SUD BOSNE I HERCEGOVINE **СУД БОСНЕ И ХЕРЦЕГОВИНЕ**

Case number: S1 1 K 007121 14 Krž 9

Delivered on: **25 February 2015**
Written Judgment sent out on: **27 April 2015**

The Panel of Judges: **Redžib Begić, Panel Presiding**
Mirko Božović, Rapporteur
Mirza Jusufović, Panel member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

THE ACCUSED BRANKO VLAČO

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

Mr. Adis Nuspahić

Counsel for the Accused:

Mr. Rade Golić, Attorney
Mr. Dragan Međedović, Attorney

C O N T E N T S

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting in the Panel composed of Judge Redžib Begić, as the Panel Presiding and Judges Mirko Božović and Mirza Jusufović, as members of the Panel, with the participation of Legal Advisor Elma Karović as the Minutes-taker, in the criminal matter against the accused Branko Vlačo for the criminal offense of War Crimes against Humanity in violation of Article 172(1)(h), as read with Subparagraphs a), c), e), g), i) and k) of the Criminal Code of Bosnia and Herzegovina (CC BiH), in connection with Article 180(1) of the same Code, deciding upon the appeal filed by the Prosecutor's Office of Bosnia and Herzegovina (the Prosecution of BiH, the Prosecution) of 12 November 2014 and the appeal filed by the accused Branko Vlačo through his Defense Attorneys, Mr. Rade Golić and Mr. Dragan Međović, of 5 December 2014, from the Judgment of the Court of Bosnia and Herzegovina number S1 1 K 007121 12 Kri of 4 July 2014, after the Panel session held on 25 February 2015, in the presence of the Accused and his Defense Attorneys, and the Prosecutor of the Prosecution of BiH, handed down the following

J U D G M E N T

dismissing as ill-founded the appeal filed by the Prosecution of BiH from the Judgment of the Court of BiH, number S1 1 K007121 12 Kri of 4 July 2014, **and granting, in part,** the appeal filed by the accused Branko Vlačo through his Defense Attorneys, Mr. Rade Golić and Mr. Dragan Međović, **thus *altering*** the referenced Judgment in its conviction part as follows:

- with regard to the legal definition of the offense, by legally qualifying the Accused's acts specified in the conviction part of the contested Judgment as the criminal offense of **Crimes against Humanity (by Persecution) under Article 172(1)(h) of the CC BiH**, **as read with Article 180(1) of the CPC BiH,**

and

- with regard to the sentencing decision, by sentencing the accused Branko Vlačo for the referenced criminal offense, pursuant to Articles 39, 42 and 48 of the CC BiH to imprisonment for a term of **13 (thirteen) years,** to which sentence the time the Accused spent in custody, running from 27 August 2011 (the day when he was deprived of liberty and ordered into extradition custody) onwards, shall be credited pursuant to Article 56 of the CC BiH.

The First Instance Judgment shall remain unaltered in both the remaining conviction and the dismissal part thereof.

REASONING

I. PROCEDURAL HISTORY

A. FIRST INSTANCE JUDGMENT

1. The Judgment of the Court of Bosnia and Herzegovina (the Court of BiH), number: S1 1 K007121 12 Kri of 4 July 2014, found the accused Branko Vlačo guilty, pursuant to Article 285 of the CPC BiH of the commission, by the acts described in Sections I, I(1), I(2), I(3), I(4), I(5), II, II(1), II(2), II(3), II(4), II(5) of the operative part of the contested Judgment, of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h), as read with Subparagraphs a), c), e), i) and k), all in connection with Article 180(1), Article 29 and Article 31 of the CC BiH, wherefore the Court sentenced him, pursuant to Articles 39, 42 and 48 of the CC BiH, to imprisonment for a term of 15 (fifteen) years. Pursuant to Article 284(c) of the CPC BiH, the same Judgment acquitted the accused Branko Vlačo of the charges that, by the acts described in Counts I.1, I.3, I.7 and II.5 of the Indictment, he committed the criminal offense of Crimes against Humanity under Article 172(1)(h), as read with Subparagraphs a), c) and k) of the CC BiH, all in connection with Article 180(1) of the same Code. Under the same Judgment, pursuant to Article 283(b) of the CPC BiH, the Panel dismissed the charges that, by the acts described in Counts I.6. and II.1 of the Indictment, the accused Branko Vlačo committed the criminal offense of Crimes against Humanity under Article 172(1)(h), as read with Subparagraphs a), g) and i) of the CC BiH, in connection with Article 180(1) of the same Code.

2. Under the same Judgment, pursuant to Article 56 of the CC BiH, the time the accused Branko Vlačo spent in custody, running from 27 August 2011 (when he was deprived of liberty and ordered in extradition custody) onwards, was credited to the sentence imposed. Also, pursuant to Article 188(1) of the CPC BiH, the Accused was obligated to reimburse the costs of the criminal proceedings in the scheduled amount of KM 300.00, within 30 days from the finality of the Judgment. In relation to the acquitting and dismissing part of the Judgment, pursuant to Articles 188(2) and 189(1) of the CPC BiH, the Accused was relieved of the obligation to reimburse the costs of the criminal proceedings, which shall be paid from within the budget appropriations of the Court.

3. Pursuant to Article 198(2) of the CPC BiH, the injured parties were instructed that they may pursue their possible claims under property law in civil action.

B. APPEALS AND RESPONSES TO THE APPEALS

4. The referenced Judgment was appealed by the Prosecution of BiH on the ground of the sentencing decision under Article 300(1) of the CPC BiH, with a proposal that the Appellate Panel of the Court of BiH grant the appeal as well-founded in its entirety, revise the challenged Judgment, and impose on the Accused a long-term prison sentence for the committed crime, or alternatively, a prison sentence exceeding 15 years.

5. The accused Branko Vlačo appealed the Judgment through his Counsel on the grounds of the essential violations of the criminal procedure provisions under Article 297(1)(d), (h), (j) and (k) of the CPC BiH, incorrectly or incompletely established state of facts under Article 299 of the CPC BiH, criminal code violation under Article 298 of the CPC BiH and the sentencing decision under Article 300 of the CPC BiH, moving the Panel of the Appellate Division of the Court of BiH to grant the appeal, revoke the challenged Judgment and hold a hearing, or to revise the First Instance Judgment and acquit the Accused of the charges.

6. The Court also received the responses to the respective appeals filed by the parties to the proceedings.

7. In its response to the appeal filed by the Accused's Counsel, the Prosecution indicated that all their grounds of appeal were ill-founded, and moved the Appellate Division Panel of the Court to dismiss the appeal as ill-founded.

8. Counsel for the accused Branko Vlačo also submitted his response to the appeal stating that the Prosecution's appellate grounds were ill-founded, that the reasons for which the Prosecution requested that just a slightly lengthier sentence be imposed on the Accused in relation to the earlier one imposed were unclear, since he could even be sentenced to 16 (sixteen) years in prison. Thus it is not clear how would just one year affect the purposes of both special and general deterrence.

9. At the Panel's public session held on 25 February 2015 pursuant to Article 304 of the CPC BiH, the Prosecutor of the Prosecution of BiH, as well as the Accused's defense attorneys, stood by their respective appeals and responses to the appeals submitted in writing. Mr. Rade Golić, defense attorney for the Accused, provided in his oral address a more comprehensive explanation of the appeal, and further referred to the non-existence of a widespread and systematic attack in the territory of the Vogošća municipality during the critical period.

10. Having reviewed the challenged Judgment pursuant to Article 306 of the CPC BiH, within the grounds and arguments of the appeals, the Appellate Division Panel (the Appellate Division, the Panel) decided as stated in the operative part of the Judgment for the reasons that follow.

II. GENERAL CONSIDERATIONS

11. Prior to providing reasons for each appellate ground individually, the Appellate Panel notes that, pursuant to Article 295(1)(b) and (c) of the CPC BiH, the applicant should include in his/her appeal both the grounds for contesting the verdict and the reasoning behind the appeal.

12. Since the Appellate Panel shall review the judgment only insofar as it is contested by the appeal, pursuant to Article 306 of the CPC BiH, the appellant shall draft the appeal in the way that it can serve as a ground for reviewing the verdict.

13. In that respect, the appellant must specify the grounds on the basis of which he contests the verdict, specify which section of the verdict, piece of evidence or proceedings of the Court he contests, and adduce clear and substantiated reasons in support of the appeal.

14. Mere arbitrary indication of the appellate grounds, and of the alleged irregularities in the course of the trial proceedings, without specifying the ground to which the applicant refers is not a valid ground for reviewing the trial judgment, wherefore, the Appellate Panel will, pursuant to the established case law of the appellate panels[1], dismiss as ill-founded the unreasoned and unclear appellate complaints.

A. GROUNDS OF APPEAL UNDER ARTICLE 297 OF THE CPC BIH: ESSENTIAL VIOLATIONS OF THE CRIMINAL PROCEDURE PROVISIONS

1. Standards of review

15. A judgment may, pursuant to Article 297 of the CPC of BiH, be contested mainly on the grounds of an essential violation of the provisions of criminal procedure, which is always established in the cases specified in Article 297(1).[2]

16. Considering the gravity and significance of the procedural violations, the CPC BiH distinguishes between the violations which, if found to be in existence, create an irrefutable assumption that they have negatively affected the validity of the imposed judgment (absolutely essential violations) and violations in relation to which the Court has discretion,

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[1] See the Appeals Judgment in *Krajišnik*, para. 17; Appeals Judgment in *Martić,* para. 15; Appeals Judgment in *Strugar,* para. 17. A number of the Panels of the Court of BiH followed this case law through their decisions. Along this line, see the Appellate Judgment in *Trbić*, No. X-KRŽ-07/386 of 21 October 2010.

[2] Article 297. **Essential Violations of the Criminal Procedure Provisions:** (1) The following constitute an essential violation of the provisions of criminal procedure: a) if the Court was improperly composed in its membership or if a judge participated in pronouncing the verdict who did not participate in the main trial or who was disqualified from trying the case by a final decision, b) if a judge who should have been disqualified participated in the main trial, c) if the main trial was held in the absence of a person whose presence at the main trial was required by law, or if in the main trial the defendant, defense attorney or the injured party, in spite of his petition was denied the use of his own language at the main trial and the opportunity to follow the course of the main trial in his language, d) if the right to defense was violated, e) if the public was unlawfully excluded from the main trial, f) if the Court violated the rules of criminal procedure on the question of whether there existed an approval of the competent authority, g) if the Court reached a verdict and was not competent, or if the Court rejected the charges improperly due to a lack of competent jurisdiction, h) if, in its verdict, the Court did not entirely resolve the contents of the charge; i) if the verdict is based on evidence that may not be used as the basis of a verdict under the provisions of this Code, j) if the charge has been exceeded, k) if the wording of the verdict was incomprehensible, internally contradictory or contradicted the grounds of the verdict or if the verdict had no grounds at all or if it did not cite reasons concerning the decisive facts. (2) There is also a substantial violation of the principles of criminal procedure if the Court has not applied or has improperly applied some provisions of this Code to the preparation of the main trial or during the main trial or in rendering the verdict, and this affected or could have affected the rendering of a lawful and proper verdict.

in each concrete case, to evaluate whether the violation found affected or could have negatively affected the validity of the judgment (relatively essential violations).

17. Absolutely essential violations of the CPC BiH are specified in Article 297(1)(a) through (k) of the CPC BiH.

18. If the Appellate Panel found any essential violations of the criminal procedure provisions, it shall revoke the first instance judgment, pursuant to Article 315(1)(a) of the CPC, except in cases provided for in Article 314(1) of the CPC BiH.[3]

19. Unlike absolutely essential violations, relatively essential violations are not specified in the law, but rather exist in situations where the court, during the main trial or in the rendering of the judgment, did not apply or improperly applied a provision of the criminal procedure code, but only if this affected or could have affected the rendering of a lawful and proper judgment.

20. With respect to an allegation that a violation of the principles of criminal procedure could have affected the rendering of a lawful or proper verdict, it is not sufficient for the appellant to simply assert that the procedural violation could have *hypothetically* affected the rendering of a lawful or proper verdict. Rather, the Appellate Panel will only find a violation of the principles of criminal procedure when the Appellant shows that it is of substantial character and impossible to conclude that the alleged violation did not affect the rendering of a lawful or proper verdict. That is, where the Appellate Panel is satisfied that a lawful and proper verdict was rendered notwithstanding a non-substantial procedural violation, the Appellate Panel will conclude that Article 297(2) of the CPC of BiH was not violated.

2. Sub-ground III: Article 297(1)(d) of the CPC BiH – the right to defense was violated in the challenged Judgment

(i) Appeal filed by the accused Branko Vlačo

21. **Counsel submitted that, during the criminal proceedings, the Accused did not defend himself against the responsibility for which he was convicted (perpetrator, co-perpetrator and accessory), because the Indictment charged him with participation in the joint criminal enterprise. According to the Defense, the Accused's right to defense was violated in this way since the Accused was not notified of the legal and factual charges against him.**

[3]Article 314. **Revision of the First Instance Verdict:** (1) By honoring an appeal, the Panel of the Appellate Division shall render a verdict revising the verdict of the first instance if the Panel deems that the decisive facts have been correctly ascertained in the verdict of the first instance and that in view of the state of the facts established, a different verdict must be rendered when the law is properly applied, according to the state of the facts and in the case of violations as per Article 297, Paragraph 1, Item f) and j) of this Code.

(ii) Position of the Appellate Panel

22. Violations of the right to defense will exist in situations where the rules of procedure were not applied or were improperly applied to the prejudice of the accused. Any violation of the procedural norm to the prejudice of the accused means that the accused's right to defense, as guaranteed under international acts, has been violated. If such a violation was made, and the authorized procedural subject so indicated in his/her appeal, the violation at issue shall have the character of an absolutely essential violation of the criminal procedure, the result of which always is a revocation of the judgment.

23. The Appellate Panel has held that, during the first instance proceedings, the Accused's right to defense was not violated because the Accused was notified of the factual charges brought against him and the Accused's unlawful acts were concretely specified in the factual description of the indictment.

24. All the referenced charges against the Accused were specified in the factual description of the Indictment itself. Thus, the Accused was aware of the factual part of the Indictment regardless of the legal definition of the form of participation in the acts of commission determined in the challenged Judgment.

25. Article 6(1) and (3) of the ECHR governs the right to a fair trial, and contains a set of fundamental mandatory procedural rights comprising the minimum rights guaranteed for the Accused. The Panel has also noted that the Accused is entitled to be promptly notified, in a language he understands, of the nature and reasons of the charges brought against him. This right is closely connected with the Accused's right to be provided with an adequate period of time and possibility to prepare defense, all of which should be evaluated within the context of the criminal proceedings and the procedure provided for in the CPC BiH. Bearing in mind that the Indictment did specify the charges against the Accused, and that during the guilty plea hearing and at the status conference subsequently held on 17 December 2013, prior to the main trial opening, the Accused confirmed, upon the Court's inquiry, that he had received and understood the Indictment, this Panel has held, with respect to Article 6(3) of the ECHR, that the accused Branko Vlačo's right to defense was not violated.

26. In view of all the foregoing, this Panel cannot accept the appellate complaint that the Accused's right to defense was violated. This is so because the Accused had become aware of the charges brought against him already at the moment when the confirmed Indictment was served on him. Thus, the Accused could and actually did exercise his right to present his defense in order to contest the Prosecution's allegations.

3. Sub-title two: Article 297(1)(j) of the CPC BIH – the charges were exceeded

(i) Appeal filed by the accused Branko Vlačo

27. **The Defense submitted that the Court violated Article 297(1)(j) of the CPC BiH by prequalifying in the contested Judgment the charges against the Accused from**

the participation in the joint criminal enterprise into co-perpetration which is, according to the Defense, a much graver form of participation in the commission of the criminal offense. The Defense believed that the charges were exceeded because the Accused's alleged contribution to the criminal offense was deemed as decisive and his intent as direct intent, whereby a significant degree of criminal activity was attributed to the Accused.

(ii) Position of the Appellate Panel

28. Article 280 of the CPC BiH provides for the correspondence between the judgment and the charges, namely that the judgment shall refer only to the accused person and only to the criminal offenses specified in the indictment that has been confirmed. The Panel has noted that an identity between the verdict and the charges must exist, and that it is apparent from the identity between the scope and substance. However, Paragraph 2 of the same Article provides that the Court is not bound to accept the proposals of the Prosecutor regarding the legal evaluation of the act.

29. Along this line, the objective identity of the indictment and the judgment includes all legally relevant facts from which the subjective and objective essential elements of the criminal offense ensue. This means that the identity must exist with regard to the act of the crime commission and its consequences described in both the indictment and the judgment. Thus, there will be no identity if the judgment is based on the facts distinct from the facts alleged in the indictment, from the different nature of the acts of commission and the elements of the criminal offense ensue. [4]

30. In the concrete case, the Judgment is based on the facts presented in the Indictment. This indicates that the charges were not exceeded, but the Panel rather found, in the challenged Judgment, that the Accused did not participate in the acts charged against him as a participant in the JCE, but rather as a co-perpetrator.

31. Article 227(1)(c) of the CPC clearly provides that the indictment shall contain a description of the act pointing out the legal elements which make it a criminal offense, the object on which and the means with which the criminal offense was committed, and other circumstances necessary for the criminal offense to be defined *as precisely as possible.* All the foregoing is the factual basis of the indictment defining the subject of the criminal proceedings, or the subject of main trial. The factual description of the indictment determines the subject of trial and it forms the basis for a judgment. The obligation to present a short review of the state of facts must be interpreted in the light of the Accused's rights guaranteed under the provisions of Article 7(3) of the CPC BiH and Article 6(1) of the ECHR, providing that, in determining the charges against him, the accused shall be concretely entitled to: 1) be informed of the nature and cause of accusation against him, 2)

[4] See the Commentaries to the Criminal Procedure Codes in Bosnia and Herzegovina, Common Project of the Council of Europe and the European Commission, 2005 (the Commentaries to the Criminal Procedure Codes in BiH), p. 773 in the BiH languages.

the right to a fair trial, 3) the right to adequate representation, and 4) the right to prepare his defense.

32. In addition, Article 227(1)(d) of the CPC BiH provides that the indictment shall contain the legal name of the criminal offense accompanied by the relevant provisions of the Criminal Code, the legal name of the criminal offense pursuant to the CC BiH, accompanied by the relevant provisions to the criminal offense at issue, its basic or qualified form, the form of responsibility or another provision of substantive-legal character which may apply to the concrete case.

33. The Panel has held that the Defense's objection, that the charges were exceeded by the prequalification of participation in the JCE into co-perpetration because co-perpetration is a much more serious form of perpetration in the commission of crime than the JCE, is ill-founded in whole.

34. The elements necessary for proving one's responsibility within the basic form of the JCE are as follows: the plurality of persons, common design or purpose to commit a crime and the accused's participation or joining in the commission of the design or purpose. The participants participate in a joint action and their contribution is significant, whereby the participation in the JCE covers a wider scope of responsibility.

35. In view of the foregoing, the Appellate Panel has concluded that, in the proper application of the law to the established state of facts, the form of participation of the accused Branko Vlačo points to the proper type of responsibility set forth in Article 180(1) of the CC BiH, rather than as stated in the impugned Judgment, Article 180(1), Article 29 and Article 31 of the CC BiH. Considering that the state of facts was properly established in the present case, the Appellate Panel has modified the trial Judgment and properly applied the provisions of substantive law in relation to the accused Branko Vlačo's criminal responsibility. This will be addressed in more detail in the part of the Judgment concerning the violations of the criminal code.

4. Sub-title II: Article 297(1)(k) of the CPC BiH – the operative part of the Judgment is incomprehensible and contrary to the reasons of the Judgment

(i) Appeal filed by the accused Branko Vlačo

36. **Counsel submitted that the essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH was also made because the factual description did not provide for clear actions of each perpetrator individually by which he participated in the commission of the crime, whereby the operative part of the Judgment contradicts the reasons of the Judgment.**

37. According to the Defense, the omission of the JCE-related factual part of the description left the factual part without the information concerning the co-perpetrators and their respective actions, wherefore the reasoning of the Judgment was not harmonized with the operative part of the Judgment.

38. An absolutely substantial/essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC of BiH exists when the trial judgment, as a formal judicial document, contains certain deficiencies in both the operative part and the reasoning, the nature of which is such that they prevent the examination of the judgment's lawful and proper nature.

39. Having reviewed the contested Judgment comprehensively and with due diligence, from the aspect of existent deficiencies which could amount to an essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH, the Appellate Panel concluded that the Judgment contained no deficiencies specified in Subparagraph k), as the appeal arbitrarily indicated. Therefore, Counsel's appellate complaints were dismissed as ill-founded.

40. The foregoing Defense's appellate complaint is directly connected with its objection pointing to the violation of the Accused's right to defense as he was found guilty as a co-perpetrator of certain actions, as well as due to the alleged exceeding of charges. In the Appellate Panel's view, it was not necessary to state concretely in the factual description with whom exactly the Accused participated in the acts of commission because Article 180(1) of the CC BiH involves all forms of criminal responsibility (direct perpetrator, co-perpetrator and accessory). Thus, any *actus reus* of the Accused or the act of commission was harmonized with the forms of criminal responsibility set forth in Article 180(1) of the CC BiH. This is because the concrete case involves the acts that are systemic by nature, the Accused's acts are mutually entwined, and because a plurality of persons participated in the commission thereof. The Appellate Panel has therefore held that the operative part of the Judgment does not contradict the reasons of the Judgment.

41. This Panel has held that the Accused is criminally responsible on the ground of individual criminal responsibility under Article 180(1) of the CC BiH, the application of which is limited to the criminal offenses of Crimes against Humanity and the offenses in breach of international law under Articles 171 through 179 (except for Article 176). The referenced Article also provides for further forms of responsibility, which are separate from and more concrete that those specified in the General Part of the CC BiH in Articles 21, 29, 30 and 31, as read with Articles 33, 34 and 35 of the CC BiH. This Article prescribes that a person who planned, ordered, perpetrated or otherwise aided and abetted in the planning, perpetration or execution of a criminal offense shall be guilty of the criminal offense.

42. **Counsel argues that the essential violation under Article 297(1)(k) of the CPC BiH was also made due to the fact that the reasoning of the Judgment did not show that the attack was directed against the Croat population, while the operative part thereof stated that the attack was directed against the non-Serb civilian population of the Vogošća municipality and the other municipalities of the City of Sarajevo, with the aim of persecuting the Bosniak and Croat population.**

43. According to the Panel, the concrete case does not concern the violations under Article 297(1)(k) of the CPC BiH because the Judgment is not contradictory, either internally or to the reasons of the judgment. The introduction of the operative part of the

Judgment stated that the attack was directed against the non-civilian population with the aim of persecuting the Muslim and Croat population.

44. In addition to the existence of a widespread or systematic attack and the accused's awareness of the attack and his knowledge that his acts formed part of the attack, one of the general elements of the criminal offense of Crimes against Humanity is also that the attack is directed against "any civilian population", which indicates that the word "*some" /or "any"/ civilian population implies that nationality or ethnicity of the population is irrelevant if the population must be of a predominantly civilian nature. The Trial Judgment in Kunarac stated that "any" civilian population means that this category may also comprise the state's attack on its population.*[5]

45. Therefore, the determinant used in the operative part of the Judgment the attack against the ***non-Serb*** civilian population does not mean, as the appeal claimed, that it is an attack directed against the Muslim and Croat population, but it may rather imply an attack directed only against the Muslim population.

46. The element of persecution, *inter alia*, means intentional and severe deprivation of fundamental rights on the grounds of affiliation to a group or against any group or collectivity on political, racial, national, ethnic, cultural, religious, or sexual gender or other grounds that are universally recognized as impermissible under international law. The trial judgment established that the state policy was aimed at the persecution of Muslim and Croat population, which directly concerns the element of persecution as the act of commission of the criminal offense of Crimes against Humanity, which is directly tied to a widely set up design, and, thus, as stated in the operative part of the Judgment itself, "in furtherance of the state policy, *to persecute the Bosniak and Croat population on ethnic and religious grounds from the territory of the Serb Republic of BiH"*, and does not in any way concern the general elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH.

47. **The defense sees the incomprehensibility of the operative part of the Judgment and its contradiction with the reasons for the Judgment also in the mere introduction to the operative part of the Judgment, which inconsistently mentioned the municipalities from which the population was allegedly persecuted and in which the attack existed. Thus, in relation to persecution, the municipalities of Vogošća, Ilijaš, Centar and other municipalities of the City of Sarajevo were indicated, while only the municipalities of Vogošća, Ilijaš and Centar, in part, were indicated in relation to the attack.**

48. Even though persecution was in the Judgment operative part set up more broadly in relation to the attack, the operative part is not incomprehensible, because the reasoning of the Judgment precisely stated the places and the municipalities where and the period during which the widespread and systematic attack existed, wherein the scope of

[5] *Prosecutor v. Tadić*, case No. IT-94-1-T, Opinion and Judgment, 7 May 1997, para. 635. *Prosecutor v. Kunarac*, case No. IT- 96-23/1-T, of 22 February 2001, p. 132.

persecution need not match the scope of the attack. The Trial Panel has found that the persecution of the population occurred in the municipalities Vogošća, Ilijaš, Centar and the other municipalities of the City of Sarajevo, and that the Accused's actions undertaken in the territory of municipality Vogošća formed part of persecution, both within the context and as a part of a widespread and systematic attack launched in the territory of **municipalities Vogošća, Ilijaš and Centar, in part.**

49. The Trial Chamber in *Tadić* stated the following: "*Although it is correct that isolated, random acts should not be included in the definition of crimes against humanity, that is the purpose of requiring that the acts be directed against a civilian population and thus "even an isolated act can constitute a crime against humanity if it is the product of a political system based on terror or persecution".* [6]

50. It is clear from the foregoing that the acts the accused Branko Vlačo had undertaken in the territory of the Vogošća municipality were committed within a widespread and systematic attack, and as a product of a political system of persecution.

51. **The Defense sees the contradiction between the operative part of the Judgment and its reasons also in relation to the *Bunker*, *Sonja*, *Nako's Garage* and *Planjo's House* camps for civilians, which were mentioned in the operative part of the Judgment, because the *Sonja* facility was omitted from the introduction, while the *Bunker* facility was omitted from the reasons of the judgment, instead of which the *Kontiki* facility was mentioned.**

52. However, it is apparent from the mere operative part of the Judgment that the *Kontiki* and *Sonja* facilities are interrelated, namely that they are parts of the very same catering facility, that is, the detention facility. Also, the civilian camps were twice mentioned in the introduction of the operative part: first, when stating that the **Accused** was a warden of the camps organized in the *Bunker*, *Nako's Garage* and *Planjo's House*, and in the latter part of the operative part, stating that the Accused **took part in the establishment and organization of camps** for civilians, *Bunker, Sonja, Nako's Garage* and *Planjo's House*.

53. Thus, in relation to this segment, the Panel has held that the operative part of the Judgment is not incomprehensible and that, as Counsel's appeal also stated, the *Sonja* and *Kontiki* facilities were mentioned later on in the Reasoning of the Judgment in the context of one and the same facility. As also mentioned in the factual description of Section I of the conviction Judgment "... the premises of the catering facility *"Kontiki" – "Sonja" formed part of the Bunker civilian* camp and the outbuildings ...". The mere fact that the "*Sonja*" and "*Kontiki*" facilities were omitted from one segment of the operative part of the Judgment, while only the *Sonja* facility was omitted from the latter segment thereof in the context of the fact that the Accused was a warden of the referenced facilities, poses no obstacle since it was one and the same facility.

[6] Trial Judgment (Opinion and Judgment) in *DuškoTadić,* number IT 94-1 of 7 May 1997, para. 649.

54. Also, the *Bunke*r facility solely was mentioned in Sub-sections of Section I as the site where the unlawful acts were committed, in relation to which the Judgment provided an adequate reasoning.

55. **The Defense also sees an essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH in the use of different terminology indicating the sites where detained persons were held. Thus, the term camp was used in one part, and the term prison for civilians was used in the other part thereof. The Defense submitted that the characteristic competences and organization were being attributed to the camp, and deems it as a decisive fact.**

56. The above referenced facilities indeed had different statuses during different periods of time; thus, the indication of different names defining them in the operative part of the Judgment is not an error because the character of the facilities where the civilians were unlawfully detained amounts to neither an essential element of the criminal offense at issue nor to a decisive fact in this case. In the context of these facilities, the important fact is that civilians were unlawfully detained therein regardless of their status.

57. Initially, the Vogošća Municipality Crisis Staff was a founder of the referenced facilities, and subsequently the Ministry of Justice of the Serb Republic of BiH. Specifically, the material documentation showed that the Decision on Foundation of the *Butmir-Ilidža* Penal-Correctional Facility was published in the Official Gazette of the Serb People in Bosnia and Herzegovina, No. 10 of **30 June 1992;** and the Decision, tendered as Prosecution Exhibit T-28, shows that a detention section in Vogošća was established within the *Butmir-Ilidža* Penal-Correctional Facility.

58. Under the Decision of the Ministry of Justice of the Serb Republic of Bosnia and Herzegovina, number 01-131/92 of **21 July 1992**, Branko Vlačo was appointed warden of the detention section of the *Butmir-Ilidža* Penal-Correctional Facility (located in Vogošća).

59. The foregoing shows that the referenced facilities gained the status of a prison as of 30 June 1992. However, due to the conditions in those facilities, which the witnesses comprehensively described in their testimonies, they did not have the characteristics of a prison; these detention facilities were used for the unlawful imprisonment of civilians.

60. **The Defense contested that the attack was (directed) against the civilian population and submitted that the Court should have taken into account Exhibit O-5, which indicated that those were prisoners of war**.

61. The Panel has reviewed Exhibit O-5 concerning the document issued by the Federation Ministry for War Veterans and Disabled Veterans of the Defense-Liberation War, number 07-03-91-1/12 of 28 September 2012, with the attached military records kept by this Sector, which were submitted to the Prosecution BiH's attention, concerning the persons mentioned as the injured parties in both the Indictment and the contested Judgment.

62. In relation to the assertion that in the contested Judgment the Trial Panel did not take into account the referenced Exhibit in whole, the Appellate Panel has noted that, in the part concerning the injured persons' status, the Trial Panel did refer to the Defense's evidence relating to the injured parties' military records by stating the following: "...*The Panel has also taken into account the Defense's assertions that certain witnesses gave evidence with regard to the arming of Muslims and the fact that, even before the mere attack, they had been registered in the military records as members of the Army BiH. However, these facts, in and of themselves, do not indicate that these individuals were prisoners of war."*

63. Also, the view the ICTY presented in its Judgment handed down in *Prosecutor v. Halilović* was as follows: *While membership of the armed forces can be a strong indication that the victim is directly participating in the hostilities, it is not an indicator which in and of itself sufficient to establish this.*[7]

64. The fact that certain civilians had indeed possessed weapons and handed them over long before being arrested, does not deprive them of their civilian status considering that, at the time when they were arrested, they took no active part in any military activity.

65. Pursuant to the definition provided in Article 3(1) of the Geneva Convention, the protected category of persons are "persons taking *no active part in the hostilities*, including *members of the armed forces who had laid down their arms and those placed 'hors de combat'*". In terms of the provision of common Article 3, a civilian is the "person taking no active part in the hostilities" and is not a member of armed forces, or who is not a combatant.

66. Exhibit T-124 shows that, even on 9 August 1992, the status of the detainees held at the detention facilities in the Serb Republic of BiH was unknown. Therefore, a commission was established with the task to review, through the responsible state authorities, the status of the persons interned in the collection centers and other detention facilities in the Serb Republic of BiH, that is*, to determine whether they were civilians, prisoners of war, war criminals, or persons subject to criminal liability*, and to expedite the procedure related to those persons' categorization, determination of their liability and sanctioning.

67. The Trial Judgment in *Kunarac* stated that: "a person should be considered to be a civilian for as long as there is a doubt as to his or her status."[8]

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[7] *Halilović*, Trial Chamber Judgment, 16 November 2005, paras. 33-34. It should be noted that the legality of the attack on members of the armed forces is separate from the direct participation of the person at issue in the hostilities. The notion of direct participation in the hostilities concerns civilians, rather than combatants or soldiers; thus civilians and combatants/soldiers are two mutually exclusive categories.

[8] *Prosecutor v. Dragoljub Kunarac et al*., case No. IT – 96/23 /1-T, para. 426; See Article 50(1) of Additional Protocol I.

68. The notion of "civilian population" should be understood in a wider context. The Trial Judgment in *Kordić* stated that "a population may be considered as "civilian" even if certain non-civilians are present".[9]

69. The Trial Judgment in *Krnojelac* has upheld a broad definition of a civilian, which may "also include individuals who at one time performed acts of resistance, and persons who were placed *hors de combat* when the crimes were perpetrated."[10]

70. The fact that the injured parties had surrendered their weapons when they were arrested upon a promise that no harm would be done to any of them indicates that at the moment of their arrest they were persons taking no active part in the hostilities, who had in advance surrendered their weapons as a pre-condition for safe leaving the territory where they had lived. The foregoing undoubtedly indicates that the detainees held on the premises of the *Bunker, Sonja, Nako's Garage* and *Planjo's House* had the status of civilians.

71. The Panel has also recalled the position the ICTY's Appeals Chamber presented in *Kvočka*: *"...* that *it is in the discretion of the Trial Chamber as to which legal arguments to address*. With regard to the factual findings, the Trial Chamber is required only to make findings of those facts which are essential to the determination of guilt on a particular count. *It is not necessary to refer to the testimony of every witness or every piece of evidence on the trial record.*[11]

72. **The Defense submitted that an essential violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH was made by the Panel's a failure to provide in Section II-1 any reasons with regard to May, June and July but rather just for the period August-October, whilst indicating in the operative part the May-October period in relation to the charges of which the Accused was found guilty.**

73. Having reviewed the reasoning provided in relation to Section II-1 of the Judgment, the Panel concluded that, indeed, no charges against the Accused in relation to May, June and July were indicated, but rather just for August, September and October. Considering that, in relation to Section II-1, the contested Judgment determined that the Accused **committed persecution by enslavement,** during the period between May and late October 1992, the Appellate Panel has noted that, when it comes to persecution, that the time of the offense commission should be addressed in broader terms.

74. According to the Appellate Panel, the time of the offense commission is not a decisive fact, but rather what matters are the Accused's acts, in relation to which the Trial Panel provided its reasoning in the contested Judgment, and found that the Accused

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[9] Trial Chamber Judgment in *Tadić*, para. 638; Trial Chamber Judgment in *Kordić*, para 180.

[10] Trial Chamber Judgment in *Tadić*, par. 638, 643; *Prosecutor v. Jelisić*, IT-95-10-T, Judgment, 14 December 1999. (hereinafter: Trial Chamber Judgment in *Jelisić*), para. 54; Trial Chamber Judgment in *Blaškić*, para. 214; Trial Chamber Judgment in *Kunarac*, 425.

[11] Appeals Chamber Judgment in *Kvočka et al*., paras. 23-25.

committed these acts *with the aim of persecuting the Muslim civilian population within a widespread and systematic attack.*

75. The contested Judgment also found that the Accused's acts formed part of a widespread and systematic attack against the civilian population. Thus the determinant concerning the period during which the Accused was undertaking the acts of persecution by enslavement has no decisive significance because these Accused's acts were committed in the context of and as a part of the attack, and they formed part of the attack protracted over the period between early May 1992 and 21 October 1992. The Accused's acts could have occurred even after the period of time determined as the period during which the widespread and systematic attack lasted, and could still have been qualified as part of the attack had they occurred within the context of the attack.[12]

76. **In the Defense's view, the fact that Trial Panel qualified the acts referred to in Section I-4 as the acts set forth under Subparagraph i) - (unlawful disappearance of persons), but provided no reasons for the essential elements of the offense at issue, constituted an essential violation under Article 297(1)(k) of the CPC BiH.**

77. The Appellate Panel has held that Section I-4 of the contested Judgment provided the reasons for which the prequalification was made (from murder into enforced disappearance of persons), as well as the reasons for the Accused's acts of commission and their legal definition, upon a prior explanation of the general elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH. In addition, the Appellate Panel has noted that the Trial Panel properly and completely established the state of facts, and properly applied to such a state of facts the provisions of substantive-criminal law, qualifying the Accused's acts as enforced disappearance of persons under Article 172(1)(i) of the CC BiH. This is so because the contested Judgment stated that "*the adduced evidence does not show that the Accused's intent was to deprive the lives of the Bosniaks from the referenced group once the group was brought from the Bunker camp, and (the Trial Panel) found that the accused Branko Vlačo had unlawfully kept the detained group of Bosniaks and subsequently handed them over to the persons he knew, who took them in an unidentified direction, and they have been unaccounted for ever since".* The Accused's criminal responsibility as an accessory in another person's act ensues from the foregoing. In terms of Article 280(2) of the CPC BiH, the Court is not bound to accept the Prosecutor's proposal regarding the legal evaluation of the act.

78. **The Defense submitted that the lack of explanation or omission of the facts related to the time when the *Kula* prison section was established, with the Accused as its warden, amounts to an essential violation of the criminal procedure provisions under Article 297(1)(k).**

79. The Appellate Panel has considered as ill-founded the Defense's submission, that the omission from the operative part of the Judgment of the fact that, as of 14 July 1992,

[12] Judgment in *Ratko Dronjak*, no. S1 1 K 003420 12 Krž 7 of 21 February 2013, p. 25.

Branko Vlačo had the status of a warden of the *Kula* prison section, led to the essential violations of the criminal procedure provisions. Specifically, the contested Judgment indeed determined the accused Branko Vlačo's status, while only the time determinant, or the date on which the Accused had acquired the status of a warden was omitted from the operative part of the Judgment, but maintained the part related to the Accused's status and his management of the facilities at which the civilians were imprisoned. Thus, the operative part of the conviction Judgment stated "…*under the management of Branko Vlačo and in which the Kula prison section was subsequently established...* while the Reasoning concluded *"in which, even after the Kula prison section was established, he further kept the detained civilians on no legal grounds, not informing them about the reasons for their detention, and further enabled the use of detained civilians to perform forced labor and as "human shields",* while omitted from the operative part of the Judgment was only the part "*the warden of which Branko Vlačo became on 14 July 1992."*

80. The facts that the *Accused's status and the facility's name were changed,* including *the date when* these changes were made, did not affect *the detention grounds, the status and treatment of the civilians detained at Planjo's House, Nako's Garage, the Bunker and the Kula prison section, located in Vogošća, because the* civilians were imprisoned on no legal grounds *during the whole period of their imprisonment*.

81. Thus, the contested Judgment stated that the examined witnesses[13] testified that, at the moment when they were imprisoned and during their detention in the Semizovac barracks, as well as in the prisons for civilians (*Nako's Garage* and *Planjo's House)*", no one had informed them about the reason(s) for which they were deprived of liberty, that they were not interrogated and that no proceedings whatsoever were conducted against them.

82. As stated in the contested Judgment, the Prosecution of BiH proved beyond a reasonable doubt that the imprisonment of civilians at the referenced facilities was unlawful and had no legal grounds. Thus, the specific date when Branko Vlačo became a warden of the *Kula* prison section in Vogošća is of no decisive significance for determining his responsibility. In the contested Judgment, the Trial Panel found beyond a reasonable doubt that the Accused was a warden of the facilities at which the civilians were imprisoned unlawfully and on no legal grounds whatsoever.

83. Within the context of the Accused's status, the contested Judgment stated as follows: "The Panel concluded from the examined witnesses' statements that *Nako's Garage* was a prison to which the civilians previously detained in the barracks in Semizovac were transferred, and that prison was organized and managed by prison warden, the Accused Branko Vlačo. Many a witness described the role of the Accused in this camp. They said that the Accused introduced himself to them as the prison warden.*"*[14]

[13] Witnesses Osman Tiro, Rašid Hodžić, Mustafa Dervišević, Asim Šehić, Hikmet Brkić, Refik Šehić, Mirsad Šehić and Eset Muračević.
[14] Para. 353 of the contested Judgment.

84. “The Accused Vlačo also participated in the transfer of civilians from this prison to *Planjo's House* prison for civilians. In addition to witnesses’ statements, another proof of it is Exhibit T-18, Order of the Crisis Staff of the Serb Municipality of Vogošća of 26 May 1992, ordering the prison warden to release 145 persons from the prison and escort them safely to the village of Svrake, Sarajevo and Vogošća. Many witnesses confirmed it when they testified that after several days of incarceration in *Nako's Garage* they were released to their homes with the obligation to report to *Planjo's House.”*

85. **The Defense submitted that, in rendering its Judgment, the Trial Panel violated the provisions of Article 290(3) and (4), in connection with Article 285 of the CPC BiH, due to the fact that the operative part of the Judgment did not specify the act of which the Accused was found guilty. No legal definition was provided for Section I, nor is there one in the reasoning either.**

86. The examination of the operative part of the Judgment manifestly showed that the part concerning the legal definition was not specified in relation to each Count of the Indictment of which the Accused was found guilty, but rather that, in terms of Article 285 of the CPC BiH, the accused Branko Vlačo was found guilty of the criminal offense of Crimes against Humanity by persecution under Article 172(1)(h), in connection with Subparagraphs a), c), e), i) and k), all as read with Article 180(1), Article 29 and Article 31 of the CC BiH.

87. The Accused was found guilty of the criminal offense of Crimes against Humanity by persecution under Article 172(1)(h) of the CC BiH, which pursuant to the legal definition may be committed “*in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the jurisdiction of the Court of Bosnia and Herzegovina”,* but the act of persecution is the main qualification. Truly, the acts by which the Accused committed persecution were not specified in the operative part of the Judgment in relation to each Count of the Indictment, but persecution can be committed in connection with any criminal offense, wherein persecution remains the main qualification.

88. Contrary to the appellate complaints, the Appellate Panel has held that it is not necessary to indicate for each section of the operative part of the Judgment individually the criminal offense or the paragraph defining the act by which persecution was committed. As already emphasized, persecution is a separate offense, and the grounds of the charges and the legal definition are Crimes against Humanity. Therefore, with regard to the clarity and precision of the operative part of the Judgment, the referral to Article 172(1)(h) of the CC BiH is both sufficient and proper, in addition to providing a descriptive definition of the manner in which persecution was committed (as it was done in the operative part of the Judgment).

89. In view of the foregoing, the Appellate Panel has upheld the position of the Appellate Panel taken in the Appellate Judgment in *Bundalo* X-KRŽ-07/419 of 28 January 2011, that persecution constitutes a *separate offense, and the grounds of the charge and the legal qualification are Crimes against Humanity by way of persecution; therefore, in terms of clarity and precision of the operative part, it suffices to refer to Article 172(1)(h) of*

the CC BiH and provide a descriptive definition of the manner in which the persecution was committed.

90. In view of the foregoing, the Appellate Panel has revised the Trial Judgment by qualifying the criminal offense as Crimes against Humanity by way of persecution under Article 172(1)(h) of the CC BiH, and determined descriptively that persecution was committed by way of murder, enslavement, imprisonment, enforced disappearance of persons and other inhuman acts of a similar character intentionally causing great suffering, bit did not subsume them under the corresponding subparagraphs of Article 172(1)**(a), (c), (e), (i)** and **(k).**

91. In relation to the Defense's submission, that the legal qualification for Section **I** was not obvious from either the operative part of the Judgment or its reasoning, the Panel reiterated that the Court was not bound by the Prosecution's legal evaluation in terms of Article 280(2) of the CPC BiH. Considering the fact that the factual description under Section I is a common introductory part preceding the concretization of the accused Branko Vlačo's acts of commission referred to in Sections I1, I2, I3, I4, I5 to which the legal qualification of "unlawful imprisonment" was attached under the Indictment, the Appellate Panel has also held that the factual description of this Section constitutes an introductory part for sub-sections in which the Accused's acts were concretized, and for which the contested Judgment provided the legal qualification on an individual basis.

92. **The Defense saw the violation of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH also in the part charging the Accused, through the factual description in Section I3, with a failure to undertake any action to prevent (the commission of crime), which is an element laid down in Article 180(2) of the CPC BiH, while the Accused was neither charged nor convicted on the grounds of command responsibility.**

93. The Panel found that the Accused is also responsible for and guilty of the acts under Section I3 of the operative part of the Judgment because, after being notified of the incident, or that 5 detainees had not returned from the hill of Žuč, the Accused undertook no action whatsoever to prevent the detainees from being taken for forced labor in the future. Thereby, by his omission to act, the Accused aided and abetted other soldiers in committing the criminal offense under Article 172(1)(c) of the CC BiH, as read with Article 31 of the same Code.

94. The Indictment neither charged the accused Branko Vlačo with command responsibility nor drafted along this line any factual description of this Count thereof. In relation to Section I3 of the contested Judgment, the Trial Panel found the Accused responsible for aiding and abetting other soldiers in committing the criminal offense of Crimes against Humanity by way of persecution by the acts of enslavement. Also, the factual description did not describe the Accused's responsibility as a superior for the acts of his subordinates, namely that, in terms of Article 180(2) of the CC BiH, as a superior person, the Accused failed to take necessary and reasonable measures to prevent the commission of crime, that is, to have the perpetrators thereof punished. Also, the factual description neither stated the capacity of the crime perpetrators nor their relationship with

the Accused. The Accused's omission to act, in terms that *he did nothing to prevent the prisoners from being taken for forced labor in the future*, was in the contested Judgment qualified by the Trial Panel *as the act of* accessory in other person's offense, on the grounds of individual criminal responsibility.

95. **The Defense submitted that violations of the criminal procedure provisions under Article 297(1)(k) of the CPC BiH were made as a result of the absence of explanation in terms of Article 3 of the CPC BiH, or of the principle of *in dubio pro reo*, even in the acquitting part of the Judgment.**

96. The principle of *in dubio pro reo* is the direct consequence of the presumption of innocence. The law strictly provides that, when in doubt, the Court must decide in favor of the accused. Any doubt into the existence of a legally relevant fact must be reflected in favor of the accused. The facts in prejudice of the accused (*in peius*) must be determined with full certainty, and if there is any doubt into these facts they cannot be accepted as proved or determined. The facts in favor of the Accused are considered as proved even if there is a likelihood or doubt as to their existence.

97. The Appellate Panel has noted that the Trial Panel evaluated every piece of evidence individually, and in correlation with the other evidence, and based on such an evaluation found that the legally relevant facts existed and determined the Accused's guilt beyond a reasonable doubt. Therefore, both formally and legally, the Trial Panel acted in full compliance with the statutory obligations provided for in Article 15 and Article 281(2) of the CPC BiH.

98. Contrary to the Defense's appellate arguments, the Trial Panel was in the contested Judgment led by the principle of *in dubio pro reo* laid down in Article 3 of the CPC BiH, as stated in detail in Part IV of the Judgment (Applicable Law). Thus the reasoning thereof stated that any ambiguity or doubt was resolved in favor of the Accused in compliance with the principle of *in dubio pro reo*.

99. The Appellate Panel has, however, noted that the application of the principle of *in dubio pro reo* should be viewed within the scope of the Defense's complaint of the improperly and incompletely established state of facts, that is, in the context of probative value of the adduced evidence. Thus, a more comprehensive examination of each Count of the Indictment will be presented in the part of the Judgment providing the reasons concerning the complaints of incorrectly or incompletely established state of facts.

5. Sub-title III: Article 297(1)(h) - the subject of charges was not dealt with

100. **The Defense submitted that the contested Judgment did not deal with the time period between 21 and 31 October because, in the operative part of the Judgment, the Trial Panel reduced the time period from 31 October (as indicated in the Indictment) down to 21 October. The Defense submitted that the Court should have also decided on the referenced time period, or indicated that it should have**

been considered as an adjudicated matter. Also problematic is the different time periods indication in the reasoning of the Judgment, that is, the phrase 'up until late October' was indicated at one place, and only 'up until October' in the other.

101. No violation was made due to the referenced acting because the changes to which the Defense pointed were not made to the prejudice of the Accused but rather only the time of the commission of the crime strictly was determined. Considering that the determination of the time of the crime commission in the contested Judgment did not result in any changes to the legal definition of the offense, but rather in the fact the acts charged against the Accused under the amended Indictment also satisfied the essential elements of the same criminal offense, albeit for a shorter period of time, the Appellate Panel has held it unnecessary to render an acquitting judgment. It should be also noted that the referenced interventions in the Indictment factual description were made in favor of the Accused. The Appellate Panel has concluded that the appellate complaint, that the contested Judgment did not fully deal with the subject of charges which resulted in an essential violation of the criminal procedure provisions under Article 297(1)(h) of the CPC BiH, is ill-founded since the subject of the Judgment is the criminal offense contained in the amended Indictment.

102. **According to the Defense, the subject of charges was not dealt with in relation to six Counts of the Indictment (I4, I5, I8, II2, II5, II7) because, in the Indictment, the Prosecutor gave an alternative legal definition in relation to these Counts, while in the contested Judgment the Trial Panel found the Accused responsible for only one Count thereof. The Trial Panel found that, in relation to the referenced Counts, the Accused was not responsible for murder, but rather for the latter legal definition indicated under the referenced Count. The Defense submitted that the Court should have rendered an acquitting judgment with regard to the referenced charges.**

103. The Court is not bound by the legal definition indicated in the Indictment and the reasoning of the contested Judgment, because the Trial Panel did explain the reasons for which it deemed the determined legal qualification as adequate in relation to all the acts of which the Accused was found guilty. In the Appellate Panel's view, the substantive law was properly applied to the established state of facts, wherefore the Defense's appellate complaint is ill-founded in whole. The Appellate Panel has recalled Article 280(2) of the CPC BiH which provides that: "*The Court is not bound to accept the proposals of the Prosecutor regarding the legal evaluation of the act*".

B. GROUNDS OF APPEAL UNDER ARTICLE 299 OF THE CPC BIH: INCORRECTLY OR INCOMPLETELY ESTABLISHED STATE OF FACTS

1. Standards of review

104. The standard of review in relation to alleged errors of fact to be applied by the Appellate Panel is one of reasonableness.

105. The Appellate Panel, when considering alleged errors of fact, will determine whether any reasonable trier of fact could have reached that conclusion beyond reasonable doubt. It is not any error of fact that will cause the Appellate Panel to overturn a Verdict, but only an error that has caused a miscarriage of justice, which has been defined as a grossly unfair outcome in judicial proceedings, as when an accused is convicted despite a lack of evidence on an essential element of the crime.

106. In determining whether or not a Trial Panel's conclusion was reasonable, the Appellate Panel shall start from the principle that findings of fact by a Trial Panel should not be lightly disturbed. The Appellate Panel recalls, as a general principle, that the task of hearing, assessing and weighing the evidence presented at trial is left primarily to the discretion of the Trial Panel. Thus, the Appellate Panel must give a margin of deference to a finding of fact reached by a Trial Panel.

107. The Appellate Panel may substitute its own finding for that of the Trial Panel only where a reasonable trier of fact could not have reached the original Verdict, the evidence relied on by the Trial Panel could not have been accepted by any reasonable tribunal of fact or where the evaluation of the evidence is "wholly erroneous ".

108. Article 299 of the CPC BiH provides when a judgment may be contested on the grounds of incorrectly or incompletely established state of facts. Decisive facts are being determined directly by ways of evidence, or indirectly from other facts (indicia or control facts). Only the facts contained in a judgment may be deemed as existent. Thus, regardless of the fact that the decisive facts do exist, the judgment must always provide the reasons for their existence, or otherwise, there will be no established state of facts (incompletely established state of facts). An incorrectly established state of facts will exist if a decisive fact is not determined in the way as it indeed existed in the reality of an event.

109. The Constitutional Court, with regard to direct or indirect circumstantial evidence, emphasizes that proving facts through circumstantial evidence is not by itself contrary to the principle of fair trial, as laid down in Article 6(1) of the ECHR.[15] However, proof of a fact by circumstantial evidence must be established beyond any reasonable doubt and tightly and logically interrelated so that the Trial Panel's factual conclusion is the only possible conclusion in light of the evidence. Reasonable doubt is the criterion. It is very rare that a fact can be proven beyond any doubt. Indeed, sometimes circumstantial evidence, like separate pieces of a puzzle when all put together, can be more compelling than a direct eye-witness's testimony, which can be subject to normal human error.

110. The Appellate Panel will evaluate whether the state of facts is incorrectly established in relation to the facts and findings indicated in the Defense's appeal. As stated above, the criterion to be applied for such an evaluation is that pursuant to which the Appellate Panel will address all appellate grounds an evaluate if certain decisive fact ensues form the evidence adduced.

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[15] *M.Š.*, AP-661/04 (Constitutional Court of BiH), Decisin on Admissibility and Merits of 22 April 2005, para. 36.

(i) **Appellate complaints of the accused Branko Vlačo**

111. The appeal was also filed on the grounds of **incorrectly and incompletely established state of facts**. Counsel primarily submitted that the Trial Panel incorrectly established the state of facts within the context of the fact that the attack was directed against the civilian Muslim population, because the adduced evidence clearly showed that the military activities were directed against the hostile armed formations, and that an armed conflict occurred indeed. Counsel submitted that the Judgment did not explain the existent state policy. In relation to the status of individuals, Counsel submitted that the injured parties concerned were prisoners of war.

112. Counsel also submitted that the contested Judgment incorrectly found that the Accused was aware of the attack; that he knew that his acts formed part of the attack; and that he had discriminatory intent. According to Counsel, all the foregoing assertions are arbitrary and have no grounds in the evidence adduced. The appeal also contested the established state of facts, that is, it pointed to the lack of evidence regarding Sections I, I.1, I.2, I.3, I.4., I.5, II, II.1, II.2, II.3, II.4 and II.5 of the operative part of the Judgment, pertaining to the situations explained more comprehensively in the appeal's substance.

113. In relation to Section **I** of the operative part of the Judgment, the Defense's appeal primarily stated that there was no evidence proving the existence of any plan, and that it was not proved beyond a reasonable doubt that the Accused indeed removed the civilians deprived of liberty from the Semizovac barracks. The Defense submitted that the Commanders of the Corps of the Serb Republic of BiH were in charge of the camp organization and location. Given the fact that the Accused was a member of neither the VRS nor the MUP, he could not have been responsible for either the prison organization and interment of prisoners or the selection of locations and the related conditions. The foregoing implies the *Sonja*'s prison or the *Bunker* facility, whose premises and location were chosen by the Crisis Staff. The Defense submitted that the Accused was not a member of the Vogošća Municipality Crisis Staff and that no related data existed in this regard. Therefore, the Accused had no decision-making authority in the referenced bodies. The Defense submitted these premises formed just a single prison and that over the time only its location changed, except during the period when *Naka's garage* existed. In addition, the Defense did not contest that the conditions of internment at the *Bunker* facility were poor, but rather indicated that the Accused significantly contributed to their improvement. Thus, the Defense submitted that food supply was insufficient, but that it was insufficient for Vogošća too; that the prisoners were provided with medical support, and that the Accused made efforts to ensure it as much as he could in the conditions of an armed conflict. The Defense submitted that the Accused had the status of warden as a civilian, rather than the status of a camp or prison commander; that, as such, he had no real authority or effective control over soldiers whatsoever; that he could not decide on the prisoners' liberty because the Accused's mere presence during the exchange does not give him the status of a decision-maker, but just that of a person providing technical support during the exchange procedure. The appeal further stated that the Accused had no authority to prosecute the apprehended war prisoners since there was no judicial

system established, that is, there were no civilian or military courts which could operate efficiently, and such actions were not the Accused's responsibility either.

114. In relation to Section **I.1** of the operative part of the Judgment, the Defense submitted that the Court incorrectly established the state of facts and found the Accused guilty of causing great suffering or inflicting serious physical harm to prisoners. The appeal stated that such a finding ensued from witness Ferid Čutura's testimony. In the Defense's view, this witness was unreliable, his testimony untrue and overflown with contradictions. In support of such an assertion, the Defense also mentioned the other witnesses' testimonies. The Defense further submitted that the accused Branko Vlačo had no real authority to prevent other soldiers from abusing the prisoners; that he did not enable such abuse to occur, but rather made efforts to protect the prisoners at the time when he was present there, which was not often.

115. Under **Section I.2** of the operative part of the Judgment, the accused Branko Vlačo was found guilty of the criminal acts related to the approved taking-away of the prisoners to perform forced labor, in the course of which certain prisoners were wounded. The Defense submits that the state of facts relating to the foregoing acts was also incorrectly established because the Accused neither gave any such approvals nor was responsible for the prisoners outside the prison perimeter. The Defense submitted that the evidence clearly showed that the military/army was responsible for the prisoners' labor and that the Accused just acted in compliance with the orders received. The question is whether the Accused approved the prisoners' taking away for performing forced labor and if he could prevent this. Those are the criteria established by the Appellate Panel of the Court of BiH in its Judgment handed down in *Radoje Lalović and Soniboj Škiljević*. The Defense's view is that these two cumulative requirements were not proved in the context of legal definition.

116. Under **Section I.3** of the operative part of the Judgment, the Accused was charged that, after the incident with Dragan Damjanović, he failed to undertake any act to prevent that the prisoners be treated in such a way in the future, and that he kept singling out the prisoners to perform forced labor. The Defense did not contest the incidents which had occurred at the hill of Žuč at the critical time, but rather submitted that the adduced evidence did not show that the accused Vlačo had indeed approved the prisoners' taking-away, or that he could have prevented this given his status of a civilian prison warden with insignificant powers.

117. When it comes to **Section I.4** of the operative part of the Judgment, the Defense submitted that there is no evidence whatsoever proving that the accused Vlačo either possessed or refused to provide any information concerning the destiny or whereabouts of the persons taken away. The Defense considers as reasonable the finding that the detainees did not have the status of prisoners; that the Accused did not admit them for imprisonment; that the Accused decided about their destiny in no way whatsoever; and that he could prevent neither the apprehension nor the abduction of these men because he was not present during these activities, that is, during the surrender of persons, and he did not aided and abetted other persons in depriving others of their fundamental human rights, as the contested Judgment incorrectly found.

118. The appeal further stated that the Trial Panel incorrectly established the state of facts in relation to **Section I.5** of the operative part of the Judgment, namely that the accused Vlačo undertook the actions enabling other persons to commit the crime, and that by his passive conduct and omission to undertake active actions he enabled two soldiers to take the prisoners outside the detention center, with the intent to inflict on them serious physical and mental harm/injury. The Defense submitted that the Accused was not present when the prisoners were mistreated; that he would arrive at the site just after mistreatment had ended; and that he could not prevent the soldiers from doing so.

119. When it comes to **Section II** of the operative part of the Judgment, the appeal considered as incorrect the assertion in the operative part of the Judgment, that the Crisis Staff had organized a prison at *Planjo's House*. The Defense submitted that the technical transfer of the prisoners from the Semizovac barracks and the prisoner s' release from *Nako's Garage* do not point to the Accused's criminal liability. The Defense does not contest that the prisoners were indeed held at *Nako's Garage*, where the internment conditions were relatively good and even got improved over the time; that the Accused made efforts to prevent the prisoners from sustaining gross suffering and serious physical harm and to ensure that as much as possible humane treatment be accorded to the prisoners of war. The Defense further stated that, up until 11 August 1992, the Accused had no authority/responsibility related to *Planjo's House*, to which the prisoners had been transferred from the *Bunker* facility, which is when it became the responsibility of the KPD Butmir and the Ministry for Judiciary and Administration, since the Accused was a warden of the civilian prison. According to the Defense, the state of facts was incorrectly established in the referenced segment because, since 14 July 1992, the Accused's formal status was that of a warden of the KPZ Butmir Detention Section. The Defense's appeal insisted on making a distinction between the prisoners held in *Nako's Garage*, who were released in May, and the prisoners held in *the Planjo's House* prison, which started operating on 11 August 1992, which is when the prisoners from the *Bunker* had been transferred there.

120. In relation to **Section II.1** of the operative part of the Judgment, the Defense first contested the time during which *Planjo's House* functioned as a prison, arguing that it was not operational during May, June, July and early August 1992. In addition, the Defense submitted that the taking away of the prisoners to perform forced and other types of physical labor at the site of Žuč, which they did not perform during hostile combat actions, does not constitute cruel treatment in criminal and legal terms. The appeal did not contest that a number of mentioned persons had been indeed taken to perform unlawful labor, during which certain persons even sustained injuries, while some of them were killed; it rather indicated that the evidence showed that one secretary, Božidar Pušara, signed the document allowing the engagement of prisoners, and that the accused Vlačo was not present during these events. The Defense submitted that no finding can be made that the accused Branko Vlačo indeed had knowledge about and intent to implement the system for using the prisoners to perform forced labor.

121. When it comes to **Section II.2** of the operative part of the Judgment, the Defense submitted that it is clear that the accused Vlačo is not responsible for the referenced

persons' abuse because, in the Accused's absence, this duty was performed by his deputy Nebojša Špirić, and that the Accused had neither *de facto* nor *de iure* control over the persons who had abused the prisoners. According to the Defense, the contested Judgment's findings in para. 391 are arbitrary.

122. In relation to **Section II.3** of the operative part of the Judgment, the Defense did not contest that the Brigade Commander indeed ordered the engagement of prisoners of war for forced labor and that certain number of prisoners were killed and wounded while performing this labor, as it ensues from the documentary evidence. The Defense, however, submitted that the evidence also clearly showed that the Vogošća Brigade was responsible for these prisoners, and that the prison staff acted in compliance with its orders. The Defense also submitted that the referenced arguments were inapplicable to a cumulative conviction; that it could not be concluded that the death of the persons referred to in the operative part of the Judgment is a result of the act or omission by the Accused or his subordinate; and that it was not proved beyond a reasonable doubt that the Accused indeed had intent to deprive prisoners of their lives.

123. When it comes to **Section II.4**, the Defense primarily contested the fact that it was not the abuse that lasted over the two-month period. The Defense also submitted that the concrete case concerned light bodily injuries which did not reach the objective extent of gross suffering or severe physical or mental harm, or health injury caused to the persons at issue. Also, the Defense stated that it was not proved beyond a reasonable doubt that the accused Vlačo knew about or took part in the physical abuse of Mirsad Ljevo, but rather that the Accused's conduct was to the contrary of the Court's finding, namely that by his example the Accused had showed that the referenced persons should not be abused.

124. In relation to **Section II.5** of the operative part of the Judgment, the Defense submitted that the accused Vlačo was not present at, had no reason to know or enabled the taking of prisoners to perform forced labor. The appeal also stated that the documentary Exhibit – Bulletin of 19 October 1992 as well as the related order clearly mentioned the site of Žuč and construction works, and that the person who enabled the taking of prisoners, other than the accused Vlačo in the Defense's view, had thought that within the order context the prisoners were going to perform (forced) labor at the place of Žuč, rather than to retrieve dead bodies from the battlefield.

(ii) **Conclusion of the Appellate Panel**

125. Having reviewed the Defense's appellate grounds indicating that the state of facts was incorrectly and incompletely established in the contested Judgment, and having comprehensively examined both the substance of the contested Judgment and the case record, the Appellate Panel concluded that these complaints are ill-founded. The Panel has also noted that the state of facts was correctly and completely established and that the contested Judgment provided valid and acceptable reasons for all the decisive facts on the basis of which the conviction judgment was rendered against all the Accused.

i. Existence of a widespread and systematic attack and the Accused's knowledge about the attack and his discriminatory intent

126. The Panel considers as ill-founded the Defense's appellate complaints contesting that, during the critical period, a widespread and systematic attack existed in the territory of both the Vogošća municipality and the other municipalities of the city of Sarajevo.

127. As the contested Judgment properly established, a widespread and systematic attack existed at the critical time in the territory of both the Vogošća municipality and the other municipalities of the City of Sarajevo, as well as the nexus between the Accused's acts and the attack.

128. In this context, also interesting is the definition of an attack in terms of Article 172 of the CC BiH, which reads as follows: "*a course of conduct involving the multiple perpetrations of acts referred to in paragraph 1 of this Article against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such an attack".*

129. The Trial Panel properly found, based on the adduced evidence and the examined witnesses' evidence, that *there was no armed conflict in the territory of the villages pertaining to the Vogošća municipality, and even if any conflict occurred, by their quality and quantity, they can only be considered as sporadic and individual acts of individuals, which cannot constitute the existence of any form of organized resistance by the Muslim population in the area at issue.*

130. In addition, the Appellate Panel has upheld the position presented in the contested Judgment that "*an armed conflict is said to exist whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups, or between such groups within a State*"[16]. In the concrete case, however, the evidence adduced by the Defense does not point that any such armed violence existed in the territory of the Vogošća municipality. The villagers, who were according to the witnesses engaged in the villages defense, neither offered any organized resistance nor had the status of military units taking part in any operations within the conflict.

131. In the context of this issue, as also properly stated in the contested Judgment, the phrase "attack" in the context of crimes against humanity, pursuant to the ICTY's recognized case law, is not limited to the use of armed force, unlike an armed conflict; it also encompasses any mistreatment of the civilian population".[17]

[16] *Prosecutor v. Kunarac, Kovač and Vuković*, cases Nos. IT-96-23 and IT-96-23/1 (Appeals Chamber), 12 June 2002, para. 56.
[17] *Vasiljević*, Trial Chamber, Judgment of 29 November 2002, paras. 29-30.

132. The Trial Chamber in *Krnojelac* noted that: An “attack” may be described as a conduct involving the commission of acts of violence. The concepts of “attack” and “armed conflict” are clearly distinct and separate.

133. Witnesses Ahmet Hido and Eset Muračević testified about the events that had preceded the attack. They testified that before April, the Serbs who had lived in the settlement of Svrake started abandoning their houses. In the context of random killings in April 1992, witness Ibro Mujanović described his uncle’s murder. Witnesses Ekrem Piknjač and Osman Tiro testified about the setting up of the first barricades in the Vogošća territory.

In addition to the witnesses’ testimonies in the context of the existing policy and the organized attack, the contested Judgment also mentioned the facts adjudicated in *Prosecutor v. Krajišnik* and accepted under the Court of BiH’s Decision of 22 April 2013, concerning the *establishment of their own Assembly by the SDS delegates, as well as the establishment of the Vogošća Crisis Staff led by Jovan Tintor, and that during the period between 4 and 17 April 1992, the Serb Army units, in the organization of the Vogošća Crisis Staff, put a large part of Vogošća under Serb’s control by the use of military force.* Among the other adjudicated facts accepted under the Decision, the facts from the *Judgment rendered in Prosecutor v. Brđanin* concerning the six strategic goals of the Serb people in BiH, were also accepted.

134. Contrary to the Defense’s appellate complaints, the existence of policy within which the attack is being carried out does not constitute an essential violation of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH; therefore, it need not be determined beyond a reasonable doubt for the purpose of existence of this criminal offense.

135. The contested Judgment also presented the reasons for which the Panel found that the model of conduct adopted during the critical period in the territory of Vogošća municipality as well as in Sarajevo’s other municipalities during the period between April and October 1992, had the character of a **widespread and systematic attack** due to the organized character of the acts of violence and the repetition of similar criminal conduct on a regular basis, as manifested through the intimidation of civilian population, dismissal from work, weapons surrender, termination of compulsory work obligation, the police division on ethnic grounds, setting up of the barricades, the establishment of the Serb authority in the relevant municipalities’ territory, the apprehension of persons and their internment at the camps in inhumane conditions. Therefore, the Panel has held that the Defense’s appellate complaint, that no widespread and systematic attack existed in the territory of the Vogošća municipality, is ill-founded in whole.

136. In relation to the Defense’s submission, that the reasoning of the contested Judgment lacks the explanation concerning the existence of a widespread and systematic attack in the territory of the other municipalities of the City of Sarajevo, in addition to the Vogošća and Ilijaš municipalities, the Appellate Panel has held that the referenced lack of explanation is not a decisive fact. This is so because it was established beyond a reasonable doubt that the widespread and systematic attack indeed existed in the

Vogošća municipality, that the Accused indeed undertook his actions in the territory of the Vogošća municipality in the context of this attack, that the Accused had knowledge about the attack and was aware that his acts formed part of the attack.

137. In the Panel's view, the Defense's contesting of the findings of the appealed Judgment concerning **the Accused's knowledge about the existent attack** and of the findings on the existent discriminatory intent, is also ill-founded.

138. In the context of **the Accused's knowledge about the existent attack**, it is irrelevant, under the case law, whether the Accused had any intent to direct his actions against the civilian population or just against his victim. The attack, rather than the Accused's acts, must be directed against the civilian population, and the Accused must know that his acts comprise part of that attack, as the contested Judgment found beyond a reasonable doubt. [18]

139. *Mens rea* concerns the knowledge about the context, rather than about the motive.[19] Crimes against humanity may be committed for purely personal reasons. The accused need not share the purpose or goal behind the attack.[20]

140. Within the context of **the Accused's knowledge** about the existing attack, the contested Judgment determined the Accused's status itself, namely found beyond a reasonable doubt that he was the warden of the *Bunker, Sonja, Nako's Garage and Planjo's House* detention facilities, at which civilians were imprisoned. Also indicated in the context of the Accused's knowledge was the Accused's role in the negotiations with Muslim representatives from the Vogošća municipality territory, as many witnesses testified, and the fact that during these negotiations the accused Vlačo gave an ultimatum to Muslims to surrender their arms, promising them in return that they would be taken to the free territory. However, already in May, the Accused was appointed warden of the *Sonja* camp, at which the civilians from the referenced territory were imprisoned in inhumane conditions. The foregoing fully supports the fact that the Accused had already known that, despite being disarmed, the Muslim population would not be released to go to the free territory, and that the mass-scale arrest would follow-up the attack on the surrounding villages in the Vogošća and Ilijaš municipalities.

141. In the context of the Defense's objection concerning the nonexistent **discriminatory intent**, the Panel has noted that the Accused was aware of the national, ethnic and religions origin of the victims of the attack, that a large number of the Bosniaks who were arrested, detained and subsequently abused, killed, disappeared or were exchanged, had lived in the territory of the Vogošća municipality, where the Accused had also lived, and that many witnesses had known him from before the war and identified him as the warden, since they were the Accused's fellow citizens or neighbors before the war.

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[18] *Blaškić*, Appeals Judgment, para. 124; *Kunarac et al.,* Appeals Judgment, para. 103.
[19] Appeals Judgment, para. 271-2.
[20] *Ibid.* Paras. 252, 272-305.

In the context of the existence of discriminatory intent, the Panel also took into account that the Accused undertook none of the foregoing actions against Serbs.

142. In contesting the state of facts established in the appealed Judgment, the Defense particularly contested the Accused's presence in the detention facilities at the critical time (in relation to Sections I4, I5, II1, II2 and II5), that is, the findings that the Accused approved the practice of taking the prisoners for forced labor. The Defense submitted that the Accused had no effective control over the guards to be able to prevent them from abusing the prisoners (in relation to Sections I2, I3 and II2). The Appellate Panel has held that the foregoing appellate grounds are ill-founded in whole, and it will address them more comprehensively further below.

143. The contested Judgment found the accused Branko Vlačo individually criminally responsible for contributing, by his actions, to the commission of the actions of the principal perpetrators, or for giving his decisive contribution, as a co-perpetrator, in the commission of actions specified under certain Counts of the Indictment. The Accused was found guilty as the direct perpetrator solely for the Counts in relation to which he had undertaken his actions alone, where his actions formed part of the system and overlapped each other.

144. Prior to any concrete examination of the state of facts under the Sections of the conviction part of the Judgment, within the advanced appellate complaints, the Panel has held that it is necessary to address the Defense's appellate complaints advanced in relation to almost all Counts of the Indictment in terms that, as a civilian prison warden, the Accused held no responsibility whatsoever in the detention facilities, and that he only acted upon the military orders.

145. Specifically, in the context of the Accused's role, the contested Judgment determined beyond a reasonable doubt that the Accused was a warden of the facility where the civilians were imprisoned, which subsequently became part of the KPD Butmir-Ilidža, and that on 21 July 1992 the Ministry of Justice of the Serb Republic of BiH appointed the Accused as warden of the Detention Section of the Butmir-Ilidža Penal and Correctional Institution, located in Vogošća, to be effective as of 14 July 1992.

146. The Accused discharged the function of the warden of the facility at which the civilians were imprisoned. In common terms, since 14 July 1992, this function implied *formally and legally* having control over all the activities in the facility, in whole. The evidence showed that the Accused voluntarily accepted to perform the function of acting warden, but there is no evidence indicating that he made any efforts to refuse assuming this duty, or to resign after having performed it for some time. When he voluntarily assumed the referenced role, the Accused was fully aware that the civilians had been unlawfully imprisoned solely on the ground of their ethnic/national origin. The fact highlighted in the Defense's appeal, that the Accused made efforts to improve the conditions in the detention facilities, also indicates that the Accused did have certain influence and powers. Also, there is no evidence proving that, at any times, the Accused indeed made any efforts to refuse the admission of civilian prisoners, who had been unlawfully kept there, or that he refused to approve in the future any taking of the civilians

to perform forced labor after learning about the harm and casualties the civilians taken to perform forced labor had suffered. Thus the Accused indeed knew that by his actions he contributed to the furtherance of the offenses committed by the principal offenders.

147. The Accused's contribution to the commission of the crimes of which he was found guilty as a co-perpetrator is apparent from his omission to undertake the actions he was obliged to undertake, whereby he enabled third parties to complete and commit the offense. The act of co-perpetration means "*undertaking such actions in order to contribute to and enable the commission of a criminal offense by another person. An aider does not participate, even in part, in the commission of an offense; he is just a (co)participant in someone else's offense, or the offence by which another offense is being furthered*"[21]. Aiding may be committed even by omission. Omission means that the accused fails to act in accordance with his tasks and duties, thereby aiding the third parties to commit the offenses at issue. The Accused undertook no measures he was obligated to undertake to prevent the prisoners from being taken to perform forced labor at frontlines, that is, to prevent the civilians from being taken to perform labor generally, despite his knowledge and awareness about where they were being taken, or the danger, and particularly despite knowing that certain prisoners had been wounded and killed before. In this way, the Accused shares the same intent of the perpetrators and consents to all the consequences that might occur.

148. The Accused knew that the civilians were unlawfully kept at detention facilities and unlawfully taken to perform forced labor. Despite holding the position entailing certain responsibility, the Accused allowed that the prisoners be beaten and taken to perform forced labor. It is inadmissible that the persons authorized for and tasked with ensuring the proper and lawful functioning of the detention facilities, including the safeguarding of the lives of the prisoners kept at the detention facilities, which was indeed the Accused's responsibility, allowed that the prisoners be accorded such a treatment. All the foregoing shows that the Accused was aware of the intent and wish that the prisoners be accorded unlawful treatment and that his silence and consent to such treatment, in fact, meant that he agreed with such intentions and thereby aided and abetted the commission of the criminal offense.

149. The actions qualified as the acts of co-perpetration essentially mean that the Accused failed to take the necessary measures to prevent the prisoners at the detention facilities from being treated in such a way. The Defense's submissions, that the Accused had no control over the guards or soldiers who had undertaken the unlawful acts and that he acted strictly in compliance with the military command orders, do not in any way relieve him of the responsibility to make efforts, as a warden of the detention facility, to undertake any action to prevent or object to such a treatment. Having acted in the described manner, the Accused consented to the unlawful acting.

[21] Page 299, Criminal Law - Part I, Dr. Miloš Babić and Dr. Ivanka Marković.

ii. Section I

150. Contrary to the Defense's assertions, the contested Judgment properly found the Accused guilty of the criminal acts on the ground of individual criminal responsibility, rather than on the ground of command responsibility. Therefore, the appellate complaints denying the existence of the Accused's effective control over subordinates and his position of a superior are unclear because the Accused was not even charged with nor found guilty of the foregoing. In relation to this Section, the contested Judgment found beyond a reasonable doubt that, in early May, the accused Branko Vlačo was the warden of the *Bunker* detention facility for civilians, which also comprised the premises of the *Kontiki-Sonja* catering facility. In addition, no part of the Judgment stated that the Accused was a member of the Municipality Vogošća Crisis Staff, or that he was a camp/prison commander, which does not at all constitute a decisive fact in the context of his individual criminal responsibility.

151. According to the Defense, the status of warden as a civilian, which the Defense does not deny, does not give to the Accused the status of a decision-maker, but rather just that of a person providing technical support to the principal perpetrators of the offense during the exchange of civilians, as the Trial Panel properly found in the contested Judgment, finding the Accused guilty as an accessory in relation to Sections I3, I4, I5, as the direct perpetrator in relation to Section II4, and as a co-perpetrator for Sections I1, I2, II1, II2, II3, and II5 of the operative part of the Judgment.

152. The Defense's assertions that other structures were in charge of war prisoners do not, in any way, bring into doubt the findings of the contested Judgment that the accused Branko Vlačo, as the warden of the detention facilities at which **civilians** were interned, was personally responsible for the imprisonment, internment and holding of the civilians in inhumane conditions exactly because they were not prisoners of war. For this Panel, the status of persons who were imprisoned as civilians is indisputable, and, along this line, the Panel provided the explanation in the foregoing part of the Judgment.

153. The testimonies of witnesses A.H. and Alija Halilović show that, in early May 1992, upon the order issued by the Vogošća Municipality Crisis Staff, the accused Vlačo transferred the civilians deprived of liberty from the Semizovac barracks and imprisoned them in the *Bunker*. The referenced witnesses consistently testified that they had spent several days in the Semizovac barracks, that Branko Vlačo personally came to transfer and imprison them at the *Bunker* detention camp, where no minimum internment conditions whatsoever existed, according to all the examined witnesses. In response to the Prosecutor's question, witness Halilović stated that the persons who had brought them to the *Bunker* facility were *Branko Vlačo and witness SV-7.*

iii. Section I1

154. The Panel considers as ill-founded the Defense's submissions that the state of facts in Section **I 1** of the contested Judgment was established incorrectly. Specifically, as the Trial Panel properly noted in the contested Judgment, the accused Branko Vlačo

personally physically abused Ferid Ćutura. This was established on the basis of witness Ferid Ćutura's testimony. The Defense contested this witness's credibility and submitted that the conviction judgment against the accused Vlačo cannot be based solely on a single witness's testimony.

155. The Appellate Panel has evaluated the testimony of witness Ferid Ćutura, as the only witness possessing direct information about the charged incident. Due consideration had to be given to such an incriminating evidence, which the Trial Panel indeed did. When a conviction is based on a single witness's testimony, this testimony must not give raise to a slightest doubt into its accuracy and truthfulness, or in the witness's credibility and integrity. The Trial Judgment provided comprehensive reasons concerning the evaluation of this witness's credibility. In this context, it was stated that. "*The Panel had no reason whatsoever not to the credit this witness's testimony, all the more because during his testimony no impression was gained that the witness had the intent to unjustifiably incriminate the Accused, as well as that during the referenced period he was taken for interrogation to the auxiliary premises in the camp vicinity three times, but that the accused Vlačo interrogated and physically abused him (only) once".* In terms of the reasons for which there were no eye-witnesses to the referenced incident, that is, the witnesses who would confirm witness Ferid Ćutura's assertions, the Trial Panel noted that the witnesses examined in relation to these circumstances had been imprisoned at the *Bunker* camp just before or after witness Ćutura's exchange.

156. The Defense contested witness Ćutura's credibility by submitting repeatedly that no examined witnesses confirmed witness Ćutura's assertions that the Accused had worn "*a cockade and a fur cap*", even though the Trial Panel explained in the contested Judgment, and this Panel upheld this explanation, that witnesses Nijaz Salkić and SV7 mentioned no cockade and fur cap as parts of the Accused's clothing at the critical time, because they were neither examined about these facts nor present in the same room together with witness Ferid Ćutura and the Accused during the critical incident. In this Panel's view, the explanation provided in the contested Judgment is appropriate in whole, particularly bearing in mind that the injured party Ferid Ćutura described the Accused's act of commission, having no intent to incriminate him by increasing the degree of the Accused's criminal activity.

157. The Panel has held that the Defense's assertions, that the Accused had no effective control over the soldiers who had abused the prisoners and that he made efforts to protect the prisoners whenever he was present there, are ill-founded. With this appellate complaint too, the Defense contested the existence of the Accused's realistic control over the soldiers (effective control), as an element of the command responsibility with which the Accused was neither charged nor found guilty of, as a form of criminal liability. Specifically, the Accused was found guilty of this Section of the operative part of the Judgment because he participated, as a **co-perpetrator**, in the physical abuse of the prisoners by enabling other soldiers to abuse them, within the context of his above described powers and responsibilities/duties of a warden.

158. In relation to this Section of the operative part of the Judgment, the Accused was found guilty because he had physically abused and enabled other soldiers to physically abuse and extort information from prisoners Asif Šehić, Halil Udvinčić, Mensur Šahbegović, Mehrudin Hadžalić, Eset Muračević, Zahid Baručija and Derviš Pandžić.

159. The Defense did not contest that the referenced prisoners had indeed sustained injuries (except Derviš Pandžić) while being imprisoned at the detention centers, but rather contested that the Accused had enabled this. The facts that the Accused was the warden of the *Bunker* detention facility, that he was responsible for the lives of the men interned therein and that he never objected to such type of the treatment being afforded to the prisoners by guards and soldiers, that he made no efforts to withdraw from the function and that these act were occurring continually, indicate that the Accused did consent to and did enable such a conduct.

160. This Panel recalls that, in relation to this Section of the operative part of the Judgment, it was found beyond a reasonable doubt that the Accused indeed committed the criminal offense of War Crimes against Humanity in violation of Article 172 of the CC BiH by persecution, namely by inhumane acts intentionally causing great suffering, or serious injury to body or to physical or mental health of the prisoners. The Panel has noted that even if there were insufficient evidence proving that the Accused undertook such actions against all the injured parties indicated in the operative part of the Judgment, this would not result in the rendering of an acquittal because omitting the name of one injured party would not affect the factual description of the acts in terms of their change that would result in an altered legal qualification of the offense, but rather, in such a situation, the accused's acts would also satisfy the essential elements of the same criminal offense, which were committed against the lesser number of victims/injured parties.[22]

iv. Section I2

161. **In relation to the Defense's submissions concerning this Section of the operative part of the Judgment, the Panel has noted** that the Accused was not even charged with being responsible at all for the prisoners outside the prison perimeter. However, the fact that, as a responsible person in the detention facility where the civilians were imprisoned upon the military orders the Accused sent the prisoners to perform forced labor, despite his prior knowledge that some of them had not returned after performing similar "works", renders the Accused a co-perpetrator in the acts of persecution by enslavement. As the contested Judgment stated, even after prisoners Muhamed Ruhotina and Zejnil Muharemović had sustained injuries and Nedim Pandžić had been killed while performing labor at the frontlines, of which facts the Accused was aware, the Accused nevertheless continued engaging the prisoners to perform labor in risky areas. The

[22] Second Instance Verdict in *Eso Macić*, No. S 1 1 K 002594 13 Krž3 of 13 June 2013; Decision of the Constitutional Court of BiH, AP/4613/12 of 17 March 2015, p. 10.

Defense does not contest that that Accused had just acted in compliance with the military orders, which renders him a **co-perpetrator** in the referenced acts of commission.

162. Specifically, in the context of the Accused's role, the contested Judgment found beyond a reasonable doubt that the Accused was indeed the warden of the facilities at which civilians had been imprisoned, and which subsequently became part of the KPD *Butmir-Ilidža*, and that on 21 July 1992, the Ministry of Justice of the Serb Republic BiH appointed the Accused as warden of the detention section of the *Butmir-Ilidža* Penal and Correctional Institution, located in Vogošća. The Defense's submissions, that the Accused had not approved the abduction of prisoners but rather simply acted in compliance with the military orders, in the context of his contribution as a co-perpetrator to the acts of prisoners' enslavement, clearly indicate that the Accused approved all that, despite knowing that the prisoners were not taken to perform lawful labor, all of which renders their acts as the acts of co-perpetration.

v. Section I3

163. In the context of the appellate complaints relating to Section I3, the Accused's status and powers are also very important. The Defense did not contest the events that had occurred at the hill of Žuč, but rather the Accused's role and authority as a civilian warden, in terms that he could have prevented the similar treatment of the prisoners in the future, as well as the fact that the Accused indeed approved their taking out to perform forced labor.

164. In relation to this Section, the Accused was found guilty as an **accomplice** in the commission of the criminal offense of Crimes against Humanity under Article 172(1)(h) by persecution and enslavement, because after being informed about the death of 5 prisoners, the Accused undertook no action whatsoever to prevent such treatment of prisoners in the future and continued approving the prisoners' taking-away.

165. Bearing in mind that, at the critical time (23 June 1992), the Accused *in fact* did perform the function of the warden of the facility at which civilians were imprisoned and that he held this function *formally and legally* since 21 July 1992, this function generally implies an overall supervision/control over all the activities and events in the facility. The evidence showed that the Accused voluntarily consented to assume the function of an acting warden; however, there is no evidence proving that the Accused refused either to assume the function or to withdraw from the function after having performed it for a while. Having voluntarily accepted the referenced role, the Accused was fully aware that the civilians were unlawfully imprisoned solely on the ground of their ethnicity. The fact highlighted by the Defense's appeal, that the Accused made efforts to improve the conditions in the detention facilities, indicates that he indeed had certain influence and powers. Also, there is no evidence proving that the Accused has ever tried to refuse the admittance of civilian prisoners, who had been held there unlawfully, or that, once he had learned about the death of certain civilians taken to perform forced labor, he refused to approve in the future that the prisoners be taken for such purposes; thus the Accused

knew that his acts contributed to the furtherance of the offences committed by the principal perpetrators.

166. That the Accused had approved the practice of prisoners' being taken for forced labor, which the Defense contested, and the appealed Judgment comprehensively explained, ensues from the testimonies of the witnesses, who testified that exactly the accused Vlačo decided which prisoners would go to perform forced labor. Also, a large volume of documents confirmed that the accused Vlačo was aware of the type of labor for which the prisoners were used, bearing in mind numerous requests filed by various institutions/bodies which had addressed the Accused, as the prison warden, asking for his approval to use the prisoners. Thus, the appealed Judgment properly found as follows: *"The referenced requests also clearly indicated the type of jobs for which their engagement was required (Exhibits T-158, T-162, T-190, T-199, etc.), and that the Accused granted and approved these requests, as it ensues from the Bulletin (Exhibits T-304, T-301, T-302 and T-303), as well as the documents of the prison section signed by none other than Branko Vlačo."*

167. In relation to this Section, this Panel has also concluded, beyond a reasonable doubt, that the accused Branko Vlačo was responsible for approving the prisoners being taken out of the detention facility despite his knowledge that they would be taken to perform forced labor.

vi. <u>Section I4</u>

168. In relation to Section I4, the Accused was found guilty because, as an **accomplice,** he contributed to the commission of the offenses by the principal perpetrators, namely the commission of the criminal offense of Crimes against Humanity by persecution under Article 172(1)(h) through enforced disappearance (Subparagraph i) of the CC BiH.

169. As the contested Judgment found beyond a doubt, the evidence showed that the Accused had admitted 10 persons for imprisonment, and unlawfully held them in the facility along with other prisoners, and subsequently handed them over to a person he knew, and they have been unaccounted for ever since. In this Section context, the statement the witness SV7 gave during the investigation is relevant. The Panel accepted the referenced statement and provided a comprehensive explanation of the reasons for which it accepted this witness's statement given during the investigation, rather than that given at the main trial. The other witnesses, who had also been imprisoned, confirmed that the accused Branko Vlačo was present while the referenced 10 civilians were apprehended and taken for forced labor. Witness A.H., as well as witnesses Hata Balešić, Alija Halilović, Fadil Medić, Osman Hadžić and Nijaz Salkić confirmed that 10 elderly men had been brought to the *Bunker*, and that Vlačo stated that the group from Vogošća should be taken, whereupon they were gone.

170. The witnesses' testimonies are inconsistent with regard to the fact of whether the Accused was standing at the hill slope, or in front of the facility, or in his office; however, all the witnesses confirmed that the Accused indeed admitted the prisoners and allowed their

being taken for forced labor, namely that he did not object to it. In the context of the accused Branko Vlačo's actions taken at the critical time, the part of witness Osman Hadžić's testimony, credited by the Trial Panel, is also interesting. Witness Hadžić described the event and the Accused's role in it by stating that he had heard Vlačo saying: "*I cannot give you these (men), they are registered on the Red Cross list; you may take those who arrived this morning"*. The referenced statement of witness Osman Hadžić further confirms that, as the facility warden, by his acts the Accused aided and abetted the principal perpetrators in the furtherance of unlawful disappearance of prisoners.

171. Therefore, the Defense's submissions that the apprehended persons were not prisoners because they were imprisoned at the facility managed by the Accused, that the Accused did not decide on their destiny and therefore could not prevent their apprehension and abduction as they were not under his control, are ill-founded.

vii. Section I5

172. In relation to Section I5, it is crucial that the Accused was found guilty as an **accessory** in the acts committed by the principal perpetrators, in persecution by inflicting great suffering and serious physical and mental harm on the injured parties by allowing that the prisoners be taken outside the prison. The Accused was not found guilty of participating in the mistreatment/abuse of the prisoners, or of being present during such mistreatment, but rather that, as an accessory, he contributed to the acts of the principle perpetrators. The contested Judgment explained that, on the critical occasion, the accused Branko Vlačo was present in front of the detention facility while the prisoners were abused, that the witnesses had heard his voice and that the Defense also did not contest that the injured parties A.H. and H.A. had been indeed abused.

173. The witnesses who confirmed that the Accused had been present during the prisoners' abuse in front of the detention facility are the injured parties A.H., Suljo Durić, Mensur Šahbegović, Asif Šehić and Eset Muračević. In relation to this Count of the Indictment, the Defense also submitted that the Accused could not prevent the referenced abuse. Thus, in this context, the Panel reiterates the Accused's status and position of a warden of the *Bunker* detention facility that he had voluntarily accepted, being aware of the responsibility he had toward the prisoners. Therefore, there is no evidence proving that the Accused had in any way objected to the acts of the principal perpetrators, particularly bearing in mind that the prisoners were civilians.

viii. Section II

174. In relation to the Defense's appellate complaints under this Section, the Appellate Panel has noted that neither the operative part of the Judgment nor its reasoning stated at all that the prison at *Planjo's House* was organized by the Crisis Staff.

175. The operative part of the Judgment stated, under Section II that, pursuant to the Crisis Staff's decision, Branko Vlačo organized a prison for civilians at *Nako's Garage* to

which he transferred 150 Muslim civilians who had been imprisoned at the Semizovac barracks, which the Defense did not contest either.

176. In the context of *Planjo's House*, the operative part stated that this was a civilian detention facility managed by Branko Vlačo, in which he further kept the civilians imprisoned on no legal grounds even after the establishment of the *Kula* prison section.

177. In relation to the status of *Planjo's House* as the prison for civilians, witnesses Osman Tiro, Rašid Hodžić and Mustafa Derviš testified that, several days after being released from the *Naka's garage* in May 1992, they were again imprisoned, but this time at *Planjo's House*. This indicates that this facility indeed existed already in May 1992. Independently from the status of *Planjo's House* and the Accused's formal status, the prisoners were unlawfully imprisoned at this facility, on no grounds whatsoever.

178. Despite the Defense's submission that the accused Branko Vlačo was not responsible for *Planjo's House* up until 11 August 1992, when the facility became the responsibility of the KPD Butmir and the Ministry of Justice of the Serb Republic of BiH, this Panel has held that, under the Decision dated 8 July 1992, the house owned by Almasa and Miralem Planjo was made available for being used by the Ministry of Justice, and that Branko Vlačo was under the Decision of the Ministry of Justice, number 01-131/92 of 21 July 1992, appointed the warden of the KPD Butmir-Ilidža Detention Section located in Vogošća, and that the Decision was to be applied as of 14 July 1992.

179. The fact is that, formally and legally, the accused Branko Vlačo became the warden of the *Butmir-Vogošća* KPD detention section in July (14 July 1992), but that civilians had been imprisoned at *Planjo's House* since May 1992, as confirmed by the examined witnesses.

180. In the context of the foregoing, the Defense's appellate complaint, that his was always the same prison but that its location and name changed, is interesting.

181. In relation to Section II of the operative part of the Judgment, the Accused was found guilty of committing the criminal offense under Article 172(1)(h) of the CC BiH, persecution by unlawful imprisonment and inhumane treatment (Subparagraphs (e) and (k)) in the facility known as *Naka's Garage*, where he kept the prisoners deprived of any possibility to satisfy their basic hygienic needs.

182. This Panel considers as incorrect the Defense's submission that *Planjo's House* started functioning (as a prison) no sooner than 11 August 1992, when the prisoners from the *Bunker* facility were transferred there, because this facility had been operational since May, as the examined witnesses confirmed.

ix. Section II1

183. This Panel considers as ill-founded the Defense's appellate complaints indicating that, for the foregoing reasons, the detention facility at *Planjo's house* was not operational in May, June, July and early August 1992.

184. The Accused was found guilty of this Count of the Indictment because he participated, as a co-perpetrator, in the functioning of the system in which the prisoners, imprisoned at *Planjo's House* detention facility, were taken to perform forced labor, and that by these acts the criminal offense of persecution by enslavement was committed, all because the witnesses' testimonies showed that exactly the accused Vlačo had selected the prisoners who would perform forced labor and that he had known exactly for which type of the work the prisoners were being used.

185. In this Panel's view, the Defense's submission that the work performed by the prisoners does not constitute cruel treatment in criminal and legal terms, is ill-founded. Specifically, in the context of forced labor performance, the status of imprisoned persons is the most important fact, and the prisoners in question had the status of civilians. The referenced prisoners were imprisoned at *Planjo's House* on no legal grounds, wherefore, in criminal and legal terms, taking these prisoners to perform forced labor indeed constituted a cruel treatment.

186. The Panel primarily holds it is noteworthy that the taking of **prisoners of war** to perform forced labor, in and out of itself, is not in violation of the provisions of the III Geneva Convention. This is because Article 49 of this Convention provides that prisoners of war may be used as workers, and its Article 50 provides for the work allowed to be performed by prisoners of war. Strictly prohibited, however, is to expose prisoners to danger and death while performing this labor, as provided for in Article 23(1) of the Convention.

187. In the context of the foregoing, it is of particular relevance to repeat that the persons at issue were unlawfully imprisoned civilians rather than prisoners of war.

188. The existence of the accused Branko Vlačo's knowledge and intent to implement the system for using the prisoners to perform forced labor is apparent from the fact that he was the warden of the detention facility located at *Planjo's House*, where civilians had been imprisoned on no legal grounds, and that he alone selected the prisoners who would perform forced labor upon requests, all of which renders him a co-perpetrator of the criminal offense of persecution by way of enslavement.

189. As also noted in the contested Judgment, various documents indicated that different subjects (institutions and bodies) had addressed the warden and requested him to approve the engagement of prisoners to perform combat positions-related labor. Such documents, however, indicated only the number of required prisoners, and the documents by which such requests were granted contained the signature and name of prison warden Branko Vlačo, as well as the full names of prisoners assigned to perform forced labor. The foregoing indicates that the warden did select the prisoners who would perform forced labor.

x. Section II2

190. In relation to this Count of the Indictment, the Accused was found guilty as a **co-perpetrator** of the criminal offense of inhuman acts of similar nature on the ground of individual responsibility rather than on the ground of command responsibility. The facts that the accused Branko Vlačo was the warden of *Planjo's House*, and that the abuse of prisoners Zahid Baručija and Eset Muračević by the guards and other soldiers lasted for a protracted period of time, that the Accused's office was located on the floor of the same house, that the injured parties had visible injuries, indicate that the Accused was aware of the physical abuse and that this abuse occurred with his consent.

191. The arguments that the Accused was not present while the prisoners were abused and that he had neither *de facto* nor *de iure* control over the persons who had abused the prisoners, and the Defense's pointing to the responsibility of Nebojša Špirić, who acted as a deputy warden in the Accused's absence, are ill-founded and arbitrary in the Panel's view. The highlighting of the elements of command responsibility, with which the Accused was not charged at all, does not in any way bring into question the contested Judgment's findings.

xi. Section II3

192. In relation to this Count of the Indictment, the Trial Panel found the Accused guilty as a **co-perpetrator** for the commission of the criminal offense of crimes against humanity by persecution, that is, by the acts of deprivation of other persons of their lives and enslavement, and personally singled out and took the prisoners to perform forced labor, knowing that the prisoners were used in human shields, that their lives were put at risk and that some of them had been killed. The contested Judgment properly found that, despite being aware based on the previous experiences that the selected prisoners would be used to perform forced labor at dangerous sites, the accused Branko Vlačo selected the prisoners based on the number of prisoners requested for this purpose. Thus, by his acts of co-perpetrator, the Accused gave a decisive contribution to the commission of unlawful acts.

193. In the Panel's view, the Accused's appellate complaints contesting that the death of persons mentioned in the operative part of the Judgment resulted from the act or omission on the part of the Accused or his subordinate, or that the Accused gave a decisive contribution to the principal perpetrators' acts, are ill-founded. Witness Mirsad Šehić, who had been taken to form a human shield, testified that the accused Branko Vlačo had *told them that they would go to the hill of Žuč, to do some work there since it was a dangerous zone up there*. Witness Šehić also testified that two dead persons had been brought in before he was taken to the referenced site. Vlačo decided which prisoner would go by saying to them "*you, you and you*". Witness Husnija Šehić confirmed that he had been taken in a human shield for five times repeatedly.

194. In addition to the documents mentioned in the contested Judgment, clearly showing that the Accused knew that the prisoners had been taken to perform forced labor and that he approved so, the Panel also highlights Exhibit T-198[23], the request of the Semizovac Battalion Commander of 12 September 1992, asking prison warden Brane Vlačo to send 20 prisoners every morning to the frontline to dig trenches, as well as the contents of Exhibit T-224[24] concerning the number of persons who were killed and wounded while performing forced labor at the hill of Žuč on 21 September 1992.

195. The Defense does not contest that the prisoners were indeed taken to perform forced labor, but rather submits that the prison had acted in compliance with the orders issued by the Vogošća Brigade. The contested Judgment properly stated that the Accused's acts are the acts of co-perpetration by which he, as the warden, contributed to the commission of the principal perpetrators' acts. The Accused knew that the prisoners had been taken to dangerous sites and frontlines, and that they were used in human shields. The Accused kept Bulletins where he entered the information concerning the number of killed and wounded prisoners. On many occasions and upon requests filed by various bodies, the Accused continued allowing the engagement of prisoners whom he had personally selected. All the foregoing shows that the Accused was aware of the situation and the consequences thereof.

xii. Section II4

196. As to the act of commission under this Section of which the Accused was found guilty, the Defense contested that the Accused had at all abused prisoner Mirsad Ljevo. Also, the Defense contested the intensity of the injuries inflicted on Hilmo Šehić and Avdo Durmić, namely that the injuries did not reach the degree of objective suffering. The Defense, however, did not contest the Accused's act of commission in relation to the injured parties.

197. Contrary to the Defense's assertions, the Trial Judgment found beyond a reasonable doubt, on the basis of the evidence given by witnesses Hilmo Šehić, Izet Šehić, Husnija Šehić, Refik Šehić, Hikmet Brkić, Bego Selimović and witness SV 3, that by his acts the Accused caused mental suffering or serious mental and bodily harm, which constitute the prohibited acts pertaining to other inhumane acts referred to in Article 172(1)(k). That the Accused had indeed undertaken the referenced acts against Hilmo Šehić and Avdo Durmić knowingly and intentionally is also shown by the fact that, with no reason whatsoever, the Accused physically abused prisoner Hilmo Šehić, when he volunteered to perform labor, as well as prisoner Avdo Durmić, after he had complained about the quality and quantity of food. Therefore, the sole reason for physical abuse and causing physical and mental harm to the prisoners, as properly stated in the contested Judgment, was the Accused's desire to humiliate the prisoners and thereby manifest his

[23] Request for the use of 20 prisoners of 12 September 1992.
[24] Bulletin of 21 September 1992, Prison Section, Serb Municipality Vogošća of 22 September 1992.

power and authority that he had held at the time over all the prisoners imprisoned at the civilian prison.

198. In the Appellate Panel's view, the Defense's complaint that the Accused's acts undertaken against the injured parties do not reach the objective degree of gross suffering or serious physical or mental harm is ill-founded. Specifically, the consequences of the acts indicate whether a certain act has acquired the character of gross suffering or serious physical or mental harm.

199. In this Panel's view, the facts that the injured parties had been mistreated and thereupon returned to the facility premises unfit for detention and that during all that time they lived in fear and uncertainty for their lives, amount to violations of bodily integrity, caused severe mental suffering to the prisoners, and constitute the criminal offense of inhumane treatment, as also found in the contested Judgment.

200. In the Panel's view, the Defense's submission that the Accused did not abuse Mirsad Ljevo, and that no witness had confirmed so, is ill-founded. Thus, in this context, the Panel notes that the number of injured parties is not an essential element of the criminal offense, and that the finding that the Accused undertook no unlawful acts against all the injured parties mentioned in the operative part of the Judgment would not result in the rendering of an acquitting decision, because the omitting of an injured party's name would not affect the factual description of the acts in terms of their change which would result in an altered legal definition/qualification of the offense, but rather, the Accused's acts would in such a case satisfy the elements of the same criminal offense committed against the lesser number of injured parties.[25]

xiii. Section II5

201. With regard to this Count of the Indictment, the accused Branko Vlačo was found guilty as a **co-perpetrator** in the commission of the criminal offense of Crimes against Humanity (by persecution) under Article 172(1)(h) of the CC BiH by the acts of enslavement, that is, by enabling the use of the prisoners imprisoned at the prison for civilians-*Planjo's House* for the reference purposes/acts.

202. The fact is indeed that the Accused was found guilty because, as the civilian prison warden, he enabled the prisoners' participation in retrieving dead bodies from battlefields.

203. As the contested Judgment properly noted, the accused Vlačo was found guilty of enabling the use of prisoners held at *Planjo's House,* prison for civilians for the referenced actions because he was the civilian prison warden. Therefore, in the context of the criminal act charged against the Accused, it is irrelevant whether the Accused was at all present there on the referenced day, as the Trial Panel found in the contested Judgment.

[25] Second Instance Verdict in *Eso Macić*, No. S 1 1 K 002594 13 Krž3 of 13 June 2013; Decision of the Constitutional Court of BiH, AP/4613/12 of 17 March 2015, p. 10.

However, the Accused was found guilty as the prison warden because, as a co-perpetrator, in concert with other persons, he enabled that the prisoners be used for withdrawing killed persons (from the war theater), as established beyond a doubt. Thus the Trial Panel did not find the Accused guilty of the criminal offense of deprivation of life, but rather it established his responsibility on the ground of individual criminal responsibility for enslavement. As described in relation to the foregoing Sections, the Accused was held responsible as the warden of the civilian prison located in *Planjo's House*. Considering that people had been previously taken to perform forced labor, as a result of which some of the taken men were wounded and killed, that the Accused was fully aware of the degree of risk the prisoners faced when they were taken to perform labor, the Accused had never opposed to prevent their being taken for that purpose. As already addressed above in the context of this issue, the status of prisoners who were not prisoners of war but rather civilians is particularly relevant.

C. GROUNDS OF APPEAL UNDER ARTICLE 298 OF THE CC BIH - VIOLATION OF THE CRIMINAL LAW

1. Standards of Review

204. An appellant alleging an error of law must, as said, identify, at least, the alleged error, present arguments in support of its claim, and explain how the error affects the decision resulting in its unlawfulness.

205. Where an error of law arises from the application in the Verdict of a wrong legal standard, the Appellate Panel may articulate the correct legal standard and review the relevant factual findings of the Trial Panel accordingly. In doing so, the Appellate Panel not only corrects a legal error, but also applies the correct legal standard to the evidence contained in the trial record in the absence of additional evidence, and it must determine whether it is itself convinced beyond any reasonable doubt as to the factual finding challenged by the Defense before that finding is confirmed on appeal.

206. Where the Appellate Panel concludes that the Trial Panel committed an error of law but is satisfied as to the factual findings reached by the Trial Panel, the Appellate Panel will revise the Verdict in light of the law as properly applied and determine the correct sentence, if any, as provided under Articles 314 and 308 of the CPC of BiH.

2. Submissions of the Defense

207. The Defense submitted that the Trial Judgment violated the criminal code because the CC BiH was applied despite the fact that the referenced offence was provided for in the 1976 CC SFRY (Chapter XVI – Criminal Offenses against Humanity and International Law).

208. The Defense therefore submitted that the application of Article 4a of the CPC BiH in the concrete situation was inadequate. Also, considering that the Indictment contained no charges in relation to Subparagraph i) but the Accused was nevertheless found guilty of this charge, the Defense alleged the violation of the principle of *nullum crimen sine lege*, because *enforced disappearance of people* was not criminalized under the law that was in effect in 1992. The Defense submitted that, in 1992, enforced disappearance of persons was not a criminal offense pursuant to customary international law. In case that the Defense accepts that the criminal offense of Crimes against Humanity was governed by international law, an issue arises as to which sanction was prescribed during the relevant period. In this context, the Defense submitted that Article 38 of the CC SFRY should have been applied because, according to the case law, in a situation where no maximum and minimum limit of the sentence is specified, the sentence will be imposed within the range between the general minimum and the maximum limit provided for by the law. In the concrete case, it is a sentence between 15 days and 15 years, which means that the CC SFRY is more favorable to the Accused.

(i) **Position of the Appellate Panel**

a. **Applicable Law**

209. The Trial Panel properly noted that the derogation from the principle of time constraints regarding the applicability of the criminal code exactly concerns the criminal offense of Crimes against Humanity under Article 172 of the CC BiH, which was at the time of the crime commission a criminal offense prescribed in accordance with the general principles of international law, where Article 4a) of the CC BiH was applied. Specifically, this criminal offense was not provided for by the criminal code effective at the time of the crime commission (the CC SFRY). However, since the referenced criminal charge involves violations of the rule of international law, concerning the offenses by which the essential elements of the criminal offense of Crimes against Humanity under Article 172(1) of the CC BiH were satisfied, the requirements provided for in Article 4a) of the CC BiH[26] were satisfied indeed.

210. Contrary to the Defense's submissions, the Trial Panel properly found in the contested Judgment that the CC SFRY did not provide for the criminal offense at issue at all. The Defense's argument, that the criminal offense of Crimes against Humanity was also prescribed under the part of the CC SFRY titled "Criminal Offenses against Humanity", is incorrect because this crime was not criminalized in the CC SFRY effective at the time of commission of the criminal offense, but it does constitute an imperative principle of international law, and it is indisputable that, in 1992, crimes against humanity

[26] Article 4a) of the CC BiH provides as follows: „Articles 3 and 4 if this Code shall not prejudice the trial and punishment of any person for any act or omission which, at the tme when it was committed, was criminal acording to the general principles of international law."

formed part of customary international law[27]. Thus, in this context, it is important to highlight the case law of the European Court of Human Rights in *Šimšić v. Bosnia and Herzegovina*, number 51552/10 of 26 August 2010[28], which stated that the offenses of crimes against humanity, *at the time of the commission thereof (1992) did not form part of the internal law up until the entry into force of the Criminal Code (2003), but they did form part of international law*.

211. Also ill-founded is the complaint of the Accused's Defense that the criminal offense of Crimes against Humanity under Article 172 of the CC BiH should not have been applied to the established state of facts, because the offense of "enforced disappearance of persons" under Subparagraph i) was introduced in the Criminal Code no sooner than in 2003, while "enforced disappearance" as the act of commission of the criminal offense of Crimes against Humanity, that is, of persecution also formed part of customary international law. Enforced disappearance of persons has been recognized as a crime against humanity in several international declarations and conventions, such as the Declaration on the Protection of All Persons from Enforced Disappearance, G.A. res. 47/133, 47 U.N. GAOR Supp. (No. 49) at 207, U.N. Doc. A/47/49 (**1992.)** or the International Convention on the Protection of All Persons from Enforced Disappearance, E/CN.4/2005/WG.22/WP.1/Rev.4 (2005). The foregoing indicates that, at the time when the offense was committed, the offense at issue indeed formed part of international law, as crime against humanity (persecution).

212. Considering that, in the concrete case, the application of Article 4a) of the CC BiH, providing that Articles 3 and 4 of the CC BiH shall not prejudice the trial and punishment of any person for any act or omission, which at the time when it was committed, was criminal according to the general principles of international law, and that the Trial Panel properly applied the 2003 CC BiH to the concrete case, the range of punishment under the 2003 CC BiH was also properly applied to this criminal offense.

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[27] Decision of the European Court of Humna Rights in *Šimšić v. Bosnia and Herzegovina*, No. 51552/10 of 26 August 2010.

[28] The Court observes that the present applicant was convicted in 2007 of persecution as a crime against humanity with regard to acts which had taken place in 1992. While the impugned acts had not constituted a crime against humanity under domestic law until the entry into force of the 2003 Criminal Code, it is evident from the documents cited in paragraph 8-13 above that the impugned acts constituted, at the time when they were committed, a crime against humanity under international law. In that regard, it is noted that all the constituent elements of a crime against humanity were satisfied in this case: the impugned acts were committed within the context of a widespread and systematic attack targeting a civilian population and the applicant was aware of that attack (contrast *Korbely*, cited above, §§ 83-85). The applicant argued that he could not have foreseen that his acts could have constituted a crime against humanity under international law. It is noted, however, that the applicant committed those acts as a police officer. The Court has held that persons carrying on a professional activity must proceed with a high degree of caution when pursuing their occupation and can be expected to take special care in assessing the risks that such activity entails (see *Kononov*, cited above, § 235) Furthermore, having in mind the flagrantly unlawful nature of his acts, which included murders and torture of Bosniacs within the context of a widespread and systematic attack against the Bosniac civilian population of the Višegrad Municipality, even the most cursory reflection by the applicant would have indicated that they risked constituting a crime against humanity for which he could be held criminally accountable.

b. **Legal definition of the offense**

213. Bearing in mind that, on page 10 herein, the Appellate Panel has noted that with the proper application of the law to the established state of facts, the form of the accused Branko Vlačo's participation points to the proper type of criminal liability under Article 180(1) of the CC BiH since there are many acts of commission wherein the perpetrator committed several mutually overlapping acts under the criminal offense of Crimes against Humanity under Article 172 of the CC BiH, that presently involve the criminal offenses referred to in Article 180(1) of the CC BiH.

214. **Individual criminal responsibility under Article 180(1)** of the CC BiH provides as follows:

> (1) A person who planned, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offense referred to in Articles 171 (Genocide), 172 (Crimes against Humanity), 173 (War Crimes against Civilians), 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violations of the Laws and Customs of Law) of this Code, shall be guilty of the criminal offense. The official position of any individual, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of culpability nor mitigate punishment. (2) The fact that any of the criminal offenses Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of culpability if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. [29]

i. Individual responsibility

215. The referenced provision contains several forms of the acts of co-perpetration or complicity that were determined taking into account the specific nature and gravity of these criminal offenses, as well as the fact that this is criminal liability for the crimes comprising, as a rule, a large number of the acts of commission, the crimes which are most often being committed by a large number of persons and which are planned and systemic by their nature. Therefore it is often difficult to determine the individual contribution of an individual in the commission thereof.

[29] Article180(1) of the CC BiH.

216. Article 180(1) addresses the acts which often cannot be clearly separated one from another since, as a rule, the perpetrator undertakes several, mutually connected actions.

217. Certain acts referred to above are being used for causing other persons to decide or strengthen their decisions to commit any of the referenced criminal offenses (incitement to commit a crime). The form of some acts is that of the acts which precede the commission of a crime (e.g., planning, aiding and abetting the perpetrator of the referenced offenses). Planning implies considering the ideas for the commission of crimes individually, or, more often, on a large scale, elaborating on the manner of and means for the commission of crime, figuring out and defining the roles of individuals in the commission of crime, planning the time and scene of the crime commission. Intellectual activities preponderance is characteristic for planning, while certain manual and physical activities, such as procurement of the means or arms for the commission of crime are, in addition to the intellectual activities, characteristic of preparing to commit a crime. Essentially, preparing to commit a crime is just one of the stages of the implementation of the acts of planning; the planner is a conceptual creator, and the preparatory is one of the implementers of the crime commission (*Ignjatović, p.* 90). Individual criminal responsibility for the referenced acts will exist only where these acts were committed in relation to the foregoing criminal offenses specifically prescribed under this Chapter.[30]

218. In terms of Article 180(1) CC BiH, „*planning means that one or more persons design the commission of a crime during both the preparatory and execution stage*." "*Aiding and abetting means rendering a substantial contribution to the commission of a crime*". "*Aiding and abetting, which may appear to be synonymous, are indeed different*. *Aiding means giving assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto*". *Instigating means prompting another to commit a crime* or intentional convincing another to commit a crime". "*The actus reus required for 'instigating' a crime is any conduct by the accused prompting another person to act in a particular way. This element is satisfied if it is shown that the conduct of the accused was a clear contributing factor to the conduct of other person(s). It is not necessary to demonstrate that the crime would not have occurred without the accused's involvement*."[31]

219. The Court also provided an explanation of the Accused's form of criminal liability and his form of participation in the criminal acts in the part concerning the incorrectly and incompletely established state of facts.

[30] Commentary to the Criminal Codes of Bosnia and Herzegovina, p. 594.
[31] *Prosecutor v. Radislav Krstić*, case No. IT-98-33, Judgment handed down on 2 August 2001 (*Krstić*, Trial Chamber Judgment), paras. 601, 440; *Kvočka*, Trial Chamber Judgment, paras. 254, 441; See Judgments in *Prosecutor v. Aleksovski*, No. IT-95-14/1-A, para. 144; Judgment in *Momčilo Mandić*, X-KR-05/58 of 18 July 2007, p. 143.

ii. Crimes against Humanity under Article 172(1)(h) of the CC BiH

220. Considering the arguments provided on page 18 herein in relation to the definition of the criminal offense of Crimes against Humanity by persecution under Article 172(1)(h) of the CC BiH, the Appellate Panel has revised the Trial Judgment by qualifying the criminal offense as Crimes against Humanity by persecution under Article 172(1)(h) of the CC BiH, and describing that persecution was committed by the acts of murder, enslavement, imprisonment, enforced disappearance and similar inhuman acts committed with the intent to cause great suffering, but did not indicate the appropriate subparagraphs of Article 172(1), that is, Subparagraphs **a), c), e), i)** and **k).**

D. GROUNDS OF APPEAL UNDER ARTICLE 300 OF THE CPC BIH – SENTENCING

1. Standards of Review

221. Prior to addressing the concrete appellate grounds, the Appellate Panel emphasizes that the Trial Panel is vested with broad discretion in determining an appropriate sentence, as the Trial Panel is best positioned to weigh and evaluate the evidence presented at trial. Accordingly, the Appellate Panel will not disturb the Trial Panel's analysis of aggravating and mitigating circumstances and the weight given to those circumstances unless the appellant establishes that the Trial Panel abused its considerable discretion.

222. In particular, the appellant must demonstrate that the Trial Panel gave weight to extraneous or irrelevant considerations, failed to give weight or sufficient weight to relevant considerations, made a clear error as to the facts upon which it exercised its discretion, or that the Trial Panel's decision was so unreasonable or plainly unjust that the Appellate Panel is able to infer that the Trial Panel must have failed to exercise its discretion properly. The Appellate Panel recalls that the Trial Panel is not required to separately discuss each aggravating and mitigating circumstance. So long as the Appellate Panel is satisfied that the Trial Panel has considered such circumstances, the Appellate Panel will not conclude that the Trial Panel abused its discretion in determining the appropriate sentence.

223. However, the Appellate Panel will not revise the decision on sentence simply because the Trial Panel failed to apply all relevant legal provisions. Rather, the Appellate Panel will only reconsider the decision on sentence if the appellant establishes that the failure to apply all relevant legal provisions occasioned a miscarriage of justice. If the Appellate Panel is satisfied that such a miscarriage of justice resulted, the Appellate Panel will determine the correct sentence on the basis of Trial Panel's factual findings and the law correctly applied.

2. Arguments of the Defense

224. According to the Defense, the sentence imposed on the Accused pursuant to the CC BiH for a term of 15 years practically amounts to 1/3 of the maximum prescribed sentence, which indicates a tendency toward a more lenient sentencing; however, the referenced sentence is the maximum prison sentence prescribed by the CC SFRY. Ultimately, the Defense submitted that, given the mitigating circumstances accepted by the Court, the Accused should have received a prison sentence below the special minimum. The Defense repeated again the mitigating circumstances which the Appellate Panel should take into account in the rendering of its final decision. To this effect, the Defense particularly emphasized the accused Vlačo's proper conduct during his time in custody, the period of time elapsed since the alleged commission of the crime, the Accused's age and health condition, the unjustified charges ultimately withdrawn by the Prosecutor, the Accused's past life and expressed remorse, the saving of lives or diminishing of the prisoners' suffering, the 6-month period during which he performed his duty (as a warden), and the improvement of the living conditions in the prison. The Defense submitted that the foregoing circumstances are particularly extenuating circumstances, and that both special and general deterrence can be achieved by a sentence below the minimum prescribed by the CC BiH, that is, by the sentence much closer to the minimum sentence prescribed by the CC SFRY.

3. Arguments of the Prosecution BiH

225. The Prosecution argued that the Trial Panel insufficiently evaluated the aggravating circumstances found on the part of the Accused, overestimated the extenuating circumstances, and accordingly imposed on the Accused a much more lenient sentence. The Prosecution of BiH contested the Trial Judgment's findings related to the evaluation of the degree of danger/risk for the protected persons, because the Trial Panel's position concerns the criminal offense of War Crimes against Prisoners of War and War Crimes against Civilians, with which the Accused was not charged at all. The appeal further stated that the Trial Panel should have also taken into account, as the aggravating circumstances, the number, intensity and length of the unlawful acts, the number of casualties/victims, and the fact that 35 prisoners had sustained injuries/were wounded while being imprisoned at the referenced camps and 38 prisoners killed, and that the Accused had undertaken his acts within a widespread and systematic attack with discriminatory intent.

226. The Prosecution argued that the reasons for which the purpose of punishment could be achieved by a lesser sentence are not apparent from the reasoning of the Judgment. Even though the contested Judgment stated that the Court did take into account all the circumstances, the Prosecution argued that the Trial Court only evaluated the extenuating circumstances on the part of the Accused. According to the Prosecution, the explanation of the reasons for imposing a 15-year prison sentence remains unclear, despite the precise indication of the statutory provisions the Panel took into account.

(i) **Position of the Appellate Panel**

227. In meting out the punishment in the contested Judgment, the Panel found no aggravating circumstances on the part of the Accused. In terms of the extenuating circumstances, the Panel took into account that the Accused had no prior convictions, as well as his family circumstances (married, father of two children), and imposed on the Accused the sentence of imprisonment for a term of 15 years.

228. The basis of the Accused's criminal responsibility were the facts that he was the warden or acting warden of the detention facilities at which civilians were imprisoned on no legal grounds; that he aided and abetted the commission of the referenced crimes by knowing they were being committed but failing as the warden to take any action whatsoever with regard to those crimes; and that he knowingly gave a significant contribution to the continued commission of these criminal offenses by encouraging the perpetrators thereof.

229. In meting out the sentence of imprisonment, the Appellate Panel took into account all the circumstances that may affect the imposing of a more or less lenient sentence, and particularly the degree of the Accused's criminal responsibility, the motives for which he committed the crime, the degree of danger or violation of the protected value, the circumstances under which the offense was committed and the Accused's personal circumstances, which the Trial Panel evaluated only in part when meting out the sentence, as a result of which the imposed sentence was too stringent, as the Accused's Counsel submitted in his appeal.

230. The Appellate Panel has therefore accepted, in part, the Defense's arguments contesting the imposed criminal sanction, and, taking into account the Accused's role in the overall system of the imprisonment of civilians at the detention facilities during the period between April and October 1992, it concluded that the sentence of imprisonment for a term of 13 (thirteen) years is an appropriate sentence for the Accused.

231. In addition to the Accused's sincere remorse and regret expressed in his written submission delivered at the Appellate Panel's session, the Accused's age and health condition[32], the foregoing indicates that the purpose of punishment, from the aspect of both special and general deterrence, can also be achieved with a prison sentence shorter than that imposed by the Trial Panel.

232. In view of the foregoing, the Appellate Panel has granted, in part, the appeal filed by Counsel for the accused Branko Vlačo, and revised the Trial Judgment in the part concerning the sentencing decision by imposing on the Accused, for the committed criminal offense, the sentence of imprisonment for a term of 13 (thirteen) years, to which the time the Accused spent in custody, running from 27 August 2011 (when he was deprived of liberty and ordered into extradition custody) onwards. The Appellate Panel is

[32] Mental Condition Report, 16 January 2015; Report on the health condition of detainee Branko Vlačo, in relation to a cardiac examination.

satisfied that such a punishment is proportionate with all the circumstances pertaining to the concrete case, which affect the length of the imposed sentence, and that thereby the purpose of punishment, provided for in Article 39 of the CC BiH, will be achieved.

233. The Appellate Panel has not taken into account as either aggravating or extenuating circumstances the accused Vlačo's proper conduct in custody and the time he spent in custody.

234. The Appellate Panel did not consider as extenuating the fact that the Accused had helped some of the imprisoned civilians several times because the referenced conduct was not evaluated as a regular modus of the Accused's conduct. Thus, this fact also indicates that the Accused could have significantly affected the destiny of the civilians held at the detention facilities.

235. For all the foregoing reasons, the Appellate Panel has held that the appellate complaints of the Prosecution BiH, that the Accused should receive a sentence of long-term imprisonment or a more severe sentence of 15 years in prison, are ill-founded in whole. In the Appellate Panel's view, the Prosecution's complaints indicating that the Accused committed the unlawful acts within a widespread and systematic attack and with discriminatory intent are ill-founded, because the referenced circumstances constitute essential elements of the criminal offense already evaluated by the Panel when it established the Accused's guilt.

236. In view of the reasons presented in relation to the sentencing decision, the other appellate complaints advanced by the Prosecution BiH concerning the sentence imposed on the Accused have become irrelevant.

237. For the foregoing reasons, pursuant to Articles 313 and 314 of the CPC BiH, the Appellate Division Panel decided as stated in the operative part of the Judgment.

Minutes-taker:	**PANEL PRESIDENT**
Legal Advisor	**J U D G E**
Elma Karović	Redžib Begić

NOTE ON LEGAL REMEDY: No appeal lies from this Judgment.