. The main trial in this case commenced on 14 December 2011, where the Indictment was read out.

5. Ultimately, the evidentiary proceedings in this case were completed on

11 December 2013.

## **B. CLOSING ARGUMENTS**

### **1. Prosecution**

6. On 13 December 2013, the Prosecution provided comments on the evidence adduced, and highlighted all relevant aspects of the criminal proceedings conducted against the accused Veselko Raguž and Ivo Raguž.

7. The Prosecution has first presented the chronology of the events which had occurred in the Stolac and Čapljina territory, but in the wider area too. The Prosecution has thereupon analyzed Veselko Raguž's role and his duties of a Commander of the IV Battalion.

8. In the context of duties performed by the accused Veselko Raguž, the Prosecutor has addressed the elements of command liability, and examined the adduced evidence. The Prosecutor suggested the conclusion that the accused Veselko Raguž knew or might have known that his subordinates were about to commit or had already committed a criminal offense, and that the Accused failed to undertake necessary and reasonable measures to prevent the perpetration of crime, or to punish the perpetrators thereof.

9. In the latter part of his closing argument, the Prosecutor has analyzed the adduced evidence in relation to the allegations under particular counts/sub-counts of the Indictment.

10. With regard to Count I-1, the Prosecutor first pointed to the statements given by witnesses Ibro Selimić, Ismet Ratkušić, Esad Ratkušić, Meho Bucman, Selvedin Kaplan, Semir Kaplan, Samir Kaplan and Suad Boškailo. In the Prosecutor's view, the facts indicated in this part of the Indictment have been proved beyond any reasonable doubt.

11. With regard to the allegations under Count I-2 of the Indictment, the Prosecutor pointed to the statements of witness Fata Kaplan, Esmā Kaplan, Aiša Kaplan, Indira Bešo, Zijo Vukičević, Muhiba Balavac and Fata Kaplan. According to the Prosecutor, the statements of these witnesses confirmed that, on 13 July 1993, in the village of Crnići, Stolac municipality, the accused Veselko Raguž, together with members of the IV Battalion, unlawfully deprived of liberty around 1,500 civilians and detained them on



the premises of the *Branko Šotra* Elementary School, including the Bosniak women, children and elderly, namely: Zijada Humačkić, Fata Kaplan, Aiša Kaplan, Esmā Kaplan, Muhiba Balavac, Đulsa Balavac, Adisa Balavac, Indira Bešo, Šaćira Pirić, Alija Hajdarović, Zijo Vukićević, Senad Balavac, Zijo Balavac, Merima Đulić, Fatima Tuće, Indira Šetka and others, and subjected them to unbearable living conditions, with insufficient food, water, and space; thus Alija Hajdarović, Zijo Vukićević, Senad Balavac, Zijo Balavac and others, were in the evening hours of the same day, upon Veselko Raguž's order, transported by truck and detained on the premises of the *Koššana* Hospital, where Alija Hajdarović and Senad Balavac were subjected to physical abuse, and on the following day driven to and detained at the Dretelj camp.

12. In relation to the allegations under Count I-3 of the Indictment, the Prosecution has particularly pointed to the testimonies of witnesses Muhiba Balavac, Indira Bešo and Witness CE. The Prosecution particularly highlighted witness Muhiba Balavac's claim that, on the relevant occasion, she saw the accused Veselko Raguž in the vehicle, and that witness Indira Bešo's claim that she had seen a man in the vehicle, but that she had not known the Accused.

13. In relation to the allegations under Count I-4 and I-5 of the Indictment, the Prosecution argued that the testimonies of witnesses Hamza Šuta, Remzo Šuta, Salko Alihodžić and Hasan Ćatić confirmed, beyond a reasonable doubt, that in the afternoon hours of 13 July 1993, in the place of Masline, Stolac municipality, the accused Veselko Raguž, together with a number of unidentified members of the IV Battalion of the *Knez Domagoj* HVO Brigade, armed with automatic rifles, surrounded and captured the following civilians: Witness S-1, Salko Alihodžić, Remzo Šuta, Hamza Šuta, Halil Palikuća, Hasan Ćatić, Ibro Klarić, Hadžo Klarić, Fadil Razić, Bećir Šuta and Musair Klarić, who had been hiding in the woods, with the intent to reach Blagaj, the territory held by the ARBiH, disarmed and ordered them to take the M6 highway, at the Masline-Hodovo-Stolac-Čapljina intersection, whereupon Veselko Raguž, with several unidentified members of the HVO, approached them, interrogated and physically abused them by punching, kicking and hitting them with rifle butts all over their head and body, whereupon unidentified members of the HVO, upon Veselko Raguž's order, transported them by truck and detained on the premises of the *Koššana* Hospital, subjected them to physical abuse, and subsequently drove and detained them at the prisons known as Dretelj and Gabela, in the Čapljina municipality, and at the Heliodrom prison, Mostar municipality, where they were

held for around five months, and that on 13 July 1993, in the *Koššana* Hospital in Stolac, the accused Veselko Raguž questioned Remzo Šuta, in an office upstairs, attempting to force his confession, ordered two unidentified members of the military police force to hit him, which they did, repeatedly punching him with their closed fists into his head, chest and back, as a result of which he suffered great pains.

14. With regard to the deprivation of liberty, detention on the premises of the *Koššana* Hospital, and mistreatment of Senad Šetka and Mirsad Žujo on 14 July 1993 (Count I-6 of the Indictment), the Prosecutor pointed to the testimonies of witnesses Hadžo Klarić, Suad Boškailo, Samir Kaplan and Alija Kaplan.

15. Ultimately, relating to the allegations under Count II-1 of the Indictment, the Prosecutor has analyzed, in detail, the testimonies of witnesses Medin Kaplan, Selvedin Kaplan, Semir Balavac and Edin Đulić. According to the Prosecutor, these witnesses' evidence confirmed beyond a reasonable doubt that, in early August 1993, in the Dretelj camp, Čapljina municipality, where several hundred Bosniak civilians had been unlawfully detained and held, the accused Veselko Raguž and Ivo Raguž, together with Anto Krešić and several unidentified members of the military police force, participated in the questioning and physical abuse of the detained civilians: Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, by calling them out, one by one, ordering them to enter a tin-made garage inside the camp perimeter, forcing their confessions, repeatedly kicking them with military boots on their legs, and punching them with closed fists all over their head, body and legs, whereupon Ante Krešić connected their ears and hands to the electric current circle via manually activated induction telephone in order to produce electric current, which passed through the bodies of the injured parties, shook and threw them on the ground, as a result of which they suffered severe pains, and sustained injuries to their bodies and bleeding, and, when Semir Balavac started bleeding from his mouth and nose, Ivo Raguž placed a handful of salt into his mouth and nose, as a result of which Semir Balavac suffered even greater pains.

16. Ultimately, the Prosecutor referred to the adduced documentary evidence, and the evidence adduced upon the Defense's proposal, and moved the Court to render a verdict finding the accused Veselko Raguž and Ivo Raguž guilty of the criminal offenses as charged and to sentence them according to the law.

## **2. Defense for the accused Veselko Raguž**

17. The Defense has first recalled its earlier claims from the opening argument, namely that the Indictment was untimely and erroneous, and their indication of developments related to these charges. In Counsel's view, the foregoing has been subsequently confirmed.

18. The Defense argued that the essence of problems related to these criminal proceeding is apparent from the fact that the Prosecutor failed to pay equal attention to the evidence in favor of the Accused.

19. Counsel argued that, in the context of time and moment, the facts and living conditions should have been considered in parallel. More specifically, Counsel argued that, at the relevant time, the Army BiH, the HVO and the VRS operated, in the territories under their respective control, as legitimate military formations, and that following the formation of the armed forces at the entities' level, they were subsequently legalized at the state level too. The legitimacy of objectives has been also confirmed by the legality of their existence. Counsel argued that their ways of operation and objectives were different, but that, in this context, the acts of concrete individuals and the proportionality of their actions with the circumstances should be considered, which essentially international humanitarian law indeed is.

20. Counsel also argued that, in these proceedings, the Prosecutor did not defend justice, he rather used it as an offensive weapon. In support of the foregoing stands the hearing of Medin Kaplan who obviously did not tell the truth.

21. Counsel further submitted that, following the Prosecution's closing argument, he first wondered if they had attended the same trial, thinking that, fortunately, the Court's trials were not based on the closing arguments. Counsel also wondered if everyone (participating at the trial) was ready to bear the burden of time, and continue the proceedings on the grounds of deficient and untimely indictment. The Prosecutor has made efforts to create confusion about the evidence, disregarding both his own Exhibit T-55 and the HVO structures. Counsel further added that the Prosecutor has disregarded everything, and that his sole interest was Veselko Raguž.

22. The structure, however, is very simple. According to Counsel, the Prosecution has

continuously disregarded the zone of responsibility of not only the IV Battalion, but of the other battalions as well. During wartime, however, any unit's zone of responsibility is both sacrosanct for its superior officer, and it is an area within which actions must be undertaken.

23. Counsel has further submitted that the Prosecutor's theory on persecution had no factual background, and that the absence of supportive facts was substituted by the legal terms used. Thus, the Prosecutor mentioned, for at least 30 times, that the Accused had ordered, aided and abetted, and committed (the offenses). However, the Prosecutor should have presented the facts and circumstances related to each action mentioned, but he failed to do so during the entire course of the proceedings.

24. In addition, there is no mention of the persons who received the orders, whatever they might have been, or any definition of the Accused's relation with these persons. The main cause of the problem lies in the fact that Veselko Raguž's officers, either superior or subordinate to him, were not heard at all, for the whole picture would have been clearer only after their hearing.

25. Since the Prosecutor omitted to hear the referenced officers, the Defense did it.

26. Counsel argued that, not only that the Indictment was not corroborated by evidence, but it also contained no important details to support the Prosecutor's position as such.

27. In his opening statement, Counsel submitted that his intent was to defend a man, rather than the system. Counsel pointed out that the task of the defense was to defend a man who has been de-humanized and to whom all inhuman characteristics have been attributed. In these proceedings, the Accused's rank was unjustifiably overemphasized, which poses a great risk. The Accused has been charged because of his position, rather than his acts. Somebody has noticed, at one of the seminars, that prosecutors often err, like in the present case, by starting not from an act towards the responsible person, but quite contrary to this, namely from one's position and rank, with no facts and evidence pointing to the offense. Acting in this way is erroneous and inadmissible.

28. Counsel further argued that there remains bitterness caused by the Prosecutor's attempts to mislead and direct our consciousness and to point to the events not covered by the Indictment. This is so particularly in relation to the death of Sanida Kaplan

(daughter of Hamza). We are all ashamed for this fact, however, Dragan Bunoza was, already in 2004, criminally prosecuted and sentenced for this offense, and he has nothing to do with the IV Battalion.

29. Having referred to Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, Counsel added that protection is reduced in a situation where non-international armed conflict is in question. In the concrete case, the rules are being applied to a limited extent, and only certain acts are prohibited, while the other acts covered by the national legislation may not be qualified as war crimes (Bavcon, Srzentić and Stajić, *Savremena administracija Beograd* 1995).

30. Counsel argued, in relation to the events under Counts I-1 and I-2 of the Indictment, that the events that had occurred in the field were presented in a confusing and arbitrary way. First, there is no piece of evidence proving that any military formations were re-subordinated to the IV Battalion. On the contrary, quite the opposite transpires from Exhibits T-43 and T-37. The documentary evidence was confirmed by witness Đuro Šutalo and military witness expert Milan Gorjanc, who stated that the formations mentioned in Exhibit T-37 were re-subordinated to IZM-Stolac, to which the IV and V Battalion had been already subordinated, namely that these joined formations were under the exclusive jurisdiction and command of the IZM, and the unit to which they were re-subordinated, with no further re-subordination.

31. Counsel further stated that there is no piece of evidence whatsoever proving that the IV Battalion indeed participated in the unlawful arrests of either Muslim soldiers within its own unit or civilians. It ensues from Exhibit T-41 that this order was given to IZM rather than to the IV Battalion. This was also confirmed by Đuro Šutalo, then Chief of Operations and Training of the *Knez Domagoj* 1<sup>st</sup> Brigade. Responding to the question as to who was in charge of the execution of order, the witness stated that it was the party to which the order was given, that is, the IZM-Stolac, rather than the IV Battalion.

32. In relation to the arrests, Counsel stated that there was neither general nor military logic that the IV Battalion could take any part in disarming its own soldiers. There are no facts in support of this allegation. Counsel has recalled the expert witness's evidence that, given its ethnic composition (it comprised 60% Muslims), the IV Battalion could not participate in this event. Esed Ratkušić, Meho Bucman and Ismet Ratkušić confirmed that the logic of the IV Battalion non-participation in disarming its own soldiers is justified.

These witnesses testified that they had been arrested by unidentified soldiers. The foregoing was also confirmed by Božo Rajić's statement that they were all aware of the existing complex situation, and that soldiers discussed this situation among each other. Ultimately, Željko Stanković, Ljubomir Raguž and Anđelko Milanović testified that the IV Battalion had never received any oral or written order to disarm soldiers, and that they must have been aware of such an order had it ever been received.

33. Counsel referred to a saying of the elderly that: "One should carefully choose his words: they pop off and close the road ahead". They learned that the Accused was a person in charge, but they only knew about the existing HVO and its soldiers. Counsel has understood that no other units existed in their minds. Esmā Kaplan heard, in front of the *Branko Šotra* Elementary School, that Veselko had ordered all that. Fata Kaplan heard soldiers' recounts that the accused Veselko Raguž was responsible for everything.

34. In relation to Count I-3 of the Indictment, Counsel argued that the Prosecution had no trust in its witnesses. The Indictment relied on witness Muhiba Balavac testimony and Exhibit T-19 even though it did not originate from the investigation conducted against the Accused. Witness Muhiba Balavac testified that Veselko Raguž had driven her and Witness CD. Counsel, however, submitted that this witness could not describe Veselko Raguž's physical appearance at the time when he had driven her from the *Branko Šotra* Elementary School to the *Koššana* Hospital. Counsel added that the Prosecution's Indictment alleged that this was done by unidentified members of the IV Battalion.

35. Referring to Count I-4 of the Indictment, Counsel confirmed as correct that, on 13 July 1993, a certain number of individuals were captured in the place of Masline, but they were not civilians. Those men were armed, organized and they had certain objectives.

36. According to Counsel, the Prosecution witnesses' claim, that they were on their way to Mostar to meet their people, lacks logic because in such a way they would leave their families and go to Mostar, and notably, they would not pass through the villages populated by Muslims, but rather through those populated by Croats. Counsel believes that their objective was to take over the Čapljina-Stolac road, Prenj-Nakovanj-Aladinići road and the town of Stolac (O1-18). Counsel argues that it is not coincidence that they started off in the night of 12/13 July, that is, during the night when 23 soldiers were killed by the Army BiH infiltrated sabotage groups. According to Counsel, such a coincidence is not allowed by

either the life or logic. Therefore, this was an organized military attack on the HVO check-point carried out by 11 men, which implied a logical counter-action by the HVO military.

37. Counsel further argued that the Prosecution Exhibits T-38 and T-43 suggested that the check-point at issue was under the control of the II Čapljina Battalion. According to Ivica Mustapić, this site is 10 km far away from the zone of responsibility of the IV Battalion. Exhibit T-100 confirms that all members of the IV Battalion were obligated to strengthen the defense against the VRS.

38. Therefore, the Accused could not be present at two sites at the same time.

39. Also, Counsel argued that there is no evidence for the allegations under Count I-6 of the Indictment either. Senad Šetka testified that he had been arrested by the II Čapljina Battalion in the place of Plješevac Greda, that he knew the Accused well, but that he could not confirm seeing him at the *Koššana* Hospital. Confirming the foregoing, Zoran Pažin stated that Senad Šetka had been arrested on 14 July 1993, but that the accused Veselko neither apprehended nor interrogated him because he was not at the *Koššana* Hospital at all. Zoran Pažin and other witnesses excluded a possibility of the Accused's presence in the *Koššana* Hospital because of the then ongoing field reconnaissance and stabilization of frontlines, and because everyone had to go with the unit due to the lack of men.

40. Counsel argued that the accused Veselko Raguž was charged with having interrogated and abused the civilians at Dretelj (Count II-1 of the Indictment), and with having participated in the abuse of Medin Kaplan, Edin Đulić, Semir Balavac and Selvedin Kaplan. All these witnesses, however, consistently testified that Veselko had not beaten them, and that they had heard no one saying that he was the person who ordered their beating. Two witnesses testified that Veselko was not present at the garage. Semir Balavac testified that he had stood near the opening gate, and that they were the last persons to enter the garage. Edin Đulić also testified that Veselko Raguž had spoken with him in front of the garage, but that he did not enter it.

41. Ultimately, Counsel submitted that it is not a court judgment that one should be ashamed of but rather his acts, and that such an act does not exist in the concrete case. Consciousness is a witness to all the events in the present case. Regardless of where the consciousness might be, the Defense is still not convinced, beyond a reasonable doubt, in the interpretation of the events, which is contrary to the allegations from the Indictment.

Counsel ultimately moved the Court to acquit the accused Veselko Raguž of the charges due to the lack of evidence, and, out of precaution, also due to the lack of the essential elements of the crime charged against him under Count i-1 and i-2.

### **3. Accused Veselko Raguž**

42. The accused Veselko Raguž presented no separate closing argument, but rather just stood by his Counsel's arguments.

### **4. Defense for the accused Ivo Raguž**

43. The Defense for the accused Ivo Raguž has divided its closing argument into two segments. The first segment analyzed the legal matters of importance for these criminal proceedings. The latter segment analyzed the contents of both the charges pressed against the accused Ivo Raguž and the evidence adduced.

44. The legal analysis comprises three parts.

45. In the first part, Counsel argued that the decisions of the ECtHR and the Constitutional Court of BiH were disregarded in the Indictment, and particularly pointed to the *Maktouf and Damjanović v. Bosnia and Herzegovina*.

46. Counsel argued that, in the concrete case, the Prosecution should have amended the Indictment by qualifying the criminal offense charged against his client pursuant to the CC of SFRY.

47. Counsel further indicated that, in the case at hand, the Prosecution erred by granting the status of civilians to the injured parties (Count II-1 of the Indictment). According to Counsel, the evidence adduced may potentially suggest the conclusion that, at the moment when they were deprived of liberty, the injured parties were armed soldiers, rather than civilians.

48. At the end of the legal part of his presentation, Counsel stated that the legislation which was in effect in the relevant territory at the relevant time implied the application of the Peoples Defense and Self-Protection doctrine (ONO and DSZ), namely that all men fit to work were obliged to offer resistance, and to be considered as members of the armed forces of the RH.



49. In other words, Counsel argued that the persons mentioned in Count II-1 of the Indictment as the injured parties could in no case enjoy the protection guaranteed to civilian persons.

50. In relation to the factual allegations under the Indictment, Counsel primarily indicated as incomprehensible the concept that the accused Veselko Raguž and Ivo Raguž acted as accomplices; that they urged the injured parties, one by one, to enter the tin-wall garage; that attempting to extort their confession, the accused repeatedly kicked them with military boots on their legs, and punched them with closed fists all over their heads, body and legs; and that after Semir Balavac had been beaten, the accused Ivo Raguž put a handful of salt in his mouth and nose, as a result of which he suffered even greater pains.

51. In other words, Counsel believes it is impossible that the Principal-accused and the Second-accused acted as accomplices given the fact that a whole chain of command existed between them. Counsel also argued that, according to witness Ante Čoko, the Accused were not among the persons authorized to have access to the Dretelj prison.

52. Counsel further analyzed the testimonies of witnesses Medin Kaplan, Samir Kaplan, Selvedin Kaplan and Semir Balavac, and pointed out their inconsistencies and deficiencies.

53. Ultimately, Counsel argued that the Prosecution failed to prove that the accused Ivo Raguž had any motives to commit the crime charged against him. On the other hand, Counsel indicated possible motives the witnesses might have to give false evidence.

54. In view of the foregoing, Counsel moved the Court to render a verdict acquitting the accused Ivo Raguž of the charges due to the lack of evidence.

## **5. Accused Ivo Raguž**

55. The accused Ivo Raguž stood by the arguments advanced by his Counsel, and added that, obviously, the whole Indictment in the present case was a result of various fabrications.

### III. PROCEDURAL DECISIONS

#### A. DECISION TO ACCEPT THE ESTABLISHED FACTS

56. On 6 December 2011, the BiH Prosecutor's Office forwarded to the Court of BiH a Motion No. T20 0 KTRZ 000436 05 moving the Court, pursuant to Article 4 of the Law on Referral of Cases, to take judicial notice of the facts established under the final judgments of the ICTY in the cases: *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo (IT-96-21-T)*, *Prosecutor v. Mladen Naletelić and Vinko Martinović (IT-98-34-T)* and *Prosecutor v. Darijo Kordić and Marijo Čerkez (IT-95-14/2-A)*.

57. The Motion proposed that the total of eight facts contained in twenty two paragraphs of the Trial and Appellate Judgments be accepted. These facts refer to the development of events in Bosnia and Herzegovina, the conflicts between the HVO and the Army BiH, and the nature of the conflict itself.

58. The Prosecutor's Motion provided no detailed line of arguments in support of the Motion, but rather stated that granting the Motion would contribute to the efficient conduct of the criminal proceedings.

59. In his response to the Prosecution's Motion, Attorney Branko Karadeglić, Counsel for the Principal-accused, supported the acceptance of the facts established under paras. 177 and 179 of the Judgment in *Prosecutor v. Mladen Naletelić and Vinko Martinović (IT-98-34-T)*. Counsel disagreed with the acceptance of the remainder of the facts proposed, and explained that these facts were irrelevant to the proceedings against Veselko Raguž *et al.*

60. Similarly as Counsel for the Principal-accused, Attorney Marko Raguž, Counsel for the Second-accused, agreed with the Prosecutor's proposal related to the fact that, between 17 April 1993 and late February 1994, there was indeed a conflict between the Army BiH and the HVO. Counsel for the Second-Accused also argued that the remaining proposed facts were irrelevant to his client.

61. Having considered in detail the arguments advanced by the parties to the proceedings, the Court decided as stated in its Decision of 14 March 2012 for the reasons that follow.

62. According to this Panel, it needs to be pointed out, in relation to the established facts that the burden of proof is being shifted by taking judicial notice of the facts established under the ICTY judgments. Specifically, a refutable assumption that these facts exist is being created, whereby the adverse party is being provided with a possibility to contest them.

63. In line with such an approach, Article 4 of the Law on the Transfer of Cases should be treated as a *lex specialis* in relation to Articles 15 and Article 273 of the CPC of BiH. Even though Article 4 of the Law on the Transfer of Cases employs the phrase "accept as proven", the Panel finds that by applying the referenced provision the burden of proof may only be shifted, rather than irrefutable assumptions created.

64. In the light of the foregoing, and relying on the principles of the ECHR, the Court has also noted that none of the Accused's guaranteed rights shall be violated by applying this institution. The jurisprudence of the European Court of Human Rights has exactly recognized that applying this institution, generally also applied by other courts when dealing with similar cases, is admissible.

65. Objectively, the Accused have a strong motive to contribute to the efficiency and expeditiousness of the proceedings given the prohibiting measures they received in this case. Naturally, the referenced measures were not imposed on the Accused with the intent to practically bring them into a position of self-accusation, but rather, into a position where they remain strongly interested in having the proceedings against them completed within the shortest period possible in compliance with the principle of fairness.

66. As to the issue of applicable law, certain ambiguities in the Law on the Transfer of Cases, relating to the institution of "established facts" itself, have already been noted. Consistently with the foregoing, the Law on the Transfer of Cases has specified no conceivable criteria to be applied in deciding whether to take judicial notice of adjudicated facts under the ICTY judgments.

67. In such circumstances, the Panel has accepted the views and the standards established and applied by the ICTY<sup>1</sup> and the ICTR, whose case law has been adopted by the Court of Bosnia and Herzegovina too. Since the established standards have not been

fully developed, the approach as to how broad their interpretation should be is obviously manifold.

68. Prior to elaborating on each standard individually, it should be noted that it is a *conditio sine qua non* that the conclusion must be related to the existence or non-existence of certain relevant facts. Therefore, the paragraphs concerning the legal and other similar issues discussed in the verdict do not fall within this category. The Panel has found that the Prosecutor's motion exactly contained the paragraph expressing the legal positions of the Trial Panel, and that, therefore, the referenced paragraph is inappropriate for applying Article 4 of the Law on the Transfer of Cases. In view of the foregoing, the Prosecution's motion to accept the facts established in para. 177 of the Judgment in *Prosecutor v. Mladen Naletelić and Vinko Martinović (IT-98-34-T)*, has been dismissed.

69. Each of the referenced standards will be individually addressed below. Where the Panel has deemed it necessary, the positions related to the extent of their interpretation, will be also presented.

### **1. The fact must be relevant to the current proceedings**

70. The meaning of this standard is fully clear, and it may be viewed in close nexus with Article 263(2) of the CPC of BiH. In the evidentiary proceedings, the presentation of certain pieces of evidence may be prohibited by the Court upon its finding that it is irrelevant to the concrete case. Similarly, when the issues relevant to the referenced case are in question, it is senseless to consider taking judicial notice of the adjudicated facts unless the purpose thereof is conducting more expeditious and more efficient proceedings.

71. Having applied the standard of relevance, the Court refused to accept para. 33 of the Trial Chamber Judgment in *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo (IT-96-21-T)*. More specifically, the events which had occurred before 19 May 1992 are not related to the events covered by the Indictment, namely the events covering the period between early July and late August 1993.

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<sup>1</sup>These criteria have been defined in the decisions of this Court in *Prosecutor v. Vujadin Popović et al. (IT-05-88-T)*, and *Prosecutor v. Momčilo Krajišnik (IT-00-39-T)*.

## **2. The fact must be distinct, concrete and identifiable**

72. Practically, this standard means that the considered fact has to be identifiable, and that it is not based on the other facts which have not satisfied the required standards. In addition, the fact must not be of such a character so as to conceal the other, principal fact.

73. In order to determine whether, in the concrete case, a certain fact has satisfied the referenced three requirements, the fact should be evaluated within the context of the whole verdict.

74. Applying this standard, the Panel has refused accepting para. 15 of the Judgment in *Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo (IT-96-21-T)*.

75. The referenced paragraph contains several allegations, but the conclusion on the facts itself is insufficiently clear and defined so as to be accepted as admissible.

76. Also, in order to specify as much as possible the facts admissible to this Panel, only parts of paras. 186 and 187 from the Judgment in *Prosecution v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo (IT-96-21-T)* were accepted by applying this standard.

## **3. The fact, as formulated by the moving party, must not differ in any substantial way from the formulation of the original judgment**

77. This standard seeks to explain that a quotation of certain paragraph from the judgment is not necessarily in question, but rather that the formulations substantially harmonized with certain paragraphs of the judgment may also be accepted.

78. Considering that the Prosecutor's motion exclusively used the quotations, none of his proposals was refused by applying this standard.

## **4. The fact must not be unclear or misleading in the context in which it is placed in the moving party's motion**

79. In the context in which it is planned to use the proposed fact, the fact needs to have an identical meaning like in the judgment from which it is being taken. Therefore, strengthening or distorting the sense of the proposed fact by placing it into a certain context is not allowed.

80. No fact has been refused for this reason. It should be noted and explained, however, that the fact under para. 179 from the Judgment in *Prosecutor v. Mladen Naletilić and Vinko Martinović (IT-98-34-T)*, refers to the conflict between the Army BiH and the HVO.

**5. The fact must be identified with sufficient precision by the moving party**

81. This standard requires that the proposed fact may be identifiable in the judgment from which it is being taken. Similarly to the standard No. 3, the Court may accept the proposed fact also in the case where the moving party has erroneously quoted the paragraph, when it is obviously an error, and when the other party fully understands the intended factual finding.

82. No fact has been refused for this reason.

**6. The fact must not contain characterizations or findings of an essentially legal nature**

83. This standard has hitherto caused the most intensive discussions and deliberations. In principle, there is an agreement to prevent, by its application, accepting the facts inherently containing a legal characterization. Nevertheless, there are various positions in practice in relation to the issue as to which linguistic formulation inherently contains a legal formulation.

84. In addition, having accepted the definition of this standard as important, and having applied it, the Panel refused to accept paras. 196 and 321 from the Judgment in *Prosecutor v. Mladen Naletelić and Vinko Martinović (IT-98-34-T)*.

85. Specifically, the finding that a certain conflict was international by its character, or that certain events gave it such a character, is exactly a legal finding based on the facts.

**7. The fact must not be based on an agreement between the parties to the original proceedings**

86. This standard means that the proposed fact was the subject of the evidentiary proceedings. Therefore, the facts agreed upon and uncontested between the parties to the proceedings do not reach the necessary degree of credibility so as to result in shifting the

burden of proof onto the adverse party.

87. No fact has been refused for this reason.

#### **8. The fact must not relate to the acts, conduct, or mental state of the accused**

88. Starting from the right to a fair trial, the Prosecutor needs to convince the Trial Panel, during the evidentiary proceedings, that his theory is true. This means that the acts committed by the Accused and the Accused's subjective relation with these acts need to be proved. This relation implies the issues concerning both the mental competence and the guilt.

89. In case the Panel accepted the facts comprising the direct charges against the Accused, the Accused would have an opportunity to defend from the charges, whereby the presumption of innocence would be violated.

90. It has been noted, like in the standard No. 6, that the extent to which this standard may be interpreted has been differently understood. Nevertheless, starting from the facts proposed by the Prosecutor, the Panel has concluded that they do not directly relate to the acts charged against the Accused, and that they have thereby satisfied the standard No. 8. In addition, it should be noted that the proposed facts (considering the standard No. 1) are indeed relevant since they prove the context of the events covered by the Indictment.

#### **9. The fact must clearly not be subject to pending appeal or review**

91. When this standard is in question, Article 4 of the Law on the Transfer of Cases is explicit. The confusion may possibly be caused by the ICTY judgments in cases of pending appeals. In such circumstances, the facts adjudicated in the trial judgment, uncontested on a pending appeal, may be accepted as established.

92. Our legal system has also accepted such an approach, both with regard to the interpretation of the notion of 'finality' and the actions of courts in such circumstances.

#### **Comprehensive test: Using the Court's discretionary power regarding the established facts**

93. Each of the proposed facts tested by the above referenced standards may be

refused if the Panel found, using its discretionary powers, that the acceptance thereof would not contribute to the increased expedience of the proceedings, and, in parallel, that it would not ensure the right to a fair trial. This is so particularly considering the cases where the adjudicated facts are too general, imprecise, biased and final.

94. As already stated, the facts proposed in the concrete case are rather commonly known and directly unrelated to the Accused. The Panel has therefore found no obstacles to accepting the Prosecutor's motion in the scope accepted through analyzing certain standards, and as stated in the operative part of this decision.

95. In addition, the Panel has also taken into account that, in principle, Counsel for both the Accused accepted certain facts, despite their objections.

#### **B. DECISION TO GRANT PROTECTIVE MEASURES TO THE WITNESSES**

96. Considering the requirements set out in the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, a certain number of witnesses sought protective measures during the proceedings.

97. In relation to the above referenced requests, a number of decisions were rendered granting protective measures to the witnesses.

98. It should be noted, however, that not all the witnesses with granted protective measures testified in these proceedings, namely that the following witnesses gave evidence: CD, CE and S-1.

99. Ultimately, it should be noted that the witnesses who testified by applying the protective measures are the witnesses for the Prosecution, and that appropriate decisions were issued granting the protective measures to these witnesses.

#### **C. DECISION TO EXCLUDE THE PUBLIC**

100. During the conduct of the proceedings at issue, the public was, pursuant to Article 235 of the CPC of BiH, excluded from the trial for several times, when the interests of the witnesses with the granted protective measures so required.

101. The public was excluded from the main trial when the personal details of the witnesses with the earlier granted protective measures were verified, or when the



witnesses were examined about the circumstances due to which the protective measures had been sought, and in all cases where it was also necessary to protect the interests of the other witnesses with granted protective measures.

102. The public was also excluded from the main trial when the protective measures, granted to the witness in the proceedings before the ICTY, had to be implemented, which had to be kept in force *mutatis mutandis* in the proceedings at issue.

103. Therefore, in each individual case, and pursuant to the given circumstances, the Panel has evaluated the necessity and justifiability of excluding the public from the main trial. The Panel has also cautioned the present persons that they must keep confidential all the information they learned during the trial, and that any unauthorized disclosure of such a secret would be a criminal offense. When excluding the public from the trial, the Panel informed the public about the reasons for its exclusion and about the rendered decisions.

#### **D. REFUSAL TO PRESENT CERTAIN EVIDENCE**

104. During the proceedings, the Court has relied on the duties prescribed by Article 239(2) and Article 263(2) of the CPC of BiH, namely of the duty to present evidence relevant to the concrete case, by preventing any unnecessary delay of the proceedings.

105. In view of the above principle, both the Prosecution and the Defense were requested to focus on the proceedings conducted against the accused Veselko Raguž and Ivo Raguž, and to avoid proving or contesting, to an unnecessary extent, the general factual context during the July – late August 1993 period.

106. Considering the emphasized need for efficiency and economy of the proceedings, the Prosecution notified the Court, the Accused and their Counsel, by its letter of 5 December 2011, that the total of 41 instead of 51 witnesses (proposed under the Indictment) would be heard during the Prosecution's evidentiary proceedings.

107. In addition, the Prosecution's letter, which the Court received on 8 February 2013, notified the Court that the Prosecution would withdraw four witnesses proposed to be heard at the main trial.<sup>2</sup>

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<sup>2</sup> Šerif Hajdarević, Zijada Humačkić, Šaćira Pirić and Halil Palikuća.

108. Also, by its letter of 21 February 2013, the Prosecution notified the Court, the Accused and their Counsel that they would withdraw from hearing yet another witness.<sup>3</sup>

109. Ultimately, at the main trial resumed on 28 March 2013, the Prosecution withdrew its proposal to hear three witnesses, namely the witness<sup>4</sup> by whose hearing the Prosecution stood in its letter of 5 December 2011, and the two witnesses whose hearing was requested subsequently, although not planned in the letter of 5 December 2011.<sup>5</sup>

110. All the remaining witnesses, whose hearing was proposed under the Indictment, were provided with an opportunity to testify before the Court.

111. It should be further noted that abundant correspondence was kept up in relation to the Prosecution's additional and rebuttal evidence.

112. Specifically, by its letter of 5 December 2011, the Prosecution notified the Court of its evidence planned to be presented as both additional and rebuttal evidence.

113. Since the forwarded proposal had certain deficiencies in terms of exactly which proposed piece of evidence was tendered as rebuttal evidence, and which one was additional evidence, the Court requested the Prosecution, by its letter of 8 November 2013, to consolidate the submitted proposal.

114. On 12 November 2013, the Prosecution submitted the consolidated proposal, which again had certain deficiencies. Thus, only on 15 November 2013, the Prosecution notified the Court of the evidence it planned to adduce.

115. All the evidence, proposed to be adduced under the letter of 15 November 2013, was tendered in the case record at the main trial resumed on 20 November 2013.

116. Also at the same main trial, the petition of the accused Veselko Raguž to summon again expert witness Milan Gorjanc, forwarded by his Counsel, was refused pursuant to Article 263(2) of the CPC of BiH.

117. Specifically, the Prosecution introduced as rebuttal evidence 19 documents related to the events which were the subject of an expert analysis.

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<sup>3</sup> Aiša Kaplan.

118. The Prosecution has also attempted, by its evidence, to differently interpret the events in relation to the findings of expert witness Milan Gorjanc.

119. When such an expert analysis is in question (exceptionally complex and related to the organization and activities of all units within the zone of responsibility of a brigade, both the units within the brigade and the units re-subordinated in order to operate within the brigade's zone of responsibility), there is always a possibility that certain documents will point to a different development of the events.

120. In other words, the expert witness's findings should point, directly or indirectly, to a possibility that such documents will appear, and to their importance for the essential interpretation of the events.

121. Consistently with the foregoing, the proposal to summon again the expert witness was refused. In evaluating the credibility and authenticity of the findings of expert witness Milan Gorjanc, but of the other evidence adduced too, the Court was under obligation to evaluate them in their entirety, excluding the need that the expert witness comments on all the documents of the *Knez Domagoj I* Brigade that may appear at any stage of the proceedings.

#### **E. OBJECTIONS TO THE EVIDENCE**

122. A large number of objections were advanced during the evidentiary proceedings.

123. The objections mostly concerned the evidence adduced pursuant to the Prosecution's proposal, and, to the largest extent, they were related to the objection of lawfulness and authenticity, and thereby to its relevance.

124. More specifically, during the proceedings, a certain number of witness examination records collected during the investigation were, upon the Prosecution's motion, tendered into the case record.

125. The Defense objected that it could not be seen from these records how these witnesses were examined, namely that questions and answers were not indicated. In other

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<sup>4</sup> Ibro Klarić.

<sup>5</sup> Šefik Ratkušić and Merima Đulić.

words, the referenced records do not show whether the examination was conducted in compliance with Article 262(2) of the CPC of BiH.

126. Since the questions posed to the witnesses are unidentifiable from the records, the Defense argued that it was not possible to determine the authenticity of the witnesses' statements contained in the records, or of their answers to the questions posed.

127. The Defense's objected to and contested the lawfulness and authenticity of the quoted records, and, as a logical result thereof, the relevance of tendering these records in the case record was also called into question.

128. Furthermore, the objections to certain evidence were also tendered in the case record, particularly to the Prosecution Exhibit T-106 (List of members of the I Brigade *Knez Domagoj*).

129. The Defense has also objected to the relevance of evidence considering that the evidence does not indicate the date of the list at issue.

130. Considering a large number of the advanced objections and the need to respond in the verdict only to the most important issues, the Court has considered the advanced objections and provided appropriate explanations of reasons.

#### **IV. GENERAL EVALUATION OF EVIDENCE IN THE PROCEEDINGS**

131. During these criminal proceedings, a fairly large number of evidence, which may be differently construed, was adduced before the Court.

132. The evidence adduced may be construed by imputing to the accused Veselko Raguž most of the criminal offenses covered by the Indictment. In the concrete case, however, such an interpretation would not exclude a reasonable doubt into their different interpretation. Therefore, the documentary evidence primarily related to the accused Veselko Raguž and his position in the context of overall HVO forces which operated in the relevant area is the first to be analyzed below.

133. In relation to the examination of the evidence adduced, four facts should be pointed out.

134. Specifically, in the concrete case, the Prosecution has failed to define beyond a reasonable doubt (1) the zone of responsibility of the IV Battalion or the Stolac Battalion which was under the command of the accused Veselko Raguž, (2) the degree of integration of certain units which (should have) functioned under the Accused's command, (3) the facts and hearsay about the Accused, and (4) the Accused's absence from the command post in a situation of high combat readiness.

**A. ZONE OF RESPONSIBILITY OF THE IV (STOLAC) BATTALION AND THE DEGREE OF INTEGRATION OF CERTAIN UNITS WHICH (SHOULD HAVE) FUNCTIONED UNDER THE ACCUSED'S COMMAND (1) AND (2)**

135. One of the important issues raised during these criminal proceedings is the issue of the zone of responsibility of the battalion under the Accused's command. It should be first noted, within this context, that the Prosecution has relied on the documentary evidence and the witnesses' testimonies to prove that the critical events occurred within the zone of responsibility under the Accused's command.

136. Along this line, during the presentation of its own evidence, but of the Prosecution's evidence too, the Defense has accentuated the issue of the zone of responsibility, particularly in the context of merger of the IV and V battalions, that is, the issue of the Stolac Battalion formation.

137. It may be concluded from the Prosecution's Exhibit T-41 (an order issued with the aim to restructure the units of the I Battalion *Knez Domagoj*), that since 7 July 1993 (24:00 hours), at the latest, all the events that had occurred in the Stolac wider area fall within the zone of responsibility of the accused Veselko Raguž.

138. The referenced order specified that the Forward Command Post Stolac (IZM Stolac), the former IV Battalion and V Battalion would be abolished. and a new, IV Battalion formed, whose commander would be the accused Veselko Raguž. In addition, the above referenced Exhibit, if viewed in relation to Exhibit T-47 (Order of the I Battalion *Knez Domagoj* of 1 August 1993), suggests the conclusion that the zone of responsibility of the IV Battalion ranged from a trig point (tp) 192 Gradac to Žujina gradina tp 478.

139. In the concrete case, however, the other adduced evidence should be considered

too. Exhibit T-36 (Security Situation Report of 8 January 1993 forwarded to the Commander of the southeast Herzegovina operations zone) points to the conclusion that the IV Battalion held under its control the area from Hodovo to Drenovac, and that the V Battalion controlled the Komanje hill (Komanje brdo), Barani, Ošanići and Poplat.

140. The facts, however, that a large number of witnesses testified about the foregoing, should also be indicated, as well as that, among others, witnesses Meho Bucman and Suad Boškailo, then members of the IV Battalion, testified that the zone of responsibility of their Battalion always covered the area from Ošanići to the Komanje brdo or Poplati.

141. Furthermore, Exhibit O1-28 (Active Defense Order of 16 March 1993) should be examined. It is obvious from this Exhibit that the Commander of the IZM Stolac defined the zone of responsibility of the IV Battalion as the area from the Radimlja River canyon to the tp 358, and that particularly requested was a joint action of the II and IV Battalions to prevent wedging and infiltration of sabotage groups into the canyon of the River Radimlja.

142. It is therefore obvious that the evidence of the referenced witnesses directly contradicted Exhibit T-36.

143. The evidence adduced was also examined in the context of re-subordination of certain units to the IZM Stolac and the IV Battalion, that is, in depth control of the area.

144. The Indictment, *inter alia*, addressed the issue of members of the Neum Battalion and the Military Post (MP) under the command of the IV Battalion. It should be indicated, however, that the evidence adduced suggests that certain units were re-subordinated to the IV Battalion no sooner than 10 August 1993 (T-50), and that the previous re-subordination was carried out towards IZM Stolac (T-37).

145. Therefore, the referenced evidence suggests that certain units (1<sup>st</sup> Platoon of the II Battalion, 1<sup>st</sup> Platoon of the Gradac Company, and 1<sup>st</sup> Platoon of the Neum Company) joined the IZM Stolac, and that no sooner than on 10 August 1993 was the *Klis* Battalion re-subordinated to the IV Battalion.

146. Ultimately, it should be noted, in this context, that it is not obvious from the Reorganization Order (T-41) what happened with the units earlier re-subordinated to the IZM Stolac. It can be concluded, however, that they returned to their original formations, and that their re-subordination was carried out pursuant to Item 2 of the Order.

147. Furthermore, in relation to the range of area and the delineation of powers among the Battalion Command, military and civil police, it should be pointed to Exhibit O1-4 (Order of the South Sector Commander of 3 July 1993), showing that the Stolac and Čapljina civil police were responsible for the security of towns, citizens and property.

148. Exhibit O1-5 (Order of 3 July 1993), which defines the formation of check points and prohibition of movement for soldiers, shows that the zones of responsibility were divided between the military and civil authorities.

149. In relation to the Indictment allegations concerning the charges for enforced removal of the children and elderly to the Blagaj territory, Exhibit O1-1 needs to be pointed out. It ensues from this Exhibit that these were the activities of both the civil authorities and the police.

150. Ultimately, in relation to the zone of responsibility of the Battalion under the command of the accused Veselko Raguž, one should indicate the Orders (Exhibits T-47, T-48 and T51), which showed that, between 1 August 1993 and 17 August 1993, the zone of responsibility of the IV Battalion was re-defined several times. Also, it should be pointed to Exhibit T-103 (Report on Executed Orders of 29 July 1993) and T-101 (of 18 July 1993), which raised the issue of the lack of soldiers (difficulties in keeping the zone of responsibility in depth without at least one battalion), and the lack of the IV Battalion's potential to keep the defense line around Stolac, and finally, to the List of members of the IV Battalion Command of 29 July 1993 (Exhibit T-46).

151. In view of the evidence adduced, the Court has found that there is no evidence showing that the 3 July 1993 Order (T-41) was executed in practice before 29 July 1993, that before 29 July 1993 the new Commander of the Stolac Battalion had operative command over all units which had earlier functioned within the IZM Stolac, but also that until 17 August 1993 activities were carried out to re-define the zone of responsibility of the new Stolac Battalion.

152. Ultimately, relating to the issue of the units under the Accused's command, it should be noted that, for the reason of relevance, the Court did not accept Exhibit T-106 (List of the First Brigade members), because it does not show the period of its origin, and because it shows that 6 battalions were within the I Brigade (even though abundant evidence points to a different conclusion, e.g. T-109 and T110 indicates that, on 16 April 1993 and 17 July

1993, the total of 5 battalions were within the I Brigade), and that the accused Veselko Raguž was assigned the duties of an Operations and Training Adviser.

**B. THE FACTS AND HEARSAY ABOUT THE ACCUSED AND THE ACCUSED'S ABSENCE FROM THE COMMAND POST IN CONDITIONS OF HIGH COMBAT READINESS (3) AND (4)**

153. The evidence adduced suggests the conclusion that, during the relevant period, the Accused performed the duty of a Commander of the IV Battalion, and subsequently, of the new IV (Stolac) Battalion, and that, on 9 October 1993, he was relieved of the duties of the Commander of the IV Battalion (T-52).

154. Also tendered in the case record was the evidence speaking about the duties of the accused Veselko Raguž. The evidence also showed that the Accused was assigned to various duties within the I Brigade *Knez Domagoj*.

155. In the concrete case, however, the witnesses who testified before the Court imputed to the Accused different attributes, titles and responsibility for various events.

156. For example, witnesses Suad Boškailo, Medin Kaplan and Murat Kaplan confirmed they had known that the Accused was the Brigade Commander, and that Plješevac Greda, and Crnići were within the IV Battalion's zone of responsibility. Witness Selvedin Kaplan stated that he did not know whether Plješevac Greda was in the IV Battalion's zone of responsibility. Witness Meho Bucman stated that the referenced villages were located deep behind the frontlines, and that he did not know if they were at all in the Battalion's zone of responsibility.

157. Therefore, the foregoing witnesses consistently testified that the Accused was the Battalion's Commander, however it remains unclear from their testimonies in which territory he had operated.

158. Other witnesses for the Prosecution, who had confirmed the existence of rumors about the Accused, or that his name was a topic of different stories, should also be mentioned. The foregoing was confirmed by witness Murat Kaplan. Also, witnesses Indira Bešo and Remzo Šuta testified that the Accused was "in charge" in the HVO, while witness Muhiba Balavac identified him with Tuđman at his time.

159. Ultimately, witness Medin Kaplan stated that, generally speaking, Veselko Raguž is



to be blamed for everything he had survived.

160. Therefore, the evidence of the above referenced witnesses showed an obvious propensity to impute certain events to Veselko Raguž, even though these witnesses, in answering to the questions posed with regard to the Accused's nexus with the events, gave no satisfactory answers, as explained separately.

161. Ultimately, the inconclusiveness of the Indictment itself, that is, its contradictory allegations, should also be noted. Specifically, the starting position of the Indictment was that the events charged against the Accused occurred in the zone of responsibility of the unit under his command, and that, in addition to the Accused, direct perpetrators were heterogeneous forces comprising the units from Neum, Home Guard, civil police, etc.

162. In the conditions where the Accused is being charged with the acts committed by the units re-subordinated to him, it is necessary to prove a strong nexus in the chain of command, the Accused's active role in the issuance of orders, and his awareness of the events. In the concrete case, however, pursuant to the allegations of the Indictment and the Prosecution witnesses' evidence, the Accused was present in Crnići, Koštana Hospital, Brdo Prenj, Masline and Jasoč during the most critical period (13-15 July 1993).

163. In addition, the Prosecution's witnesses testified that the Accused had been seen using different means of transportation (vehicles make *Golf* or *Jeep*).

164. It should be noted (as analyzed above) that abundant documentary evidence suggests the conclusion that, at the relevant time, an order for full combat readiness was issued, implying in any case that the Accused was, to an extent greater than usual, linked to his authority as a commander, namely that he commanded over the units in the field.

165. Taking into account the above referenced evidence, the witnesses for the Prosecution obviously tend to impute significant authority to the Accused, and they spoke about him even though most of the witnesses hardly knew him, or had not known him at all.

166. A logical result of the above described situation is that the witnesses imputed to the Accused the acts committed by other units, often unknown to them. This was particularly analyzed in the reasoning of certain allegations of the Indictment.

## V. FACTUAL FINDINGS BASED ON THE CONSIDERATION OF EVIDENCE

### A. COUNT I-1

167. Count I-1 of the Indictment charged the accused Veselko Raguž with having unlawfully deprived liberty of Bosniak civilian men in their houses, and unlawfully detained them at the building of the *Koššana* Hospital in Stolac, some of them at the Dretelj and Gabela camps, and with expelling women and children from their houses, transporting them near Blagaj, and forcing them to march on foot, and to cross to the territory held by the Army BiH.

168. A larger number of witnesses testified, upon the Prosecution's motion, about the facts referred to under Count I-1 of the Indictment, among which the evidence of the following witnesses should be singled out: Edin Đulić, Meho Bucman, Murat Kaplan, Ismet Ratkušić, Esad Ratkušić, Nusret Hajdarović, Ibro Hajdarović, Alija Hajdarović, Medin Kaplan, Alija Kaplan, Selvedin Kaplan, Samir Kaplan, Admir Kaplan, Suad Boškailo and Ibro Selimić.

169. The foregoing witnesses testified that, in July and August 1993, a fairly large number of Bosniak men were deprived of liberty, as described under Count I-1 of the operative part of the Indictment. In terms of the essential issues, however, the testimonies of the heard witnesses were far from identical.

170. More specifically, the described arrests occurred several times. According to the witnesses' evidence, the arrests may be related to 1 July, 2 July, 13 July, 14 July, 15 July and 2 August 1993.

171. First, it should be noted that witness Edin Đulić testified about the arrests of **1 July 1993**. This witness stated that, on the referenced occasion, in Pješevac Greda, Hamdo Đulić, Ćamil Đulić, Elvir Đulić and Hamdija Đulić were arrested together with him by *some soldiers* from Neum.<sup>6</sup>

172. Witnesses Meho Bucman, Murat Kaplan, Ismet Ratkušić, Esad Ratkušić testified about the arrests carried out on **2 July 1993** in the Ošanići area. Witnesses Esad

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<sup>6</sup> Transcript of the witness's evidence of 27 March 2012, p.5.

Ratkušić<sup>7</sup> and Ismet Ratkušić<sup>8</sup> consistently testified that they had been arrested by two or three unidentified persons, and escorted to Alija Ratkušić's house, where the Company's Command had been located.

173. Witness Murat Kaplan testified that he had been arrested at the Pješevac Greda site and escorted to the Company Command. This witness confirmed that he, Meho Kaplan, Zahir Kaplan, Alo Kaplan, Ćamil Kaplan and Ismet Kaplan were arrested by Mile Raguž, Tvrtko Raguž and two other unidentified persons, and escorted to Alija Ratkušić's house.<sup>9</sup>

174. In the context of witness Murat Kaplan's evidence, it should be noted that this witness stated that, at the relevant time when they were arrested, Mile Raguž wore civilian clothing, and that, following the Defense's specific question, he could neither confirm nor deny the fact that Tvrtko Raguž and Mile Raguž were members of the civil police.<sup>10</sup>

175. In order to clarify the status of persons who had arrested a group of men, including witness Murat Kaplan, the accused Veselko Raguž's Defense tendered Exhibit O1-33 (Certificate of the Registration Issues Group for the Stolac Military Area issued in the name of Tvrtko Raguž), showing that, at the relevant time, Tvrtko Raguž was a member of the MUP-PS Stolac.

176. Ultimately, Meho Bucman testified as the Prosecution's witness about the arrests of 2 July 1993. The witness explained the circumstances in which he was arrested, namely that he was arrested by his colleagues, assisted by soldiers who had surrounded the site where he was present.<sup>11</sup>

177. In relation to the arrests carried out on 2 July 1993, however, the testimonials of a large number of witnesses showed that other, unidentified soldiers and formations were present, and that it was impossible for the witnesses to identify of which formation these unidentified soldiers were members. Truly, all the examined Prosecution's witnesses clearly stated that they had been arrested by HVO soldiers, and also that there were persons wearing civilian clothing. Since all witnesses have differently identified the

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<sup>7</sup> Transcript of the witness's evidence of 18 January 2012, p. 58.

<sup>8</sup> Transcript of the witness's evidence of 18 January 2012, p. 34.

<sup>9</sup> Transcript of the witness's evidence of 7 March 2012, pp. 9 and 10.

<sup>10</sup> *Ibid*, p. 16.

<sup>11</sup> Transcript of the witness's evidence of 11 January 2012, p. 56.

formation of which those soldiers were members, the Court could not conclude with certainty that they were under the command of the accused Veselko Raguž.

178. Witness Meho Bucman stated clearly that the site where he had been present was surrounded by a large number of persons unknown to him, and that he was arrested by his co-combatants, including Ivica Mustafić.

179. Ivan Mustafić testified at the hearing held on 28 August 2013. The witness stated that he was Commander of the 2<sup>nd</sup> Company of the IV Battalion, *Knez Domagoj* Brigade. On the critical morning, when Muslims from his units were disarmed, the witness was in his Command, and Božo Radić and Pero Marić were also there with him.

180. Witness Mustafić explained that, on this very day, there should have been a shift between the 2<sup>nd</sup> and 3<sup>rd</sup> Company, that a group of unidentified soldiers came to the Command stating that their superiors had ordered them to disarm Muslim soldiers. The witness further explained that he had asked them for the reasons for disarming, and that they mentioned the security reasons and the incidents that had earlier taken place in the Mostar and Bijelo Polje areas.

181. The unidentified soldiers numbered around 30.<sup>12</sup>

182. Witness Mustafić was specifically asked what the meaning of an order issued by the superior instance was. The witness explained that, as far as he had understood, the higher instance meant a superior command.<sup>13</sup>

183. Finally, witness Mustafić stated that his co-combatants, members of his Company, did not participate in the process of disarming, that something like that was not necessary since no resistance was offered in the process. The witness also stated that members of his Company, who had not been arrested on the relevant night, were deployed to the frontlines towards the Army of Republika Srpska.<sup>14</sup>

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<sup>12</sup> Audio-recording of 28 August 2013, 00:16:30-00:18:40.

<sup>13</sup> *Ibid*, 00:18:40-00:19:30.

<sup>14</sup> *Ibid*, 00:19:30-00:21:00.

184. Witnesses Božo Radić<sup>15</sup> and Pero Marić<sup>16</sup> also testified about the process of disarming the Muslims, members of the 2<sup>nd</sup> Company of the IV Battalion of the I Brigade *Knez Domagoj*.

185. These two witnesses consistently testified that, on the relevant occasion, on 2 July 1993, the Muslims, primarily members of the 2<sup>nd</sup> Company of the IV Battalion, were disarmed by soldiers unknown to them. Both witnesses stated that these unidentified soldiers had been in uniforms identical to those of members of their Companies, but with different insignia. In responding to the questions aimed at establishing which unit carried out the disarming, witness Božo Radić stated that the unidentified soldiers had different insignia, namely that some of them had the HVO insignia, some the insignia of the HVO Military Police, and some had no insignia at all.

186. In addition, in responding to the questions posed, all three Defense witnesses confirmed that, immediately before their disarming, they had been in the company of Meho Bucman, who was disarmed and escorted like all other Muslims from the unit on the relevant occasion.

187. In responding to the questions relating to the participation of members of the 2<sup>nd</sup> and 3<sup>rd</sup> Companies in the process of disarming the Muslim co-combatants, all the Defense's witnesses consistently stated that, when arrested, none of their co-combatants offered any resistance, since the unit unknown to them had informed them that they acted in compliance with the superior command order, and that the order to disarm Muslims was forwarded through their chain of command.

188. In addition, in responding to the question as to whether they provided any assistance in the process of disarming, these witnesses stated that they had been present but took no part in the disarming itself, and that something like that was not even necessary given their co-combatants' awareness that something like that was to be expected.

189. The Court has evaluated the foregoing statements of the witnesses for both the Prosecution and the Defense for the Accused, individually, in combination, and in relation to the referenced documentary evidence. The Court has found that these testimonies form

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<sup>15</sup> Audio-recording of 28 August 2013, 01:03:40-01:07:00.

a logical and convincing whole, from which it cannot be concluded with certainty that the accused Veselko Raguž, in any way, took part in the process of disarming the Muslim soldiers. Also, it should be noted that, in principle, all the witnesses consistently testified that the IV Battalion comprised a larger number of Muslims, that is, around 50% of the total number of soldiers.

190. All the witnesses further confirmed that, when arrested on 2 July 1993, they saw a fairly large number of unidentified soldiers. According to both the Prosecution witness Meho Bucman, and the witnesses for the Defense, this number ranged between 20 and 30 soldiers.

191. Also, witnesses Murat Kaplan, Ismet Ratkušić and Esad Ratkušić consistently testified that they had been arrested and escorted to Alija Kaplan's house by persons unknown to them. Witness Murat Kaplan stated that these persons cannot be regarded with certainty as members of the IV Battalion.

192. Within the context of arrest of the witness/injured party Meho Bucman, it should be explained how he realized that he had been arrested by his colleagues. If due attention is paid, it can be observed that, at the critical occasion, Meho Bucman was not solely in the company of members of the IV Battalion, but rather of the commanders from the IV Battalion who held either the same or similar rank to his own rank.

193. In the context of possible participation of members of the IV Battalion in disarming the Muslim co-combatants, it should be noted that there is not a single piece of evidence showing that any-level command staff had any prior knowledge of the plan to disarm them, namely that the Prosecution adduced no piece of documentary evidence whatsoever to confirm its theory of charges. It can be concluded from the foregoing that no such documentary evidence exists.

194. The Court has examined the testimonies of the witnesses for both the Prosecution and Defense who had testified about the circumstances under Count I-1 of the Indictment, and concluded that none of the witnesses confirmed that they had known in advance that the disarming was to occur. Truly, witness Meho Bucman, like other witnesses for the Defense, confirmed that they were not surprised with the disarming and apprehension,

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<sup>16</sup> Audio-recording of 28 August 2013, 01:46:00-01:50:00.

that they had already discussed such an option, but also that soldiers unknown to them took part in the disarming.

195. In addition, all the evidence consistently confirms that, in the earlier period, there had been certain problems and incidents between members of the HVO and the Army of the Republic of Bosnia and Herzegovina, and that in the context of such events in the Mostar territory they mostly feared the problems in the Stolac area.

196. In other words, considering the context of the events, witnesses Ivan Mustapić, Božo Radić and Pero Marić consistently confirmed that they took no part in the process of disarming their co-combatants, but also that they were not surprised that members of the formation unknown to them acted in such a way, all the more because they were informed that such an order had been issued by a superior command, under quite a different chain of command in relation to the IV Battalion.

197. The evidence adduced confirms, to a certain extent, that the Command of the IV Battalion received no order to disarm Muslim members of the IV Battalion. The evidence mentioned above, that is, the testimonies of witnesses Murat Kaplan, Ismet Ratkušić, Esad Ratkušić, Ivica Mustapić, Božo Radić and Pero Marić also confirm the objective facts ensuing both from their own testimonies and the testimonies of witnesses Željko Stanković and Ljubomir Raguž, and particularly from witness Anđelko Milanović's testimony.

198. The Court has indisputably found that all these witnesses testified that they had no knowledge about the order to disarm (the Muslims), and that at the main trial the Prosecution adduced no evidence to satisfy the Court that the IV Battalion, within its capacities, made any earlier preparations to lose a half of its own personnel. Witness Meho Bucman testified that at the critical moment he was surrounded by a large number of soldiers unknown to him, who participated in his arrest. Furthermore, the Court could not conclude, from the evidence adduced by both the Prosecution and the Accused's Defense, that the IV Battalion received any reinforcement in soldiers to compensate for a large number of soldiers lost due to the disarming, which would be logical, particularly given the fact that, at the time, by disarming almost a half of the IV Battalion (Muslim soldiers), and by opening a new frontline with the Army BiH, the IV Battalion was significantly weakened. Of course, the Prosecution presented the Court with no piece of evidence along this line either. Rather, the Court has concluded, on the basis of the evidence adduced by both the Prosecution and the Accused's Defense, that the IV and V

Battalion had indeed merged, but only after the arrest period, more precisely, in late July or in early August 1993.

199. On the contrary, the accused Veselko Raguž's Defense has examined witness Anđelko Milanović to this effect. At the relevant time, this witness performed the duty of Assistant Commander of the IV Battalion for Operations and Training, that is, he was a so-called *operations officer*.<sup>17</sup>

200. The duties of operations officers, that is, of witness Anđelko Milanović, included organizing and developing the defense, and elaborating on the issued orders to make them applicable in practice. In the concrete case, the witness was particularly precise in saying that no order, oral or in writing, to disarm the IV Battalion came from the superior level of command, nor did the Commander of the IV Battalion issue any such order.

201. In addition, witness Milanović confirmed that, in operative terms, the IV Battalion did not cover disarming, and that it was carried out by persons unknown to him.<sup>18</sup> Truly, the Court did not credit the part of the witness's evidence where he stated that a unit unknown to him carried out the disarming and arresting. Considering, however, that the burden of proof, including proving this fact too, is on the Prosecution, the Court has accepted the testimony of this witness in its entirety.

202. Therefore, starting from the earlier examined evidence, that is, from the testimonies of the witnesses for both the Prosecution and the Defense, and reviewing the documentary evidence tendered by the Prosecution, the Court has found that the Prosecution's allegations under Count I-1 of the Indictment were not proved beyond a reasonable doubt, and that the tendered documentary evidence in no way corroborates either the testimonies of the heard witnesses or the allegations of the confirmed Indictment.

203. As earlier stated, there is no dispute that a certain number of Muslims were arrested on the premises of the Command of one of the Companies within the IV Battalion, and that members of the IV Battalion had been present when they were arrested. By presenting its evidence, however, both by hearing the witnesses and presenting the documentary evidence, the Prosecution failed to prove that members of exactly this

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<sup>17</sup> Audio-recording of 8 May 2013, 00:08:50-00:09:30.



Battalion participated in the disarming and arresting of their co-combatants, but on the contrary, that they were arrested by the HVO soldiers unknown to them. In addition, it should be noted that the Prosecution presented not a single piece of documentary evidence whatsoever suggesting the conclusion that the Command of the IV Battalion had been in advance notified of the disarming.

204. When it comes to the acts of members of the IV Battalion themselves, who did not object to the disarming and apprehension of their co-combatants, the Court has found that their acts were reasonable and logical in the given circumstances, and that as such, in the absence of any other evidence, they can in no way give rise to the issue of command responsibility of the accused Veselko Raguž, with which the Prosecution has charged him.

205. As stated earlier, and as concluded by the Court too, the referenced persons were disarmed pursuant to the order given to a certain unit, that is, the order issued by a superior command along the chain of command. It should be noted here that the Court has not even determined what superior command issued the order, particularly which unit received this order. The Court could not determine this fact on the basis of the evidence presented by the Prosecution, let alone if the order “came down” to the IV Battalion. In particular, the Prosecution presented no piece of evidence whatsoever that, at the relevant time, the accused Veselko Raguž himself had received such an order. Therefore, from the presented Prosecution’s evidence, the conduct of the Commander of the IV Battalion, and the Commanders of subordinate units within this Battalion, the Court has concluded that their passivity at the critical time, as well as the behavior of the witnesses themselves at the main trial, both the Prosecution’s and the Defense’s witnesses, can be justified by the security reasons, particularly considering the events that preceded the disarming in the Mostar wider area, as stated in Exhibit O1-31 (Finding and opinion of expert witness Milan Gorjanc) on p.15, and by the Defense’s strategy, all in the absence of the Prosecution’s evidence.

206. Witnesses Nusret Hajdarović<sup>19</sup>, Ibro Hajdarović<sup>20</sup> and Alija Hajdarović<sup>21</sup> testified about the circumstances in which they had been arrested in Pješevac on **13 July 1993**.

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<sup>18</sup> *Ibid*, 00:23:00-00:27:40.

<sup>19</sup> Transcript of the witness's evidence of 11 January 2012, p. 34.

<sup>20</sup> Transcript of the witness's evidence of 11 January 2012, p. 7.

<sup>21</sup> Audio-recording of 24 April 2013, 00:08:20-00:09:30.

207. These three witnesses consistently testified that they had been arrested by persons unknown to them, that is, by unidentified members of the HVO.

208. Considering the fact that the Court has not determined, on the basis of the testimonies of heard witnesses and the documentary evidence presented by the Prosecution, on whose order these witnesses were arrested, that is, whether members of the IV Battalion did so themselves, with the knowledge of Commander Veselko Raguž. Therefore, it was decided as stated in the enacting clause of the Verdict.

209. Medin Kaplan, Alija Kaplan, Selvedin Kaplan, Samir Kaplan and Admir Kaplan testified, as witnesses for the Prosecution, about the arrests related to **14 July 1993** and the Kaplani Mahala.

210. The foregoing witnesses described, rather consistently, the way in which they had been arrested on the relevant occasion. Of particular importance for the Court, however, was to determine who had arrested these persons since the accused Veselko Raguž was charged with arresting these men.

211. In relation to the persons who participated in his arrest, witness Medin Kaplan stated that he was arrested by members of the HVO, namely: Mirko Raguž aka *Kopiljan*, Mile Pažin, Ivica Marković and Vide Krešić, and that these persons were members of the IV Battalion.

212. Witness Alija Kaplan testified at the hearing held on 14 March 2012 that Mile Pažin, Ivica Rajić and Zoran Marković<sup>22</sup> had arrested him together with Selvedin Kaplan, Nedim Kaplan, Samir Kaplan, Adi Kaplan, Remzo Kaplan, Suad Pošković and Ibro Tuka.

213. Upon a specific question posed by the Defense Attorney, witness Alija Kaplan explained with certainty that Mile Pažin and Zoran Marković participated in the arrest, and that Zoran Marković was a member of the Civilian Protection.<sup>23</sup>

214. Furthermore, witness Samir Kaplan confirmed that, on the relevant occasion, they were arrested by members of the HVO, namely by Ivica Marković, Mile Pažin, Mirko Raguž.<sup>24</sup>

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<sup>22</sup> Transcript of the witness's evidence of 4 March 2012, pp. 7 and 8.

<sup>23</sup> *Ibid*, pp. 39 and 40.

215. Witness Samir Kaplan testified that Mile Pažin, one of the participants in his arrest, was a member of the Civilian Protection, but he did not know of which unit Mirko Raguž and Ivica Marković were members. Despite this explanation, however, the witness stood by his position and belief that he was arrested by soldiers-members of the IV Battalion.<sup>25</sup>

216. In relation to the arrests of 14 July 1993, witness Alija Kaplan confirmed that Mirko Raguž, Mile Pažin, Marković and Vide Krešić had arrested him together with Selvedin Kaplan, Samir Kaplan, Medin Kaplan, Ibro Tuka and Suad Bošković.<sup>26</sup>

217. This witness further testified that, on the relevant occasion, he gained an impression that Mirko Raguž, Mile Pažin, Marković and Vide Krešić had come there for a burial of Sanida Kaplan, and that these activities were led by Mile Pažin, member of the Civilian Protection.<sup>27</sup>

218. Witness Selvedin Kaplan should be also mentioned in relation to the events of 14 July 1993. The credibility of this witness's testimony will be separately explained within the reasoning of the Court's decision concerning Count II-1 of the Indictment/enacting clause of the Verdict. This witness testified that he had been arrested by the HVO soldiers, namely by Mile Pažin and Mirko Raguž, and that Vide Krešić and Ivica Marković had tied up his hands.<sup>28</sup>

219. Among the testimonies of the witnesses for the Accused's Defense, regarding the disputable events of 14 July 1993, the testimonies of witnesses Mile Pažin, Ivica Marković and Vide Krešić should be pointed out.

220. In responding to the questions posed, witness Mile Pažin stated that, at the relevant time, he was a member of the Civilian Protection, that is, he was Assistant Commander of the Civilian Protection for the Stolac<sup>29</sup> municipality. This fact was confirmed by witnesses Samir Kaplan and Admir Kaplan.

221. In relation to the death of Sanida Kaplan, witness Pažin confirmed that he had been informed about the killing of a daughter of his work colleague, Hamza Kaplan, and that he

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<sup>24</sup> Transcript of the witness's evidence of 24 January 2012, p. 50.

<sup>25</sup> *Ibid*, pp. 59 and 61.

<sup>26</sup> Transcript of the witness's evidence of 7 March 2012, p. 37.

<sup>27</sup> *Ibid*, pp. 48 and 49.

<sup>28</sup> Transcript of the witness's evidence of 2 February 2012, pp. 42 and 43.

and Mirko Raguž, along with two other Muslims, went to her burial. Witness Pažin further added that, at the entrance to the Kaplani Mahala, he had noticed a soldier wearing a uniform, who introduced himself as Kaplan, that there were 7 or 8 persons, who thereupon all surrendered.

222. Witness Pažin confirmed that those men had three rifles, but that they had not tied up their hands since it was totally unnecessary. Thereupon, they buried Sanida Kaplan in the Perićs' harem (cemetery).

223. According to witness Mile Pažin, there is a road by this cemetery along which members of the military police had come by and arrested the referenced men after the funeral.<sup>30</sup>

224. It should be noted that witness Mile Pažin confirmed, in his testimony, his awareness that Ivica Marković and Vide Krešić were members of the IV Battalion. These men were accidentally present in the area, since they went to visit an ill soldier, Dane Puljić, to deliver his salary to him.

225. When particularly asked whether Marković and Krešić had any tasks related to the burial of Sanida Kaplan, or to the arrest of the referenced persons, witness Pažin responded that they had nothing to do with that, and that they were quite accidentally present at this site on 14 July 1993.<sup>31</sup>

226. Witnesses Ivica Marković and Vide Krešić testified about the circumstances related to Count I-1. These two witnesses confirmed Mile Pažin's evidence, namely that, on 14 July 1993, they were present at the relevant site because they went to deliver salary to their colleague Dane Puljić.

227. Witness Vide Krešić explained that, in July 1993, he was assigned to the logistics of the IV Battalion whose Commander was the accused Veselko Raguž. This witness testified that Mile Pažin was a member of the Civilian Protection. In mid July 1993, together with Ivica Marković, Logistics Commander of the IV Battalion, witness Krešić had to deliver salary, cigarettes and medicines to Dane Puljić, ill member of the IV Battalion.

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<sup>29</sup>

<sup>30</sup> *Ibid*, 00:17:30 – 00:22:45.

<sup>31</sup> *Ibid*, 00:22:45 – 00:26:30.

Ivica Marković, Commander of the Logistics Platoon, handed the salary, cigarettes and medicines over to Dane Puljić, and on their way back they noticed members of the Civilian Protection, Mile Pažin and Mirko Raguž, escorting 7-8 men in uniforms. After speaking with Mile, they learned that those persons had surrendered, and that they had had three rifles, which they surrendered too. The witness and Ivica returned to a tobacco station, and notified no one that those persons had surrendered.<sup>32</sup>

228. Witness Ivica Marković's testimony confirmed the statements of witness Vide Krešić. Witness Marković stated that, in July 1993, he went along Vide Krešić to deliver the salary to a colleague of theirs, and that, on their way back, they heard shouting, and saw Mile Pažin, member of the Civilian Protection, and Mirko Raguž. They saw men wearing camouflage uniforms coming out and surrendering. After 10-15 minutes, when a tractor drove in, the witness continued marching toward the logistics of his Battalion. The witness does not know what the destiny of the surrendered men was. They notified no one in particular about the surrender of the 7-8 men.<sup>33</sup>

229. In delivering the decision as stated in the enacting clause of the Verdict, the Court was mindful of the testimonies of witnesses Zdenko Goluža and Ilija Šutalo, heard upon the Defense's proposal with regard to the arrest of Suad Boškailo, who had testified in the capacity of a witness.

230. More specifically, it should be pointed to the testimony of witness Suad Boškailo. In responding to the questions posed, this witness stated he was certain that, on **15 July 1993**, he was arrested by Zdenko Raguž, Zdenko Bošković and Miro Moro.<sup>34</sup>

231. In responding subsequently to additional questions, however, this witness stated that he had erred in relation to Zdenko Raguž, that it was not Zdenko Raguž who had arrested him, but rather Zdenko Goluža.

232. All responses of witness Suad Boškailo to the Prosecutor's questions may be reduced to the theory that Veselko Raguž was behind the arrest and that he was to be held accountable. The witness further explained his position, and stated that he had been

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<sup>32</sup> Audio-recording of 10 July 2013, 01:00:00-01:06:15.

<sup>33</sup> Audio-recording of 10 July 2013, 01:12:30-01:17:15.

<sup>34</sup> Transcript of the witness's evidence of 2 February 2012, p. 17.

arrested by Veselko Raguž,<sup>35</sup> who questioned him about his activities and whereabouts, and thereupon escorted him to the Koštana Hospital.

233. In relation to witness Suad Boškailo's testimony, however, it should be pointed to the responses and explanations he gave during cross-examination. Specifically, the witness confirmed for three times that, among others, he had been arrested by Zdenko Raguž, accompanied with Miro Moro and Zdenko Bošković, members of the HVO rather than of the Military Police.<sup>36</sup>

234. With regard to witness Boškailo's testimony, it should be further noted that, in responding to the questions posed in cross-examination about the status of Marinko Raić and Franjo Krnić, the witness was certain that those persons were not members of the Military Police, and that, in fact, he did not know of which unit they were members. The witness thought they were not members of the Military Police because its members mostly wore white belts.<sup>37</sup>

235. A large number of the Defense's witnesses were examined in relation to the circumstances under the referenced Count of the Indictment, among which special attention should be paid to the evidence of witnesses Zdenko Goluža, Marinko Raić and Ilija Šutalo.

236. In responding to the questions posed to him, witness Marinko Raić stated he was a member of the IV Battalion, that is, a squad commander.

237. Witness Raić further testified that (the village of) Prenj was approximately 20 km far away from the zone of responsibility of the IV Battalion, and that, on 15 July 1993, he took no part in Suad Boškailo's arrest. When asked why he was certain about his non-participation in the arrest, the witness answered that, at the time, there were certain problems in the field, namely that the Army of the RBiH had launched an attack in the area of the Dubravka plateau, wherefore a standby for action order was in place since 13 July 1993, due to which he had not left his zone of responsibility.<sup>38</sup>

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<sup>35</sup> *Ibid*, p. 7.

<sup>36</sup> *Ibid*, p. 7.

<sup>37</sup> *Ibid*, p. 22.

<sup>38</sup> Audio-recording of 24 June 2013, 00:07:00-00:12:30.

238. In responding to the questions posed, Zdenko Goluža, witness for the accused Veselko Raguz's Defense, stated that, at the relevant time, he was Assistant Battalion Commander for MIS (Military-Intelligence Service)<sup>39</sup>.

239. In relation to the events of 13 July 1993, witness Goluža confirmed the averments of witness Marinko Raič that, on the referenced day, the Army of RBiH had indeed launched an attack due to which a standby for action order was issued, which is why they could not leave their combat positions until late July 1993.

240. In responding to the question of whether he participated in Suad Boškailo's arrest, witness Goluža stated that he had not participated in the arrest, and that he was ready to confront Suad, if necessary. The witness stated that Zdenko Bošković and Miro Moro were members of the Military Police.<sup>40</sup>

241. With regard to Suad Boškailo's arrest, the Court was mindful of the testimony of witness Ilija Šutalo, member of the 1<sup>st</sup> Company of the IV Battalion, who had at the relevant time resided in (the village of) Dolumi. Witness Šutalo stated that he knew Suad Boškailo, and that he had taken no part in his arrest. Witness Šutalo explained that, on 15 July 1993, he started off towards his house after learning about a massacre committed down from the village of Dolumi. Thus he went to find out what had happened with his parents. At the entrance to the village, witness Šutalo and Zdenko Marković were stopped by soldiers who asked him to identify himself, and who informed him that Suad Boškailo had inquired about him. Witness Šutalo further explained that he had a possibility to see Suad from the distance of 8m, and that he was informed that Suad had been arrested in a uniform, with a small-caliber rifle.<sup>41</sup>

242. Witness Šutalo was specifically asked if he had seen Zdenko Goluža and Marinko Raič at the referenced site. The witness responded that he had seen no one he knew. He thought that Zdenko Bošković and Miro Moro were members of the Military Police.<sup>42</sup>

243. The Court has found that witness Suad Boškailo was fully determined about certain key facts. In responding to additional questions, however, the witness could not provide

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<sup>39</sup> Audio-recording of 24 June 2013, 00:25:30-00:26:00.

<sup>40</sup> *Ibid*, 00:27:30 – 00:32:00.

<sup>41</sup> Audio-recording of 24 June 2013, 00:49:35-00:56:00.

<sup>42</sup> *Ibid*, 00:56:50 – 00:59:00.

adequate explanations, particularly considering the fact that, in both direct and cross-examination, witness Boškailo was confused with regard to the persons who had indeed arrested him on the relevant occasion. On the other hand, the Court has found that the statements of the other witnesses were fully consistent and formed a logical whole, both in relation to a possibility to leave their position and the zone of responsibility and the status of Zdenko Bošković and Miro Moro. In view of the foregoing, the Court has found no evidence proving, beyond a reasonable doubt, that the accused Veselko Raguž is responsible for the arrests and the subsequent events related to Suad Boškailo, particularly considering the Prosecution's failure to prove, with his witnesses, who had indeed participated in Suad Boškailo's arrest, and whether this unidentified person was a member of the IV Battalion, the Military Police or even of the Civilian Protection.

244. Ultimately, when it comes to the surrender of the group, whose member was witness Ibro Selimić too, on **2 August 1993**, it should be noted that the adduced evidence does not show that the accused Veselko Raguž, or any member of the IV Battalion, had anything to do with this witness's arrest. It ensues from witness Ibro Selimić's evidence, given at the main trial, that on 2 August 1993, the witness and his cousin came to his neighbor Stojan Bošković's house, that Stojan's son Ilija was called, that he contacted someone, and that thereupon they surrendered to Dragan Krešić and Pero Matić.<sup>43</sup>

245. In the concrete case, attention should be paid to the witness's averments related to the unit of which Dragan Krešić and Pero Matić were members. At the main trial, witness Ibro Selimić first testified that these persons had been in camouflage uniforms with the HVO insignia. Thereupon, in responding to the questions related to his statement given during the investigation, the witness could not remember his answers to this specific question. He stated he did not know if the persons to whom he surrendered were members of the HVO Military Police or just HVO soldiers<sup>44</sup>.

246. Stojan Bošković's son, Ilija Bošković, testified as the Defense's witness, about the surrender of the group of persons, including witness Ibro Selimić. At the hearing held on 12 June 2013, witness Ilija Bošković stated that, at the relevant time, he was a member of the V Battalion, and that he knew certain facts related to Ibro Selimić's surrender. This witness confirmed that he had met with Ibro Selimić in front of the house, and that Selimić

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<sup>43</sup> Transcript of the witness's evidence of 18 January 2012, p. 8.



told him he wanted to surrender. The witness thereupon went to the Military Police check point to inform them that Ibro Selimić wanted to surrender together with 4-5 other persons. The witness added that his way back lasted a little bit longer, and that, meanwhile, members of the Military Police, Dragan Krešić and Pero Matić, came and took the Selimićs away. Witness Ilija Bošković explained that he had learned these facts from his father, who told him who had taken the Selimićs away.<sup>45</sup>

247. Therefore, in view of both the Prosecution's and the Defense's evidence adduced in relation to the arrest on 2 August 1993, the Court has concluded, beyond a doubt, that there is no evidence that the accused Veselko Raguž played any role in the arrest of the group of persons, as explained by the Prosecution in the Indictment. In addition, the Court has concluded that, during the main trial, the Prosecution adduced not a single piece of evidence whatsoever to prove its allegations under the Indictment, particularly because the Prosecution's single witness, the injured party Selimić himself, did not know of which formation the individuals to whom he surrendered were members.

248. Regarding the evidence adduced in relation to Count I-1 of the Indictment, the Panel has noted that the Prosecution did not prove, beyond a reasonable doubt, that in July and August 1993, in the Stolac municipality, the accused Veselko Raguž, together with members of the IV Battalion and units joined from other Battalions, Neum Battalion and V.P. HVO, unlawfully arrested all Bosniak civilian men in their homes, including: Esad Šuta, Osman Obradović, Mustafa Repak, Mustafa Gerin, Ibro Selimić, Meho Bucman, Ismet Ratkušić, Esad Ratkušić, Šefik Ratkušić, Nusret Hajdarović, Ibro Hajdarović, Šerif Hajdarović, Zulfo Hajdarović, Almir Hajdarović, Halil Hamzić, Suad Boškailo, Samir Kaplan, Murat Kaplan, Medin Kaplan, Selvedin Kaplan, Admir Kaplan, Alija Kaplan and others, loaded them onto the already prepared trucks, transported and unlawfully detained them on the premises of the *Koššana* Hospital in Stolac, where the Bosniaks from the Stolac municipality had been brought and detained on a daily basis. Some Bosniaks were detained at the Dretelj and Gabela camps, located in the Čapljina municipality, while the women and children, expelled from their homes, were removed by prepared trucks and buses near Blagaj, and forced to march to the territory held by the Army RBiH.

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<sup>44</sup> *Ibid*, p. 31.

<sup>45</sup> Audio-recording of 12 June 2013, 00:42:00-00:46:30.

## B. COUNT I-2

249. Count I-2 of the Indictment charged the accused Veselko Raguž that, on 13 July 1993, in the village of Crnići, Stolac municipality, along with members of the IV Battalion, he unlawfully arrested around 1,500 civilians and detained them on the premises of the *Branko Šotra* Elementary School, including the Bosniak women, children and elderly, namely: Zijada Humačkić, Fata Kaplan, Aiša Kaplan, Esmā Kaplan, Muhiba Balavac, Đulsa Balavac, Adisa Balavac, Indira Bešo, Šaćira Pirić, Alija Hajdarović, Zijo Vukičević, Senad Balavac, Zijo Balavac, Merima Đulić, Fatima Tuće, Indira Šetka and others, subjected them to inhuman living conditions, with insufficient food, water and space, whereupon Alija Hajdarović, Zijo Vukičević, Senad Balavac, Zijo Balavac and others, were on the evening hours of the same day, upon the order of Veselko Raguž, transported by truck and detained on the premises of the *Koššana* Hospital, where Alija Hajdarović and Senad Balavac were physically abused and, on the following morning, transported and detained at the Dretelj camp.

250. Pursuant to the Prosecution's proposal, a large number of witnesses were examined in relation to the circumstances addressed under Count I-2 of the Indictment, among whom attention should be paid to the following witnesses: Fata Kaplan, Esmā Kaplan, Aiša Kaplan, Indira Bešo, Zijo Vukičević, Witness C, Muhiba Kaplan, Alija Kaplan and Hadžo Klarić.

251. In addition, the issues related to certain individuals mentioned in the context of their relations with the accused Veselko Raguž, whose membership was analyzed in the above evidence, will not be repeated in this section.

252. It should be first pointed to the evidence of witnesses Fatima Kaplan and Esmā Kaplan, who have identically described their arrest. Witness Fata Kaplan testified that, on the relevant occasion, she saw two soldiers, Mirko Raguž<sup>46</sup> and Mile Pažin,<sup>47</sup> and that she could guarantee that 2,000 people had been gathered in (the village of) Crnići.<sup>48</sup>

253. Witness Esmā Kaplan testified that, on the relevant occasion, there were around 1,000 people assembled in front of the Crnići School, and that they had been arrested by

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<sup>46</sup> As earlier concluded, they were members of the Civilian Protection.

<sup>47</sup> Transcript of the witness's evidence of 3 April 2012, pp. 10 and 19.

<sup>48</sup> *Ibid*, 12.

unidentified soldiers. This witness stated that she had seen Mladen Stanković, Tvrtko Raguž and Mile Raguž in the Đulići Mahala.<sup>49</sup>

254. Witnesses Alija Kaplan, Hadže Klarić, Indira Bešo<sup>50</sup> and Witness C consistently testified that they had been arrested by the HVO soldiers, but they could not specifically state by which unit the civilian population had been arrested.

255. Additionally, in relation to the witnesses who testified with regard to Count I-2 of the Indictment, it should be noted that, when arrested, witness Muhiba Balavac had identified a large number of persons, her neighbors, but she did not know of which unit they were members.<sup>51</sup> In relation to this witness's averments, it was not possible to determine if the mentioned persons were indeed present due to the fact that they were her neighbors, or in fact, these activities were coordinated by a certain unit.

256. Due consideration should be given to the analysis of witness Zijo Vukičević's evidence. This witness testified at the main trial, with determination and certainty, about numerous facts. Witness Vukičević was certain that he had identified Palameta aka Đir and Veselko Raguž among the persons arresting the civilians. This witness testified that these men took them and the women to a school at Pilete. There were at least 1,000 people.

257. Witness Vukičević further stated that Veselko Raguž and Palameta aka Đir had been present all the time,<sup>52</sup> namely that the accused Veselko Raguž issued no orders on this occasion, but rather stood with his rifle pointed at them. The witness responded to Counsel's questions with determination, and stated that he had mentioned the accused Veselko Raguž, in this context, in each of his statements.

258. Witness Vukičević also stated that the accused Veselko Raguž had been present while they were loaded onto trucks.<sup>53</sup>

259. Witness Vukičević, however, testified on 9 October 2002 before the Cantonal Court in Mostar (O1-20), and gave significantly different answers with regard to almost all

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<sup>49</sup> Transcript of the witness's evidence of 10 April 2012, pp. 8 and 23.

<sup>50</sup> The witness stated that she had recognized the last name of Stanković, but could not provide any detailed information about him. Transcript of the witness's evidence of 8 May 2012, pp. 53, 61 and 62.

<sup>51</sup> Transcript of the witness's evidence of 10 April 2012, pp. 7, 8, 21 and 22.

<sup>52</sup> Transcript of the witness's evidence of 22 May 2012, p. 6.

mentioned facts. Specifically, the witness stated before the Court of BiH that he had had an opportunity to see Veselko Raguž in the *Košтана* Hospital, while he denied this very fact in 2002.

260. Also, in 2002, this witness stated that Veselko Raguž had a pistol at his belt.

261. In addition, this witness did not mention, in 2002, that the accused Veselko Raguž had participated in the arrest of a larger number of civilians, or that he had stood by the column of civilians, with his rifle pointed at them.

262. In responding to the questions posed at the main trial, witness Vukičević clearly stated that the accused Veselko Raguž had not been present when the witness testified in 2002. It, however, transpires from Exhibit O1-20 that the then accused Veselko Raguž attended the hearing with his Defense Attorney Mario Bogdanović.

263. Witnesses Drago Palameta aka Đir and Zdenko Beno testified about the event at issue as witnesses for the Defense.

264. In responding to the questions posed, Defense's witness Drago Palameta stated that (the village of) Aladinići was not in the zone of responsibility of the IV Battalion where the witness served as a reconnaissance squad driver. Witness Palameta further stated that, on the morning of 13 July 1993, he was on the way back after his leave. He was stopped at the check point because of the events that had occurred on that very morning. Once he was allowed to pass, in the afternoon hours, the witness stopped at the Pileti/Crnići/Masline/Rivine/Aladinići intersection for about ten minutes, bought some cigarettes, and ultimately drove to the base in Stolac, where he saw the accused Veselko Raguž.

265. When specifically asked about the arrest of Zijo Vukičević, witness Palameta stated that criminal proceedings had been conducted against him, and that he was ultimately acquitted of the charges under a final judgment.<sup>54</sup>

266. With regard to the evidence adduced in relation to this Count of the Indictment, the evidence of witness Zdenko Beno, Deputy Commander of the Home Guard Regiment,

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<sup>53</sup> *Ibid*, pp. 13-18, 21 and 23.

<sup>54</sup> Audio-recording of 12 June 2013, 00:47:00-01:04:30.

should be emphasized. This witness explained that the Home Guard Regiment was a unit comprised of men aged between 55 and 60, established by the Stolac civilian authorities, and that he received orders from the Stolac Municipal Council.

267. Witness Palameta explained that, in the afternoon hours of 13 July 1993, he took over the duty to secure a group of civilians held at Pileta for a certain period of time, who were thereupon removed to the Đulići and Kaplani Mahalas.

268. Witness Zdenko Beno stated that, the referenced civilians were deported to the Blagaj area on 2 August 1993, on the basis of a decision of the Stolac Municipality Council, and that they were escorted by the Stolac civil police.

269. Witness Beno stated that, according to his information, the territory where the *Branko Šotra* Elementary School was located was within the zone of responsibility of the IV Battalion Ošanići-Komanje Brdo.

270. Ultimately, in relation to the abduction of Alija Hadarović, Zijo Balavac and Senad Balavac from the *Branko Šotra* Elementary School, witness Zdenko Beno stated that, as far as he knew, those men were taken away by the civil police. With regard to Marijan Prce, Boško Bošković, Marko Mišić, Mladen Stanković, Mile Raguž and Tvrtko Raguž, witness Beno confirmed that they were members of the civil police.<sup>55</sup>

271. In analyzing the most important evidence adduced in relation to Count I-2 of the Indictment, namely, in evaluating the presented pieces of evidence, individually and in combination, the Court has not concluded, beyond a reasonable doubt, that the accused Veselko Raguž indeed committed the acts charged against him under this Count of the Indictment. Specifically, the above evidence shows it is impossible to conclude, beyond a reasonable doubt, that members of the IV Battalion, the Accused himself, or other units subordinated to him, had indeed arrested the civilians from the village of Crnići. The evidence adduced suggests that, on the relevant day of 13 July 1993, members of the Civilian Protection, certain members of the police force, members of the independent Home Guard Regiment were all present at the referenced site, including a larger number of unidentified soldiers, and that witness Drago Palameta aka Đir, member of the IV

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<sup>55</sup> Audio-recording of 12 June 2013, 00:44:00-00:51:20.

Battalion, was also present there, but not in order to perform certain tasks conferred upon him, but rather because he was on his way back to the base.

272. In the context of the Court's conclusions relating to Exhibit T-106 or the List of members of the I HVO Brigade *Knez Domagoj* (to be separately evaluated by the Court below), it should be noted that the referenced evidence shows that the IV Battalion comprised 480 members, and that, quite logically, certain members could be met outside their combat position, particularly during the period before the morning of 13 July 1993.

273. Ultimately, the Court did not accept as credible and reliable witness Zijo Vukičević's evidence given that he was fully adamant regarding the facts whose existence mutually excluded each other. The witness testified quite differently about the Accused's and witness Drago Palameta's roles. The witness stated that the accused Veselko Raguž was not present when he had given his evidence in Mostar. It should be also noted that Drago Palameta was acquitted of the charges for the arrest of Zijo Vukičević under a final judgment, and that the Witness Examination Record for this witness, made before an investigative judge, shows that the accused Veselko Raguž himself was indeed present at the hearing, together with his Defense Attorney.

274. In evaluating all pieces of evidence adduced with regard to the facts presented under Count I-2 of the Indictment, individually and in combination, the Court has undoubtedly concluded that the Prosecution did not prove beyond a reasonable doubt that, on 13 July 1993, in the village of Crnići, Stolac municipality, the accused Veselko Raguž, together with members of the IV Battalion, unlawfully arrested around 1,500 civilians and detained them on the premises of the *Branko Šotra* Elementary School, including the Bosniak women, children and elderly, namely: Zijada Humačkić, Fata Kaplan, Aiša Kaplan, Esmā Kaplan, Muhiba Balavac, Đulsa Balavac, Adisa Balavac, Indira Bešo, Šaćira Pirić, Alija Hajdarović, Zijo Vukičević, Senad Balavac, Zijo Balavac, Merima Đulić, Fatima Tuće, Indira Šetka and others, and subjected them to unbearable living conditions, with insufficient food, water and space. In addition, the Prosecution did not prove that, Alija Hajdarović, Zijo Vukičević, Senad Balavac, Zijo Balavac and others were in the evening hours of that very day, transported by truck upon the Accused's order, and detained on the premises of the *Koššana* Hospital, where Alija Hajdarović and Senad Balavac were physically abused, and, on the following day, transported to and detained at the Dretelj camp.

### C. COUNT I-3

275. Count I-3 of the Indictment charged the accused Veselko Raguž that, after unidentified members of the IV Battalion on 15 July 1993 singled out Muhiba Balavac and Witness CD from the *Branko Šotra* Elementary School, escorted and detained them on the premises of the *Koššana* Hospital for interrogation, the Accused ordered, on 16 July 1993, that these two women, along with several other women from the *Branko Šotra* Elementary School, enter a vehicle with him, drove them to the village of Prenj, subjected them to inhumane treatment by requesting them to deliver a letter to the Bosniak men who had attempted to hide fearing they would be arrested, urging them to surrender, and that while these women acted upon his order, members of the IV Battalion accompanying Veselko Raguž, fired at them from their weapons, thereupon returned these women to the premises of the Elementary School, and detained them for around seven days, and then removed them to other detention facilities, such as the Kaplan and Đulići Mahalas and the Correctional-Penal Institution, and subsequently forcibly removed them to the area near the town of Blagaj, and expelled to the territory held by the ARBiH.

276. With regard to the above circumstances, the Prosecution has heard witnesses Fata Kaplan, Esmā Kaplan, Muhiba Balavac, Witnesses CD and CE. All these witnesses have identically and consistently described how the HVO soldiers unknown to them had taken them from their houses to the Elementary School.

277. The Prosecution witnesses also testified that some elderly men in camouflage uniforms guarded them in the Elementary School, but they all stated that they had not seen the accused Veselko Raguž there.

278. There are significant differences in the statements of the above mentioned witnesses regarding the removal of witnesses Muhiba Balavac and Witness CD from the Crnići School to the *Koššana* Hospital, particularly in the evidence of the two witnesses-participants in their bringing to the *Koššana* Hospital.

279. Specifically, in responding to the Prosecutor's questions at the main trial, witness Muhiba Balavac stated that soldiers had taken her and witness CD out from the elementary school and forced them into a vehicle driven by the accused Veselko Raguž.

280. This witness testified that Miroslav Raguž and Šćepo Matić had interrogated them

at the *Koššana* Hospital.<sup>56</sup>

281. It does not ensue from Witness CD's evidence, however, that the accused Veselko Raguž drove the vehicle by which she and Muhiba Balavac were transported to the *Koššana* Hospital<sup>57</sup> to be interrogated by Miroslav Raguž.

282. Therefore, Witness CD did not at all mention the accused Veselko Raguž in this part of her evidence.

283. There is also Witness CE's evidence. This witness testified at the main trial that witnesses Muhiba Balavac and CD had told her that the accused Veselko had driven them from the *Koššana* Hospital to the place of Bregava.

284. As to the further development of the events, Witness CD testified, similarly to witness Muhiba Balavac<sup>58</sup>, that "...after a while, they were again driven by car to Bregava to deliver a letter". Witness Muhiba Balavac, however, testified that they had been, on the following day, driven by a jeep from the *Koššana* Hospital to the Gnijezdac hill, and that the accused Veselko Raguž was in the vehicle.

285. Obviously, there are certain inconsistencies regarding the essential facts and the acts charged against the accused Veselko Raguž, namely that he drove the women both from the School to the *Koššana* Hospital and from the *Koššana* Hospital to Bregava, or to the Gnijezdac hill, as well as that the witnesses discussed with each other the events at issue.

286. Ultimately, the evidence adduced does not show how Witness CD identified the accused Veselko Raguž. Only witness Muhiba Balavac testified with regard to this issue.

287. Witness Muhiba Balavac, however, testified with certainty that the accused Veselko Raguž was there in the concrete case (on both occasions, when they were transported to the *Koššana* Hospital, and on the following day, during their transport to the Gnijezdac hill). Her evidence, however, shows an obvious tendency to refuse answering the questions posed by the Defense Attorney.

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<sup>56</sup> Transcript of the witness's testimony of 8 May 2012, p. 9.

<sup>57</sup> T-105.

<sup>58</sup> *Ibid*, p. 10.



288. Also, responding to the Defense's questions concerning the reliability of the Accused's identification, or who was the driver of the vehicle at issue, witness Muhiba Balavac stated: "*Veselko Raguž. I was **informed** it was Veso Raguž. And, having known him, it was indeed him.*"<sup>59</sup>

289. Bearing in mind the described way of giving evidence, the Panel President posed to witness Muhiba Balavac a number of questions in order to examine the reliability of the identification concerned. The witness gave neither clear nor convincing responses to these questions. On the contrary, the witness either avoided giving a direct answer, or avoided giving answers at all ("*For God's sake, do not abuse me anymore.*"<sup>60</sup>). This is so particularly when the witness was asked to describe the then physical appearance of the Accused, and when she gave an illogical explanation that she could not describe the Accused's appearance because it was dark. Upon reminding the witness that, according to her own statement she had seen the accused in the rooms where the light was on, or in a daylight, the witness responded that she had not looked at him, that he had a cap on his head, namely that some (of those men) had worn caps, and some had not.<sup>61</sup>

290. Furthermore, it is important to underline the fact that witness Indira Bešo also testified about the events at the Gnjezdac hill.

291. Witness Indira Bešo has confirmed the events at issue. However, responding to the questions related to the Accused's identity, she stated that she had not known him because she was very young when she got married, but that she had learned that it was none other than Veselko Raguž.<sup>62</sup>

292. Considering such a testimony of witness Muhiba Balavac and of the other witnesses-actors in the critical incident too, the Court could not determine, with sufficient certainty, the identity of the persons-participants in the event at issue.

293. When it comes to the evidence of the witnesses related with the event concerned, it should be added that Witness CD's evidence does not show how she learned about the

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<sup>59</sup> *Ibid*, p. 23.

<sup>60</sup> *Ibid*, p. 41.

<sup>61</sup> *Ibid*, pp. 41, 42 and 43.

<sup>62</sup> Transcript of the witness's evidence of 8 May 2012, p. 57.

Accused's identity. The Court has evaluated this witness's statements in the context of the testimonies of witness Indira Bešo and Witness CE.

294. In other words, witnesses Muhiba Balavac, CE, CD and witness Indira Bešo have obviously discussed with each other the events at issue, where the accused Veselko Raguž was mentioned as an actor in these events. Since at least two witnesses did not charge the Accused with the same act, and since they neither saw nor described him in the context of these acts, the Court has found that these testimonies are unreliable.

295. Within the context of evaluating the adduced evidence, it should be noted that the evidence (with the exception of witness Muhiba Balavac's statement) regarding the Accused's identity was not tendered in the case record (based on which the identification was carried out), namely that Witness CD mentioned the accused Veselko Raguž in her testimony, but it remains unclear whether she personally knew him, or whether she had identified the accused merely on the basis of her conversations with other persons (which conversations obviously occurred).

296. It should be added that the essential parts of witnesses Muhiba Balavac's and Indira Balavac's evidence are mutually contradicted. More specifically, witness Muhiba Balavac stated that the letter they had carried to Gnjizdac was addressed to Habib Vujnović and Sejo Humačkić, that they found none of these two men but rather they met with unidentified civilians<sup>63</sup> at the Gnjizdac hill. Witness Indira Bešo, on the other hand, testified not only that they had found Habib Vujnović, but also that he had read the letter they brought and wrote his response.<sup>64</sup>

297. Therefore, considering the inconsistencies in the essential parts of these witnesses' testimonies mutually excluding each other, that not a single piece of evidence was adduced to reliably identify the actors of the events described under Count I-3 of the Indictment, that witness Muhiba Balavac's evidence is insufficiently convincing in this part, and having found quite justified the suspicion into the Accused's presence, the Court decided, applying the principle set out in Article 3 of the CPC BiH (*in dubio pro reo*) as stated in the enacting clause of this Verdict.

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<sup>63</sup> *Ibid*, p. 30.

<sup>64</sup> *Ibid*, pp. 69, 70 and 79.

#### **D. COUNTS I-4 AND I-5**

298. Counts I-4 and I-5 of the Indictment charged the accused Veselko Raguž that, in the afternoon hours of 13 July 1993, in the place of Masline, Stolac municipality, after a number of unidentified members of the IV Battalion of *Knez Domagoj* HVO Brigade, armed with automatic rifles, surrounded and captured the civilians: Witness S-1, Salko Alihodžić, Remzo Šuta, Hamza Šuta, Halil Palikuća, Hasan Ćatić, Ibro Klarić, Hadžo Klarić, Fadil Razić, Bećir Šuta and Musair Klarić, who had been hiding in the woods with the intent to break through towards Blagaj, in the territory held by the Army RBiH, disarmed and ordered them to take the M6 highway, Veselko Raguž approached them, at the Masline-Hodovo-Stolac-Čapljina intersection, with several unidentified members of the HVO who interrogated and physically abused them, punched, kicked and beat them with rifle butts all over their head and body, and, upon Veselko Raguž's order, these unidentified members of the HVO transported by truck and detained them on the premises of the *Koššana* Hospital, physically abused them there, and thereupon transported and detained them at the prisons known as Dretelj and Gabela, in the Čapljina municipality, and at the Heliodrom camp in the Mostar municipality, and kept them there for around five months, namely that on 13 July 1993, at the *Koššana* Hospital in Stolac, the Accused interrogated Remzo Šuta in the office on the upper floor, and, attempting to force out his confession, ordered two unidentified military police officers to beat him, which they did, repeatedly punching him with their closed fists all over his head, chest and back, as a result of which he suffered severe pains.

299. The Court will further below provide the reasons for both Sub-counts of the Indictment due to which the decision was issued as stated in the enacting clause of the Verdict.

300. With regard to these Counts of the Indictment, the Prosecution has heard the following witnesses: Fadil Razić, Salko Alihodžić, Remzo Šuta, Hamza Šuta, Hasan Ćatić, Hadžo Klarić and Witness S-1.

301. All these witnesses have identically testified that they had been together hiding in the woods, that the HVO soldiers arrested and loaded them onto trucks and transported them to the *Koššana* Hospital.

302. The witnesses who testified at the main trial have differently described the events in

(the village of) Masline. Certain witnesses testified that some of them had been beaten. Some of them testified that all of them had been beaten, while some witnesses stated that they had not been abused in Masline.

303. All the heard witnesses, other than witness Remzo Šuta, testified that they had not been abused by anyone in the *Košтана* Hospital. Witnesses Salko Alihodžić, Hamzo Šuta and Fadil Razić even stated that some of them had been kept at the *Košтана* Hospital for about an hour, and thereupon transported by truck to Čapljina, while the others, including Remzo Šuta, Hasan Ćatić and Salko Alihodžić, had spent the night in the hospital's basement, and, on the following day, were also transported to Dretelj.

304. Witness Remzo Šuta testified that he had been interrogated and abused at the *Košтана* Hospital.

305. In the context of Counts I-4 and I-5 of the Indictment, however, it was of primary importance for the Court to determine whether any of the heard witnesses had recognized the Accused at the relevant sites.

306. It should be noted here that witnesses Salko Alihodžić,<sup>65</sup> Hasan Ćatić,<sup>66</sup> Hamzo Šuta<sup>67</sup> and Hadže Klarić<sup>68</sup> testified before the Court that they identified no one at Masline, namely that they had been arrested by the HVO soldiers unknown to them.

307. It should be further noted that all the witnesses, other than Remzo Šuta, testified that none of them had identified the accused Veselko Raguž on the road, and that they were not beaten and abused there, except for Remzo Šuta, who testified that they had been beaten by unidentified HVO soldiers on the road, that the accused Veselko Raguž was present at the relevant occasion, that he ordered them to stop the beating and to load them all onto the truck. It is important to note here that the witnesses, heard by the Prosecution about this Count of the Indictment, who had been arrested at Masline, were at the relevant time members of the IV Battalion, namely that they all knew both members of their own Battalion and their Commander, while no witnesses, other than witness Remzo Šuta, had either seen or identified the Accused.

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<sup>65</sup> Audio-recording of 17 July 2012, 00:25:20-00:26:00 and 00:29:00-00:29:45.

<sup>66</sup> Audio-recording of 26 September 2012, 02:40:00-02:41:00.

<sup>67</sup> Audio-recording of 4 September 2012, 01:18:15-01:20:55.

<sup>68</sup> Audio-recording of 10 October 2012, 00:14:50-00:16:50.

308. It should be noted that witness Remzo Šuta testified in detail about the events that had occurred at Masline and the *Koššana* Hospital (Count I-5 of the Indictment). The answers provided by this witness in relation to the Accused's identity, however, should also be underlined.

309. During the hearing, several questions were posed to the Accused to this effect. In responding to these questions, witness Šuta stated that the people from Stolac, who had known him, recognized the Accused at Masline. When additionally asked to provide names of those men, for verifying the reliability of this identification, the witness provided no specific answer.<sup>69</sup>

310. The Court has further analyzed the rest of witness Šuta's testimony. Witness Šuta described his experiences from the *Koššana* Hospital, where he had an opportunity to see the Accused. In responding to the questions posed, the witness stated that he had learned from the other witnesses heard that the men who had sat over there was Veselko Raguž, but only subsequently in his testimony did he stated that this was the very man he had seen before at Masline.

311. In order to verify the reliability of witness Remzo Šuta's evidence, the witness was asked to identify other persons interrogated by the accused Veselko Raguž on the relevant occasion. The witness stated that, among the witnesses in this case, Fadil Razić and most likely Salko Alihodžić were interrogated at the time.

312. Both the witnesses referred to above, however, denied that they had been interrogated at the *Koššana* Hospital. Witness Fadil Razić stated that he had not even known Veselko Raguž, namely that he had learned about him from Remzo Šuta.<sup>70</sup>

313. Ultimately, a reference should also be made to Witness S-1's evidence. This witness confirmed the accused Veselko Raguž's presence at Masline.

314. In order to verify Witness S-1's averments, however, the Defense posed a series of questions to him. Witness S-1 confirmed, in his responses, that he had had an opportunity to see the Accused only for three times, namely that he had not known him personally,

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<sup>69</sup> Audio-recording of 26 September 2012, 02:00:00-02:01:55.

<sup>70</sup> Audio-recording of 12 December 2012, 00:32:55-00:34:15.

and that he had a chance to see a man who was said to be the Company Commander, that is, one of the commanders from Stolac.<sup>71</sup>

315. Considering the responses of the above referenced witness, the Court has found that, obviously, he had not known the Accused very well. In support of this finding stands the fact that, at the main trial, the witness could not identify the accused Veselko Raguž in the courtroom.

316. Therefore, given the fact that the essential parts of these witnesses' evidence are inconsistent, namely that they exclude each other, and that, with regard to these counts of the Indictment, the Prosecution presented no valid piece of evidence whatsoever, on the basis of which the actors in the events described under Counts I-4 and I-5 of the Indictment could be reliably identified, and that Witness S-1 did not know the Accused very well, who was obviously superficially known even to the Prosecution's key witness, Remzo Šuta, the Court had found quite justified the suspicion into the Accused's presence. Therefore, applying Article 3 of the CPC of BiH (*in dubio pro reo*), the Court decided as stated in the enacting clause of the Verdict.

#### **E. COUNT I-6**

317. Count I-6 of the Indictment charged the accused Veselko Raguž that, on the morning hours of 14 July 1993, in the village of Jasoč, Stolac municipality, in front of Spaso Obradović's house, where Senad Šetka, Mirsad Žujo and others had been held, he ordered Senad Šetka and Mirsad Žujo to come out, sit in two vehicles make "Golf", whereupon the Accused and unidentified soldiers of the HVO drove and detained them on the premises of the *Koššana* Hospital, and, on the same day, at the *Koššana* Hospital, together with unidentified HVO members, repeatedly abused them in order to extort their confession by beating them with rifles, punching them with closed fists, kicking and hitting them with baseball sticks all over their bodies, as a result of which they suffered severe pain.

318. In relation to the allegations under this Count of the Indictment, the evidence given before the Court by witness Senad Šetka and Exhibit T-93 (Witness Examination Record for Senad Šetka) should also be underlined.

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<sup>71</sup> Audio-recording of 14 November 2012, 00:32:30-00:40:00.

319. Witness Šetka confirmed before the Court most of the facts covered by Count I-6 of the Indictment; however, it remains unclear whether the Accused indeed participated in the events at issue.

320. Witness Šetka testified that he had been captured on 13 July 1993 together with Mirsad Žujo, transferred first to (the village of) Crnići and thereupon to Jasoč.

321. Witness Šetka further testified that he and Mirsad had spent the night of 13/14 July 1993 in Spaso Obradović's house in Jasoč.

322. On the following day (14 July 1993), witness Šetka and Mirsad Žujo were transported by two Golf vehicles to the *Koššana* Hospital.

323. When specifically asked if he had recognized anyone, witness Šetka responded that he had identified several men. When asked if he had seen the accused Veselko Raguž on the relevant occasion, the witness responded that there was a possibility that it could be him, but that he was not certain.

324. Witness Šetka further confirmed that he had been taken to the *Koššana* Hospital, that he was beaten there, and after 3-4 days transferred to Gabela.

325. The Prosecutor asked witness Šetka, as when referring to Jasoč, whether he had identified the accused Veselko Raguž at the *Koššana* Hospital. The witness did not exclude such a possibility, but could not confirm this fact either.

326. It should be pointed here to the Prosecution's Exhibit T-93 (Witness Examination Record for Senad Šetka), that is, to the fact that the Record, *inter alia*, stated that witness Šetka had an opportunity to see the Accused in Jasoč and at the *Koššana* Hospital.

327. Therefore, in the concrete case, there are significant inconsistencies between the evidence the witness gave at the main trial and his statement made during the investigation.

328. It should be noted in relation to Exhibit T-93, that this Record was made within the investigation against the accused Veselko Raguž, and that Senad Šetka spoke for the record about a larger number of events. In other words, the Record obviously shows that the witness gave less importance to the accused Veselko Raguž in relation to some other persons (e.g. D.B., Z.P., D.K., members of the Neum V.P., members of the *Ludvig* unit,

Pavlović aka *Božanov* and N.A.).

329. It should also be added that the Record does not show the context in which witness Šetka started speaking about the Accused. Specifically, the question which preceded the mentioning of the accused Veselko Raguž is not obvious, which is of the greatest importance for these criminal proceedings. The extent to which the witness knew the Accused is also not obvious from the referenced Record.

330. In responding to the questions posed by the Panel President, witness Senad Šetka stated that he had known the Accused "by sight", and that he had seen him once or twice during the Accused's attendance at the frontlines.

331. The Panel President asked witness Šetka if he had told the truth during his examination at SIPA. The witness explained that he had agreed with the investigation allegations, but that he was not certain about the accused Veselko Raguž.

332. As to the accused Veselko Raguž's identification, the witness stated for the record made during the investigation that, in addition to him and Mirsad Žujo, witness Suad Boškailo had also been beaten. Witness Boškailo, however, confirmed at the hearing before the Court that he had been beaten at the Koštana hospital, but that he identified no one among the persons who had beaten him.<sup>72</sup>

333. Considering the foregoing facts and the fact that the Prosecution adduced before the Court no other piece of evidence to confirm the witness's averments from the investigation regarding the accused Veselko Raguž, the Court has accepted the explanation provided by witness Senad Šetka at the main trial.

334. Bearing in mind that, during the investigation, the accused Veselko Raguž was mentioned within the context of events that were not the focus of the witness's testimony, the Court has accepted as admissible and logical the witness's explanation that he could not give assurances that the Accused had indeed participated in the events at issue.

335. Thus, taking into account the referenced evidence of witness Senad Šetka, the fact that no other piece of evidence was adduced as a basis to reliably identify the actors in the events described in Count I-6 of the Indictment, and that Suad Boškailo did not confirm

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<sup>72</sup> Transcript of the witness's evidence of 2 February 2012, pp. 8 and 9.



that the Accused was indeed present at the *Koštana* Hospital, the Court has found quite justified the suspicion into the Accused's presence, and, applying the principle set forth in Article 3 of the CPC of BiH (*in dubio pro reo*), decided as stated in the enacting clause of the Verdict.

#### **F. COUNT II-1**

336. Count II-1 of the Indictment charged the accused Veselko Raguž and Ivo Raguž that, in early August 1993, at the Dretelj camp, Čapljina municipality, where several hundreds of Bosniak civilians were unlawfully detained, together with Anto Krešić and several unidentified members of the military police force, they participated in the interrogation and physical abuse of the detained civilians: Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, by calling them out one by one, forcing them into a tin-wall garage located within the camp perimeter, forcing their confessions, repeatedly kicking them with military boots on their legs, and punching them with closed fists in their heads and legs, whereupon Ante Krešić connected their ears and hands to electric circle via manually activated induction telephone to produce electricity, which passed through the bodies of the injured parties, shook and threw them on the ground, as a result of which they suffered severe pain and sustained injuries to their bodies and bleeding, and when Semir Balavac's nose and mouth started bleeding, Ivo Raguž put a handful of salt into them, as a result of which Semir Balavac suffered even greater pains.

337. Therefore, based on the above described findings of facts, the accused Veselko Raguž and Ivo Raguž were charged that, together with Ante Krešić, they participated in the interrogation and physical abuse of civilians Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, in a way that, while forcing their confession, the accused Veselko Raguž and Ivo Raguž repeatedly kicked them with military boots on their legs, and punched them with closed fists in their heads and legs, and that after Semir Balavac's mouth and nose started bleeding, the accused Ivo Raguž placed a handful of salt in his mouth and nose.

338. A large number of witnesses testified about the circumstances alleged under Count II-1 of the Indictment, among which it should be particularly pointed to the testimonies of the Prosecution's witnesses Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan.

339. Considering that this count of the Indictment covers one and the same event, and that all the four witnesses appear as the injured parties, the Court will first evaluate the testimony of witness Semir Balavac in the part concerning the accused Ivo Raguž, and thereupon examine all the evidence adduced in the context of charges brought against both the Accused.

340. Witness Semir Balavac clearly explained, at the main trial, that on 2 August 1993, Vide Palameta had come to the Dretelj camp, and took him, two Kaplan men and Edin Đulić to a tin-wall hangar. The witness further testified that he was the fourth men called to come out, and that, immediately at the entrance, Ante Krešić hit him, assisted by the accused Ivo Raguž.

341. Witness Balavac testified that the accused Ivo Raguž had interrogated him about the reasons for his arrival in Stolac to kill the accused (Ivo Raguž). Thereupon they connected him to a field phone wire and caused a short circuit for three or four times.

342. Once witness Balavac had fallen on the ground, Ante Krešić, the accused Ivo Raguž, and seven-eight police officers started kicking him, whereupon the accused Ivo Raguž put a handful of salt into his wounds.<sup>73</sup>

343. Certain inconsistencies, however, appeared in witness Balavac's further responses to the questions posed which have, in their entirety, raised suspicion about the reliability of the witness's averments in the part relating to the accused Ivo Raguž's acts.

344. It should be first pointed to the witness's claims that, in fact, he did not know the accused Ivo Raguž very well,<sup>74</sup> and thereupon, to his response related to the accused Veselko Raguž's presence in the hangar: "*... thus, you could not even see due to the continued beating, you could not recognize even your own mother when you were beaten nonstop, not to mention anybody else. So, there were seven-eight police officers, and I really do not know who else was there with them.*"<sup>75</sup>

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<sup>73</sup> Transcript of the witness's evidence of 24 October 2012, p. 9.

<sup>74</sup> *Ibid*, p. 10.

<sup>75</sup> *Ibid*, p. 12.

345. The witness Balavac's objective ability to observe and remember relevant facts was further examined. In the process, the witness stated that he was **probably** able to observe and remember those facts.<sup>76</sup>

346. In addition, witness Balavac confirmed that, in the proceedings conducted against Ante Krešić and Pero Marković, he had testified about the event of 2 August 1993, and that he had not at all mention the accused Ivo Raguž, because no question was posed to him to this end.<sup>77</sup>

347. The Record of the Cantonal Court in Mostar was adduced as the Defense's Exhibit O2-3A. The Record shows that witness Semir Balavac has stood by his statement given on 6 May 1997. The witness described that, on 2 August 1993, he was called out and beaten up by Ante Krešić, and that, thereupon, Krešić most probably twice connected him to the telephone electric current (at the main trial, the witness stated this was done for 3 or 4 times<sup>78</sup>), and that other HVO police officers jumped and started beating him (except for Ante Krešić, which differs from his testimony at the main trial).

348. Witness Balavac ultimately stated that one of the HVO members had put a handful of salt into his bleeding wounds.

349. Therefore, it is obvious from the referenced Record of the Cantonal Court Mostar, that witness Balavac testified about the overall event, rather than about the acts of Ante Krešić, as he stated at the main trial, and that he had an opportunity to identify the person who had put salt on his wounds, whom he ultimately identified as a member of the HVO other than Ante Krešić.

350. In responding to the questions related to his earlier given statements, witness Balavac stated, with 100% certainty, that in testifying about the event at issue before Judge Munevera Rahimić of the Court in Mostar, he confirmed that the accused Ivo Raguž was the one who had put salt on his wounds.

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<sup>76</sup> *Ibid*, p. 25.

<sup>77</sup> *Ibid*, p. 26.

<sup>78</sup> *Ibid*, p. 9.

351. Witness Semir Balavac proposed that, in order to verify his claims, the referenced Record be reviewed.<sup>79</sup>

352. The Record made on 6 May 1997, and referred to this main trial, was adduced as Exhibit O2-3.

353. Contrary to the 100% certainty of witness Balavac, however, the Record primarily shows that Ante Krešić put a telephone on both witness's ears only once, and thereupon beat him with a metal bar all over his body.

354. Therefore, except for the fact that, in his statement of 6 May 1997, witness Balavac presented an opposite sequence of the events (first placing the telephone on his ears, and thereupon the beating), the witness mentioned only Ante Krešić, and no one else, as a participant in this incident, and did not state that any one at all had put salt into his wounds.

355. With regard to the foregoing inconsistencies in witness Balavac's evidence, the Court was particularly mindful of his claims that he was absolutely certain about the decisive facts, even though the objective evidence shows the opposite (he mentioned the accused Ivo Raguž before Judge Munevera Rahimić, while at the trial against the accused Petar Marić and Ante Krešić he had no opportunity to mention the accused Ivo Raguž). Also, the Court took into account the obvious and significant inconsistencies regarding the important facts (whether he was beaten up only by Ante Krešić, who had also connected his ears to the electric current, or Ante Krešić did this together with seven-eight other military police officers, namely whether the Accused Ivo Raguž was Krešić's assistant in these acts). In view of the foregoing, the Court could not find witness Semir Balavac's evidence sufficiently reliable so as to base, exclusively on it, a convicting verdict regarding the beatings and putting salt on the wounds of witness Semir Balavac (since there is no other evidence to support these specific acts).

356. In relation to Count II-1 of the Indictment, it should be referred to the testimonies of witnesses Medin Kaplan and Selvedin Kaplan. These witnesses consistently testified and confirmed that, on the relevant occasion, the accused Veselko Raguž and Ivo Raguž had

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<sup>79</sup> *Ibid*, p. 31.

been present in the garage, that the Accused had beaten them and connected their ears to electricity.

357. In the concrete case, however, it should be first noted that none of these witnesses confirmed that any of the Accused persons had directly hit or abused them in any other way.

358. Unlike the two other witnesses (Semir Balavac and Edin Đulić), witnesses Medin Kaplan and Selvedin Kaplan confirmed that, once they had left the garage, they entered a gauntlet where they were beaten.<sup>80</sup>

359. In addition, it should be noted that witness Medin Kaplan testified that, in addition to the Accused and Ante Krešić, a large number of police officers were also in the garage. According to witness Selvedin Kaplan, there were no persons in the garage other than the Accused persons and Ante Krešić.<sup>81</sup>

360. Witness Medin Kaplan particularly emphasized, in his responses to the questions posed, that the accused Veselko Raguž and Ivo Raguž were guilty of everything that he and other persons had survived. The witness, however, provided no further explanation in support of his claims.<sup>82</sup> The Court has brought such a statement of his in connection with the witness's averments at the beginning of his testimony when the witness stated that they had been arrested by Mirko Raguž, Mile Pažin, Ivica Marković and Vide Krešić, members of the IV Battalion.<sup>83</sup>

361. It should be noted that the Battalion concerned was under the accused Veselko Raguž's command. In responding to Counsel's questions, witness Medin Kaplan first withdrew his decisive claim that those were members of the IV Battalion, stating this was only his assumption.<sup>84</sup> Thereupon, it turned out that, in the statement given during the investigation, this witness was fully decisive that he had been arrested by members of the Civilian Protection, in which context he mentioned the names of Mirko Raguž, Mile Pažin, Ivica Marković and Vide Krešić (Exhibit T-5).

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<sup>80</sup> Transcript of witness Medin Kaplan's evidence of 24 January 2012, p. 12, and Transcript of witness Selvedin Kaplan's evidence of 2 February 2012, p. 47.

<sup>81</sup> Transcript of given witness Selvedin Kaplan's evidence of 2 February 2012, p. 67.

<sup>82</sup> *Ibid*, pp. 37 and 38.

<sup>83</sup> *Ibid*, pp. 5 and 6.

<sup>84</sup> *Ibid*, p. 20.

362. It should be also noted that, in responding to the questions posed by a Panel member, the witness stated he did not know that the mentioned persons were members of the IV Battalion.<sup>85</sup>

363. The referenced way of the witness's testifying about the events points to his partiality. Obviously, the witness puts blame on the accused Veselko Raguž for everything he had survived. The witness changed his evidence in relation to the status of persons who had arrested him, but did not explain why he did it, and additionally charged the Accused.

364. In the context of the referenced views, it should be also pointed to witness Selvedin Kaplan's averments. At the main trial, this witness stated even more precisely that members of the 3<sup>rd</sup> Company of the IV Battalion, Mile Pažin and Mirko Raguž, had arrested him and Medin. In responding to the Defense's additional questions, the witness stated that he did not know of which unit these persons were members, but that they should have been members of the IV Battalion.<sup>86</sup>

365. In order to explain the basis for the above assumption that the referenced persons were members of the IV Battalion, the witness responded to the Panel President's question, that, as far as he knew, there was only one unit.<sup>87</sup>

366. Witness Selvedin Kaplan further explained his arrest, and stated that, in fact, Ivica Marković and Vide Krešić were not the ones who arrested him, Medin Kaplan and the others, as witness Medin Kaplan claimed, but that they came only subsequently.<sup>88</sup>

367. Witnesses Medin Kaplan and Selvedin Kaplan consistently testified that the accused Veselko Raguž was the first one to blame for their suffering, but these views were not supported by appropriate facts. It may be assumed from such compared statements, that during the investigation, witness Selvedin Kaplan identified the persons who had arrested him.

368. Obviously, witness Selvedin Kaplan (Exhibit T-7) stated that they had been arrested by armed persons in charge of the Civilian Protection from Stolac.

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<sup>85</sup> *Ibid*, p. 45.

<sup>86</sup> *Ibid*, pp. 42, 43 and 54.

369. Changing the referenced parts of both these witnesses' evidence to the prejudice of the accused Veselko Raguž points to the fact that these witnesses have obviously attempted to harmonize their statements, namely that they had discussed with each other the event at issue.

370. The part of witness Selvedin Kaplan's response to Counsel's question, that he had told Semir Kaplan that the accused Veselko had beaten them, shows best who has spoken and with whom about the event at issue.

371. Counsel, however, continued examining witness Selvedin Kaplan along this line considering that he denied this fact at the main trial, *explaining* that the accused Veselko Raguž had beaten him during the interrogation.<sup>89</sup>

372. It should be added that in testifying at the main trial in relation to the accused Ivo Raguž, Selvedin Kaplan stated that the accused Ivo Raguž had not kept the records<sup>90</sup> at the relevant time, but that he stated quite the opposite during the investigation.

373. Reference should be also made to the testimony of witness Edin Đulić, which is, in its most relevant parts (except in relation to the Accused personally), to a greatest extent consistent with the testimonies of the three remaining witnesses.

374. Witness Edin Đulić confirmed that Vide Palameta had taken all four of them towards the gate, and that he could hear moaning from the garage.<sup>91</sup>

375. Witness Đulić further confirmed that Ante Krešić had beaten him, and connected a telephone cable to his ears. These facts were confirmed by the other witnesses too.<sup>92</sup>

376. In the remaining part of his testimony, witness Đulić confirmed that the accused Veselko Raguž and Ivo Raguž were not present in the garage either during their interrogation or the interrogation of others (Medin or Selvedin).<sup>93</sup>

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<sup>87</sup> *Ibid*, p. 55.

<sup>88</sup> *Ibid*, p. 62.

<sup>89</sup> *Ibid*, p. 65.

<sup>90</sup> *Ibid*, p. 77.

<sup>91</sup> Transcript of witness Edin Đulić 's evidence of 27 March 2012, pp. 7 and 8.

<sup>92</sup> *Ibid*, p. 9.

<sup>93</sup> *Ibid*, pp. 12, 42, 46 and 47.

377. Witness Đulić testified, consistently with witness Semir Balavac, that, at the relevant time, the accused Veselko Raguž was in front of the garage.

378. As stated above, in the Court's view, Count II-1 of the Indictment describes the interrogation and abuse of 4 persons, one by one.

379. In view of such a description of the event, it would be logical that the interrogations took place in a similar or identical way (beating and connecting to the telephone wire). The witnesses confirmed both the foregoing and that it was done by one or several same investigators.

380. In the concrete case, however, all four witnesses consistently confirmed, in relation to the development of the events, that they had been called out, beaten during the investigation, and that electric telephone wire was connected to their ears. Regarding the key facts, or the actors in the event at issue, however, the witnesses gave different and mutually quite contradictory evidence.

381. While witnesses Medin Kaplan and Selvedin Kaplan testified that the interrogation had been practically led by the accused Veselko Raguž, witnesses Semir Balavac and Edin Đulić testified that the accused Veselko Raguž had not been at all present in the facility where the interrogation was conducted, but that Ante Krešić was in charge of the interrogations, and that he had interrogated them.

382. Considering such different and mutually exclusive statements of the witnesses, the Court has particularly pointed to the above examined facts which raise suspicion into the credibility and accuracy of the evidence given by witnesses Semir Balavac, Medin Kaplan and Selvedin Kaplan. The Court has also found that the Prosecution presented no evidence to confirm, beyond a reasonable doubt, the allegations under Count II-1 of the Indictment. Therefore, acting pursuant to Article 3 of the CPC of BiH, the Court rendered a verdict acquitting both these Accused of the charges for the criminal offense described under Count II-1 of the Indictment.

## **VI. CONCLUSION**

383. Having conducted the evidentiary proceedings, the Court found that the Prosecution offered no evidence whatsoever whose quality and contents would suggest,



beyond a reasonable doubt, that the Accused are guilty as charged.

384. As stated above, the parties to the proceedings did not in principle contest that the events at issue had indeed occurred.

385. More specifically, different interpretations of the general events in the critical area, during the period covered by the Indictment were provided, and different evidence presented regarding the identity of the perpetrators of the crimes charged against the Accused persons.

386. Unlike the general agreement between the Prosecution and the Defense regarding the fact that relevant events had indeed occurred (with certain exceptions), the participation of the Accused persons themselves in these events was disputable among the parties to the proceedings.

387. The Prosecutor argued that the Accused participated in the event in the garage (Count II-1 of the Indictment), namely that the accused Veselko Raguž played an important and active role in multiple criminal offenses committed in the municipalities of Stolac and Čapljina.

388. The Court has adduced abundant evidence and heard a large number of witnesses, including the eye-witnesses, and considered all the factors which may affect the witnesses' perception of these events, including fear, shock, age, stress, the interest to diminish one's own criminal liability, the inconsistencies in addressing the decisive facts, etc. The Court, however, could not find beyond a reasonable doubt that the Accused were guilty as charged. Therefore, the Court acted pursuant to Article 284(c) of the CPC of BiH, and rendered a verdict acquitting the Accused of the charges under Counts I-1, I-2, I-3, I-4, I-5, I-6 and II-1 of the Indictment.

## **VII. DECISION ON THE COSTS OF PROCEEDINGS AND CLAIMS UNDER PROPERTY LAW**

389. Pursuant to Article 189(1) of the CPC of BiH, the accused Veselko Raguž and Ivo Raguž shall be relieved of the duty to reimburse the costs of the criminal proceedings under Article 185(2)(a) through (f) of this Code, which shall be, together with the necessary expenditures of the Accused and the Defense Attorneys, and the attorneys'

remuneration, paid from within budget appropriations of the Court.

390. Pursuant to Article 198(3) of the CPC of BiH, the Court has instructed the injured parties that they may pursue their potential claims under property law in a civil action.

**RECORD-TAKER – LEGAL ADVISOR**

**Emil Pinkas**

**PANEL PRESIDENT**

**JUDGE**

**Minka Kreho**

**NOTE ON LEGAL REMEDY:** An appeal from this Verdict may be filed within 15 days after the receipt thereof.

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## IX. ANNEX I (EVIDENCE ADDUCED)

### A. EVIDENCE FOR THE PROSECUTION

#### 1. Witnesses

As proposed by the Prosecution, the following witnesses testified before the Court:

1. Admir Kaplan;
2. Alija Hajdarević;
3. Alija Kaplan;
4. Berima Hačam;
5. Edin Đulić;
6. Esad Ratkušić;
7. Esmā Kaplan;
8. Fadil Razić;
9. Fata Kaplan;
10. Fatima Tuće;
11. Hadže Klarić;
12. Hamzo Šuta;
13. Hasan Čatić;
14. Helena Škobić (expert witness);
15. Ibro Hajdarović;
16. Ibro Selimić;
17. Indira Bešo;
18. Ismet Ratkušić;
19. Medin Kaplan;
20. Meho Bucman;
21. Muhiba Balavac;
22. Murat Kaplan;
23. Nusret Hajdarović;
24. Remzo Šuta;
25. Salko Alihodžić;
26. Samir Kaplan;
27. Selvedin Kaplan;
28. Semir Balavac;
29. Senad Balavac;
30. Senad Šetka;
31. Suad Boškailo;
32. Witness CD;
33. Witness CE;
34. Witness S1;
35. Zerema Miljanović;
36. Zijo Balavac;
37. Zijo Vukičević.

## 2. Documentary Evidence

Pursuant to the Prosecution's proposal, the following documentary evidence was adduced:

- T-1 Witness Examination Record for Ibro Hajdarović, No P-16-12/3-1-04-2-Z-179/11 of 6 May 2011; Regional Office Mostar (SIPA);
- T-2 Witness Examination Record for Nusret Hajdarović, No P-16-12/3-1-04-2-Z-173/11 of 28 April 2011, Regional Office Mostar (SIPA);
- T-3 Witness Examination Record for Meho Bucman, No P-16-12/3-1-04-2-Z-34/11 of 24 February 2011, Regional Office Mostar (SIPA);
- T-4 Witness Examination Record for Samir Kaplan, No 17-13/3-1-04-2-29-147/10 of 29 September 2010, Regional Office Mostar (SIPA);
- T-5 Witness Examination Record for Medin Kaplan, No 17-13/3-1-04-2-29-136/10 of 21 September 2010, Regional Office Mostar (SIPA);
- T-6 Witness Examination Record for Medin Kaplan, No Ki 18/02 of 16 September 2000, given in the Cantonal Court Mostar;
- T-7- Witness Examination Record for Selvedin Kaplan, No 17-13/3-1-04-2-29-135/10 of 21 September 2010, Regional Office Mostar (SIPA);
- T-8 Examination Record for Suad Boškailo, No 17-13/3-1-04-2-29-219/10 of 30 November 2010, Regional Office Mostar (SIPA);
- T-9 Examination Record for Murat Kaplan, No 17-13/3-1-04-2-29-223/10 of 1 December 2010, Regional Office Mostar (SIPA);
- T-10 Examination Record for Admir Kaplan, No 17-13/3-1-04-2-29-132/10 of 20 September 2010, Regional Office Mostar (SIPA);
- T-11 Examination Record for Alija Kaplan, No P-16-12/3-1-04-2-Z-125/11 of 29 March 2011, Regional Office Mostar (SIPA);
- T-12 Witness Examination Record for Fata Kaplan, No Ki.18/02 of 3 December 2002, given in the Cantonal Court Mostar;
- T-13 Witness Examination Record for Zerem Miljanović, No 16-12/3-1-04-2-Z-42/11 of 2 March 2011, Regional Office Mostar (SIPA);
- T-14 Witness Examination Record for Đulić Edina No. 17-13/3-1-04-2-29-145/10 of 29 September 2010, Regional Office Mostar (SIPA);
- T-15 Witness Examination Record for Edin Đulić, BiH Prosecutor's Office, No T20 0 KTRZ0000436 05 of 13 January 2011;
- T-16 Witness Examination Record for Edin Đulić, BiH Prosecutor's Office, No T20 0 KTRZ0000436 05 of 14 March 2012;
- T-17 Witness Examination Record for Alija Hajdarević, No P-16-12/3-1-04-2-Z-166/11 of 21 April 2011, Regional Office Mostar (SIPA);
- T-18 Witness Examination Record for Indira Bešo, BiH Prosecutor's Office, No T20 0 KTRZ0000436 05 of 5 May 2011;
- T-19 Witness Examination Record for Muhib Balavac, No 17-13/3-1-04-2-29-161/10 of 7 October 2010, Regional Office Mostar (SIPA);
- T-20 Decision Proclaiming the State of War, Official Gazette of the R BiH No 7, p. 234 of 20 June 1992;
- T-21 National composition of the population – 1991 Republic results per municipalities and populated places;
- T-22 Form VOB data for Veselko Raguž;
- T-23 Personal file of officer Veselko Raguž
- T-24 Form VOB – 1 for Ivo Raguž;
- T-25 Personal record for Officer Ivo Raguž;

T-26 Military department personal file for Ivo Raguž;

T-27 Witness Examination Record for Fatima Tuce, No P -16-12/3-1-04-2-Z-191/11 of 18 May 2011, Regional Office Mostar (SIPA);

T-28 Witness Examination Record for Senad Balavac, No P -16-12/3-1-04-2-Z-116/11 of 24 March 2011, Regional Office Mostar (SIPA);

T-29 Witness Examination Record for Salko Alihodžić, No P-16-12/3-1-04-2-Z-155/11 of 14 April 2011, Regional Office Mostar (SIPA);

T-30 Form VOB – 8 for Veselko Raguž, of 28 June 1995;

T-31 Form VOB – 8 for Ivo Raguž, of 28 June 1995;

T-32 Order to Relieve of Duties in the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Stolac Battalion, No 02-1-1483/I/93 of 3 November 1993;

T-33 Criminal record data for Veselko Raguž – BiH Ministry of Security, State Investigation and Protection Agency, No P16-04-04-2-272-5/11 of 20 June 2011;

T-34 Criminal record data for Ivo Raguž – BiH Ministry of Security, State Investigation and Protection Agency, No P 16-04/2-5-04-2-217-9/10 Ž.T. of 24 June 2011;

T-35 Combat Readiness Report for the Neum Battalion and current problems, Class: 81/92-02/28, No 1100-01-01-92-1 of 1 October 1992;

T-36 Commander O.Z. JiH, Security Situation until 8 January 1993, Security Sector No 01-908/93 of 11 January 1993;

T-37 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/81, No 1100-01-01-93-244 of 21 April 1993;

T-38 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/80-1, No 1100-01-01-93-242 of 21 April 1993;

T-39 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/118, No 1100-01-01-93-242 of 20 May 1993;

T-40 Report of the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 02-82/93, No 1100-11-17-93-82 of 15 June 1993;

T-41 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/163-2, Ur. Number 1100-01-01-93-486 of 3 July 1993;

T-42 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/164-2, No 1100-01-01-93-489 of 3 July 1993;

T-43 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/172-1, No 1100-01-01-93-482 of 9 July 1993;

T-44 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/186, No 1100-01-01-93-521 of 28 July 1993;

T-45 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/186-1, No 1100-01-01-93-522 of 29 July 1993;

T-46 List of the IV Battalion Command Staff (Stolac), Class 035-01/93-15/1, No 1100-15-21/4-93-016 of 29 July 1993;

T-47 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/190-1, No 1100-01-01-93-534 of 1 August 1993;

T-48 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/199-2, No 1100-01-01-93-562 of 9 August 1993;

T-49 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/204-1, No 1100-01-01-93-575 of 10 August 1993;

T-50 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/201-2, No 1100-01-01-93-566 of 10 August 1993;

T-51 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Class 8/93-01/151-1, Ur. number 1100-01-01-93-607 of 17 August 1993;

T-52 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Sector South, Class 8/93-01/257-2, number 1100-01-01-93- 733 of 9 October 1993;

T-53 Order by the 1<sup>st</sup> HVO Brigade “Knez Domagoj”, Sector South, Class 8/93-01/286-2 of 23 December 1993;

T-54 Commendation for the units of the HR Herzeg Bosnia, Ministry of Defense, HVO Main Staff, Ur. number 02-2/1-01-3663/93 of 24 December 1993;

T-55 BiH Prosecutor’s Office, Witness Examination Record for Hamzo Šuta, number T20 0 KTRZ 0000436 05 of 2 February 2011;

T-56 Witness Examination Record for Hamzo Šuta made in the Cantonal Court in Mostar, number Ki.19/02 of 9 October 2002;

T-57 BiH Prosecutor’s Office, Witness Examination Record for Hamza Šuta, number T20 0 KTRZ 0000436 05 of 10 February 2011;

T-58 State Investigation and Protection Agency, RU Mostar, Witness Examination Record for Hasan Čatić, number P-16-12/3-1-04-2-Z-144/11 of 8 April 2011;

T-59 Organizational Scheme of the Brigade Command;

T-60 Article from the Feral’s Dossier – Crimes in Herzeg Bosnia;

T-61 Excerpt from the book “Defense of Herzeg-Bosnia 2, by Karlo Rotim;

T-62 State Investigation and Protection Agency, RU Mostar, Examination Record for Witness CE, number P-16-12/3-1-04-2-Z-A76/11 of 29 April 2011;

T-63 State Investigation and Protection Agency, RU Mostar, Examination Record for Witness S1, number 17-13/3-1-04-2-29-245/10 of 17 December 2010;

T-64 Verified documentation collected from the database of the International Criminal Tribunal for the Former Yugoslavia, Analytical processing of BiH, HR HB units, Ministry of Defense, 50<sup>th</sup> Home Guard Regiment HVO “Knez Domagoj”, SIS Department, Class 804-01/95-02/02, ur. Number 1727-17-95-166 of 1 December 1995;

T-65 Verified documentation collected from the database of the International Criminal Tribunal for the Former Yugoslavia, List of members of the IV Battalion, 1<sup>st</sup> HVO Brigade “Knez Domagoj”;

T-66 Verified documentation collected from the database of the International Criminal Tribunal for the Former Yugoslavia, Foundation of UDIVDR HR HB branches;

T-67 Verified documentation collected from the database of the International Criminal Tribunal for the Former Yugoslavia, Decision of the President of the Republic of Croatia to Bestow an Order of the Croatian Trefoil for excellence in war for the Republic of Croatia, number 01-012-96-169/1 of 29 January 1997;

T-68 Verified documentation collected from the database of the International Criminal Tribunal for the Former Yugoslavia, 1<sup>st</sup> Brigade HVO “Knez Domagoj”, Brigade Command;

T-69 BiH Prosecutor’s Office, Witness Examination Record for Fadil Razić, number T20 0 KTRZ 0000436 05 of 2 February 2011;

T-70 Verified copy of the 1<sup>st</sup> Brigade of the IV Battalion HVO;

T-71 Crimes in the Stolac Municipality (1992 and 1994) (Presidency, Democratic Action Party Board, Cultural Association “Preporod”, Islamic Community Board, Muslim Charitable Society “Merhamet”, citizens);

T-72 Photo-documentation of the Orthopedic and Trauma Clinic Stolac (Bone Diseases Hospital), number 01/96 of 21 May 1996;

T-73 List of the HVO Commanders with personal details, Ministry of Interior, Security Services Center, Mostar, Public Security Station Stolac, number 18-16-I-90/96 of 8 January 1996;

T-74 Document “HVO Camps in Herzegovina”;

T-75 Monthly strength, IV Battalion, 1<sup>st</sup> Company, July 1993 (unverified copy);

T-76 Personal salaries of members of the IV Battalion, 1<sup>st</sup> Company HVO Herzeg Bosnia Čapljina for July 1993, number 116 of 16 September 1993;



T-77 Personal salaries of members of the IV Battalion (killed and wounded) HVO Herzeg Bosnia Čapljina, for July 1993, number 13 of 16 September 1993; Recapitulation IV Battalion – Stolac;

T-78 Personal salaries of Command members of the IV Battalion, HVO Herzeg Bosnia Čapljina, for July 1993, number 113 of 16 September 1993;

T-79 Personal salaries of members of the IV Battalion-Scouts, HVO Herzeg Bosnia Čapljina, August 1993, number 93 of 23 October 1993; Recapitulation IV Battalion Stolac;

T-80 Personal salaries of members of the IV Battalion, 1<sup>st</sup> Company HVO Herzeg Bosnia Čapljina, August 1993, number 72 of 23 October 1993;

T-81 Personal salaries of members of the IV Battalion, 2<sup>nd</sup> Company HVO Herzeg Bosnia Čapljina, August 1993, number 75 of 23 October 1993;

T-82 Personal salaries of members of the IV Battalion, Command, HVO Herzeg Bosnia Čapljina, August 1993, number 69 of 23 October 1993;

T-83 Monthly strength, Command of the V Battalion, September 1993, verified copy of the archive depot of the former 1<sup>st</sup> GZ VF BiH;

T-84 Command Monthly strength, August 1993, verified copy of the archive depot of the former 1. GZ VF BiH;

T-85 Monthly strength I Company, August 1993, verified copy of the archive depot of the former 1. GZ VF BiH;

T-86 Monthly strength IV Battalion 2<sup>nd</sup> Company, August 1993, verified copy of the archive depot of the former 1. GZ VF BiH;

T-87 Monthly strength IV Battalion, 2<sup>nd</sup> Company, July 1993, verified copy of the archive depot of the former 1. GZ VF BiH;

T-88 Monthly strength IV Battalion Command, July 1993, verified copy of the archive depot of the former 1. GZ VF BiH;

T-89 50<sup>th</sup> Home Guard Regiment, HVO Knez Domagoj List No. 91, verified copy of the archive depot of the former 1. GZ VF BiH, Ministry of Defense, Joint Main Staff of the BiH Armed Forces;

T-90 50<sup>th</sup> Home Guard Regiment, HVO Knez Domagoj List No. 92, verified copy of the archive depot of the former 1. GZ VF BiH, Ministry of Defense, Joint Main Staff of the BiH Armed Forces;

T-91 Excerpt from the Register of Deaths for Bećir Šuta, No 04/1-II-15-3-1692/2010 of 8 October 2010;

T-92 List of expenditures of the BiH Prosecutor's Office for witness examination, No T20 0 KTRZ 0000436 05 of 20 April 2010;

T-93 State Investigation and Protection Agency, Regional Office Mostar, Witness Examination Record for Senada Šetka, No P-16-12/3-1-04-2-Z-111/11 of 23 March 2011;

T-94 Request No. 1100-01-01-93-236 of 16 April 1993 and Request No. 1100-11-17-93/65 of 14 April 1993, Republic of Bosnia and Herzegovina, Croat Community Herzeg-Bosnia, 1<sup>st</sup> Brigade HVO "Knez Domagoj", verified in The Hague;

T-95 Order by the 1<sup>st</sup> Brigade "Knez Domagoj" No. 1100-01-01-93-299 of 7 May 1993, verified in The Hague;

T- 96 Order No. 1100-01-01-93-301 by the 1<sup>st</sup> Brigade HVO Knez Domagoj, verified in The Hague; of 7 May 1993;

T-97 Order by the 1<sup>st</sup> Brigade "Knez Domagoj" No. 1100-01-01-93-455 of 24 June 1993, verified in The Hague;

T-98 Order No. 1100-01-01-93-474 of 1 July 1993, 1<sup>st</sup> Battalion HVO Knez Dokagoj, verified in The Hague;

T-99 Order No. 1100-01-01-93-475 of 1 July 1993 by the 1<sup>st</sup> Brigade HVO Knez Domagoj, verified in The Hague, forwarded to the 2<sup>nd</sup> Brigade and the 3<sup>rd</sup>

Brigade related to the continued cleansing of the area; the 2<sup>nd</sup> Battalion is to participate from the canyon Bregava direction towards Habatnica and Imanica/Imanica blocking IZM Stolac;

T-100: Order by the 1<sup>st</sup> Brigade Knez Domagoj, No. 1100-01-01-93-480 of 8 July 1993, verified in The Hague, forwarded to all units;

T-101: Report by the 1<sup>st</sup> Brigade Knez Domagoj, No. 1100-11-17-93-92 of 18 July 1993, verified in The Hague;

T-102: Order by the 1<sup>st</sup> Brigade HVO Knez Domagoj, No. 1100-01-01-93-513 of 27 July 1993, verified in The Hague;

T-103: Report by the 1<sup>st</sup> Brigade HVO Knez Domagoj, No. 1100-01-01-93/4 of 29 July 1993;

T-104: Report per elements: problems and solution proposals, No. 1100-01-01-93-5 of 10 August 1993;

T-105: Examination Record for Witness CD, State Investigation and Protection Agency, Regional Office Mostar, No. 17-13/3-1-04-2-29-229/10 of 6 December 2010;

T-106: List of members of the 1<sup>st</sup> Brigade HVO Knez Domagoj per commands and units, verified in The Hague;

T-107: Request by the 1<sup>st</sup> Brigade HVO Knez Dokagoj, No. 1100-01-01-93-248 of 23 March 1993;

T-108: HVO Action Report, Command of the III Company of the III Battalion, Military Police Čapljina from 15 April 1993 to 25 April 1993, No. 02-4/3-06/4-02-128/93 of 28 April 1993;

T-109: Order by the 1<sup>st</sup> Brigade HVO Knez Domagoj, No. 1100-01-01-93-233 of 15 April 1993 and No. 1100-01-01-93-237 of 16 April 1993;

T-110: Order by the 1<sup>st</sup> Brigade HVO Knez Domagoj, No. 1100-01-01-93-494 of 17 July 1993;

T-111: Report by the 1<sup>st</sup> Brigade HVO Knez Domagoj of 14 September 1993;

T-112: Report by Mirko Matić, Squad Commander, III Company IV Battalion, Nos. 1100-15-21-2-93/219 and 1100-05-21-93/221 of 4 July 1993.

## **B. EVIDENCE FOR THE ACCUSED VESELKO RAGUŽ**

### **1. Witnesses**

Pursuant to the proposal by the Defense for the accused Veselko Raguž, the following witnesses testified before the Court:

1. Anđelko Milanović;
2. Ante Čoko;
3. Ante Krešić;
4. Božo Radić;
5. Dragan Bošković;
6. Drago Palameta;
7. Đuro Šutalo;
8. Ilija Bošković;
9. Ilija Šutalo;
10. Ivan Mustapić;
11. Ivica Marković;
12. Ivica Radić;
13. Janja Raguž;
14. Jasmina Balavac;

15. Ljubomir Raguž;
16. Marinko Raič;
17. Miho Vukić;
18. Milan Gorjanc, expert witness;
19. Mile Pažin;
20. Pero Marić;
21. Slavko Bošković;
22. Stjepan Bošković;
23. Vide Krešić;
24. Vidoje Prleta;
25. Zdenko Goluža;
26. Zoran Pažin;
27. Željko Stanković;
28. Zdenko Beno.

## **2. Documentary Evidence**

Pursuant to the proposal by the Defense for the accused Veselko Raguž, the following documentary evidence was adduced during the main trial:

- O-I-1: Report of 5 August 93;
- O-I-2: Order by the I Brigade HVO forwarded to the IPD of 6 July 1993;
- O-I-3: Order by the HVO Main Staff of 5 July 1993;
- O-I-4: Order by the HVO South Sector of 3 July 1993;
- O-I-5: Order by the HVO South Sector of 3 July 1993 forwarded to all units;
- O-I-6: Order by the HVO South Sector of 6 July 1993;
- O-I-7: Official Note of the BiH Prosecutor's Office of 24 January 2012;
- O-I-8: Witness Examination Record for Alija Kaplan of 6 December 2010;
- O-I-9: Intelligence Report of the 1<sup>st</sup> Brigade HVO Knez Domagoj of 3 July 1993;
- O-I-10: Intelligence Report of 11 July 1993;
- O-I-11: Notice of the HVO Main Staff of 13 July 1993;
- O-I-12: Handwritten order of the HVO Main Staff of 13 July 1993;
- O-I-13: Order by the HVO Main Staff of 13 July 1993;
- O-I-14: Order by the HVO Main Staff of 14 July 1993;
- O-I-15: Information of the Information and Propaganda Service of the 1<sup>st</sup> Brigade Knez Domagoj of 13 July 1993;
- O-I-16: Information by the HVO Main Staff of the Military Intelligence Sector of 13 July 1993;
- O-I-17: Security situation evaluation made by the 42<sup>nd</sup> Mountain Brigade, Army BiH of 16 April 1993;
- O-I-18: Report on the Situation and Events in the 42<sup>nd</sup> Mountain Brigade, Command of the IV Corps of the Army BiH of 2 May 1993 forwarded to the Main Staff of the Armed Forces Military Command;
- O-I-19: Document of the Ministry of Defense of 8 July 2013, Item II relating to Zijo Vukičević showing that he was a member of the Army;
- O-I-20: Witness Examination Record for Zijo Vukičević made before the Cantonal Court in Mostar of 9 October 2002;
- O-I-21: Witness Examination Record for Esad Ratkušić Ki: 18/02 of 2 September 2002;
- O-I-22a: Two topographic maps, one signed by Commander Miljenko Lasić;
- O-I-22 b: Second topographic map made by the I Brigade Knez Domagoj;

O-I-23: Certificate of the Association of Parents of Killed Veterans No. 09/13 of 4 September 2013;  
 O-I-24: Report by the Croat Community Herzeg Bosnia, Main Staff of 30 June 1993;  
 O-I-25: Order by the HVO Main Staff of 30 June 1993;  
 O-I-26: Report, message to the Croat people and HVBO Defense Sector 02-1-765/93 of 30 June 1993;  
 O-I-27: Report by the President of the R BiH Government Mile Akmadžić forwarded to UN-u of 1 July 1993;  
 O-I-28: Letter of the I Brigade Knez Domagoj of 16 March 1993 with Annex-Order No. 2, I Brigade Knez Domagoj, signed by Colonel Nedeljko Obradović;  
 O-I-29: Excerpt from the Register of Marriages kept for Stolac of 2 September 2013 proving that Janja Raguž and Veselko Raguž entered into marriage;  
 O-I-30: Order by the Croat Community Herzeg-Bosnia, HVO, Operative zone Herzegovina Mostar No. 01-4312/93 of 22 July 1993;  
 O-I-31: Findings and Opinion of military expert witness Milan Gorjanc made in Ljubljana, October 2013;  
 O-I-32: Act of the Ministry of Defense, No.: 13-04-1-109-4/13 of 17 October 2013;  
 O-I-33: Certificate by the Federation Ministry for Veterans and Disabled Veterans of the Homeland War to the name of Tvrtko Raguž, No. 07/64-03-679/13-2 of 6 November 2013.

### **C. EVIDENCE FOR THE ACCUSED IVO RAGUŽ**

#### **1. Witnesses**

Pursuant to the proposal by the Defense for the accused Ivo Raguž, the following witnesses testified before the Court:

1. Ante Čoko;
2. Ante Krešić;
3. Ivica Džakula;
4. Ljubomir Raguž;
5. Miho Vukić;
6. Vidoje Prleta;
7. Željko Stanković.

#### **2. Documentary Evidence**

Pursuant to the proposal by the Defense for the accused Ivo Raguž, the following documentary evidence was adduced during the main trial:

O-II-1 Photograph of witnesses Prleta's and Kaplan's houses;  
 O-II-2: Judgment of the Cantonal Court in Mostar No. K 205/01 of 10 April 2008 against Ante Krešić;  
 O-II-3: Witness Examination Record for Semir Balavac of 6 May 1997;  
 O-II-3a: Continued Record of the main trial of 10 December 1997 against Ante Krešić;  
 O-II-4: Medical documentation for Ivica Džakula: Disease history of 16 February 1993, Specialist's Finding of 23 July 1993, Findings and Opinion of 16 June 1993, Surgery Clinic Findings of 10 May 1993 and 17 June 1993, Findings of 12 August 1993, Hospital Referral Form of 23 August 1993, Referral Form and Discharge Letter of 9 December 1993.

## X. ANNEX II (ESTABLISHED FACTS)

Pursuant to the Motion of the BiH Prosecutor's Office, the Court of BiH has, under its Decision No. S1 1 K 005528 11 Kri of 14 March 2012, accepted the following facts:

*The facts, established in the final Judgment of the ICTY Trial Chamber in Prosecutor v. Zejnil Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo (IT-96-21-T), are hereby accepted in the scope and order as listed in the text below:*

1. "... in Bosnia and Herzegovina [as] a whole there was continuing armed violence at least from the date of its declaration of independence – 6 March 1992 – until the signing of the Dayton Peace Agreement in November 1995. Certainly involved in this armed violence, and [...] the JNA, the Bosnian Army (consisting of TO and MUP), HVO and VRS." (part of para. 186.)
2. "The HVO was in a position similar to that of the VRS, in that it was established by the self-proclaimed para-State of the Bosnian Croats as its army and operated from territory under its control." (part of para. 187.)

*The facts, established in the final Judgment of the ICTY Trial Chamber in Prosecutor v. Mladen Naletelić and Vinko Martinović (IT-98-34-T), are hereby accepted in the scope and order as listed in the text below:*

1. "The Panel is satisfied that an armed conflict existed during the time relevant in to the Indictment, i.e. at least between 17 April 1993 and late February 1994." (para. 179.)