

Bosna and Hercegovina

Босна и Херцеговина



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

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**Docket No. S1 1 K 003807 14 Kžk**

**Delivered on: 9 March 2015**

**Sent out on: 9 April 2015**

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**Before the Appellate Panel composed of: Judge Redžib Begić, Presiding**  
**Judge Mirza Jusufović, as Panel member**  
**Judge Dr. Miloš Babić, as Panel member**

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

**v.**

**the Accused SAVO BABIĆ**

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**APPELLATE JUDGMENT**

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

**Predrag Tomić**

**Defense Counsel for the Accused Savo Babić:**

**Attorney Petko Pavlović**

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**Sarajevo, 9 March 2015**

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

The Court of Bosnia and Herzegovina, sitting in the panel of the Appellate Division composed of Judge Redžib Begić, as the presiding judge, and judges Mirza Jusufović and Dr. Miloš Babić, as the Panel members, with the participation of Legal Advisor Nevena Aličehajić as the record taker, in the criminal case versus the accused Savo Babić, concerning the criminal offense of Crimes against Humanity under Article 172(1)h) of the Criminal Code of Bosnia and Herzegovina, as read with Subparagraphs a), e), f) and k) of the same Code, all in conjunction with Article 180(1) and (2) of the Criminal Code of Bosnia and Herzegovina, acting on the confirmed indictment issued by the Prosecutor's Office of Bosnia and Herzegovina No. T200KTRZ000074910 of 18 July 2012, following a trial held before the Panel of the Appellate Division, from which the general public was partly excluded, in the presence of Prosecutor Predrag Tomić, the accused Savo Babić and his defense counsel, attorney Petko Pavlović, on 9 March 2015 issued, and on 12 March 2015 the presiding judge publicly announced, the judgment as follows.

**J U D G M E N T**

**THE ACCUSED SAVO BABIĆ**, father's name Aleksa, born on 21 December 1944 in Krasanovići, Municipality of Bratunac, Birth Register ID No. ..., ... by ethnicity, citizen of ..., residing in B..., married, father of two, economist by profession, retired, no criminal record, no other criminal proceedings pending against him, military service completed in Sinj and Split from 19 September 1964 to 8 March 1966,

Pursuant to Article 284(1)c) of the Criminal Procedure Code of Bosnia and Herzegovina,

**IS ACQUITTED OF THE CHARGES**

**that,**

Between early May and approximately 14 May 1992, during the war in Bosnia and

Herzegovina, in the framework of a widespread or systematic attack against the non-Serb population in the territory of the Bratunac municipality, knowing of such an attack, and aware that by his actions he contributed to the execution of the attack, **SAVO BABIĆ**, as Military Police commander in Bratunac, who had been appointed commander by the SDS Bratunac leader Miroslav Deronjić, with the task to secure the detention facility set up at the *Vuk Karadžić* school in Bratunac, where more than 400 non-Serb male civilians were detained, having been systematically captured in the villages in the territory of the Bratunac municipality by members of Serb armed forces, including the Territorial Defense (TO) of Bratunac, and then taken to Bratunac where they were detained, and who assigned members of his unit to secure the camp in shifts and had effective control over the actions and conduct of the military police members who were providing security around the camp and exercised supervision and had full control over the conditions in the camp and the lives and bodies of more than 400 civilians detained in the camp, whereby he participated in the persecution of detainees in the manner as follows:

- a. Savo Babić was present when more than 400 non-Serb civilian men were separated from their families at the Bratunac stadium, after which they were taken to the *Vuk Karadžić* school on 10 May 1992, and participated in their unlawful detention, including those who were brought to the camp on or about 9 May 1992 in the manner that as the detention camp commander at the *Vuk Karadžić* school in Bratunac he contributed to their detention knowing they were unlawfully detained in the gym of the *Vuk Karadžić* school in Bratunac, under threat and/or coercion, without being provided any information about the offenses they are charged with, without any trial, judgment or criminal sanction imposed by a relevant and legitimate court;
- b. Savo Babić participated in further detention of 400 non-Serb detainees by giving instructions to the guards that in the late evening hours on 13 or 14 May 1992 the remaining detainees be transferred from the *Vuk Karadžić* school to Pale, after which the 400 detainees were ordered to board the trucks, and were then taken to Pale where they continued to be detained until their “exchange” in Visoko on 16 May 1992, which is when he set aside a few members of the military police to escort the detainees.
- c. Savo Babić participated in the <sup>5</sup> persecution of non-Serb civilians

detained at the *Vuk Karadžić* school between or about 9 May to 14 May 1992, who were subjected to various forms of physical and mental violence during their detention at the *Vuk Karadžić* camp, while Savo Babić had the authority and obligation to improve the conditions at the camp, but failed to do so, the conditions being brutal and degrading, which resulted in an atmosphere of terror in which the detainees were kept in unhygienic conditions and in a narrow space, and were cramped into a gym, size 15 x 9.60 m, without the basic living needs and conditions, such as food, potable water, medicines and medical aid, access to toilettes, and they had to sleep on the floor, without any mats, and were daily subjected to systematic interrogation, beating, torture, abuse, degrading treatment and psychological abuse, living in constant fear for their lives, during which numerous detainees were killed or died because of their national, religious and/or ethnic affiliation and as a result of the given conditions of detention, which were inhumane and degrading.

- i. The detainees who were subjected to those conditions include the following persons: Šaban Avdić, Mustafa Delić, Šaban Džananović, Nijaz Hodžić, Kemal Hodžić, Fadil Karahasanović, Mirsad Karić, Vahid Salkić, S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-12, S-13, S-14, S-15, S-16, S-17, S-18, S-19, S-20, S-21, S-22, S-23 and S-25.
- ii. The cramped space and the conditions where there was not enough air resulted in the asphyxiation of nine detainees during the night of 10/11 May 1992, including: Nusret (father's name Ismet) Avdić, Husnija (Huso) Hadžibulić, Dževad (Muhammed) Husić, Omer (Šećo) Muhić, Hazim (Hašim) Muratović, Hajrudin (Hamid) Osmanović and Osman (Meho) Salkić, after the military police officer Rajko Vasić or some other soldier insisted that several hundred detainees remain behind the line drawn on the floor. The remains of the victims have been identified in the mass grave at Blječevo, municipality of Bratunac.
- iii. The detainees did not receive any medical treatment after receiving injuries in the gym, including witness S-13

whose arm was broken by Milan Trišić after he was beaten in the gym; S-6 who was hit in the temple by a stray bullet after a soldier started shooting around the gym; S-14 was beaten and cut on his forehead by a knife, which left him with lasting scars, while Fadil Karahasanović's skull was broken in two places.

d. The guards under SAVO BABIĆ's effective control allowed other persons to freely enter the premises, beat and kill the detainees as they please, of which the suspect knew because such a treatment of the detained civilians was a predictable consequence of their detention in the camp. Even his own men complained to him about the fact that third persons freely entered and abused the detainees. The suspect did not take relevant measures to prevent or punish his men who allowed the unidentified soldiers to enter the school, inflict heavy physical and mental suffering and kill the detainees. The detainees who were killed include the following persons:

- i. Hajrudin (father's name Šemso) ČOMIĆ was beaten to death by the soldier whose nickname was "Bane"; Džemo (Salčin) HODŽIĆ was beaten to death by the soldiers nicknamed "Bane" and "Makedonac"; Ahmet (Huso) HUSEINOVIĆ, Mujo (Hasib) NUKIĆ, Ahmet (Hamed) SALKIĆ, Salih (Šaban) SALKIĆ and Šaban (Alija) MEMIŠEVIĆ were beaten to death by unidentified soldiers; Nedžib HUSIĆ was beaten to death by an unidentified soldier at the gym, after which he succumbed to the injuries thus suffered; the Bratunac imam Mustafa (Miralem) MUJKANOVIĆ was beaten to death by the soldiers nicknamed "Bane" and „Makedonac". The remains of these victims have been identified in the mass grave found in the territory of Blječevo, municipality of Bratunac.
- ii. Abid (Selman) AVDIĆ; Saudin (Hariz) HOTIĆ and Mustafa (Jusuf) HASANOVIĆ were shot and killed by the soldier nicknamed "Bane"; Sakib (Kasim) MEHMEDOVIĆ was shot and killed by the soldier nicknamed "Makedonac", Mehmedalija (Ramo) DELIĆ and his two sons Samir and Nedžad were first beaten and then shot in the head by the soldier nicknamed "Bane". The remains of these victims have been identified in the mass grave

found in the territory of Blječevo, municipality of Bratunac.

- iii. Redžo (Musa) SULEJMANOVIĆ, Selmo (Redžo) IBIŠEVIĆ and Redžo (Husein) ARIFOVIĆ were set aside by Milan Trišić, member of the TO Bratunac, after they were brought to the gym, which is when they were separated from the other detainees. SULEJMANOVIĆ and ARIFOVIĆ were shot and killed by unidentified soldiers, while IBIŠEVIĆ was last seen lying motionless in front of the gym, all covered in blood, after which he was never seen alive again. The remains of these victims have been identified in the mass grave found in the territory of Blječevo, municipality of Bratunac.
- iv. Enes (Edhem) AHMETOVIĆ, Izet (Ibrahim) AHMIĆ, Ramiz (Salih) ALIĆ; Dževad (Šemso) BAJRAMOVIĆ, Mirsad (Šacir) BEGIĆ, Mensur (Muhamed) HUSIĆ, Osman (Zahid) HALILOVIĆ; Ćamil (Nurija) KARIĆ, Ramo (Suljo) KARIĆ; Dževad (Lutvo) KARIĆ; Safet (Nurija) KARIĆ; Mirsad (Šaban) MEMIŠEVIĆ; Hamed (Omer) MUSTAFIĆ; Jakub (Mustafa) NUHANOVIĆ; Mehmedalija (Osman) SALIHOVIĆ; Senahid (Suljeman) SULJIĆ and Hedim (Mujo) ZUKIĆ were taken from the school gym by unidentified soldiers and have never been seen alive again. The remains of these victims have been identified in the mass grave found in the territory of Blječevo, municipality of Bratunac.
- v. Numerous detainees whose transport was denied on or about 14 May 1992, who remained in the gym, have never been seen alive again, including Kiram (Kasim) AHMETOVIĆ, Senad (Salih) AVDIĆ, Senahid (Šemso) BAJRAMOVIĆ, Hajrudin (Lutvo) DŽAFIĆ, Ismet (Nazif) HUSIĆ, Hasan (Ahmo) IBRAHIMOVIĆ, Ramo (Meho) KADRIĆ, Ishak (Omer) KARAMUJIĆ, Ibrahim (Bajro) MEŠIĆ, Abdurahman (Meho) RAMIĆ, Ćamil (Osman) RAMIĆ, Fejzulah (Musa) RAŠKAJ and Elvir (Alija) ZUKIĆ. The remains of these victims were later found and identified, except for those of Senahid BAJRAMOVIĆ, in the mass grave found in the territory of Blječevo, municipality of Bratunac;
- e. The guards under SAVO BABIĆ's effective control allowed other persons to freely enter the premises, beat and inflict on the detainees heavy physical injuries



and mental suffering as they pleased, of which the suspect knew because such a treatment of the detained civilians was a predictable consequence of their detention in the camp. Even his own men complained to him about the fact that third persons freely entered and abused the detainees. The suspect did not take relevant measures to prevent or punish his men who allowed the unidentified soldiers to enter the school, beat the detainees and inflict on them heavy physical and mental suffering. The detainees who were subjected to physical mistreatment include: Fadil Karahasanović, who was beaten by the soldiers nicknamed "Bane", "Makedonac" and another unidentified soldier from Milići, due to which his skull was broken in two places; S-6 was wounded in his temple by a stray bullet when an unidentified soldier fired from his rifle all over the gym; Milan Trišić beat S-13 and broke his arm; S-16 was shot twice in the leg by the soldier nicknamed "Bane"; S-14 was beaten and cut by a knife on his forehead, due to which he suffered lasting scars; S-19 were beaten all over his back and head with a pickaxe and shovel handles by the soldiers nicknamed „Bane“ and „Makedonac“; S-25 were beaten by unidentified soldiers using axe handles; an unidentified soldier hit witness S-20 in the forehead with his pistol.

**Therefore**, during the widespread and systematic attack against the non-Serb civilian population in the broader territory of the Bratunac municipality, SAVO BABIĆ, knowing of such an attack and that by his actions and failures to act he was an integral part thereof, as the military police commander in Bratunac, by his actions and failures to act he ordered, committed and knew, yet failed to prevent and punish, although having the possibility to do so, the detention or other types of heavy deprivation of physical liberty in violation of fundamental rules of international law, the persecution of the non-Serb civilian population on national, ethnic and religious grounds by way of killings, torture, forced disappearance of persons, other inhumane acts of similar nature, committed with the intention to inflict great suffering or serious physical or mental injury or violation of health. In the given capacity, SAVO BABIĆ was also responsible, as a superior officer, for the failure of the men subordinated to him, over which he had effective control, to prevent third parties from abusing and killing the detainees, and failed to take the necessary and reasonable measures to prevent or punish the perpetrators of the criminal offense, or to have the perpetrators of the crime adequately punished.

**whereby the accused Savo Babić would have committed:**

the criminal offense of Crimes against Humanity under Article 172(1)h) of the Criminal Code of Bosnia and Herzegovina (Persecution) as read with Subparagraphs a), e), f) and k) of the Criminal Code of Bosnia and Herzegovina in conjunction with Article 180(1) and (2) of the same Code.

Pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused is relieved of the obligation to cover the costs of the criminal proceedings, which will be paid from within the court's budget appropriations.

Pursuant to Article 198(3) of the CPC BiH, all injured parties are referred to pursue their property claims within civil proceedings.

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

### **I. PROCEDURAL HISTORY**

1. The confirmed Indictment issued by the Prosecutor's Office of Bosnia and Herzegovina, No. T200KTRZ000074910 of 18 July 2012, charged the accused Savo Babić with the criminal offense of Crimes against Humanity under Article 172(1)h) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH), as read with Subparagraphs a), e), f) and k) of the same Code, all in conjunction with Article 180(1) and (2) of the CC BiH.

2. By the judgment issued by the Court of Bosnia and Herzegovina, No. S1 1 K 003807 12 Krl of 18 December 2013, the accused Savo Babić was acquitted of the charges that by the actions described in the operative part of that judgment he committed the criminal offense of Crimes against Humanity under Article 172(1)h) of the CC BiH, as read with Subparagraphs a), e), f) and k) of the same Code, all in conjunction with Article 180(1) and (2) of the CC BiH. Pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina (hereinafter: the CPC BiH) the accused was relieved of the obligation to pay the costs of the criminal proceedings, which were decided to be paid from within the court's budget appropriations. Pursuant to Article 198(3) of the CPC BiH, it was

decided that all victims, with possible property claims, be referred to pursue their claims in civil proceedings.

3. By its decision No. S1 1 K 003807 14 Krž3 of 08 July 2014, the Appellate Division Panel granted appeal filed by the BiH Prosecutor's Office, so that, due to the established essential violations of criminal procedure, the Trial Judgment No. S1 1 K 003807 12 Krl of 18 December 2013 was revoked and a retrial was ordered before the Panel of the Appellate Division of the Court of Bosnia and Herzegovina.

## II. EVIDENCE PRESENTED

4. The Appellate Panel admitted all the evidence presented by the Prosecution and Defense during the first-instance proceedings, testimonial and documentary alike, as well as the facts established in the ICTY judgment *Prosecutor v. Momčilo Krajišnik* No. IT-00-39-T of 27 September 2006, which the Trial Panel admitted by its decision of 14 September 2013. Statements of 9 witnesses directly examined during the first-instance proceedings<sup>1</sup> were reproduced before the Appellate Panel in the courtroom.

5. At the same time, the Panel refused the motions by the parties to reproduce the statements of a number of witnesses heard before the Trial Panel, citing the legal essence of the hearing before the Panel of the Appellate Division, which does not represent a mere reproduction of the main trial, but in a manner a continuity of the appellate proceedings, which is why, as has been told to the parties and defense counsel at the hearing held on 19 February 2015, the decisions regarding the motions to adduce evidence should be viewed in light of such an interpretation of trial before the Appellate Panel.

6. Consequently, pursuant to Article 239(3) and (4) of the CPC BiH, the Panel dismissed Prosecutor's motion to re-summon and hear before the Appellate Panel the witnesses already heard before the Trial Panel, namely Marko Deurić, Milenko Prodanović, Mirna Nedeljković, witness S-24 and witness S-15<sup>2</sup>, as well as the motion to call and directly examine the witnesses: S-25, S-23, S-14, S-20, S-11 and S-19, who had not been examined before the Trial Panel, finding that the re-examination of the witnesses who had already been directly and cross examined before the Trial Panel is unnecessary,

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<sup>1</sup> All the evidence adduced is listed in the Annex to the Judgment, including the reproduced witness statements.

<sup>2</sup> Submission by the BiH Prosecutor's Office No. T20 0 KTRZ 000749 10 of 10 October 2014.

all the more so because the Prosecutor failed to offer any valid reasons to do so, while in relation to the “new” witnesses proposed by the Prosecutor it concluded that they did not have the character of *novum* evidence in order to satisfy the legal requirements to propose them in proceedings before the Appellate Division Panel. Also, in making such a decision the Appellate Panel was mindful of the fact that in his appeal the Prosecutor did not indicate that by denying his motion to examine the proposed witnesses (S-25, S- 23, S-14, S-20, S-11 and S-19) the Trial Panel made an essential violation of criminal procedure, and that because of that the state of facts remained erroneously or incompletely established.

7. For the same reasons, the Panel also denied motions filed by defense counsel, both those for the reproduction of previous statements by witnesses already examined by the Trial Panel and those to adduce new evidence, as listed in defense counsel’s submission of 12 November 2013.

### **III. CLOSING ARGUMENTS**

#### **A. CLOSING ARGUMENT BY PROSECUTION**

8. In his closing argument, the prosecutor for the BiH Prosecutor's Office primarily stressed the need to analyze and evaluate the investigative record of hearing of witnesses Marko Deurić, Mirna Nedeljković, Milan Nešković, Dušan Mičić, Branislav Milošević, Zoran Milosavljević, witnesses S-15 and S-24, who were, except witness S-15, members of the Bratunac military police whose commander was Savo Babić, in the context of the noticed inconsistencies and contradictions in those records in relation to the testimony those witnesses gave at the trial, which discrepancies were not considered by the Trial Panel in the reasoning of the first-instance judgment, which is why the Appellate Panel quashed it and held a retrial. Also, the Prosecutor noted the necessity of evaluating the evidence the Prosecutor presented regarding the challenging of witness Rodoljub Đukanović’s credibility.

9. The Prosecutor went on to say he fully adhered to his closing argument presented before the Trial Panel, and that he would not delve into the details of essential elements of the criminal offense of Crimes against Humanity, which, according to the Prosecutor, have been proven beyond a doubt through the evidence adduced. However, he stressed that the existence of a widespread and systematic attack in the territory of the Bratunac

municipality follows from the testimony of a number of witnesses, documentary evidence and the accepted established facts, but the Trial Panel drew an erroneous conclusion that the actions taken by the accused Savo Babić did not constitute part of the widespread and systematic attack that existed in Bratunac in May 1992, without providing valid reasons to back such conclusion. As the Prosecution noted, witnesses S-1, S-2, S-4, S-5, S-6, S-9, S-12, S-18, Mirsad Karić, Kemal Hodžić and Jovan Nikolić testified about the attack on the Muslim civilian population of the Bratunac municipality. In Prosecutor's opinion, the accused Savo Babić, as the first Bratunac military police commander, from the formation of the unit in the second half of April 1992 to its resignation in mid-May 1992, had reason to know about the attacks on the villages of Glogovo, Suha and Mihaljevići, the arrests of Muslim population, their killing, capturing and taking to the stadium, and then the separation of men from women and children and their incarceration in the *Vuk Karadžić* school in Bratunac, where they were kept under inhumane conditions, tortured and killed, as well as the knowledge that those actions represent part of a wider context and plan.

10. The prosecutor particularly addressed the testimony of witness S-15, who had said during the investigation he had seen the accused Savo Babić at the stadium, whereas at the trial he confirmed the accused's presence with Goran Zekić's father at the *Vuk Karadžić* school gym. Witnesses S-27, Mustafa Delić and Mirsad Karić confirmed the accused's presence in the school gym with Goran Zekić's father, when he threatened the detainees and demanded they admit who had killed his son. Also, all the foregoing witnesses confirm, as the Prosecutor noted in his closing argument, that the accused was present in the school gym even before the departure of the captured men for exchange, so when their testimony is brought in connection with the testimony of Marko Deurić, military policeman who was one of the military policemen escorting the captured men who were marched away for exchange, one may conclude that the accused, in a way, organized and supervised the transport of the captured men. Besides, as the Prosecutor noted in his closing argument, it was in his presence that the separation of a number of captured men was carried out, who were then kept in the gym to be killed.

11. According to the prosecutor, as commander of the military police which at the time had 25 to 30 members, the accused was providing security at the *Vuk Karadžić* elementary school in Bratunac, where more than 400 non-Serb civilian men were detained, having been systematically abducted from villages in the territory of the Bratunac municipality by members of the Serb armed forces, including the Bratunac Territorial

Defense. The prosecutor went on to say that it follows from the testimony of witnesses S-24, Mirna Nedeljković and Marko Deurić that the accused, as the military police commander, assigned its men to provide security at the elementary school, in shifts. According to the prosecutor, the accused had the obligation to improve the conditions at the elementary school, but failed to do so. The prosecutor also said it was established beyond a doubt that between 60 and 120 men had been killed in the gym, and that the accused should not have allowed that the detainees be taken off the truck and then killed, in which way he basically acquiesced to take part in their liquidation; in other words his actions was a prerequisite for the liquidation.

12. Witnesses S-15, S-1, S-2, S-4, S-5, S-6, S-12, S-18, as well as witness S-27, who saw the accused in the hallway the last evening, testified about the conditions in the gym, the inhumane conditions and physical abuse, as noted by the Prosecutor in his closing argument. It clearly ensues from the testimony of witness S-24 that the accused deployed members of the military police to guard the entrance door to the school, that the guards made lists according to which the detainees were beaten, and would enter the gym itself, which was, as the Prosecutor pointed out, *inter alia* also corroborated by witnesses S-2, S-4 and S-5. Also, the Prosecutor addressed the written order which the accused, according to witness S-24, had placed at the door of the gym, which prohibited entrance to any member of paramilitary formations. According to the prosecutor, the order represented an insufficient attempt to avoid personal responsibility for the killings that had taken place in the gym. The prosecutor also addressed witness S-24's statement in great detail, arguing that, if the statement is brought in connection with Marko Deurić's statement, the only conclusion is that the accused could have received the order to secure the gym only from the Crisis Staff. His frequent presence at Crisis Staff meetings was confirmed by witness Mirna Nedeljković.

13. The prosecutor also referred to the statements of witnesses Mirna Nedeljković, Milan Nešković, Dušan Mičić, Zoran Milosavljević, Dane Lončarević, Branislav Milošević, noting that those were witnesses, military policemen, who at the trial departed from their investigative statements, the Prosecutor argues, exactly with the intention to portray a different nature of their own participation in the incriminating events, but also to give evidence in favor of the accused by changing their previous statements and alleviate his position. That is why the Prosecutor pointed to the necessity of taking into account the statements these witnesses had given during the investigation.

14. Finally, the Prosecutor finds proven that the accused Savo Babić was military police commander during the period covered by the indictment, that he performed duties of providing camp security and management, that he knew about the events within the compound, and that as a superior officer he had command responsibility but failed to take actions that he could have and should have taken in order to protect the captured persons. That is why the prosecutor finally proposed that the accused be found guilty and punished by the law.

**B. CLOSING ARGUMENT BY DEFENSE COUNSEL FOR THE ACCUSED SAVO BABIĆ, ATTORNEY**  
**PETKO PAVLOVIĆ**

15. Defense counsel for the accused Savo Babić, attorney Petko Pavlović, said in his closing argument before the Appellate Panel that he fully adhered to his closing argument presented in the first-instance proceedings.

16. He added there were no contradictions in the statements of witnesses that might have effect on the established state of facts, regarding the elements of the criminal offense as well as Savo Babić's role in and responsibility for the events covered by the indictment.

17. Defense counsel noted that numerous witnesses, not only for the Defense but also for the Prosecution, spoke about the role and activities of paramilitary formations which had arrived in Bratunac, the accused Savo Babić's attempts to stand up to them, and about the accused Babić and his family who themselves fell victim to those same paramilitary formations.

18. Defense counsel briefly addressed the statements of multiple witnesses for the Prosecution, and particularly, with regard to the statement given by witness S-24 and Mirna Nedeljković, noted that they had not spent a single day in the military police that were still being in the process of establishment, but at the training in the Medical center.

19. Also, regarding the credibility of witness Rodoljub Đukanović, defense counsel said that the Prosecution challenges his credibility on the grounds of High Representative's Decision dated 2004, which in defense counsel's view is irrelevant to the events that occurred in April and May 1992.

20. Defense counsel ultimately noted that based on a conscientious evaluation of the adduced evidence, there is but one conclusion and decision that can be made, which is to

acquit the accused of all charges, pursuant to the principle of *in dubio pro reo*.

21. The accused fully concurred with the presentation of his defense counsel.

#### **IV. PROCEDURAL DECISIONS**

##### **1. Decision on witness protection measures**

22. The Appellate Panel upheld and kept in force all protective measures originally granted to the witnesses in this case during the investigation and the first-instance proceedings.

23. In reproducing the testimony of witnesses S-15 and S-24, the Panel was mindful to also apply the measures they had been granted in the earlier stages of the proceedings, and under which they testified at the trial during the first-instance proceedings, while, regarding the other witnesses under protective measures whose testimony was not reproduced at the trial before the Appellate Panel, the Court was mindful of protecting their identity, all in line with the protective measures they have been granted.

##### **2. Decision to exclude the public**

24. The Appellate Panel partly excluded the public from part of the trial held before the Panel on 9 December 2014, during the reproduction of witness Branislav Milošević's statement, bearing in mind that the public was excluded during the examination of this witness at the trial before the Trial Panel, since there was no other way to make sure that the names of some of the witnesses who have been granted certain protective measures are not revealed. The public was included back on right after the Prosecutor finished asking a set of questions in response to which the witness could have stated or had to state a confidential piece of information.

##### **3. Lapse of 30-day time-frame between two consecutive hearings before the Panel of the Appellate Division**

25. Article 251(2) of the CPC BiH reads as follows: „*The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days but with consent of the parties and the defence attorney,*



*the Panel may decide that in such a case the witnesses and experts shall not be examined again and that the new crime scene investigation shall not be conducted but the minutes of the crime scene investigation and testimony of the witnesses and experts given at the prior main trial shall be used.”*

26. Article 317(1) of the CPC BiH stipulates that those provisions that apply to the main trial in the first instance proceeding shall apply accordingly also to a hearing before the Panel of the Appellate Division, which relates to the cited statutory provision.

27. In the proceeding conducted before the Appellate Panel in this case, there was a time lapse longer than 30 days between the hearings held on 15 January 2015 and 19 February 2015, because for objective reasons it was not possible to hold a hearing on 22 January 2015, as originally planned. However, with the consent of the parties and defense counsel, the trial before the Panel of the Appellate Division continued without re-adducing the evidence that had already been adduced at the trial before this Panel.

## **V. APPLICABLE LAW**

28. The criminal offense of Crimes against Humanity, which the confirmed indictment charged the accused Savo Babić with, is codified in Article 172 of the CC BiH, while that criminal offense was not codified in the Criminal Code of the Socialist Federative Republic of Yugoslavia, which was adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the Socialist Federative Republic of Yugoslavia (hereinafter: the adopted CC SFRY), which was in force at the time when the given criminal offense was committed.

29. The principle of legality set forth in Article 3 of the CC BiH provides that criminal offences and criminal sanctions shall be prescribed only by law, so that no punishment or any other criminal sanctions may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which no punishment has been prescribed by law. Article 4 of the same Code provides that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence, and if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall apply.

30. Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) also provides for the principle of legality. The Convention, pursuant to Article 2(2) of the BiH Constitution, shall have priority over all other law. Article 7(2) of the ECHR stipulates that “this Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.” The foregoing principle is, in an almost identical manner, included in Article 15(2) of the International Covenant on Civil and Political Rights (hereinafter: the ICCPR). Both these international legal acts have been ratified by our country, as a legal successor of the former SFRY, which means these provisions have a mandatory character.

31. The referenced Article 7(2) of the ECHR has been incorporated through Article 4.a) of the CC BiH, according to which, apart from the prohibitions listed in Articles 3 and 4 of the CC BiH, those provisions 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.

32. As a SFRY successor, during the critical period Bosnia and Herzegovina was a signatory to all relevant international human rights conventions and international humanitarian law. Viewed from that aspect, and mindful of the provisions set forth in national legislation, specifically Articles 3, 4 and 4a) of the CPC BiH, as well as the principles of customary international law, international law of treaties, and the principles of international law, there is no doubt that crimes against humanity constituted a criminal offense also during the critical period, although the applicable law did not prescribe them as a criminal offense as such.

33. This position is supported by the position taken by the ECtHR in the judgment issued in response to applicant Boban Šimšić’s application, where the ECtHR said:

*“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.”*

34. In this Panel’s opinion, the foregoing reasons render indisputable the legal qualification of the criminal offense as presented in the Indictment.

## **VI. STANDARDS OF PROOF**

35. In delivering the judgment, the Panel had the obligation to act in conformity with Article 281(2) of the CPC BiH, and in line with that provision make a conscientious assessment of all adduced evidence, individually as well as by bringing various pieces of evidence into correlation. In so doing, the Panel had the obligation to be guided by the fundamental principles proscribed by both the CPC BiH and the ECHR which, pursuant to Article II.2 of the BiH Constitution, has priority over all other domestic law. In that regard, the Panel was mindful of Article 10 of the CPC BiH, which provides that *the Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code.*

36. One of the fundamental principles of criminal procedure, the principle of legality, which this Panel was guided by in the procedure of delivering its judgment, aims to ensure that no innocent person is ever convicted, and that the perpetrator of a criminal offense

should receive punishment or some other sanction under criminal law within the bounds prescribed by the criminal law.

37. The Panel was mindful of the presumption of innocence provided by Article 3 of the CPC BiH, which stipulates that a person is considered innocent of a crime until guilt has been established by a final verdict, and of the principle of *in dubio pro reo* as set forth in Paragraph 2 of the same Article, which stipulates that *a doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation shall be decided by the Court with a verdict and in a manner that is the most favorable for accused.*

38. During the evidence evaluation procedure, the Panel was further guided by the principle of free evaluation of evidence laid down in Article 15 of the CPC BiH, which stipulates that the evaluation of existence or non-existence of decisive facts is not related or limited to special formal evidentiary rules, but the court may, under Article 281(1) of the CPC BiH, base its judgments only on the evidence adduced at the trial. In so doing, the Court has the obligation to evaluate all adduced evidence in the manner defined by Article 281(2) of the CPC BiH, which means a conscientious evaluation of evidence, individually and in combination.

39. In accordance with the foregoing principles, the Panel has considered and evaluated all adduced evidence, but in its judgment it will comment on only those pieces that are relevant to making a conclusion on decisive facts, and will elaborate on and present conclusions on those facts that are of importance for the judgment.

## **VII. FINDINGS OF FACT**

### **A. GENERAL CONSIDERATIONS**

40. The confirmed Indictment alleged that the accused Savo Babić committed some of the acts, specifically those described under Counts a, b and c of the Indictment, under the principle of individual responsibility, while for the other acts – described under Counts d) and e) of the Indictment, the accused is charged under the principle of command responsibility.

41. Following a conscientious evaluation of all adduced evidence, individually and in

combination, both the evidence reproduced at the trial before the Appellate Panel and all other evidence admitted during the first-instance proceedings, the Appellate Panel did not find proven that the accused Savo Babić committed the crimes he has been charged with under the confirmed Indictment of 18 July 2012.

42. In arriving at this conclusion, the Panel was primarily mindful of the Prosecutor's obligation in this case to prove, apart from proving the essential elements of the criminal offense of Crimes against Humanity and the fact that the events described in the Indictment indeed happened, that the accused took part in those events, or more specifically that he had control over the conditions at the school and the detainees' lives, over the guards patrolling around the school, as well as that he personally took part in the acts of unlawful detention, which, in the opinion of this Panel, it did not prove beyond any doubt.

43. When it comes to the general elements of the criminal offense of **Crimes against Humanity**, as set forth in Article 172 of the CC BiH, it is necessary to prove the following:

- a) the existence of a widespread and systematic attack,
- b) that the criminal offense was committed as a part of that attack,
- c) that the attack was directed against any civilian population,
- d) that the accused had knowledge of such an attack.

44. **Mens rea** of the accused, which is established in case of crimes against humanity:

**Intent:**

- the accused must have had the intent to commit the underlying offence or offences with which he is charged<sup>3</sup>
- the accused need not share the purpose or goal behind the attack<sup>4</sup>
- it is also irrelevant whether the accused intended his acts to be directed against the targeted population or merely against his victim.<sup>5</sup>

**Knowledge:**

The perpetrator must knowingly participate in the widespread or systematic attack, and must be aware of the nexus between his act and that context<sup>6</sup>.

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<sup>3</sup> Vasiljević, Trial Panel, 29 November 2002, Paragraph 37.

<sup>4</sup> Kunarac, Kovač, Vuković, Appellate Panel, 12 June 2002, Paragraph 103.

<sup>5</sup> Kunarac, Kovač, Vuković, *ibid*, Paragraph 103.

<sup>6</sup> *Ibid*, Paragraph 102, Tadić, Appellate Panel, 15 July 1999.

45. Based on the mutually consistent testimonies of the examined witnesses, and the accepted established facts from the ICTY Judgment *The Prosecutor v. Momčilo Krajišnik*, and the adduced documentary evidence, the Panel did not find proven beyond any doubt that in the territory of the Bratunac municipality, during the critical period, there existed a widespread and systematic attack against the Bosniak civilian population and municipalities, and that within that attack or in connection therewith, unlawful detention of Bosniak civilian men took place, after they were previously separated from their family members at the Bratunac stadium, at the *Vuk Karadžić* school premises, or were directly brought there. Witnesses Vahid Salkić<sup>7</sup>, S27<sup>8</sup>, Mirsad Karić<sup>9</sup>, Kemal Hodžić<sup>10</sup>, S2<sup>11</sup>, S5<sup>12</sup>, S18<sup>13</sup>, S12<sup>14</sup>, S13<sup>15</sup>, S9<sup>16</sup>, S4<sup>17</sup>, S7<sup>18</sup>, S15<sup>19</sup> and S10<sup>20</sup> consistently testified that the attack began on 10 May 1992, first on the villages of Hranča and Glogova, Bratunac-Suha municipalities. Therefore, the attack included a broader territory of the Bratunac municipality, which indicates its magnitude. The fact that the attack was systematic ensues from a unique pattern under which it took place, according to the evidence adduced. The witnesses are consistent in testifying that on 10 May 1992 they were called to surrender their arms and sign a statement of loyalty to the Serb authorities, while, according to their testimony, already before that barricades had been set up in the territory of the Bratunac municipality, the Novi Sad JNA Corps was deployed around the town in April, the MUP split into the Serb and Muslim parts, Muslim workers were left without their jobs, all of which culminated on 10 May 1992 when the Bosniak population was rounded up at the Bratunac stadium, where the able-bodied men were separated from women and children, and detained at the OŠ *Vuk Karadžić*, while women and children were taken to the territory under the A RBiH control. It is exactly such a pattern of attack, applied in all villages of the Bratunac municipality, that indicates the systematic nature of the conducted attack.

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<sup>7</sup> Witness Vahid Salkić testified at the hearing held on 11 February 2013.

<sup>8</sup> Witness S-27 testified at the hearing held on 18 February 2013.

<sup>9</sup> Witness Mirsad Karić testified at the hearing held on 20 May 2013.

<sup>10</sup> Witness Kemal Hodžić testified at the hearing held on 27 May 2013.

<sup>11</sup> Protected witness S-2 testified on 3 June 2013.

<sup>12</sup> Protected witness S-5 testified on 1 July 2013.

<sup>13</sup> Protected witness S-18 testified on 30 September 2013.

<sup>14</sup> Protected witness S-12 testified on 21 October 2013.

<sup>15</sup> Protected witness S-13 testified on 21 October 2013.

<sup>16</sup> Protected witness S-9 testified on 22 October 2013.

<sup>17</sup> Protected witness S-4 testified on 22 October 2013.

<sup>18</sup> Protected witness S-7 testified on 22 October 2013.

<sup>19</sup> Protected witness S-15 testified on 29 October 2013.

<sup>20</sup> Protected witness S-10 testified on 29 October 2013.

46. Further, it follows from the adduced evidence that the attack was targeted against the Bosniak civilians. All witnesses are consistent in stating that civilian population was rounded up at the Bratunac stadium, having been taken from their homes by the army, and that the able-bodied men were separated from women and children, and that all the men, subsequently detained at the OŠ *Vuk Karadžić*, were civilians. This decisive fact has been confirmed by the witnesses-victims as well as by the military police members who have been heard as witnesses at the trial, while the status of those persons was also not contested by the Defense for the accused.

47. When it comes to the events described in the Indictment, it is beyond dispute that the events indeed took place, that men were unlawfully detained at the OŠ *Vuk Karadžić*, that during their stay they were physically and mentally abused in various ways, and that a number of the men who were unlawfully detained there were eventually killed. However, although it is beyond a doubt that the events described in the Indictment indeed took place, the Panel did not find proven that the accused Savo Babić had undertaken the actions he has been charged with by the Indictment, in order to be able to discuss whether those actions were part of a widespread and systematic attack, and whether there was any need to establish if the accused knew of the attack.

#### **B. STATUS OF THE ACCUSED SAVO BABIĆ**

48. The Indictment charged the accused Savo Babić that he committed the actions described in the Indictment, which he is charged with under both individual and command responsibility, as the Bratunac military police commander. According to the Indictment, the accused performed the duty between 20 April 1992 and second half of May 1992, when he left that position. That fact, or more precisely that capacity of the accused during the relevant period, was confirmed by the testimony of witnesses Marko Deurić, Mirna Nedeljković, Srbislav Davidović, Dane Lončarević, Miloš Mitrović, witness S-24, which also ensues from the Report on Military Police Operations from the beginning of war until 4 March 1993<sup>21</sup>, which the accused himself did not deny.

49. It follows from the foregoing Report (Exhibit T-142) that *“on 20 April 1992 activities were launched to form the military police in order to provide security to certain facilities and protect citizens and their property. Savo Babić was appointed military police commander,*

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<sup>21</sup> Exhibit T-142.

*and Marko Deurić his deputy,” while the other part of the Report states that “in the second half of May Savo Babić discontinued his engagement at the Military Police.”*

50. However, besides the fact that the status of the accused as the military police commander has been proven, the Panel did not find proven any other allegation presented in the Indictment, concerning his role in the critical events.

51. The Panel did not find proven Prosecutor’s claim that the accused was a member of the Bratunac Crisis Staff, nor that he attended Crisis Staff meetings which discussed the plan of transfer of the non-Serb population from the Bratunac municipality, but that he even, as confirmed by some of the witnesses heard, exactly because of the events in Bratunac, related to the activities of the so-called “volunteers”<sup>22</sup>, came in conflict with the Crisis Staff members, primarily President Miroslav Deronjić. Besides, none of the witnesses heard confirmed that the accused was a member.... Regarding the claim that the accused was not a member of the political party at issue during the critical period, the Defense presented as evidence the Certificate<sup>23</sup> showing that the accused became a member of the ... Bratunac no sooner than in 1995.

52. The Panel finds these circumstances significant because, based on the adduced evidence, which will be further elaborated on below, the role of the Crisis Staff during the incriminated period has been determined beyond a doubt, so it was found that the Bratunac Crisis Staff collaborated with paramilitary formations and was thus involved in their actions in the territory of Bratunac, and that the Crisis Staff President Miroslav Deronjić and the influential Crisis Staff member Momir Nikolić were directly issuing certain instructions and orders to individual military police officers under Savo Babić’s command, which related to the activities towards the captured Bosniak men, which they carried out, without the accused’s knowledge.

53. The Panel found proven beyond a doubt that during the relevant period the accused indeed was commander of the recently formed military police, but, as it ensues from the witness statements and the adduced evidence, it did not find proven any connection

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<sup>22</sup> All the examined witnesses concur that in April 1992 certain units arrived in Bratunac, which some refer to as paramilitary, while other witnesses use the terms of „volunteers“, „Arkan’s men“, „Vukovarians“, „White Eagles“ etc., but as the term „volunteers“ was most often used by the witnesses this Panel too will use it in its further reasoning of the Judgment.

<sup>23</sup> Certificate No. 01-011/13 of 6 November 2013.



between the accused and the Bratunac Crisis Staff, especially his involvement in the incriminations he has been charged with, which will be analyzed in more detail below.

**C. REASONS FOR RENDERING AN ACQUITTAL UNDER THOSE COUNTS OF THE INDICTMENT**  
**UNDER WHICH THE ACCUSED SAVO BABIĆ WAS CHARGED UNDER INDIVIDUAL**  
**RESPONSIBILITY PRINCIPLE**

**1. Section a) of the Operative Part of Judgment**

54. Concerning the actions described under Count a) of the Indictment, the accused Savo Babić was charged that he:

“ a. ... was present when more than 400 non-Serb civilian men were separated from members of their families at the Bratunac stadium, after which they were taken to the *Vuk Karadžić* school on 10 May 1992, and that he participated in their unlawful arrest as well as others who were brought to the camp on or about 9 May 1992 in the manner that he, as commander of the detention camp set up at the *Vuk Karadžić* school in Bratunac, contributed to their detention, knowing that they were unlawfully detained in the gym of the *Vuk Karadžić* school in Bratunac, under duress and/or threat, without being informed about the actions they have been charged with, and without any trial, judgment or criminal sanction by a relevant and legitimate court.”

55. Therefore, this Count of the Indictment charges the accused with the unlawful arrest of more than 400 non-Serb civilian men who were brought to the OŠ *Vuk Karadžić* in Bratunac, that he was commander of the detention camp at the *Vuk Karadžić* school in Bratunac, and that it was in that capacity that he contributed to the detention of those civilians with full awareness of the unlawfulness of such detention.

56. However, in this Panel's opinion such a state of facts was not verified by a single witness, and no such finding ensues from the other adduced evidence.

57. Numerous witnesses testified about the round-up of civilian population from the Bratunac municipality at the Bratunac stadium on 10 May 1992, of which evidence was given by witnesses Šaban Džananović, Rodoljub Đukanović, witnesses S-27, S-1, S-2, S-5, S-15, S-13 and Mustafa Delić. It follows from their statements that on the day at issue they saw a multitude of unidentified soldiers at the stadium; some even mentioned a

certain number of their Serb neighbors whom they saw and recognized, but did not confirm they also saw the accused Savo Babić there.

58. Witness Šaban Džananović testifies that the military took them to the stadium, and that there was a lot of Bosniak civilians there, *“the entire Suha, Mihaljevići, Cerovac, Burnice, all those villages, there must have been some 4-5 thousand people there”*<sup>24</sup>. Witness says the army guarded them and, as he put it: *“Those were mostly military men, there was a lot of civilians too, those that imported the Arkan men, who came from Serbia”*<sup>25</sup>, while in response to the question whether he saw anyone he knew, some residents of Bratunac perhaps, he said he had seen *“the late Deronjić.”*

59. Witness Rodoljub Đukanović said he had personally seen when the Bosniaks were brought to the stadium, and that together with Deronjić he went to see what was going on. At the stadium, he found paramilitary units who stood with their weapons “at the ready,” towards the people wearing civilian clothing, while, as he put it, he did not see Savo Babić there.

60. Witness S-27, who knew the accused, and would have undoubtedly recognized him if he had seen him at the stadium, said there was a lot of military wearing SMB uniforms at the stadium, but that he did not recognize anyone.

61. Witnesses S-1 and S-5 also do not mention that they saw the accused at the stadium, nor that they had seen him in the villages during arrest. They also mentioned some known faces, for example witness S-1 says he recognized Dragan Stević and a person nicknamed “Bube” on the bus that brought him to the stadium, and that there were men wearing masks at the stadium, whom they assumed were locals, while witnesses S-2 and S-5, although confirming the presence of some people they knew from Bratunac during the arrest, including Dragan Crnogorac, Jovan Novaković, the Trišić brothers and some other of their Serb neighbors, do not mention Savo Babić as being there on the occasion. Witness S-2, who was not at the stadium, but was directly taken to the OŠ *Vuk Karadžić*, says it was Krsmanović who brought him at the police station, and that he briefly talked to the accused Babić, after which he was taken to the municipal building, from which Ilija Nikolić took him to the school, specifically to the school gym, where he was unlawfully detained, with which the accused Babić had no connection.

62. Witnesses S-13 and Mustafa Delić are specific in their statements when they say they did not see the accused Savo Babić at the stadium on the critical day, nor that he in any way whatsoever participated in their arrest.

63. Finally, in his trial testimony, and in conformity with all other witnesses, witness S15 said he had seen military wearing SNB uniforms at the stadium in Bratunac, which is where he saw and recognized some residents of Bratunac, including Miroslav Deronjić, Milenko Jovanović, Drago Jovanović, Bučalina and some others, but remains resolute in claiming he had seen the accused Savo Babić only on his second day at the school. At this point, the witness explained his investigative statement, in which it was said that the witness had stated he had seen Savo Babić at the stadium together with Miroslav Deronjić, Dragan Trišić and Dragan Jovanović, yet he fully denied having made such a claim, maintaining he had seen Savo Babić no sooner than on his second day at the school.

64. While evaluating the evidence given by the witnesses examined about the circumstances relevant to this Count of the Indictment, who were present at the stadium on the critical day, witnesses-victims as well as Rodoljub Đukanović, who, as he himself put it, arrived at the stadium together with Miroslav Deronjić, President of the Bratunac Crisis Staff, to see what was going on there, the Panel did not find proven the accused's presence at the Bratunac stadium. Also, none of the foregoing witnesses-victims, who were taken from the stadium to the *Vuk Karadžić* school in Bratunac, mentions the accused Savo Babić's presence or any role in taking the men to the gym, but mostly stressed that unidentified soldiers had taken them to the gym. Equally, it also does not ensue from the statement of witnesses who were brought from some other places and unlawfully detained at the OŠ "*Vuk Karadžić*" gym in Bratunac (e.g. witness S-2) that the accused Savo Babić was in any way whatsoever connected to their unlawful arrest and detention.

65. This is why the Panel did not find proven that the accused Savo Babić committed the acts described in Count a) of the Indictment, and consequently acquitted him of the charges concerning those acts.

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<sup>24</sup> Transcript of the hearing held on 4 March 2013, p. 8.

<sup>25</sup> Ibid.

## **2. Section b) of the Operative Part of the Judgment**

66. Under Count b) of the Indictment, which corresponds to Section b) of the Operative Part of the Judgment, the accused Savo Babić was charged that he:

“... participated in further deprivation of liberty of 400 non-Serb detainees in the manner that he gave instructions to the guards that in the late evening hours on 13 or 14 May 1992 the remaining detainees be transferred from the *Vuk Karadžić* school to Pale, after which the 400 detainees were ordered to board trucks, after which they were taken to Pale where they were held until their “exchange” in Visoko on 16 May 1992, which is when he assigned several members of the military police to be in the escort of the detainees.”

67. Regarding the circumstances described under this Count of the Indictment, the Prosecution heard witnesses-victims who survived the detention at the school, and were then taken for exchange, namely witnesses S-15, S-12, S-18, S-10, S-2, S-5 and S-6, Kemal Hodžić and Mustafa Delić, but also military police member Marko Deurić; Defense witness Miodrag Josipović also testified about these circumstances, and the accused himself referred to the critical event in his closing argument.

68. Witnesses-victims S-15, S-12, S-18, S-10 and S-6 were consistent in their testimony that the person who in the late evening hours on 13 or 14 May 1992 told them they were supposed to go for exchange in Kladanj was none other than the accused Savo Babić. The accused himself never denied that fact either, so in his closing argument he said he indeed was the one who told the detainees at the school they were going to be exchanged.

69. Witness S-18 said in his testimony that: *“Savo came in and told us he would leave us in Kladanj, where he will take Serbs to get them back to Bratunac. Those were his words. There was a Macedonian with him, at least he introduced himself as Macedonian, but I do not know whether or not he was indeed a Macedonian.”*<sup>26</sup>

70. Witness S-15 also said in his testimony that he saw Savo for the second time during his stay in the *Vuk Karadžić* school when he came by to say there would be a swap for Kladanj. As the witness said, Savo did not enter the gym on the occasion but remained on

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<sup>26</sup> Transcript of the hearing held on 30 September 2013, p. 15.

the doorstep, and the witness recognized him by his voice, although he was not able to see him, for it was already getting dark. In his testimony, the witness described the torture the captured Bosniak men had to endure during their stay in the school, but, as he said, after Savo told them there would be an exchange there was no more torture.

71. Witness S-10 said in his testimony given at the trial that he knew “Mr. Babić” from Bratunac, and that he saw him in the night when he told them they would be exchanged. As the witness said, he came to the gym and told them they would be exchanged, that the trucks had arrived, and that they should go out in groups of ten and board the trucks, which was indeed done. The witness says some of those who had been beaten remained in the gym, and previously in his statement he said those who beat them the most were persons also known as Bane and Macedonian. The witness did not know whether the accused held any list, and is specific that the accused came to the gym alone.

72. Witness S-6 also said in his testimony that in the night of exchange the accused Savo Babić showed up rather briefly, and told them “*they were to go and meet their families.*”<sup>27</sup>

73. Witness Kemal Hodžić described his meeting with Savo Babić before the exchange in a similar manner, saying he came in that night and told them they were to go for the exchange. As the witness said:

“He was, I cannot remember with whom, there he says Savo has arrived, let’s proceed with this swap he says, don’t worry, just get in. You’re gonna go to your families, on a truck; that was the rumor going around, but you cannot know, when there was fear in all of us, and you cannot tell ...”<sup>28</sup>

When asked whether he knew in which capacity Savo Babić addressed them at the time, the witness said:

“I will just say he did not point his finger to anyone to say this and that. That’s all I can say. He may have arrived as a neighbor, to see...”<sup>29</sup>

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<sup>27</sup> Transcript of the hearing held on 9 September 2013.

<sup>28</sup> Transcript of the hearing held on 27 May 2013, p. 18.

<sup>29</sup> Ibid.

74. Witness S-2 also confirms the presence of the accused Babić during their boarding the truck in order to, as he put it, go for a swap. Still, describing the very manner in which the truck boarding took place, he said:

“Someone else entered the gym and told us to form groups. Whoever had any close person, a brother or relative, or any close family member, should stand together. And some really did get together. My brother was there, but I did not dare get together with him, for I knew they would kill one of us right away. So we went out to board the trucks, and the Macedonian was there at the door, holding a list in his hand. He must have been told whom to pick...”<sup>30</sup>

The witness also said that Savo Babić did not tell anyone that he could not go for a swap, and reiterated that it was the Macedonian who had the list<sup>31</sup>.

75. Witness Mustafa Delić is also one of the victims who survived detention at the school and was eventually exchanged, and who in his testimony confirmed the accused’s presence in front of the school, by the truck, while they, the captured Bosniaks, were getting out of the school in groups of dozen men, boarding the trucks to go for exchange. The witness said he noticed Savo Babić, whom he knew from before the war, who was standing nearby, some 10 meters from the entrance, with another person. As the witness put it, “*he like had some books on him... perhaps two or three booklets, or notebooks, something like that...*”<sup>32</sup>. The witness went on to say that while they were boarding the truck, some 20 or so captured Bosniaks remained in a corner of the gym, including Hajro Džafić, who had originally boarded the truck, but at the order of the person who was standing next to Savo Babić he was taken off the truck and returned to the gym. Explaining how it came about that the 20 or so men did not board the trucks, the witness said that someone, even before some 400 of them boarded the trucks, entered the gym and told them not to leave, to stay there, but it does not follow from his testimony that the person he thus described was the accused Babić, just as it does not follow that the accused was the person who took Hajro Džafić, or any other prisoner for that matter, off the convoy. The mere fact that the accused held those, as the witness described them “*booklets...notebooks*”, which the Prosecutor implies were lists of prisoners, even if it was determined beyond a doubt that it indeed was such a list, the Prosecution did not prove at

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<sup>30</sup> Transcript of the hearing held on 3 June 2013, p. 27.

<sup>31</sup> Ibid. p. 52.

<sup>32</sup> Transcript of the hearing held on 25 February 2013, p. 30.

all that the list was made by none other than the accused, or that he had anything to do with making the list, after which the issue of his responsibility would then be addressed with regard to the fact as to which persons would leave for the swap or not.

76. Taking into consideration the testimony of those witnesses, individually and in mutual correlation, the Panel has concluded that such testimony does not uphold the Prosecution case. On the contrary, in the opinion of this Panel, the mere fact that the accused Savo Babić told the captured Bosniaks they would go for exchange, and that he was present at the scene where the captured men boarded the trucks, contrary to Prosecutor's claim, does not prove that such an action on the part of the accused satisfies the elements of the criminal offense he has been charged with.

77. Also, in this Panel's opinion, it does not follow from the adduced evidence that the accused Savo Babić gave instructions to the guards in relation to the boarding of some 400 detainees on the trucks, but, as it ensues from the previously analyzed testimony, his actions boil down to merely telling the victims they were to be exchanged. It does not follow from such a finding, contrary to Prosecutor's arguments, that the accused was in charge of providing security merely because military policemen took part in the escort of the detainees.

78. The accused does not deny that Miroslav Deronjić had told him to tell the people they would be exchanged, for people trusted him, which is why he agreed to do so. This was confirmed by witness Marko Deurić, military policeman, who was part of the convoy's escort. In his testimony the witness says that Deronjić or Nikolić had said that men should be transported, and that he received the escort order directly from Momir Nikolić, which completely exculpates the accused concerning this set of charges, especially because this witness too confirms "*that the commander (the accused) had been avoiding that,*" explaining that the accused Savo Babić may have arrived there on his own initiative to calm down the situation, and told the men in the gym they would be exchanged, which they accepted with approval.

79. Bearing in mind the foregoing, the Panel did not find that it was proven beyond a doubt that the accused committed the acts he was charged with under Count b) of the Indictment, which is why it acquitted him of the charges under this count of the Indictment.

### **3. Section c. of the Operative Part of Judgment**

80. Under Count c) of the Indictment, which corresponds to Section c) of the Operative Part of Judgment, the accused Savo Babić is charged that:

“c. Savo Babić took part in the persecution of non-Serb civilians detained in the *Vuk Karadžić* school between or about 9 May and 14 May 1992, who were during the period of detention at the *Vuk Karadžić* camp subjected to various forms of physical and mental violence, while Savo Babić had the power and obligation to improve the brutal and degrading conditions in the camp, but failed to do so, a result of which was the creation of an atmosphere of terror in which the detainees were held in unhygienic conditions and confined space, and were cramped into the school gym size 15 x 9.60 m, without basic conditions to satisfy their elementary needs, such as food, potable water, medicines and medical assistance, access to bathroom, so they had to sleep on the floor without any mattresses, and were daily subjected to systematic interrogation, beating, torture, abuse and degrading treatment and mental abuse, living in a constant fear for their lives, while numerous detainees were killed or died because of their national, religious and/or ethnic background as a result of such conditions, which were inhumane and degrading.

i. Detainees subjected to the foregoing conditions among others include the following persons: Šaban Avdić, Mustafa Delić, Šaban Džananović, Nijaz Hodžić, Kemal Hodžić, Fadil Karahasanović, Mirsad Karić, Vahid Salkić, S-1, S-2, S-3, S-4, S-5, S-6, S-7, S-8, S-9, S-10, S-11, S-12, S-13, S-14, S-15, S-16, S-17, S-18, S-19, S-20, S-21, S-22, S-23 and S-25.

ii. During the day or in the night of 10/11 May 1992, the confined space and the conditions in which there was insufficient air resulted in the overnight suffocation of nine prisoners due to lack of space and air, including Nusret (father's name Ismet) Avdić, Husnija (Huso) Hadžibulić, Dževad (Muhamed) Husić, Omer (Šećo) Muhić, Hazim (Hašim) Muratović, Hajrudin (Hamid) Osmanović and Osman (Meho) Salkić after military policeman Rajko Vasić or some other soldier insisted that several hundred detainees remain behind the line drawn on the floor. These victims' remains have been identified in a mass grave unearthed in the territory of Blječeva, municipality of Bratunac.

iii. The detainees did not receive any medical assistance after they were injured in the gym, including witness S-13 whose arm was broken by Milan Trišić



after he was beaten up in the gym; S-6 who was hit by a stray bullet in the region of his temple after a soldier fired from his rifle around the gym; S-14 was beaten up and cut by knife across his forehead, leaving him with lasting scars, while Fadil Karahasanović's skull was broken in two places."

81. When it comes to the actions described under Count c) of the Indictment, the Appellate Panel finds it was not proven that the accused took part in the persecution of non-Serb civilians detained in the *Vuk Karadžić* school gym, who were subjected to various forms of physical and mental violence, in the way that he had the authority and obligation to try and improve the conditions in the camp, but failed to do so. Concerning the conditions at the *Vuk Karadžić* school gym, the Prosecution has heard a number of witnesses, whose statements confirm beyond a doubt that those conditions at the school, as described in the Indictment, were brutal and degrading, that all the victims whose names or pseudonyms (when it comes to witnesses with protective measures) are mentioned in this section of the operative part of the judgment were held in unhygienic conditions and cramped space, that they were all packed into the school gym that was too small to accommodate such a large number of people, without the basic conditions and living needs, such as food, potable water, medicines and medical assistance, access to bathroom, that they had to sleep on floors without mattresses, that they were daily subjected to systematic interrogation, beating, torture, abuse and humiliation and mental abuse, due to which they lived in constant fear for their lives, which resulted in the death of a number of prisoners, the reason for such treatment being exclusively their national, religious and/or ethnic background. The evidence provided by the witnesses heard, in the opinion of the panel, confirm beyond a doubt that the events described in sub-sections of this section indeed took place, in the manner described in the Indictment.

82. Regarding the conditions at the school, in this Panel's opinion, particularly poignant was the testimony given by witness Mirsad Karić, who said as follows:

"There were no hygienic conditions. Whenever they would kill someone, when his brain would splatter around, and when, when blood would be spilled, they would make the first one they see, if I am the one, to take off my jacket and wipe it off. What kind of conditions are we talking about when we began to reek of human blood, conditions were non-existent. What about food, there was no food. I think once or twice they brought and dished out something like sandwiches, it was not

enough for half of us. In those, first day, second day, what water, there was no water.”<sup>33</sup>

83. Testifying similarly about the given circumstances are other witnesses who survived their stay in the *Vuk Karadžić* school gym, namely: Vahid Salkić, Mustafa Delić, Šaban Džananović, Kemal Hodžić, and witnesses with protective measures S-27, S-1, S-2, S-5, S-6, S-18, S-12, S-13, S-4, S-7, S-9, S-10 and S-15.

84. Witness S-27 confirmed that first night nine people suffocated in the gym due to the lack of air, after which cook Nikola broke the windows so the situation with air somewhat improved. However, as the witness pointed out, the conditions were extremely poor, they complained about the lack of water, they had precious little food. As the witness said, “*I once caught a sandwich, some soldiers had brought them there.*” The witness also spoke about the beatings, that he knows that some persons (Salko Ramić, Džemo Hodžić, Mustafa Mujkanović, Hajrudin Čomić, Mehmedalija Verlašević) were killed during their stay at the gym, and that he was an eye-witness when Idriz Suljić and Dževad Bajramović were taken outside by one Bane and Makedonac, only to end up killed.

85. Concerning the conditions at the school, witness Šaban Džananović said:

“They would perhaps bring a loaf of bread, one for ten people. Whoever happened to be closest to them at that moment would get some, others would not. They would also not give water at all. You just keep standing there, sometimes you don’t get to make a single move, if you take a chance you sometimes crouch so you can take a breath, but once you do there is no way back up, ten people are bending over you. That is how 8 people suffocated. I could not recognize them at all, they faces had all turned black. One of them was below me like that, I could not recognize his face, I believe it was my neighbor Hajro Osmanović.”<sup>34</sup>

86. Describing the conditions at the school, witness S-5 said:

“Some 500 of us were cramped into half a gym, it was a rather small gym to begin with. Then all of a sudden they began shooting at those who dared stepped across the line, so people were backing up. Everyone was struggling to stay alive. On that 10/11 May, eight men suffocated, they physically did not have room to breathe, fell down under the mass and suffocated.”<sup>35</sup>

87. Witness S-15 too said Arkan’s men beat them up in the gym. When he was first brought to the gym, at the door he met Osman Halilović, whom he barely recognized, for

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<sup>33</sup> Transcript of the hearing held on 20 May 2013, p.22.

<sup>34</sup> Transcript of the hearing held on 4 March 2013, p.17.

<sup>35</sup> Transcript of the hearing held on 1 July 2013, p.17.

his head was all swollen, there was no air in the gym, so some people suffocated, after which they broke windows so fresh air could come in. The witness went on to say that those Arkan men forced them to sing Chetnik songs, that *hodja* Mujanović was there too, but he refused to sign and raise three fingers, so they took him outside and killed him.

88. Apart from the witnesses-victims examined on the given circumstances, who almost identically outlined the conditions in the gym where the detained Bosniak men were held from 9 to 14 May 1992, those same conditions were also described by witness Zoran Milosavljević, who, as he put it, went to the school himself after he heard that people had been detained at the school and that some war veterans came by to mistreat them. Upon entering the gym, he found one of those veterans beating a prisoner with a rod. Describing the conditions in the gym, he said *people were exhausted, it was abnormally hot, they did not have enough air to breathe*. He said they complained about not having enough water, so together with his neighbor with whom he had arrived there he went to get them some water. The witness said he had heard that the detained men had been subjected to all kinds of unpleasant situations, they were forced to sing inappropriate songs, were hurt and so on.

89. Other examined witnesses spoke about the conditions in the school in an almost identical manner. According to all of them, the conditions were undoubtedly inhumane, brutal and degrading, which the Defense for the accused never really challenged, so the Panel thus concludes that the fact has been proven beyond a doubt.

90. However, what in this Panel's opinion the Prosecution failed to prove by the adduced evidence is that the accused is to be blamed for such conditions and for all kinds of abuse and inhumane treatment he was charged with under this count of indictment. In order to prove those decisive facts, the Prosecution was primarily supposed to prove that the accused had the obligation to take care of the conditions of stay of detained persons at the school, from which his obligation to improve those conditions would then ensue, and also that he was in such a position but failed to do so. However, during the trial the Prosecution did not adduce convincing evidence to that end.

91. In this Panel's opinion, the Prosecution above all failed to prove the accused's presence in the *Vuk Karadžić* school gym, save one occasion when, as confirmed by multiple witnesses (S-2, S-5, S-18, S-27, S-15 Šaban Džananović and some others) he showed up at the door of the gym with Goran Zekić's father, as well as in the already

described event when he came to the door of the gym and told the detained men they would be exchanged. All the mentioned witnesses describe the first encounter with the accused at the school gym in the manner that Goran Zekić's father first came to the gym, his son having just been killed, and asked who killed his son, and threatened to kill and beat the prisoners. As the witnesses testify, he said he would bring some "pliers", soaked in water so as to inflict heavy injuries. Although the witnesses confirm that the accused Savo Babić indeed arrived with Goran Zekić's at the gym doorstep, none of the witnesses said that he said or did anything. Witness S-27 testifies:

"I was the only one who recognized Savo Babić when he came at the door and took a look at us from there, lingering on for about a minute or two I think; I did not hear him uttering a single sound. Perhaps someone did hear him, but I did not hear a single word from him..."

92. Although the Panel has credited these witnesses with regard to the fact that on the given occasion the accused arrived with Goran Zekić's father at the gym door, that fact by itself, in this Panel's opinion, and in the absence of other evidence, does not prove that he was responsible for the conditions in the gym, which in this Count the Prosecution refers to as a "camp," not that he had any authority or possibility to prevent the guards' inhumane treatment of the detainees. This is particularly so if one takes into account the evidence given by the victims, which does not confirm the accused's presence in the school gym save for that one occasion when he entered there with Goran Zekić's father. Conversely, all witnesses describe "unidentified soldiers" and persons nicknamed "Bane" and "Makedonac", who were during the proceedings beyond a doubt found to have been members of the units that came to Bratunac in April 1992, who were guards at the school and who, according to witness statements, committed various kinds of abuse, mistreatment and killing while the detained men were held at the school.

93. The only witness whose statement could to a certain extent be deemed incriminating for the accused concerning the conditions in the gym is Witness S-15, who said he had heard that Savo Babić was responsible for the killings at the school. However, such allegations of his, in this Panel's opinion, are not based on any concrete evidence, nor are such allegations corroborated by any of the other witnesses heard. The witness himself does not say he saw the accused at the school, save in those occasions described by the other witnesses (when he arrived there with Goran Zekić's father, and in the night of exchange), nor that he saw the accused beating or killing anyone. Besides, Defense has cast a serious doubt on this witness statement, in the relevant part where he pinpoints the

accused Babić as the person responsible for the misdeeds that took place in the school, by presenting to the witness, during cross-examination, the statements he had given during the investigation<sup>36</sup>, in which he did not incriminate the accused Babić. In an attempt to clarify the discrepancies, the witness remains unconvincing and vague when he says that the information that Savo Babić ordered certain killings was his second-hand knowledge, which he heard much later, providing no plausible explanation why he made such an allegation at the trial, for the first time ever, following multiple previous statements. That is why this arbitrary and unproven allegation made by Witness S-15, who on top of it is also inconsistent in such a claim of his, could not constitute a reliable basis for a determination of those incriminations.

94. Ultimately, the Panel found that it was not proven that the accused committed the actions described under this Count and sub-counts of the Indictment, which he has been charged with under the principle of individual responsibility, so it acquitted him of those charges.

**D. REASONS FOR RENDERING AN ACQUITTAL FOR THE ACTS CHARGED AGAINST THE ACCUSED**  
**SAVO BABIĆ UNDER THE PRINCIPLE OF COMMAND RESPONSIBILITY**

95. The Indictment charges the accused with the acts described in Counts d) and e) of the Indictment under the principle of command responsibility, but the Appellate Panel also did not find these incriminations proven. Before analyzing the adduced evidence in relation to these counts of the Indictment, the Panel will provide a brief review of the very notion and elements of command responsibility.

**1. Elements of command responsibility**

96. Command responsibility is described in Article 180(2) of the CC BiH, which reads as follows:

“The fact that any of the criminal offences referred to in Articles 171 through 175 and Articles 177 through 179 of this Code was perpetrated by a subordinate shall not relieve his superior of culpability if he knew or had reason to know that the subordinate was about to commit such an offence, or had done so and the

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<sup>36</sup> Exhibit O-18.

superior failed to take the necessary and reasonable measures to prevent the commission of the offence or to punish the perpetrators thereof.”

97. The essence of this form of responsibility is *indirect command responsibility*, or command responsibility *stricto sensu*. This form of command responsibility exists only in cases of failure to act, and comprises the responsibility of superiors for the acts committed by their subordinates.

98. Based on the foregoing statutory definition of command responsibility, its essential elements, which need to be established in each concrete case, are as follows:

- i. *that a person, multiple persons or a specific unit subordinate to a person committed a **criminal offense** referred to in Article 171 through 175 and Article 177 through 179 of the CC BiH;*
- ii. ***existence of a superior-subordinate relationship, and that the superior person had certain authority, supervision over the acts of his subordinates; and that the superior person knew or had reason to know that his subordinate was about to commit a criminal offense or has already committed a criminal offense; and that besides having knowledge of the foregoing circumstances the superior person fails in his duty to act, or fails to take the necessary and reasonable measures.***
- iii. *further, it is necessary that the **commander has effective responsibility** over the persons who have committed violations of international humanitarian law, which means that he has material capacity to prevent the commission of such violations. Such an authority may take both de facto and de iure character. The superior must have effective command and supervision or effective authority and supervision, where effective authority should be construed as if de iure authority does not suffice, but it actually has to be de facto authority.*

99. Besides meeting the foregoing conditions, it is also necessary to prove that the superior knew or had reason to know that there would be or has been a criminal offense committed.

100. The subjective element of command responsibility is so-called *effective knowledge*, which means awareness of the act, the intellectual component that needs to be proven. This again means being aware that your subordinates have committed a crime. The other form implies responsibility for inadvertent action (“*had reason to know*”), inadvertent

negligence, when the superior did not know what his subordinate has done, despite his obligation to know. In determining the foregoing categories, the decisive question is whether the superior had certain information based on which to form its knowledge about the commission of the criminal offense by his subordinates.

(a) DE JURE<sup>37</sup>

101. A *de jure* superior-subordinate relationship, for the purpose of the doctrine of superior responsibility, means that the superior has been appointed, elected or otherwise assigned to a position of authority *for the purpose of commanding or leading* other persons who are thereby to be legally considered his subordinates.<sup>38</sup> **The mere holding of a position of authority or a title in the hierarchy does not suffice to conclude that a person is a *de jure* superior where his position is not accompanied by the actual powers and authority normally attached to it.**<sup>39</sup> The fact that an individual bears a particular title or formally holds a position of authority is not, in itself, conclusive evidence that he is in a position of authority vis-a-vis others for the purpose of the doctrine of superior responsibility. A commander who holds that title but none of the powers that go with that role may not, therefore, be said to be the *de jure* commander for the purpose of assigning superior responsibility to him.<sup>40</sup>

(b) DE FACTO<sup>41</sup>

102. A *de facto* relationship of command can be defined as a relationship in which one party – the superior – has acquired over one or more people enough authority to prevent them from committing crimes or to punish them when they have done so. The origin or basis for such *de facto* authority may be diverse, but it must be such that there is an expectation of obedience to orders on the part of the superior and a parallel expectation of subjection to his authority on the part of those who are under his authority.<sup>42</sup> The Panel

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<sup>37</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 139.

<sup>38</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 139.

<sup>39</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 140; See Appeals Judgment in the Čelebići case (197- See Judgment in Rašević and Todović, pp. 171-172 and the relevant references; Judgment in the case of Stupar *et al.*, p. 169.

<sup>39</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 140.

<sup>40</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 140.

<sup>41</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 142.

<sup>42</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, pp. 142/143.

holds that the ability of exercising effective control is a necessary element in order to conclude that a superior may be considered responsible under the doctrine of superior responsibility, based on his *de facto* superior position. Noting that the degree of control on the part of the superior may have a character of a both *de iure* and *de facto* superior, so in order for the superior to be considered *de facto* responsible for the actions of his subordinates it is necessary to establish that he wielded a certain degree of control over his subordinates or some other similar power to control them.

103. The doctrine of superior responsibility is ultimately based on the superior's power to control the actions of his subordinates. The superior has the duty to use that power of his to prevent or punish any crime committed by his subordinates, and if he fails to do so with due diligence, he shall then be punished under the principle of individual criminal responsibility in accordance with this doctrine. It follows that there is a threshold beyond which individuals no longer have the required power to exercise control over those who in fact committed the criminal offenses, which is why under the law they cannot be considered their superiors. For the application of the doctrine of superior responsibility, it is crucial that the superior has effective control over the persons who committed the underlying violations of international humanitarian law, and that for the specific purpose he had the actual ability to prevent and punish the perpetration of such offenses.

(c) EFFECTIVE CONTROL<sup>43</sup>

104. As noted above, to be liable as a superior, the accused must be shown to have exercised 'effective control' over those who are alleged to have committed the underlying crimes, which means that he must have had the material ability to prevent offences or punish the principal offenders. Effective control may be defined as the power and ability to take effective steps to prevent and punish crimes which others, one's subordinates, have committed or are about to commit. The key factor that must be established in order to establish the existence of the superior-subordinate relationship is that the superior had 'effective control' over the individual(s) in question, or over those individuals that committed the criminal offenses. 'Substantial influence' over the subordinates that does not reach the threshold of 'effective control' does not constitute grounds to assign criminal responsibility based on customary law.



105. A commander who has been given *de iure* powers, but who in reality does not exercise effective control over his subordinates, shall not be held criminally liable under the doctrine of superior responsibility, whereas a *de facto* commander who has not been formally appointed, or who does not have a higher rank or title, but wields effective control over the perpetrators of criminal offenses, may be held criminally liable based on the doctrine of superior responsibility.

106. Ultimately, it is the cumulative effect of evidence of subjugation to orders and respect for the authority of the accused generally that might convince a tribunal of the existence of a superior-subordinate relationship amounting to 'effective control' on the part of the accused over the perpetrators.<sup>44</sup>

## **2. Incriminations under Counts d) and e) of the Indictment**

107. Under the principle of command responsibility, the Indictment charges the accused Savo Babić that he *failed to take adequate measures to prevent or punish his men who allowed unidentified soldiers to enter and inflict serious bodily and mental suffering and kill the detainees*.

108. Therefore, Prosecution's case is based on the argument that military policemen, whose commander was the accused Savo Babić, were in charge of and provided security at the *Vuk Karadžić* school gym, in which the unlawfully detained Bosniak civilian men from Bratunac and environs were held, and that they allowed other persons to freely enter the gym, and beat and kill the detainees at their own discretion, and that the accused Savo Babić knew of such practices, for the military policemen, his men, had complained about the incursions of third persons and mistreatment of detainees, with such treatment of the detainees being a foreseeable consequence of camp incarceration, yet failed to take adequate measures to prevent or punish his men who allowed those unidentified soldiers to enter and abuse the detainees.

109. This Panel, although finding proven beyond a doubt, as confirmed by the evidence given by all witnesses-victims, that the abuse, in the manner described in Sections *d) i, ii, iii, iv and v) and e)* of the operative part of the Acquittal, physical as well as mental, and

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<sup>43</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 156.

<sup>44</sup> The Law of Command Responsibility, Guenael Mettraux, Sarajevo 2010, p. 180; See Prosecutor v. Nikolić.

the described killings, indeed took place, still does not find proven the accused's guilt for the given incriminations.

110. If one analyzes the evidence given by all witnesses-victims, one may conclude that they are all consistent in testifying that the acts of abuse, physical as well as mental, of the detainees at the school, were committed primarily by persons nicknamed "Makedonac", "Bane" and one Dragan from Milići, so the Prosecution itself charges a certain number of unidentified soldiers with the foregoing acts, as well as Milan Trišić, as a TO Bratunac member, identified by multiple witnesses as a person who was present in the gym. Savo Babić was not superior to any of those persons. However, the Prosecution argues that members of the Bratunac military police, whose superior was the accused Savo Babić, during the critical period, were in charge of providing security at the *Vuk Karadžić* school gym where the unlawfully detained Bosniak civilians were held, and that they enabled those third persons to enter the gym and abuse the detainees, and that the accused's guilt exists because he failed to prevent such actions, or punish his subordinates. These claims, as the Prosecutor notes in his closing argument, follow primarily from the evidence given by witnesses Mirna Nedeljković, S-24 and Marko Deurić, and the Panel did not find them to be proven because, contrary to such a position taken by the Prosecution, in this Panel's opinion, the evidence given by other witnesses, as well as other adduced evidence, does not confirm that the accused Savo Babić assigned military police members, his men, to provide security at the *Vuk Karadžić* school, in shifts, or that Bratunac military police members were at all tasked with providing security at the school gym during the relevant period with such assignments and powers to decide on who may or may not enter the facility.

111. Witness Marko Deurić, who during the relevant period, as he himself confirmed in his evidence, and as corroborated by other witnesses, military police members (Mirna Nedeljković, S-24, Dušan Mičić), was deputy to the military police commander, the accused Savo Babić, told the trial that no assignment schedule was ever made for their men to be guards on duty before the school, save for the order issued to the patrol to occasionally, while patrolling the town, pass by the school entrance door, in the same way as it patrolled by the municipality building, warehouse and other important facilities in town. It follows from the evidence given by this witness that guard duties before the school were performed by some other men.

112. In proving its claims, the Prosecution attached particular significance to the

evidence given by witness Deurić during the investigation. As follows from the record of his hearing<sup>45</sup>, during the investigation he said that after the men were brought in and taken to the gym, there would be one or two military police members who were tasked with preventing the incursions of local Serbs. He assumes that, since his task was to make lists with the schedule of military police members by shifts, he drafted the schedule for those men, and that he did so at the order of his commander, the accused Savo Babić. Also, the witness notes that the military police were not in a position to prevent members of the *Vukovarci* unit from forcing their way into the gym, on the pretext they just wanted to interrogate the men they themselves had brought in. The witness also said that the guards who were securing the gym reported that to the commander, and that in turn he informed the Crisis Staff about the serious problems they encountered.

113. When asked at the trial to clarify the discrepancies in the statements, the witness said that in his statement given during the investigation the substance “was taken out of the context,” that it was possible he spoke how things should have been done but that, officially, due to everything that was taking place, they were not able to perform the duty of providing security at the school, for they were neither trained nor had the manpower necessary to do so. The witness also said that all men who were “hanging around there” were some sort of policemen, they introduced themselves as policemen, but denies that they were members of the military police he himself belonged to.

114. Witness Mirna Nedeljković, who during the relevant period reported to the military police, specifically commander Savo Babić, in her statement also denies that the military police provided security at the *Vuk Karadžić* school gym, and describes that she went there on one occasion only, in an attempt to rescue her neighbor Idriz. The witness explains that “*my guys from the military police were patrolling around,*” but stresses they were not deployed at the very entrance door, especially not inside the gym, but were walking and patrolling “*all the way to the entrance door.*” It further follows from this witness statement that the “volunteers” had completely taken over the gym, that they had all the power in the gym, while the only assignment, that is, connection of the military police and the captives was in that they were tasked with bringing them food, which was again done in shifts, when food was taken to the door, entrance door to the gym, albeit without entering inside. In her statement, the witness went on to explain that in the beginning,

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<sup>45</sup> Exhibit T-1.

during the first couple of days, there was an idea that the military and civilian police should protect the gym together, but, as she noted, the volunteers had completely taken over, they let in whomever they wanted and nobody had any influence any more. The witness particularly remembers the event when together with Witness S-24 she went to the gym to try and rescue her neighbor Idriz Salkić. When she arrived there, she saw what she had previously only heard about, that the detainees were tortured. The witness said she had seen one with “their uniform” in the locker room at the right-hand side, mistreating a detainee with a knife. The witness said she did not enter the gym, but waited for “Bane” to take Idriz outside.

115. Concerning the circumstances of the statement she gave during the investigation, the witness clarified that the part of the statement where she said that “*at the time there were some 25 military policemen and they all performed the duty of guards in front of the school gym ...where the Muslims were detained. They performed their duty in shifts, and as I recall they worked in pairs of two or four guards ...*”. The witness went on to say that such an arrangement was valid only during the first couple of days, in the beginning, whereas later on there was debate, since military police members were not able to prevent the volunteers from coming inside.

116. The protected witness S-24, who applied for military police service with commander Savo Babić together with Mirna Nedeljković, described what he learned regarding the events at the *Vuk Karadžić* school gym, where the captured Bosniak men were held. The witness said he had learned about the captives at the school several days after they were brought there, when he heard from a colleague that someone should bring the captives some food. The witness said he had taken them food three or four times in total, over three or four days, and he did it together with his military police colleagues, who were at the same time taking water to them. The witness notes that the military police did not stand guard in front of the gym. When asked about his investigative statement in which he said he had given the food he was carrying to the military policemen who were on duty there, he said that what he meant was the military policemen who were together with him on duty in the shift, and who were the ones to take over the food in front of the entrance door, so they could take it to the door, for, as the witness put it, “*it was out of question that the two of them women should go there alone and bring food inside the elementary school.*” Describing the event when he and Mirna Nedeljković went to the school building to try and rescue Mirna’s neighbor Idriz, the witness said that one “Bane”, one of the volunteers, who

the witness said was the person making decisions as to who will be released, stepped out in front of the gym and, after they gave him the whiskey and cigarettes he had demanded, released Idriz.

117. Other witnesses – members of the military police, who were examined at the trial, as well as Milan Nešković, Dušan Mičić, Branislav Milošević, and Witness S-26 whose testimony was read out, are consistent in saying that the military police's task was to provide security to military personnel and important facilities, and to patrol around the town. They strongly deny any role of military police members in providing security at the school gym where the Bosniak civilians were detained.

118. Evaluating their evidence, individually and in mutual correlation, the Panel above all finds that the Prosecution rightfully indicates that witnesses Marko Deurić, Mirna Nedeljković and protected witness S-24, while giving evidence at the trial, without providing any acceptable explanation, partly departed from the statements they had given during the investigation. Analyzing their investigative statements and correlating them to the other adduced evidence, one may conclude that in the first days of detention facility operation there had been attempts to provide security at the *Vuk Karadžić* school building, but, as the Panel concluded based on the testimony of all examined witnesses, such attempts did not take root. Besides, those attempts to provide security could have, in this Panel's opinion, been related only to the external security of the school gym, a sort of guard shifts or patrolling in front of the gym itself, while none of the witnesses has confirmed, either at the trial or during the investigation, that any member of the military police provided security inside the school gym where Bosniak civilians were detained, especially that the accused Babić was the one to assign them to such duties, directly or indirectly. What is particularly important is the fact that it follows from the testimony of all examined witnesses, military police members, that those "volunteers", "Vukovarians", "Arkan's men" or "White Eagles", who were members of different units which, according to all the examined witnesses, arrived in Bratunac in April 1992 and installed the atmosphere of fear and terror, for the Bosniak, as well as for the domestic Serb population, among whom the persons nicknamed "Makedonac" and "Bane" particularly stood out, were out of the accused Savo Babić's control, him being commander of the emerging Bratunac military police unit.

119. Contrary to such allegations by the Prosecution, it follows from the evidence given by witness S-26<sup>46</sup> that it used to happen that the “volunteers” would in certain situations issue orders to military police members and demanded obedience from them. The testimony given by those witness goes a long way to confirm that the “volunteers” were the ones who had under their control the interior of the school gym where Bosniak men were detained, since the witness said that once when he was standing guard as a military policeman securing the municipality building he was approached by, in the witness’ words, “chief of volunteers,” who said “*Brko, take this parcel to my men to deal it out to the folk.*” The witness said he took the parcel and went to the school, where he saw two or four men, unknown to him, wearing camouflage uniforms at the door, whom he gave the parcel and, as he put it, “*conveyed the chief’s message to them.*” In her testimony, witness Mirna Nedeljković said that the *Makedonac was the key person when it comes to entering the school, more specifically he and Bane and Peki, and that without their consent no military policeman could get in*<sup>47</sup>, which indirectly also follows from the testimony given by witness Nedeljković as well as Witness S-24, who both said they had to talk to *Bane* in their attempt to enter the school and rescue Mirna’s neighbor Idriz. When he heard that Bosniak men were detained and held in the school, witness Zoran Milosavljević arrived there with his friend Slaviša in an attempt to help the detainees, but does not mention that he saw any military policeman at the school, or any of the men from Bratunac that he knew, guarding the detainees, stating that instead he saw an unidentified person there, a “volunteer” in a camouflage uniform, beating a detainee with an iron bar.

120. It is true that military police members held meetings with the accused Savo Babić, their commander, and that the talks mostly related to the conduct of military volunteers, which also follows from the testimony of Witness S-26, as well as some other members of the military police. Thus it ensues from the evidence given by witness S-26 that he complained to commander Babić about the actions of the “chief of volunteers” for he felt humiliated. Witness Dušan Mičić said that at a meeting of military police members Savo Babić said something was going on in the school, but that they, military policemen, should stay away. This is also confirmed by witness Branislav Milosavljević, who said there were some volunteers, even some military police members sporting white belts, who arrived there and monitored the process of capturing the Bosniaks, while they, military policemen

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<sup>46</sup> Exhibit T-37.

<sup>47</sup> Transcript of the hearing held on 10 December 2012, p. 51.

from Bratunac, were not supposed to interfere. The witness says he knew that the accused Babić personally had problems with the volunteers. That the accused Babić was trying to stand up to the “volunteers,” and that because of that he personally suffered serious inconveniences, not only subsequently, as confirmed by numerous witnesses<sup>48</sup>, but also during the time when he performed the duty of commander, ensues from the evidence given by witnesses Mirna Nedeljković and S-24, who described the event when in the morning hours, upon arrival at the military police premises, they found traces of blood in one of the offices, and learned that a member of the volunteers a.k.a. “Peki” had brought there and mistreated a Bosniak from Bratunac that night. In that regard, witness S-24 says that the accused Babić at the time prohibited that the “volunteers” should bring anyone to the military police premises, yet the “Peki” came by one day, *“pressed his pistol against his head ...and almost killed him right there...”*<sup>49</sup>. It follows from the evidence given by other witnesses, military police members, that Savo Babić had repeatedly tried to oppose the paramilitary units that had arrived in Bratunac, and organize the military police unit according to the standards and principles under which he operated and in which he believed as a pre-war police officer. According to witness Mičić, Babić had removed certain individuals from the military police because of their dishonorable actions and various disciplinary transgressions. Because he did not condone the conduct of volunteers in town he would also get in conflict with Bratunac Crisis Staff members Miroslav Deronjić and Momir Nikolić, who, as shown by the evidence given by witness Milan Nešković, cooperated with those volunteers. All military police members who have been examined as witnesses confirmed that Savo Babić had tried to stand up to the volunteers (Branislav Milošević, S-24), that because of their conduct he was often in conflict with Deronjić, that he would go to the Crisis Staff to tender his resignation, which Deronjić and Nikolić would not accept (S-24), that he personally experienced unpleasant treatment at the hands of certain volunteers and, ultimately, as pointed out by witnesses Mirna Nedeljković, Branislav Milošević and some others, that he left the military police already on or about 10 May 1992 because he was not in position to oppose the volunteers, and to form and shape the military police unit under the principles he believed in.

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<sup>48</sup> Multiple witnesses, for the Prosecution as well as for the Defense, presented their information on the inconveniences the “volunteers” caused the accused and members of his close family - Milenko Prodanović, Rodoljub Đukanović, Miodrag Josipović, Stojan Milovanović, Miloš Mitrović, Grozda Frančić.

<sup>49</sup> Transcript of the hearing held on 23 September 2013, pp. 20-21.

121. When statements of these witnesses, members of the military police whose commander at the time was Savo Babić, are brought in connection with the statements of witnesses-victims who survived their detention at the *Vuk Karadžić* school gym, and who, while testifying about the persons who stood guard by the school premises where they were held, identify those very “guards” as the persons who mistreated them, with “Bane”, “Makedonac” and “Dragan from Milići” particularly standing out, as well as some unidentified soldiers, with an occasional mention of some military police members they used to see there and remember by their notoriety, with a note that some of the witnesses also mention individual military police members as persons in whose presence they were not mistreated, it is obvious that the evidence adduced does not uphold the allegations made by the Prosecution.

122. The Panel stresses it fully credited the testimony of witness-victims also in the part in which they confirmed that certain members of the military police used to come to the *Vuk Karadžić* school gym, and some of whom took part, together with unidentified soldiers who all witnesses-victims unequivocally say were the main actors of the crimes committed in the gym, in the beatings and other forms of mistreatment. In their statements, witnesses Šaban Džananović, S-4, S-6 and S-2 mention persons they knew from Bratunac, specifically Trišić and Bučalina, as persons who used to beat them. Witness S-2 also identifies Milan Trišić as a person who beat the detainees. Witnesses S-15 and S-2 mentioned Slavoljub Bučalina as a person who beat the detainees, so witness S-15 states that Bučalina took his son outside and said: *“Kobra get up, he called him, and said come out here. He started to move a little bit slower, so he said come out or I will kill you all.”* Witness Mustafa Delić said that Nikola Đurković, pre-war cook from *Fontana*, with whom he used to be on good terms, as he himself put it, *“more than just family friends,”* told him *“he would like to help him, but there is no chance,”* and that Nikola did not kill anyone. He also mentions that Buba Ristanović from Bratunac beat prisoner Abid, while Ratko Živanović, although he did not kill anyone, acted *“as if he was gonna kill someone.”* Witness S-1 also identifies Nikola Kuhar as one of the guards he knew, saying he saw and recognized the person a.k.a. “Mungos”<sup>50</sup>. Witness S-6 too said he used to see Milenko Prodanović in the gym, but stresses that in his presence no one was allowed to beat them. Witnesses S-4 and S-2 had some good words about one “Kokara,” who they say smashed the windows at the gym so they could breathe inside.



123. Therefore the testimony of the foregoing witnesses confirms that not only volunteers frequented the gym, but that there were some men from Bratunac there as well, including a certain number of military police members, whose commander was the accused. However, that fact by itself does not prove the accused's guilt for the mistreatment of detainees in the school gym. In so concluding, the Panel particularly had in mind the warning the accused issued to the military police members, or rather a prohibition to go to the school gym. However, despite such warning, there was a possibility, as witness Branislav Milošević said in his testimony, that some of the military policemen went there on their own initiative. Describing the event when he went to the school with Mirna Nedeljković to try and rescue Idriz, witness S-24 said they went there without the accused Savo Babić's knowledge. Besides, witness Milenko Prodanović, identified by multiple captured Bosniak men as a person seen in the gym, said in his testimony that he received the orders to go to the gym from Deronjić, while witness S-26, as already mentioned, received the order from the "chief of volunteers" to go to the gym and hand over the parcel to "his men."

124. Therefore, the Prosecution has neither proven that the accused knew, nor that he had reason to know of such activities of his unit members, and that he failed to prevent or punish such behavior. Conversely, all members of the military police who testified, as well as those who had any information about the accused's activities during the relevant period, said the accused was a professional in what he did, and used to punish or remove from service members of the military police for any form of indiscipline<sup>51</sup>, and that he specifically prohibited any kind of connection between the military police members and the persons detained in the gym, based on which the Panel concludes that the accused had made the best effort to make sure that all the activities undertaken by the military police members he was in command of are in compliance with the law and the code of professional conduct, while clearly voicing its opposition and taking adequate measures against those members of the police who acted differently.

125. Also, as already pointed out, the Prosecution failed to prove beyond a doubt by the evidence adduced that the accused had the obligation to prevent the perpetration of

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<sup>50</sup> Milenko Prodanović's nickname.

<sup>51</sup> Witness Milan Nešković said in his statement that Savo Babić had penalized Branko Vlačo, removed him from the military police, and when the new commander arrived Vlačo was reinstated. This was also corroborated by witness S-24, who said that Nikola Đurković too had been removed from the unit, but was subsequently reinstated after Savo Babić's departure.

criminal offenses, and particularly that he had the factual power and authority to do so. It follows from the testimony of Prosecution and Defense witnesses heard at the trial that during the relevant period there was a parallel system of subordination in Bratunac, so although Savo Babić was a military police commander, it ensues from the testimony of military policemen Marko Deurić and Milenko Prodanović that they received certain orders from Miroslav Deronjić, who at the time was Head of Crisis Staff in Bratunac and who, according to numerous witnesses, supported the “volunteers.”

126. It follows from the adduced evidence that the Crisis Staff was involved in all events and developments and that Crisis Staff members acted together with the “volunteers” for the purpose of persecuting the Muslim population of the Bratunac municipality on discriminatory grounds, by committing a series of inhumane offenses. Thus all witnesses-victims confirm in their testimony that they had been captured and brought to the Bratunac stadium by unidentified soldiers, who kept them there, separated men from women and children, and then took the men to the school gym. That very day, on the stadium, the witnesses saw Miroslav Deronjić, Head of Bratunac Municipality Crisis Staff, whereas, as already explained in the part related to Section a) of the Judgment, none of the witnesses confirmed Savo Babić’s presence there. Also, witness Milenko Prodanović stated his unit had some 35 men, they operated under coordination of the Crisis Staff who were issuing decisions and deciding on the detainees. Witness Prodanović said: *“well, what I mean is that Miroslav Deronjić and Momir Nikolić were alpha and omega ... everything was revolving around Deronjić and Momir Nikolić.”*<sup>52</sup> The witness goes on to explain he had never heard that Savo Babić had any say in all that. With regard to what he saw in the school, when he went there on Deronjić’s orders, the conditions he found there, the witness says: *“Well, I told Momir Nikolić, in his capacity, and he was Head of Security, I told him what the conditions were, that it was stuffy, that something needed to be done with those men, to get them out of there,”*<sup>53</sup> to which Momir Nikolić said *“I’ll talk to Deronjić about it.”*<sup>54</sup>

127. In the Panel’s opinion, although according to some of the witnesses he did attend certain Crisis Staff meetings, the accused’s membership of the Bratunac Municipality Crisis Staff has not been proven.

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<sup>52</sup> Transcript of 26 August 2013, p. 86.

<sup>53</sup> Ibid., p. 89.

<sup>54</sup> Ibid.

128. Witnesses Milan Nešković, Jovan Nikolić, Srbislav Davidović and Dušan Mičić, as well as Defense witness Rodoljub Đukanović, were adamant that the accused was not a Crisis Staff member. Conversely, the witnesses stress they knew of the rows and disagreements the accused had with Miroslav Deronjić, so the witness Milan Nešković says:

“Back then Deronjić was, I have to be honest, even though he is now departed, it may not look like a fair statement but that is how it was, he was God and punisher. He often used to come by with Mr. Babić. I was not able to hear what the two of them were talking about, but I sometimes clearly saw Mr. Babić visibly angry ... so there were some disagreements between them. I just saw who he met with and nothing else. I assume he used to ... issue orders to Babić. What exactly he ordered him I do not know ...”<sup>55</sup>

129. Witness Jovan Nikolić, who worked with the Crisis Staff, confirmed he used to see Savo Babić and Miroslav Deronjić together, but Savo was always angry and there were disputes between them. The witness believes they were clashing because Savo Babić would not obey Deronjić’s orders, and because the accused would not appoint his men to the military police. Witness Nikolić also confirmed that Miroslav Deronjić cooperated with the volunteers, while witness Srbislav Davidović said Savo Babić spent some 29 days as the military police commander. He remembers Miroslav Deronjić telling him on one occasion that he had problems with Savo Babić, for he was clashing with the volunteers. Witness S-24, military police member, claims the accused Savo Babić repeatedly went to the Crisis Staff to tender his resignation to Deronjić and Nikolić, but that the two would not accept it.

130. The Prosecutor also adduced Miroslav Deronjić’s statement given to the ICTY<sup>56</sup> as well as transcripts of his testimony in the ICTY cases against Krajišnik and Milošević<sup>57</sup>, which are relevant in certain segments for the given incriminations. In this Panel’s opinion, Miroslav Deronjić’s statement<sup>58</sup> exactly confirms the existence of a relationship between “volunteers” and the Crisis Staff, as well as, at the same time, Savo Babić’s attempt to inform Deronjić about the events at the school in order to put an end to the crimes. In his statement Deronjić said Savo Babić had informed him that volunteers were killing people in the hangar. According to the statement, Deronjić had just returned from Pale, and might not have known about the events at the school, which, as confirmed by numerous

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<sup>55</sup> Transcript from the hearing held on 16 September 2013, pp. 30-31.

<sup>56</sup> Exhibit T-39.

<sup>57</sup> Exhibit T-40 through T-46.

witnesses, everyone knew or have heard of. It also ensues from his statement that Miroslav Deronjić then convened a Crisis Staff meeting, where Predrag Čubrila was also invited and told the volunteers must stop such activities and that there was nothing the military police could do about it. However the same pattern of volunteers behavior continued. Miroslav Deronjić said that on 13/14 May he issued a decision to release the people from the school, for he had no control over the volunteers - *“that’s when we made a decision to release all those men that same night, and that the civilian police would help us do it. Savo Babić said we could also count on the assistance by the military police.”* Taking into consideration the aforementioned, the Panel finds that Miroslav Deronjić’s statement confirms the foregoing conclusion of this Panel, which is that the school gym where the Bosniak men were detained was practically controlled by paramilitary units, the “volunteers” who have come to Bratunac and with whom the accused Deronjić as the Crisis Staff president cooperated, so he was in a position to decide on their detention or release, while the entire connection the accused Savo Babić had with the captured Bosniak men was his contribution to their rescue.

131. Analyzing the adduced evidence, individually and in combination, the Panel concludes that on the one hand the Prosecution failed to prove that the military police under the command of the accused Babić were indeed in charge of and had effective control over the detention facility where the civilians were held, which includes the possibility to prevent anyone’s entry in the facility, and on the other hand that the accused was in a position to order anything to those under whose control the detention facility really was – the paramilitary units who had arrived in Bratunac, including the above mentioned “Makedonac” and “Bane”, or that he had the power and authority to prevent their inhumane treatment of the detainees. Also, bearing in mind that the accused is charged with *“failure to take adequate measures to prevent the commission of the criminal offense,”* the Prosecution had the obligation to prove that, under a list or a decision, the accused, as the military police commander, had the duty to prevent anyone from entering the detention facility, which was also not done. Finally, the Prosecution had the obligation to prove that the accused had effective power to prevent or punish such conduct, which also, according to this Panel, the evidence adduced failed to do. Since these elements of command responsibility were not proven, there was no need to analyze evidence in relation to the existence or non-existence of its other elements (if the superior knew or learned that his

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<sup>58</sup> Exhibit T-39.

subordinates had committed a criminal offense, and whether the superior took the necessary and reasonable measures to punish the subordinates who committed the crime).

132. At this point the Panel finds necessary to briefly comment on the Prosecutor's objection about the evidence used to challenge the credibility of Defense witness Rodoljub Đukanović. In that regard, the Panel finds proven that the witness was removed from the office of Executive Board member by the OHR because, as the relevant Decision stated, he had refused to cooperate with the ICTY. However, it was also proven that he had nonetheless testified before the ICTY as a witness. That, plus the fact that factual conclusions in the judgment are not based solely on the testimony of this witness, in the Panel's opinion, render superfluous any further analysis of the witness' credibility.

133. For all the forgoing reasons, it was necessary, pursuant to Article 284)c) of the CPC BiH, to deliver a judgment acquitting the accused Savo Babić of all charges.

## **VIII. COSTS OF CRIMINAL PROCEEDINGS**

134. Bearing in mind that this judgment acquitted the accused Savo Babić of all charges, pursuant to Article 189(1) of the CPC BiH a decision needed to be made that all costs of the criminal proceedings, and the costs referred to in Article 185(2), Subparagraphs a) through f) of this Code, as well as the necessary expenses of the accused and the necessary expenses and remuneration for the counsel, shall be covered from within the Court's budget appropriations.

## **IX. DECISION ON CLAIMS UNDER PROPERTY LAW**

135. Pursuant to Article 198(3) of the CPC BiH, all aggrieved parties are referred to pursue their claims under property law in civil proceedings.

**MINUTES TAKER**

**Nevena Aličehajić**

**PRESIDING JUDGE**

**Redžib Begić**

**NOTE ON LEGAL REMEDY:** No appeal lies from this judgment.

## X. ANNEX

### A. PROSECUTION WITNESSES

1. Marko Deurić, *testimony reproduced before the Appellate Division Panel*
2. Mirna Nedeljković, *testimony reproduced before the Appellate Division Panel*
3. Srbislav Davidović,
4. Dane Lončarević,
5. Zoran Milosavljević, *testimony reproduced before the Appellate Division Panel*
6. Dušan Mičić, *testimony reproduced before the Appellate Division Panel*
7. Branislav Milošević, *testimony reproduced before the Appellate Division Panel*
8. Miloš Mitrović,
9. Vahid Salkić,
10. Mustafa Delić,
11. Šaban Džananović,
12. Mirsad Karić,
13. Kemal Hodžić,
14. Milenko Prodanović,
15. Milan Nešković, *testimony reproduced before the Appellate Division Panel*
16. Jovan Nikolić,
17. witness S-27,
18. witness S-1,
19. witness S-2,
20. witness S-6,
21. witness S-24, *testimony reproduced before the Appellate Division Panel*
22. witness S-18,
23. witness S-12,
24. witness S-13,
25. witness S-4,
26. witness S-7,
27. witness S-9,
28. witness S-10
29. witness S-15, *testimony reproduced before the Appellate Division Panel*
30. Mustafa Begić,

- 31. Smajil Karamujić,
- 32. Osman Osmanović
- 33. S-26

as well as expert witnesses Dr. Vedo Tuco and Dr. Marija Kaučić-Komšić.

**B. DOCUMENTARY EVIDENCE PRESENTED BY THE PROSECUTION<sup>59</sup>**

- T-1 Unit Card No. OMM220748471 dated 4 January 2012; Photocopy of Bratunac aerial footage; Witness Examination Record for Marko Deurić, 4 January 2012
- T-2 Witness Examination Record for Mirna Nedeljković, 23 April 2008 No. 17-04/204-2-473/08, made by the State Investigation and Protection Agency
- T-3 List with redacted names of witnesses (C1320164), Bratunac photographs, School photographs;
- T-4 AV recording, 16 November 2011, Examination of witness Mirna Nedeljković;
- T-5 Photography of Bratunac;
- T-6 Witness Examination Record for Dane Lončarević, State Investigation and Protection Agency No. 17-04/2-04-2-851/07, 22 August 2007;
- T-7 Witness Examination Record for Dušan Mičić, BiH Prosecutor's Office, No. T 20 0 KTRZ 000749 10, 15 December 2011, with audio recording of the examination and a Bratunac map
- T-8 Witness Examination Record for Zoran Milosavljević, BiH Prosecutor's Office, No. T 20 0 KTRZ 000749 10, 15 March 2012, with audio recording of the examination and a Bratunac map, Unit Card for Zoran Milosavljević, and a drawing of the town made by Zoran Milosavljević
- T-9 Salary for June 1992;
- T-10 Witness Examination Record for Branislav Milošević, No., T 20 0 KTRZ 0000749 10, 5 January 2012;
- T-11 Bratunac map;
- T-12 Witness Examination Record for Miloš Mitrović, No. T 20 0 KTRZ 0000749 10, 2 February 2012, with audio recording of the examination and a Bratunac map;
- T-13 Witness Examination Record for Šaban Džananović, State Investigation and Protection Agency, No.17/-04/2-04-2-698/07, 4 July 2007;

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<sup>59</sup> While listing the numbers, the Court skipped No. T-29 - Official note made by a legal officer;

- T-14 Witness Examination Record for Milenko Prodanović, with photographs (Bratunac map) and a CD of his testimony, BiH Prosecutor's Office, No. T 20 0 KTRZ 0000749 10, 14 March 2012;
- T-15 Photocopy, Military Personal File No. 1114066963, filed as a document pending Prosecution's submission of original; on 9 September 2013 the BiH Prosecutor's Office submitted certified copies;
- T-16 Protected Witness Examination Record for S-1, State Investigation and Protection Agency;
- T-17 Witness Examination Record for S-6, State Investigation and Protection Agency, No. 17-04/2-6-04-1080/80, 24 October 2008;
- T-18 Witness Examination Record for S-6, BiH Prosecutor's Office, No. T10 0 KTRZ 0000749 10, 12 April 2011;
- T-19 List of captives from Bratunac, accommodated in Visoko on 16 May 1992, SB-2, BiH Red Cross, Visoko;
- T-20 Certificate of confirmation that S-6 is listed in the list of captives, SB-3, Red Cross, No. 62, 19 May 1992;
- T-21 Excerpt from List of captives, SB-1, Red Cross, filed as Prosecution Exhibit T-21
- T-22 Witness Examination Record for Milan Nešković, with a CD of his testimony, BiH Prosecutor's Office, No. T 20 0 KTRZ 000749 10, 14 December 2011;
- T-23 Bratunac map with facilities highlighted by witness Milan Nešković;
- T-24 Photocopy of Personal income paper for June, list of military police members, ICTY No. 01335404,
- T-24a Photocopy of Personal income paper for June, list of military police members, ICTY No. 01335404,
- T-25 Audio CD c-p-24 (104) S-24 (audio+record) 9 November 2011 – in relation to T-27
- T-26 Witness Examination Record for S-24, before District Prosecutor's Office in Srebrenica, No. 17-04/2-04-2-502/08, 8 May 2008
- T-26a Copy of T-26
- T-27 Witness Examination Record for S-24 before the BiH Prosecutor's Office, No. T 20 0 KTRZ 000749 10, 2 November 2011
- T-28 List of military conscripts at the military police Bratunac, ICTY No. C1320164
- T-30 Witness Examination Record for S-18, State Investigation and Protection Agency, 17-04/2-04-2-1056/07, 6 November 2007
- T-31 Photography of S-12,



- T-32 Protected Witness Examination Record for S-13, State Commission for Gathering Facts on War Crimes in the territory of the BiH, R BiH Presidency;
- T-33 Witness Examination Record for S-15, made by the State Investigation and Protection Agency, No. 17-04/2-04-2-649/07, 21 June 2007;
- T-34 Witness Examination Record for Osman Osmanović, SIPA No. 17-04/2-04-2-703/07, 6 July 2007; Death Certificate for Osman Osmanović, Municipality of Tuzla No. 10/13-1-02617/12, 22 May 2012; Letter, delivery of Death Certificate for witness Osman Osmanović, Municipality of Tuzla, No. 10/1-13/2-7471, 22 May 2012, all together filed as Prosecution Exhibit T-34
- T-35 Witness Examination Record for Mustafa Begić, SIPA, No. 17-04/2-04-2-1024/08, 15 October 2008; Death Certificate for witness Mustafa Begić, Municipality of Bratunac, No. 02-4-202-160/12, 26 April 2012, all together filed as Prosecution Exhibit T-35;
- T-36 Witness Examination Record for Smajil Karamujić, SIPA, No. 17-04/2-04-2-645/07, 19 June 2007; Death Certificate for witness Smajil Karamujić, Municipality of Bratunac, No. 02-4-202-159/12, 26 April 2012, all together filed as Prosecution Exhibit T-36;
- T-37 Witness Examination Record for S-26, filed as Prosecution Exhibit T-37.
- T-38 Expert Report: Crisis Staffs of Bosnian Serbs, war presidencies and war commissions 1991-1995, Dorothea Hanson, Case No. IT-95-5/18-T v. Radovan Karadžić, filed as Exhibit P2580 in the Karadžić case;
- T-39 ICTY witness statement, (deceased) Miroslav Deronjić, 25 November 2003;
- T-40 Miroslav Deronjić's examination transcript, Case IT-00-39-T v. Momčilo Krajišnik, 12 February 2004,
- T-41 Miroslav Deronjić's examination transcript, Case IT-00-39-T v. Momčilo Krajišnik, 13 February 2004,
- T-42 Miroslav Deronjić's examination transcript, Case IT-00-39-T v. Momčilo Krajišnik, 16 February 2004,
- T-43 Miroslav Deronjić's examination transcript, Case IT-00-39-T v. Momčilo Krajišnik, 18 February 2004,
- T-44 Miroslav Deronjić's examination transcript, Case IT-00-39-T v. Momčilo Krajišnik, 19 February 2004,
- T-45 Miroslav Deronjić's examination transcript, Case IT-02-54-T v. Slobodan Milošević, 26 November 2003,
- T-46 Miroslav Deronjić's examination transcript, Case IT-02-54-T v. Slobodan Milošević, 27 November 2003,

- T-47 ICTY 92*bis*, witness statement, Ašim Džambasović, 2 May 2003;
- T-48 Transcript, witness Ašim Džambasović's testimony, Case IT-00-39-T v. Momčilo Krajišnik, 23 September 2004;
- T-49 Transcript, witness Ašim Džambasović's testimony, Case IT-00-39-T v. Momčilo Krajišnik, 24 September 2004;
- T-50 ICTY, witness Nijaz Dubičić's statement, 28 January 1999;
- T-51 Transcript, witness Nijaz Dubičić's testimony, Case IT-00-39-T v. Momčilo Krajišnik, 11 February 2004;
- T-52 ICTY, witness Dževad Gušić's statement, 15 April 1999;
- T-53 Transcript, witness Dževad Gušić's testimony, Case IT-02-54-T v. Slobodan Milošević, 5 May 2003;
- T-54 Transcript, witness Dževad Gušić's testimony, Case IT-02-54-T v. Slobodan Milošević, 6 May 2003;
- T-55 Transcript, witness Dževad Gušić's testimony, Case IT-95-5/18-T v. Radovan Karadžić, 24 August 2011;
- T-56 Aerial photograph of the *Vuk Karadžić* elementary school, with the location of the gym, and the hangar in Bratunac, adduced as Exhibit No. P440.4 during witness B-1070's testimony, ICTY Case v. Slobodan Milošević IT-02-54
- T-57 Census results in Bosnia and Herzegovina, 1991, ERN 0048-1910-0048-2329 (ESTABLISHED FACT)
- T-58 Decision made by National Defense Minister Bogdan Subotić to form Territorial Defense as SBiH armed forces, 18 April 1992, ERN 0410-2407-0410-2408
- T-59 Decision by the Serb RBiH Ministry of Defense to declare imminent threat of war, 16 April 1992, ERN 0057-4584-0057-4585
- T-60 Bratunac map, ERN 0355-6930-0355-6930
- T-61 Serb Municipality of Bratunac Crisis Staff Order on the establishment of TO staffs, commands and units, 13 April 1992, ERN 0083-5804-0083-5804
- T-62 Serb Municipality of Bratunac Crisis Staff Order on general mobilization, No. 01-07-92, 16 April 1992, ERN 0083-5802-0083-5803 ESTABLISHED FACT
- T-63 Serb Municipality of Bratunac Crisis Staff Order on disarmament of citizens, No. 01.09/92, 19 April 1992, ERN 0083-5779-0083-5779
- T-64 Bratunac Crisis Staff Order on ban on operation in the territory of Bratunac municipality for

all paramilitary formations and illegal citizens, 1 May 1992, ERN 0083-5769-0083-5772  
ESTABLISHED FACT

T-65 List of 400 people who were taken from Bratunac to Pale, signed by Slobodan Marković, 14 May 1992, ERN 0083-5780-0083-5799

T-66 Decision of the Serb authorities in the Bratunac municipality, 25 June 1992, on the payment to the soldiers of the Army of the Serb Republic of BiH in the territory of Bratunac municipality, to members of the Bratunac Territorial Defense and other members, for the month of May 1992, signed by Rodoljub Đukanović, p. 0132-0247 at: List of TO Bratunac members and salary paid for May 1992, ERN 0132-0144-0132-0276 – selected from records No. 73

T-67 Book of photographs marked “Photographing the site of stadium” made by SIPA, 10 May 2011.

T-68 Book of photographs marked “Photographing the site of *Branko Radičević* Elementary School gym,” made by SIPA, 10 May 2011

T-69 Book of photographs marked “Photographing the site of *Branko Radičević* Elementary School gym,” made by SIPA, 10 May 2011.

T-70 Sketch of *Branko Radičević* Elementary School, with the gym and streets in the immediate vicinity of the school and stadium, made by SIPA, 10 May 2011.

T-71 Sketch of *Branko Radičević* Elementary School, with the gym, and its dimensions, made by SIPA, 10 May 2011.

T-72 Sketch of *Branko Radičević* Elementary School, with dimensions, made by SIPA, 10 May 2011.

T-73 Military Personal File (VOB-2) for Savo Babić

T-74 Military Unit File (VOB-3) for Savo Babić

T-75 Rules of Service at the military police of the SFRJ Armed Forces, Federal Secretariat for People’s Defense, 1985. ERN 0207-2098-0207-2100.

T-76 Death Certificate for the deceased witness Miroslav Deronjić

T-77 Notes from the session of SDS Council, 15 October 1991, ERN SA02-8719-SA02-8722

T-78 Video record of the session of the BiH Parliamentary Assembly, October 1991, video V000-0270-1, provided by ICTY;

T-79 SDS and (Serb) National Defense Council, strictly confidential, Instruction by the Intelligence-Security and Self-Defense system of the Serb Democratic Party, no date indicated, ERN SA00-6473-SA00-6480

T-80 SDS strictly confidential instruction on "Conduct in municipalities in the conditions of

cessation of operation of Republic administration authorities," 23 February 1991, ERN SA04-1953-SA04-1955

T-81 Shorthand notes from the SDS BiH Assembly, Sarajevo, 12 July 1991, ERN 0092-8629-0092-8749 (ESTABLISHED FACT)

T-82 Mandatory guidelines by SDS President Karadžić for all municipal committees to hold meetings on a weekly basis, 15 August 1991, ERN 0056-3322-0056-3322

T-83 Decision by the SDS Executive Board on the appointment of Commission for Personnel and Organizational Issues, 9 September 1991, ERN 0048-2507-0048-2507

T-84 SDS Declaration to the Serb People, 16 October 1991, ERN SA04-1167-SA04-1168

T-85 Telegram sent by SDS President Karadžić to the SDS Zavidovići, 18 October 1991, ERN 0031-7417-0031- 7417

T-86 Telegram sent by SDS President Karadžić to the SDS Donji Vakuf, 18 October 1991, ERN 0104-6075-0104-6075

T-87 SDS minutes at the BiH Parliament, 19 October 1991, ERN 0205-2499-0205-2509

T-88 Fax sent from the SDS Novi Travnik to the SDS Main Board on 19 October 1991, on action in accordance with the order, ERN R103-6821-R103-6821

T-89 Response from SDS Odžak, 20 October 1991, ERN SA02-2812-SA02-2812

T-90 Shorthand notes from the constituent session of the Serb People's Assembly in Bosnia and Herzegovina, 24 October 1991, ERN SA01-2055-SA01-2164 (ESTABLISHED FACT)

T-91 Decision by the Serb People's Assembly in BiH that the Serb people in Bosnia and Herzegovina will remain in the common country of Yugoslavia, 24 October 1991, ERN SA01-0629-SA01-0629

T-92 Shorthand notes of the Second session of the Serb People's Assembly in BiH, 21 November 1991, ERN SA01-1999-SA01-2054

T-93 Minutes from the Second session of the Serb People's Assembly in BiH, 21 November 1991, ERN 0033-3184-0033-3190

T-94 Conclusions made by the Serb People's Assembly in BiH, 21 November 1991, ERN 0113-8859-0113-8859

T-95 Minutes from the SDS Main Board meeting, 21 November 1991, ERN 0092-8750-0092-8751

T-96 Minutes from the joint session of the SDS City and Executive boards, 27 November 1991, ERN SA02-3360-SA02-3366,

- T-97 Shorthand transcription of the Third session of the Serb People's Assembly in BiH, 11 December 1991, ERN SA02-4931-SA02-5059
- T-98 Recommendation on the establishment of municipal assemblies of Serb People in Bosnia and Herzegovina, No. 02-53/91, 11 December 1991, ERN 0049-7243-0049-7254
- T-99 Instruction by the SDS Main Board on the organization and operation of Serb People's authorities in Bosnia and Herzegovina in extraordinary circumstances (variant A and variant B), 19 December 1991, ERN 0018-4274-0018-4283 (ESTABLISHED FACT)
- T-100 Shorthand transcription of the Fourth session of the Serb People's Assembly in BiH, 21 December 1991, ERN SA02-5060-SA02-5060
- T-101 Shorthand transcription of the Fifth session of the Serb People's Assembly in BiH, 9 January 1992, ERN 0244 1677 0244 1741(ESTABLISHED FACT)
- T-102 Minutes of the extended session meeting of the SDS Main and Executive Boards, 14 February 1992, ERN 0400-2197-0400-2218
- T-103 Order by the Serb Republic of BiH Prime Minister Branko Ćerić, No. 21-9/92, on general mobilization, sent out to municipality crisis staffs, ERN 0090-4457-0090-4457
- T-104 Shorthand transcription of the Twelfth session of the Serb People's Assembly in BiH, 24 March 1992, ERN SA02-5781-SA02-5827
- T-105 Shorthand transcription of the Thirteenth session of the Serb People's Assembly in BiH, 24 March 1992, ERN SA02-5828-SA02-5840
- T-106 Shorthand transcription of the Fourteenth session of the Serb People's Assembly in BiH, 27 March 1992, ERN 0089-6915-0089-6949
- T-107 Minutes of the Sixteenth session of the Serb People's Assembly in BiH, ERN 0084-7711-0084-7761, ERN 0084-7711-0084-7761
- T-108 Press Release by the National Security Council, signed by the Council President Radovan Karadžić, 4 April 1992, ERN 0058-3805-0058-3805 (ESTABLISHED FACT)
- T-109 Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH, 15 April 1992, ERN 0124-5291-0124-5293
- T-110 Minutes of the joint meeting of the National Security Council and the Government of the Serb Republic of BiH, 27 April 1992, ERN 0076-8037-0076-8038
- T-111 Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH, 28 April 1992, ERN 0124-5307-0124-5308
- T-112 Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH, 01 May 1992, ERN 0124-5309- 0124-5310

- T-113 Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH, 8 May 1992, ERN 0124-5309-0124-5310
- T-114 Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH, 10 May 1992, ERN 0124-5315-0124-5317
- T-115 Minutes of the session of the Government of Serb Republic of BiH, 18 May 1992, ERN 0124-5318-0124-5319
- T-116 Minutes of the Twelfth session of the Government of Serb Republic of BiH, 21 May 1992, ERN 0124-5322-0124-5324,
- T-117 Conclusions, Situation Assessment in BiH, 20 March 1992, ERN 0210-0104-0210-0117
- T-118 Strictly confidential memo sent to the OS SFRY General Staff, January or February 1992, no date indicated, ERN SA03-0809-SA03-0812 (ESTABLISHED FACT)
- T-119 Facsimile sent by Rajko Dukić, President of the SD Executive Board, sent to all municipality SDS boards, 13 March 1992, ERN 0018-4291-0018-4291
- T-120 Letter by General Milutin Kukanjac sent to the JNA, 20 March 1992, ERN 0210-0104-0210-0117
- T-121 Minutes of the First session of SAO Birač Executive Council, 18 February 1992, ERN 0083-6027-0083-6029
- T-122 Decision of the Presidency of Serb Republic of BiH on the return of displaced persons to the territory of Serb Republic of BiH, 2 June 1992, ERN 0044-7475-0044-7475
- T-123 Branko Đerić's letter sent to the *Boksit* company in Milići, 24 May 1992, ERN 0124-6854-0124-6854
- T-124 Minutes of the Municipal Board meeting, 24 February 1992, ERN 0219-2723-0219-2725
- T-125 Rajko Dukić's letter sent to Radovan Karadžić, 15 December 1991, ERN 0084-5301-0084-5301 (ESTABLISHED FACT)
- T-126 Review of revenues and expenditures by purpose, from 11 May 1992 to 30 June 1992, 30 June 1992, ERN 0225-2619-0225-2626
- T-127 Recapitulation of treasury operations of the Vogošća Crisis Staff Treasury from 1 to 31 May 1992, 1 June 1992, ERN 0222-5220-0222-5221
- T-128 Minutes of the Trnovo Crisis Staff meeting, 29 April 1992, ERN 0227-6136-0227-6138
- T-129 Justice Minister Božidar Antić's letter on the issuance of specific fire arms and ammunition to the Grbavica Crisis Staff, 24 May 1992, ERN 0124-6859-0124-6859
- T-130 Minutes of the first Bratunac Crisis Staff meeting, 26 October 1991, ERN 0304-6958

- T-131 Minutes of the SDS Bratunac Municipal Board meeting, 23 December 1991, ERN 0219-2721-0219-2721 (section ERN 0219-2709-0219-2805)
- T132 Book of minutes, SDS Bratunac, 1990 and 1991, ERN 0299-3040-0299-3169
- T-133 Book of minutes, SDS Bratunac, 1991, 1992, 1993, 1994 and 1995, ERN 0299-2859-0299-3039
- T-134 SDS Bratunac minutes, no date indicated, ERN 0219-2618-0219-2619 selection from records No. 80
- T-135 SDS Bratunac minutes, 25 October 1991, ERN 0218-2717-0218-2718
- T-136 Bratunac Municipal Board Minutes, 24 February 1992, ERN 0219-2723-0219-2725
- T-137 Order by the Government of Serb Republic of BiH No. 03-253 sent to the Sokolac Crisis Staff to provide three trucks to transfer prisoners from Pale to Visoko, 15 May 1992, ERN 0124-6752-0124-6752
- T-138 Video footage V000-3811-1 showing the prisoners exchanged in Visoko, 16 May 1992, taken over from the ICTY;
- T-139 Video footage V000-3195 showing the refugees exchanged on 16 May 1992 from Pale, describing their ordeal while being expelled from Bratunac and held detained at the *Vuk Karadžić* school, taken over from the ICTY;
- T-140 List of TO Bratunac members and their salaries paid out in May 1992, ERN 0132-0144-0132-0276
- T-141 Order issued by Republika Srpska Army Staff Commander No. 30/18-25, 3 July 1992, taken from the Banja Luka Military Archives
- T-142 Report on the operation of the Bratunac military police from the onset of war until 4 March 1993, 4 March 1993, ERN 0132-2014-0132-2021
- T-143 Declaration of the Bratunac Municipal Assembly, 20 May 1992, ERN 0180-3739-0180-3741
- T-144 Report by the Bratunac Lpbr Command on the manpower at the military police, 24 February 1993, ERN 0132-2079-0132-2082
- T-145 Letter by the Bratunac Municipal War Presidency in Srebrenica, 11 July 1994, ERN 0183-8914-0183-8917
- T-146 SDS Bratunac minutes, 1991, 1992, 1993, 1994, 1995, ERN 0219-2549-0219-2640
- T-147 Minutes of the Assembly of the Serb Municipality of Bratunac, 1991-1998, ERN 0083-5909-0083-5936
- T-148 Death Records for persons killed in the gym:

1. AHMETOVIĆ, (Edhem) Enes
2. AHMETOVIĆ, Kiram
3. AHMIĆ (Ibrahim) Izet
4. ALIĆ (Salih) Ramiz
5. ARIFOVIĆ (Husein) Redžo
6. AVDIĆ (Selman) Abid
7. AVDIĆ (Ismet) Nusret
8. AVDIĆ (Salih) Senad
9. BAJRAMOVIĆ (Šemso) Dževad
10. BAJRAMOVIĆ (Šemso) Senahid
11. BEGIĆ (Šacir) Mirsad
12. ČOMIĆ (Šemso) Hajrudin
13. DELIĆ (Ramo) Mehmedalija
14. DELIĆ (Mehmedalija) Nedžad
15. DELIĆ (Mehmedalija) Samir
16. DŽAFIĆ (Lutvo) Hajrudin
17. GUSIĆ (Mujo) Zekir
18. HADŽIBULIĆ (Huso) Husnija
19. HALILOVIĆ (Zahid) Osman
20. HASANOVIĆ (Jusuf) Mustafa
21. HODŽIĆ (Salčin) Džemo
22. HOTIĆ (Hariz) Saudin
23. HUSEINOVIĆ (Huso) Ahmet
24. HUSIĆ (Muhamed) Dževad
25. HUSIĆ (Nazif) Ismet
26. HUSIĆ (Muhamed) Mensur
27. HUSIĆ (Nazif) Nedžib
28. IBIŠEVIĆ (Redžo) Selmo
29. IBRAHIMOVIĆ (Ahmo) Hasan
30. KADRIĆ (Meho) Ramo
31. KARAMUJIĆ Ishak
32. KARIĆ (Nurija) Ćamil
33. KARIĆ (Lutvo) Dževad
34. KARIĆ (Suljo) Ramo
35. KARIĆ (Nurija) Safet
36. MEHMEDOVIĆ (Kasim) Sakib
37. MEMIŠEVIĆ (Šaban) Mirsad
38. MEMIŠEVIĆ (Alija) Šaban



39. MEŠIĆ (Bajro) Ibrahim
40. MUHIĆ (Šećo) Omer
41. MUJKANović (Miralim) Mustafa
42. MURATOVIĆ (Hašim) Hariz
43. MUSTAFIĆ (Omer) Hamed
44. NUHANOVIĆ (Mustafa) Jakub
45. NUKIĆ (Hasib) Mujo
46. OSMANOVIĆ (Hamid) Hajrudin
47. RAMIĆ (Meho) Abdurahman
48. RAMIĆ (Osman) Ćamil
49. RAŠKAJ (Musa) Fejzulah
50. SALIHOVIĆ (Osman) Mehmedalija
51. SALKIĆ (Hamed) Ahmet
52. SALKIĆ (Meho) Osman
53. SALKIĆ (Šaban) Salih
54. SULEJMANOVIĆ (Musa) Redžo
55. SULJIĆ (Sulejman) Senahid
56. ZUKIĆ (Mujo) Hedim
57. ZUKIĆ (Alija) Elvir

T-149 Forensic expertise, Report submitted by Dr. Vedo Tuco, forensic specialist, with accompanying documentation, filed as Prosecution Exhibit T-149.

T-150 Decision on Rodoljub Đukanović's dismissal, ICTY No. 06852783, with translation into Bosnian, filed as Prosecution Exhibit T-150

T-151 Identity Establishment Record for Senahid Suljić, together with a DNA report, Expert team Tuzla, Protocol No.: 335/07, filed as Prosecution Exhibit T-151

T-152 Identity Establishment Record for Osman Halilović, together with a DNA report, Expert team Tuzla, Identification No. br.blje-01/123, filed as Prosecution Exhibit T-152

### **C. DEFENSE WITNESSES**

1. Rodoljub Đukanović, testimony reproduced before the Appellate Division Panel
2. Miodrag Josipović
3. Stojan Milovanović
4. Grozda Frančić

**D. DEFENSE'S DOCUMENTARY EVIDENCE**<sup>60</sup>

- O-1 Witness Examination Record for Mirsad Karić, State Investigation and Protection Agency, No. 17-04/2-04-2-300/08, 28 March 2008
- O-2 Witness Examination Record for Kemal Hodžić, State Investigation and Protection Agency, No. 17-04/2-04-2-506/08, 8 May 2008
- O-3 Witness Examination Record for S-2, BiH Prosecutor's Office, No. T 20 0 KTRZ 0000749 10, 30 June 2011
- O-4 Witness Examination Record for S-2, State Investigation and Protection Agency, No. 17-04/2-04-2-647/07, 20 June 2007
- O-6 Statement by Protected Witness S-18, MUP RBiH, CSB Sarajevo – Sector SDB, Visoko, 29 May 1992, filed as Defense Exhibit O-6
- O-7 Protected Witness Examination Record for S-12, State Investigation and Protection Agency, 25 September 2008, filed as Defense Exhibit O-7
- O-8 Protected Witness Examination Record for S-13, BiH Prosecutor's Office, 5 May 2011, filed as Defense Exhibit O-8
- O-9 Protected Witness Examination Record for S-13, State Investigation and Protection Agency, 17 October 2008, filed as Defense Exhibit O-9
- O-11 Protected Witness Examination Record for S-9, Tuzla Cantonal Prosecutor's Office, 20 December 2004, filed as Defense Exhibit O-11
- O-12 Protected Witness Examination Record for S-9, State Investigation and Protection Agency, 19 April 2011, filed as Defense Exhibit O-12
- O-13 Protected Witness Examination Record for S-9, Higher Court in Tuzla, 27 June 1995, filed as Defense Exhibit O-13
- O-14 Protected Witness Examination Record for S-8, BiH Prosecutor's Office, 5 May 2011, filed as Defense Exhibit O-14

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<sup>60</sup> In recording exhibit numbers at the trial, numbers O-5 and O-10 were skipped - Official note made by legal officer;

- O-15 Protected Witness Examination Record for S-9, R BiH MUP, District MUP Tuzla, National Security Service, 3 July 1992, filed as Defense Exhibit O-15
- O-16 Protected Witness Examination Record for S-4, R BiH MUP, District MUP Tuzla, National Security Service, 3 July 1992, filed as Defense Exhibit O-16
- O-17 Protected Witness Examination Record for S-4, State Investigation and Protection Agency, 3 July 2007, filed as Defense Exhibit O-17
- O-18 Witness Examination Record for S-15 before Tuzla Cantonal Prosecutor's Office,, No. Kt.729/94, 8 July 2005, filed as Defense Exhibit O-18
- O-19 Statement on ethnic cleansing and war crimes committed against Bosniaks from the Bratunac municipality between 10 May - 15 May 1992, Witness S-15, before the State Commission for Collecting Data on Committed War Crimes and Ethnic Cleansing, October 1997, filed as Defense Exhibit O-19
- O-20 Witness Examination Record for S-10, before the State Investigation and Protection Agency, No. 17-04/2-04-2-1023/08, 15 October 2008, filed as Defense Exhibit O-20
- O-21 Certificate, MUP RS, CJB BIJELJINA, PS BRATUNAC, No. 10-6/04-110-12/13, 15 November 2013, filed as Defense Exhibit O-21
- O-22 Decision on the relief of duty, Bratunac Police Station, Bratunac Municipal Assembly, No. 01-023-166, 9 April 1986, filed as Defense Exhibit O-22
- O-23 Certificate of SDS membership, No. 01-011/13, 6 November 2013, filed as Defense Exhibit O-23
- O-24 Certified photocopy – a summary of major decisions, Serb Republic, municipality of Bratunac, Crisis Staff, War Presidency, Bratunac, 28 August 1992, filed as Defense Exhibit O-24
- O-25 Death certificate for Hamed Salihović, No. 02-4-202-732/13, 5 November 2013, filed as Defense Exhibit O-25
- O-26 Minutes of the gathering of Bratunac residents, 8 September 1991, filed as Defense Exhibit O-26

## **E. ESTABLISHED FACTS**

136. The established facts accepted by the Trial Panel pursuant to Article 4 of the *Law on Transfer of Cases*<sup>61</sup> have also been accepted in the proceedings before the Appellate Panel, specifically as follows:

Fact No. 1 - **Paragraph 310** – "...According to the 1991 census in Bosnia-Herzegovina, the ethnic composition of Bratunac municipality was 21,535 (64 per cent) Muslims, 11,475 (34 per cent) Serbs, 40 Croats, 223 Yugoslavs, and 346 persons of other or unknown ethnicity..."<sup>62</sup>

Fact No. 4 - **Paragraph 36** By spring of 1991, the SDS, in coordination with Yugoslav authorities, also started arming and mobilizing the Serb population in many municipalities throughout Bosnia- Herzegovina. JNA and MUP officers assisted them in acquiring and distributing weapons.

Fact No. 5 - **Paragraph 41** "...- ... Serbs armed themselves in 28 indictment municipalities, including Bratunac<sup>63</sup>... In addition to weapons, Bosnian Serbs were also often provided with training by JNA and police officers, and were in some cases organized into paramilitary groups..."

Fact No. 6 - **Paragraph 42** "...A report on the situation in Bosnia-Herzegovina in March 1992 by General Milutin Kukanjac, commander of the JNA 2nd Military District (covering Bosnia-Herzegovina and small areas of Croatia) stated that "the leadership of Serbian people and all Serbs are ready for the war, in the case that the confederation in Bosnia and Herzegovina is not accepted", and indicated that the SDS had distributed 17,298 weapons to "volunteer units" in the 2<sup>nd</sup> Military District. Kukanjac acknowledged that the JNA and the SDS had armed 69,198 Serbs, mostly volunteers outside the ranks of the TO and the JNA. The report also indicated that SDS leaders "at all levels" were trying to obtain weapons from the JNA and from the Serbian MUP..."<sup>64</sup>

Fact No. 7 - **Paragraph 67** "...On 24 October 1991 the SDS deputies convened separately and established the Assembly of the Serbian People of Bosnia-Herzegovina (Bosnian-Serb Assembly)..."<sup>65</sup>

- Record of founding session of Bosnian-Serb Assembly, 24 October 1991); - proposed under No. 15 in the Indictment

Fact No. 10 - **Paragraph 86** "...On 19 or 20 December 1991 a document entitled "Instructions for the Organisation and Activity of the Organs of the Serbian People in Bosnia and Herzegovina in Extraordinary Circumstances", dated "Sarajevo, 19 December 1991", was introduced to the participants of a meeting of high-level SDS representatives ..."

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<sup>61</sup> Law on the Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina and the Use of Evidence Obtained by the International Criminal Tribunal for the former Yugoslavia in Proceedings Before the Courts in Bosnia and Herzegovina.

<sup>62</sup> P954 (Bosnia-Herzegovina 1991 census, April 1995), p. 72-5.

<sup>63</sup> Deronjić, T. 863; 889-90, 936, 945-6, 964-7, 971-86, 988-91, 1004-11, 1184, 1187-90, 1193-5, 1200-1; P37 (**Record of SDS party meeting, Sarajevo, 12 July 1991**), p. 93; P52 (**Letter sent by Rajko Dukić to Radovan Karadžić, 15 December 1992**); P51 (**Report of 2nd military district, March 1992**), p. 6; P515 (Gušić statement), pp. 3-4; P515.B (Gušić transcript), 20100; Dubičić, T. 779, 800-1, 804-5; P481 (Dubičić statement), paras 11, 19, 22, 30.

<sup>64</sup> Treanor, T. 1664-6; Brown, T. 16201, 16204-5; P733 (Selak transcript), pp. 12951-2; P733.A (Selak transcript), p. 12959; P51 (Report of 2nd military district, March 1992), pp. 4-6.

<sup>65</sup> Treanor, T. 1445-50, 1455-62; P65, tab 53 (Record of founding session of Bosnian-Serb Assembly, 24 October 1991); Đokanović, T. 10544-5, 10550; P934 (Donia report), p. 34.

**Fact No. 11 - Paragraph 87** "...The Instructions begin with the following paragraphs: 1. The adoption of the following Instructions was prompted by well-founded suspicions that certain forces were working, in a persistent, thorough and organised manner, toward a forced separation of Bosnia and Herzegovina, and thereby of the Serbian people, from Yugoslavia. The standardised tasks, measures and activities outlined here will be carried out within the Serbian national community in Bosnia and Herzegovina in order to implement the plebiscitary decision of the Serbian people in Bosnia and Herzegovina to live in one state, both under existing conditions and in any circumstances that might arise from the current political and security situation.

2. The tasks, measures and other activities described in these Instructions will be undertaken in order to enhance the preparedness of the Serbian people and its readiness to defend its interests.

3. The tasks, measures and other activities described in these Instructions shall be implemented on the entire territory of the SR BiH, i.e. in all the municipalities inhabited by the Serbian people, to wit:

- in their entirety, in municipalities where the Serbs are a majority (Variant "A") and,
- partially, in municipalities where the Serbs are not a majority (Variant "B").

4. In order to ensure uniform and timely implementation, the tasks, measures and other activities shall be implemented in variants "A" and "B", each consisting of two stages...."

**Fact No. 12 - Paragraph 88** "...The "first stage" of Variant A, applicable in municipalities with Serbs in the majority, includes the following instructions:

The SDS municipal board shall immediately form a crisis staff of the Serbian people in the municipality, to be composed of:

- all members of the secretariat of the SDS municipal board;
- municipal officials who are also SDS nominees in the following organs: president of the municipal assembly or president of the municipal executive committee; chief of the public security station or commander of the police; commander or chief of the municipal territorial defence staff; secretary of the municipal national defence secretariat or another SDS-nominated official from the secretariat;
- assemblymen in the Assembly of the Serbian people of BH
- members of the Main Board of the SDS of BH from the municipality in question..."

**Fact No. 13 - Paragraph 89** "...The Instructions set out a number of other actions to be taken at the municipal level:

Convene and proclaim an assembly of the Serbian people in the municipality ... Carry out preparations for the setting up of state organs in the municipality (executive committee, administrative organs, magistrates' court, public security station, etc.) and propose individuals for posts and duties in these organs. Prepare the take-over of staff, facilities and equipment of security services centres and their incorporation into the newly established internal affairs organ ... Upgrade the protection and security of vital buildings and facilities in the municipality ... Make an estimate of the necessary size of active and reserve police forces, TO units, and Civil Defence units; on the basis of the estimate, these structures shall be reinforced and other necessary measures shall be taken for their activation, as may be required by further developments. The order to activate these units shall be issued by the crisis staff in each municipality ... Carry out preparations (create organisational means and other conditions) for:

- ... reinforcing combat units as classified by the JNA with manpower as well as inventoried materiel and livestock, according to federal regulations, based on the Serbian principles of fairness and humanity, with SDS officials, other leaders and distinguished Serbs serving as personal examples;
- the protection of material resources important for defence and resistance, as well as for the survival and activities of the population..."

**Fact No. 14 - Paragraph 92** "...The instructions forming part of the first stage of Variant B, relating to municipalities where Serbs did not constitute a majority, are substantially the same as those relating to Variant A, including the membership in the crisis staffs. The only significant difference in the first stage of Variant B is the instruction qualifying the actions for setting up state organs in the municipality, which states: "Ensure proportionate representation in government organs of members of other nations and nationalities who have expressed their loyalty to federal Yugoslavia ..."

**Fact No. 15 - Paragraph 97** ".....the<sub>69</sub>Instructions reflected SDS policy..."

received and implemented, fully or partially, in several municipalities in Bosnia-Herzegovina;...”

**Fact No. 17 - Paragraph 103** “...On 9 January 1992 the Bosnian-Serb Assembly unanimously proclaimed “the Republic of the Serbian People of Bosnia and Herzegovina”....”<sup>66</sup>

**Fact No. 18 - Paragraph 109** “...A confidential document, contextually dated January or early February 1992, from the “organs of the Republic of Serbian Bosnia-Herzegovina” to the JNA Chief of the Main Staff in Belgrade and the commanders of the 2nd and 4th Military Districts (covering Bosnia-Herzegovina and small areas of Croatia), noted that the Bosnian-Serb Assembly had decided to “institutionalize” a situation, in which the “Serbian territories” of Bosnia-Herzegovina would remain in federal Yugoslavia. The document stated that this was to be done through peaceful means, but went on to note that the organs of the Bosnian-Serb Republic were soon to establish full control over these Serb territories, and requested various forms of assistance from the JNA in this respect. First, the “organs” requested the JNA to assign officers to assist municipal TOs, SJBs, and CSBs, and to supply materiel, including weapons, ammunition, vehicles, helicopters, communications equipment, and uniforms, all of which was required by 20 February 1992 at the latest. Second, the “organs” asked the JNA to support them in taking over “Serbian territories in [Bosnia-Herzegovina] that remain part of Yugoslavia”...”<sup>67</sup>

**Fact No. 19 - Paragraph 128** “...On 6 April 1992 the independence of Bosnia-Herzegovina was recognized by the European Community.<sup>68</sup> The next day, the Bosnian-Serb Assembly, chaired by Milovan Milanović, declared the independence of the Bosnian-Serb Republic (on 12 August 1992, the name of the republic was changed to “Republika Srpska...”<sup>69</sup>

**Fact No. 22 - Paragraph 263** “...The crisis staffs were transformed from SDS organs to republican organs with the public announcement of 4 April 1992, in which the SNB ordered their activation and instructed that the TO and reserve police be put in readiness...”<sup>70</sup>

**Fact No. 27 - Paragraph 311** “...In early April 1992, Muslim police officers in Bratunac municipality were forced to turn over their firearms, and on 9 April Serbs established their own police force displaying the insignia of the Bosnian-Serb Republic.<sup>71</sup> Thereafter, Bratunac Serbs set up barricades and checkpoints, and carried out attacks with firearms and explosives. Two coffee bars, one owned by a Muslim and the other owned by a Croat were blown up.<sup>72</sup> On 16 April, the TO in Bratunac was mobilized and in the following days, Arkan’s and Šešelj’s paramilitary units, and a JNA unit under the command of Captain Reljić, arrived in the municipality.<sup>73</sup> While the JNA and TO began disarming Muslim villagers throughout the municipality, including the majority-Muslim villages Podčauš and Suha, the paramilitaries harassed locals and pillaged abandoned Muslim

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<sup>66</sup> P65, tab 76 (Record of 5th session of Bosnian-Serb Assembly, 9 January 1992), pp. 10-13, 62; List of matters admitted by the Accused, 31 August 2001, para. 63.

<sup>67</sup> P64.A, tab 308 (Confidential document from organs of Bosnian-Serb Republic to JNA General Staff and others, undated).

<sup>68</sup> P64 (Treanor report), para. 229; Treanor, T. 1688, 1828; Adjudicated facts 40-2.

<sup>69</sup> P65, tab 192 (Minutes of 19th session of Bosnian-Serb Assembly, 12 August 1992), p. 3.

<sup>70</sup> Hanson, T. 9688; P529, tab 73 (Announcement by National Security Council, 4 April 1992). This announcement was acted upon in at least the Autonomous Region of Birač. See P529, tab 198 (Decision by crisis staff of the Serbian Autonomous Region of Birač on the proclamation of the state of war for the entire Serbian Autonomous Region of Birač, 29 April 1992); P56 (Bratunac crisis staff order, 1 May 1992); P57 (Bratunac crisis staff order, 6 May 1992).

<sup>71</sup> Hasanović, T. 2458-9, 2480; P72 (Hasanović statement), p. 5; P482 (Bećirević statement), p. 6; P481 (Dubičić statement), para. 24; Dubičić, T. 779-80.

<sup>72</sup> P481 (Dubičić statement), para. 24, 26; Dubičić, T. 779-80.

<sup>73</sup> P72 (Hasanović statement), pp. 4-7; P53 (Decision of Bosnian-Serb Presidency, 15 April 1992), p. 2; P54 (Bratunac crisis staff mobilization order, 16 April 1992), p. 1; P481 (Dubičić statement), paras 28-9; P482 (Bećirević statement), p. 6; P485 (Ibišević statement), p. 4; P515 (Gušić statement), p. 6; P515.B (Gušić transcript), p. 20114; Deronjić, T. 1023-4, 1032-3, 1037-9, 1045-6.

homes.<sup>74</sup> Most of the Muslim leadership left Bratunac municipality for Srebrenica after receiving threats from these Serb paramilitary units. This effectively surrendered Bratunac to Serb control...<sup>75</sup>

**Fact No. 30 - Paragraph 314** "...On 8 May 1992, during a Muslim attack against Serb paramilitaries in Potočari, Goran Zekić, a prominent SDS main board member visiting from Srebrenica, was killed. The Bratunac crisis staff met the same day and planned to attack the Muslim village of Glogova the next morning, and to forcibly transfer the population to Muslim-controlled Kladanj municipality. On 9 May, JNA forces and Serb TO units surrounded Glogova. There was no armed resistance to the Serb advance because the village had already been disarmed on 25 April. Approximately 65 inhabitants of Glogova were killed during the operation. The remaining Muslims were taken into Serb custody, and most of the buildings in the village were then burned.<sup>76</sup> Also on 9 May, Serb forces set fire to houses in the Muslim villages of Cerivac and Polje in Bratunac municipality.<sup>77</sup> The following day, Serb soldiers attacked the Muslim villages of Suha and Mihaljevići, near the town of Bratunac. Male villagers were arrested and taken to the Vuk Karadžić school, while women and children were taken to the Bratunac football stadium...<sup>78</sup>

**Fact No. 32 - Paragraph 316** "...The following day, Serb soldiers attacked the Muslim villages of Suha and Mihaljevići, near the town of Bratunac. Male villagers were arrested and taken to the Vuk Karadžić school [C7.4], while women and children were taken to the Bratunac football stadium. Armed Serbs forced the Muslims to surrender their valuables, after which the women and children were separated from the men, placed in buses, and transported out of the municipality...<sup>79</sup>

**Fact No. 33 - Paragraph 318** "...Four Muslim monuments in Bratunac municipality were heavily damaged or completely destroyed between April and June 1992, including the mosque in Bratunac town and the mosque in Glogova, which was demolished with explosives during the 9 May attack ...<sup>80</sup>

**Fact No. 40 - Paragraph 799** "...detainees were also physically or psychologically ill-treated in the following detention centres: ... "*Vuk Karadžić*" school in Bratunac..."

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<sup>74</sup> Deronjić, T. 1037-8, 1046-50, 1196-7; Hasanović, T. 2373-4; P72 (Hasanović statement), pp. 7-8.

<sup>75</sup> Dubičić, T. 803-6; P481 (Dubičić statement), paras 28-31; Deronjić, T. 1033-4, 1036, 1202; P485 (Ibišević statement), p. 5.

<sup>76</sup> Deronjić, T. 1055, 1065-6, 1071, 1074-80, 1200; P483 (Witness 128 statement), pp. 5-7; P857 (Tokača report).

<sup>77</sup> P485 (Ibišević statement), p. 3.

<sup>78</sup> Hasanović, T. 2374-5; P72 (Hasanović statement), p. 8; Malešević, T. 16122.

<sup>79</sup> Hasanović, T. 2385-6, 2435; P72 (Hasanović statement), p. 11; Malešević, T. 16122.

<sup>80</sup> P732 (Riedlmayer report), Appendix 2.1; P732.C (Riedlmayer transcript), p. 23813; Deronjić, T. 1078, 1080-1.