

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case number: S1 1 K 005528 14 Kžk

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Before the Appellate Panel comprising: Judge Redžib Begić, Presiding
Judge Tihomir Lukes, member
Judge Mirza Jusufović, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

VESELKO RAGUŽ and IVO RAGUŽ

SECOND INSTANCE VERDICT

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

Remzija Smailagić

Counsel for the Accused:

Attorney Branko Karadeglić, Counsel for the accused Veselko Raguž

Attorney Marko Raguž, Counsel for the accused Ivo Raguž

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Sarajevo, 10 June 2015

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, the Appellate Division Panel of Section I for War Crimes, composed of Judge Redžib Begić, as the President of the Panel, and Judges Tihomir Lukes and Mirza Jusufović, as the Panel members, with the participation of the Legal Advisor Nevena Aličehajić, as the Minutes-taker, in the criminal case against the accused Veselko Raguž and Ivo Raguž, for the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina, as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina, acting upon the confirmed Indictment of the BiH Prosecutor's Office No. T20 0 KTRZ 0000436 05 of 23 August 2011, that was specified on 31 March 2015, having held a public hearing before the Appellate Panel, in the presence of Remzija Smailagić, Prosecutor of the BiH Prosecutor's Office, the accused Veselko Raguž and his Defense Attorney Branko Karadeglić, and the accused Ivo Raguž and his Defense Attorney Marko Raguž, on 10 June 2015 delivered and publicly announced the following:

VERDICT

The Accused:

Veselko Raguž aka Veso, father's name Stjepan, born on 6 July 1965 in the village of Pješivac, Stolac municipality, place of residence at ..., Personal Identification Number: ..., ... by ethnicity, citizen of ..., commercial technician by occupation, completed Secondary School of Economics, indigent, no other criminal proceedings pending against him,

and

Ivo Raguž, father's name Fabijan, born on 11 May 1965 in Stolac, resident of ..., Personal Identification Number: ..., ... by ethnicity, citizen of ..., languages and interpretation secondary school completed, senior tax officer by occupation, indigent, no other criminal

proceedings pending against him,

ARE GUILTY

In as much as:

In early August 1993, at the Dretelj camp, in the territory of Čapljina municipality, during the wartime in Bosnia and Herzegovina and the armed conflict between the Croat Defense Council (HVO) and the Army of BiH (ARBiH), Veselko Raguž, as the Commander of the IV Battalion of the *Knez Domagoj* HVO Brigade, and Ivo Raguž, as a member of the IV Battalion of the *Knez Domagoj* HVO Brigade, acted in violation of Article 3(1)(a) of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949, in as much as they participated in the interrogation and torture of detained civilians, and thus,

In early August 1993, at the Dretelj camp, in the territory of Čapljina municipality, where hundreds of Bosniak civilians were unlawfully detained, along with Anto Krešić and a number of unidentified members of the military police force, they participated in the interrogation and physical abuse of the detained civilians: Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, by calling them one by one to enter a garage made of sheet-metal that was located within the camp perimeter, in order to force confession out of them, by repeatedly kicking them with their legs wearing military boots, and punching them with closed fists on their heads, body and legs, whereupon Ante Krešić connected their ears and hands to an electric current circle via inductor telephone, and manually activated it in order to produce electric current, which passed through the bodies of the injured persons, as a result of which they fell to the ground shaking and suffering severe pains and sustaining injuries to their bodies with the bleeding; and when Semir Balavac started bleeding from his mouth and nose, Ivo Raguž put a handful of salt into his mouth and nose, due to which he suffered even greater pains.

Therefore, during the war in Bosnia and Herzegovina and the armed conflict between the HVO and the ARBiH, in violation of the rules of international law, Veselko Raguž and Ivo Raguž, together with Anto Krešić and a number of unidentified military police officers, participated in the questioning and torture of detained civilians,

Whereby

The Accused, as co-perpetrators, committed the criminal offense of War Crimes against Civilians under Article 142(1) of the Criminal Code of the Socialist Federative Republic of Yugoslavia, 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, as read with Article 22 of the same Code,

Therefore, based on the same legal provision, and applying Articles 33, 38, 41, 42(2) and 43(1)(1) of the Criminal Code of the Socialist Federative Republic of Yugoslavia, 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, the Panel **sentenced them to**

IMPRISONMENT FOR A TERM OF 3 (THREE) YEARS EACH

Pursuant to Article 188(1) and (3) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused Veselko Raguž and Ivo Raguž shall jointly reimburse the costs of criminal proceedings, the amount of which the Court shall decide in a special decision, upon obtaining necessary data, pursuant to Article 186(2) of the Criminal Procedure Code of Bosnia and Herzegovina.

Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan were instructed that they may pursue their possible claims under property law in a civil action.

R e a s o n i n g

1. The Verdict of the Court of Bosnia and Herzegovina No. S1 1 K 005528 11 Krl of 13 January 2014 acquitted the accused Veselko Raguž and Ivo Raguž of the charges that, by the acts described in the enacting clause of the Verdict: the accused Veselko Raguž by the acts described in Section I-1, 2, 3, 4, 5, 6 and II-1, committed the criminal offense of

War Crimes against Civilians under Article 173(1)(c), (d) and (e) of the Criminal Code of Bosnia and Herzegovina (CC BiH), as read with Article 180(1) and (2) and Article 29 of the same Code, and the accused Ivo Raguž, under Section II-1 of the enacting clause of the Verdict, committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the CC BiH.

2. In its Verdict No. S1 1 K 005528 14 Krž3 of 1 October 2014, the Appellate Panel of the Court of Bosnia and Herzegovina granted, in part, an appeal filed by the Prosecutor's Office of Bosnia and Herzegovina, and in relation to the accused Ivo Raguž revoked, in whole, the Verdict of the Court of BiH No. S1 1 K 005528 11 Kri of 13 January 2014, and in relation to the accused Veselko Raguž, in part, namely in the part of Section II-1 of the enacting clause of the Verdict, and in this part ordered a hearing before the Appellate Division Panel.

3. On 31 March 2015, the BiH Prosecutor's Office specified the operative part of the Indictment in the part in relation to which the Trial Verdict was revoked, charging the Accused with the commission of the criminal offense of War Crimes against Civilians under Article 173(1)(c), as read with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina.

I. PROCEDURAL DECISIONS

A. DECISION ON PROPOSED EVIDENCE

4. At the hearing held before the Appellate Division Panel, the Prosecution moved the Court to review again the testimonies of 8 witnesses for the Prosecution, heard at the main trial before the Trial Panel. The Appellate Panel granted the motion and reviewed the testimonies of witnesses Semir Balavac, Edin Đulić, Medin Kaplan, Selvedin Kaplan, Zijo Vukičević, Alija Kaplan, Esmā Kaplan and Indira Bešo. In addition, upon a proposal by the Defense for the accused Veselko and Ivo Raguž, reproduced before the Appellate Division Panel were the testimonies of witnesses Anto Krešić and Anto Čoko, as a joint proposal by the Defense teams for both the Accused; the testimony of witness Miho Vukić upon a proposal by the Defense for the First-Accused; and the testimonies of witnesses Ivica Džakula and Vidoje Proleta upon a proposal by the Defense for the Second-Accused. At the hearing held before the Appellate Division Panel, held on 13 May 2015, witness Janja Raguž was heard again upon a proposal of the Defense for the accused Veselko Raguž.

5. Deciding upon the proposals filed by the parties and Defense Attorneys to accept the documentary evidence, the Appellate Panel granted, under its procedural decision of 13 May 2015, the Prosecution's motion to admit, without reading out again or reproducing, the documentary evidence presented in the trial proceedings, as specified in the Prosecution's Motion No. T20 0 KTRZ 0000436 05 of 12 May 2015, as well as the proposal filed by the Defense for the accused Veselko Raguž, to accept as adduced the documentary evidence enumerated in the submissions of 5 March 2015 and 12 March 2015, and the proposal by the Defense for the accused Ivo Raguž, to accept as adduced the documentary evidence specified in the submission of 12 May 2015¹.

6. The Appellate Panel refused the proposals filed by both the Prosecution and the Defense for the Accused to present new evidence, testimonial and documentary, for the finding that the evidence proposed failed to meet the standard of new evidence (*novum*), in terms of Article 295(4) of the CPC BiH, since there was no explanation as to why this evidence could not have been proposed in the trial proceedings.

7. The Appellate Panel dismissed the Prosecution's proposal to rehear the injured party-witness Medin Kaplan, because this witness was both examined and cross-examined in the trial proceedings, and was asked the questions regarding the circumstances highlighted by the Prosecutor in the reasoning of her proposal to hear this witness anew. In addition, at the time when he testified in the trial proceedings the witness had already possessed the medical documentation related to the injuries he had sustained so it is not a new piece of evidence. The Panel has concluded that there is no legal ground to present this evidence at the proceedings before the Appellate Panel, and therefore dismissed the proposal as such. The Panel also dismissed the Prosecution's motion to present as evidence the confirmed indictments against Vide Palameta, the military documentation concerning Vide Palameta and his status, having found that such evidence was not important for the establishment of decisive facts in this case. Also dismissed was the evidence the Prosecution, according to the Prosecutor, obtained in the investigation against Ivan Aničić. The Panel has concluded that this evidence could have been proposed already in the trial proceedings, considering that the Indictment against Ivan Aničić had been filed before the completion of the main trial in Veselko and Ivo Raguž. Ultimately, considering that the Dretelj camp images obtained, according to the

¹ All the documentary evidence is specified in Annex 1 to this Verdict.

Prosecution, in the case against *Ivan Zelenika et al.*, had been available to the Prosecution before the completion of the main trial against Veselko and Ivo Raguž, and that they failed to meet the standard of new evidence (*novum*), there is no legal ground to accept this evidence in the proceedings before the Appellate Division Panel.

8. The Panel has dismissed the proposal of the Defense for the accused Veselko Raguž to present new evidence before the Appellate Division Panel, joined with the proposal of the Defense for the accused Ivo Raguž, by hearing witness Miha Raguž, son of Rafo, and another NN witness, whose personal details were not available to Counsel at the time when the proposal was filed. The Panel has concluded that the circumstances about which the referenced witnesses were supposed to testify, according to Attorney Karadeglić, had been already sufficiently explained, or more precisely, that the Defense had already heard several witnesses with regard to the circumstances in question. Despite arguing that the information about the referenced witnesses was obtained no sooner than after the completion of the hearing before the Trial Panel, the Defense teams have not showed how this evidence was obtained and failed to prove this was indeed the type of evidence that would meet the standard of “new evidence” so as to have the requirement to present new evidence before the Appellate Division Panel satisfied. The Panel dismissed, on the same ground, the documentary evidence proposed by the Defense for the accused Veselko Raguž, which the Defense for the accused Ivo Raguž accepted as its proposal too. The Panel has concluded that the Defense Attorneys failed to offer any valid reasons as to why this evidence had not been obtained and presented in the trial proceedings, including the images of the Dretelj camp, which do not concern the period when the critical event occurred, but were, according to Counsel, taken subsequently.

9. Having so acted, the Panel acted in compliance with the principle of equality of arms in the proceedings.

II. CLOSING ARGUMENTS

A. CLOSING ARGUMENT OF THE PROSECUTION

10. In her closing argument, the Prosecutor stood by the closing argument she had presented in the trial proceeding. The Prosecutor thereupon thoroughly referred to the testimonies of the Prosecution’s witnesses Medin Kaplan, Selvedin Kaplan, Edin Đulić,

Semir Balavac, Alija Kaplan, Esmā Kaplan, Indira Bešo and Zijo Vukičević, and to the documentary evidence presented. The Prosecutor argued that the testimonies of the witnesses-injured parties were consistent regarding the decisive facts, and supported with the testimonies of the witnesses who possessed direct information about the incident described in both the Indictment and the documentary evidence presented. The Prosecution argued that, based on the comprehensive evaluation of evidence, it could be concluded that the allegations of the Indictment were proved by the Prosecution.

11. The Prosecution argued that all the witnesses-injured parties testified that it was Vide Palameta who had come to take them away. Medin Kaplan and Edin Đulić testified, *inter alia*, that Palameta told them that the “Commander” or the accused Veselko Raguž had sent for them. All the witnesses were consistent regarding the fact that they had arrived in front of a structure made of sheet-metal, garage or hangar, which they thereupon entered one by one. The Prosecutor further added that the witnesses-injured parties also consistently testified about the way in which they were interrogated, the type of questions the accused Veselko Raguž posed, the way in which they were abused because they all identically described the way in which phone wires were mounted on their ears and electric current turned on, and that the persons present in the garage wearing military uniforms, including Anto Krešić, had physically abused them. According to the Prosecutor, the inconsistencies in the witnesses’ evidence concern, only and exclusively, to the way in which the Accused treated them inside and outside the garage. This is understandable considering the fact that each witness testified about the mistreatment to which he had been personally subjected to and the subsequent consequences thereof. The Prosecutor argued it is crucial that all these witnesses had known Veselko Raguž, Ivo Raguž, Anto Krešić and Vide Palameta from before, wherefore there is no doubt that the witnesses could have been mistaken in identifying these persons.

12. The Prosecutor argued further in the closing argument that there was no logic in the testimonies of the Defense witnesses Ante Čoko, Vidoje Prole, Miha Vukić, Ivica Džakula, Ante Krešić and Janja Raguž and that they contained many contradictions, particularly in relation to the documentary evidence presented by the Prosecution. The Prosecutor argued that the referenced testimonies were aimed at providing an alibi for the Accused.

13. In view of the foregoing, the Prosecutor argued that, during the evidentiary proceedings, the Prosecution did prove that the accused Veselko Raguž and Ivo Raguž, together with Anto Krešić and a number of unidentified members of the HVO military

police, participated in the interrogation and physical abuse of the civilians detained at the Dretelj camp, at the time, in the place and in the way as described in the specified Indictment, whereby they committed the criminal offense as charged. Therefore, the Prosecutor moved the Court to find the Accused guilty and sentence them pursuant to the law.

B. CLOSING ARGUMENT OF THE DEFENSE

1. Closing argument of Branko Karadeglić, Defense Attorney for the accused Veselko Raguž

14. In his closing argument, Counsel for the accused Veselko Raguž first submitted that the Indictment erred regarding the legal qualification of the criminal offense charged against the Accused, which he had already addressed in his opening statement. This is so because the Accused was charged under the criminal law which was not in force at the time when the criminal offense charged against him was committed. According to Counsel, the foregoing resulted in a violation of the principle of time constraints regarding the applicability of criminal code and the application of a more lenient law, particularly following the delivery of the Judgment of the European Court of Human Rights in *Maktouf and Damjanović*.

15. Counsel Karadeglić further pointed to the misinterpretation of certain parts of the testimonies of witnesses Medin Kaplan, Edin Đulić and Semir Balavac, and to the conclusions drawn based on such a misinterpretation and presented in the Prosecution's closing argument. Counsel submitted that Exhibit T-84, showing that the Accused was together with his unit throughout the month of August 1993, has no evidentiary value because the records were generally kept as if the commanders were constantly present with their units. On the other hand, the Defense's Exhibit, excerpt from the Register of Marriages for the accused Veselko Raguž, proves quite the opposite.

16. Counsel also argued that the Prosecutor acted in violation of her obligation set forth in Article 14 of the CPC BiH to establish with equal attention the facts that are exculpatory as well as inculpatory for the accused.

17. Counsel argued that the testimonies of the witnesses-injured parties differ with regard to the decisive facts, that they differently described the garage in which the critical

incident had occurred, according to the Indictment, and the sequence in which they had entered it. Counsel also pointed to the inconsistencies between the testimonies of witness-injured party Medin Kaplan and his brother Alija Kaplan, to whom Medin Kaplan recounted the events from the Dretelj camp. In addition, Counsel pointed to the fact that the other witnesses, Esmā Kaplan, Zijo Vukičević and Indira Bešo, who possessed indirect information about the incident which is the subject of the Indictment, did not present or did not mention the referenced incident, until they were asked about it at the main trial. According to Counsel, such testimonies of theirs cannot be helpful in clarifying the incident at issue.

18. In addition, Counsel submitted it can be observed, upon correlation of the testimonies of the witnesses, that they all unanimously stated that the accused Veselko had neither beat them nor ordered anyone else to beat them. The Prosecution witnesses Edin Đulić and Semir Balavac testified that Veselko Raguž had not even entered the garage. Their statements, that the Accused had not entered the garage but rather stood near the reception, were confirmed by the testimonies of the Defense witnesses Janja Raguž, Miha Vukić and Vide Palameta.

19. Counsel Karadeglić argued it was not proved that the military or the IV Battalion, whose Commander was the accused Veselko Raguž, was responsible for Dretelj, considering that the evidence of both the Prosecution and the Defense showed that Dretelj was under the competence of the HVO military police.

20. In view of the foregoing, Counsel submitted it was not proved that the accused Veselko Raguž committed the criminal offense charged against him, and therefore moved the Appellate Panel to render an acquitting verdict in relation to the Accused.

21. The accused Veselko Raguž stood by the presentation of the Defense Attorneys and stated he had nothing else to add.

2. Closing argument of the Defense Attorney for the accused Ivo Raguž

22. Counsel for the accused Ivo Raguž primarily addressed the opening of the investigation in this case, and the manipulation of the incident at issue by the witness-injured party Medin Kaplan and his brother Alija Kaplan.

23. Counsel further added it was not proved who had called out the injured parties to enter the garage one by one, as alleged in the Indictment, and in particular that none of the witnesses confirmed that the accused Ivo Raguž indeed did it, and that no witness-injured party confirmed that the accused Ivo Raguž had forced their confession out. Counsel also pointed to the obvious discrepancies in the testimonies of the witnesses-injured parties regarding kicking, punching and pressing salt in their wounds by the Accused. Counsel pointed to witness Medin Kaplan's statement that the accused Ivo Raguž had only sat there and questioned them, although the accused Ivo Raguž was not charged with this action at all. In the case against Ante Krešić, in which witness Semir Balavac had also testified, he made no mention whatsoever of the accused Veselko and Ivo Raguž. The witnesses-injured parties gave different evidence regarding the sequence in which they had entered the garage, the distance between the garage and the hangar, the position of the garage, its interior and exterior. Counsel argued that the Defense has questioned the existence of the garage itself because this fact was denied by the Defense witnesses. A doubt into the existence of this structure ensues exactly from the inconsistent descriptions of the garage provided by the Prosecution witnesses.

24. According to Counsel, the Defense has contested all the testimonies of the witnesses-injured parties, and stated that their examination records were neither authentic nor legal. Counsel also pointed to a violation of the right to a defense in cross-examination of the witnesses because he was prohibited from posing questions regarding professionalization, property increase, the place from which the Accused took salt, what type of salt was in question, etc..

25. Counsel briefly addressed the legal qualification of the criminal offense charged against the Accused. Counsel pointed out it was necessary that the CC SFRY be applied as the more lenient law, and that the Prosecution had acted in violation of this obligation having qualified the criminal offense at issue pursuant to the CC BiH.

26. Counsel ultimately submitted that there was a plot in place against the accused Ivo Raguž, and that the only true facts regarding him are that he was a member of the IV Battalion, and that he received his August salary. Also true is the fact that the Dretelj prison existed. In view of the foregoing, Counsel moved the court to render an acquitting verdict in relation to the accused Ivo Raguž.

27. The Accused maintained the submission by his Counsel and stated he had nothing

further to add.

III. STANDARDS OF PROOF

28. In rendering its verdict, the Panel was under obligation to act pursuant to Article 281(2) of the CPC BiH, namely to conscientiously evaluate every piece of evidence, and its correspondence with the rest of the evidence. The Panel was also obligated to take account of the fundamental principles stipulated by both the CPC BiH and the European Convention on Human Rights and Fundamental Freedoms (ECHR), which has primacy over all domestic laws pursuant to Article II.2 of the Constitution of BiH.

29. One of the core principles of the criminal proceedings, the principle of legality, on which the Panel has relied in delivering its verdict, aims at ensuring that no innocent person is convicted, and that the perpetrator of the criminal offense receives a punishment or other criminal sanction within the limits prescribed by the provisions of the criminal law.

30. In addition, the Panel was particularly mindful of the presumption of innocence, contained in Article 3 of the CPC BiH, which provides that: "*A person shall be considered innocent of a crime until his/hers guilt has been established by a final verdict*", and the principle of *in dubio pro reo*, stipulated in Article 3(2) of the CPC BiH, which reads as follows: "*A doubt with respect to the existence of facts constituting elements of a criminal offense or on which the application of certain provisions of criminal legislation depends shall be decided by the Court Verdict in the manner more favorable for the accused.*"

31. Ultimately, the principle of equality of arms, enshrined in Article 14 CPC BiH, requires the Court to treat the parties and the defense attorney equally and provide each party with equal opportunities to access evidence and to present evidence at the main trial, and the obligation of the Court, the Prosecutor and other bodies participating in the proceedings to study and establish with equal attention facts that are exculpatory as well as inculpatory for the suspect or the accused.

32. The principle of free evaluation of evidence, set forth in Article 15 of the CPC BiH, which is applicable in our legal system, implies that the court's decision as to whether a decisive fact is proved or not is neither related to nor limited by special formal evidentiary rules. In addition, pursuant to Article 281(1) of the CPC BiH, the Court may reach its verdict based solely on the evidence presented at the main trial, and evaluate it as

provided for in the referenced Article 281(2) of the CPC BiH.

33. The Panel has delivered the Verdict in full compliance with the referenced principles, after evaluating all pieces of the adduced evidence, testimonial and documentary, tendered by both the Prosecution and the Defense for the Accused, including the evidence presented before the Appellate Division Panel and the testimonies of the witnesses reproduced before the Appellate Division Panel, as well as all testimonial and documentary evidence admitted by the Appellate Division Panel without being reproduced or read out, in the form as presented before the Trial Panel. Considering the large body of the probative evidence in the case, the Panel could not address, in the reasons for the Verdict, each item of the adduced evidence individually. In rendering the Verdict, the Panel has reviewed and evaluated each piece of the adduced evidence, but the reasoning of the Verdict will address only the evidence important for the findings of fact, the existence of the criminal offense and the accused's guilt. The testimonies of the witnesses formed probative evidence to a large extent, wherefore their evaluation, as well as the evaluation of the witnesses credibility, was a huge challenge for this Panel, as it would be for any other panel acting in a similar situation. Specifically, in evaluating the testimonies of the witnesses, the Panel must not *a priori* accept as true everything that a witness has stated, regardless of whether it is a testimony incriminatory or exculpatory for the accused. Due attention must be paid to the evaluation of the witnesses' evidence, and particularly, an account must be taken of both the contents of the testimony and the general impression the witness has created, his conduct, voice tone, attitude, physical and emotional reactions to the questions posed, and the witness's conduct in relation to the parties and defense attorneys. The testimonies of the witnesses should be evaluated taking in to account the overall atmosphere in which they gave evidence.

34. This is particularly important when it comes to the testimonies of the witnesses-injured parties who had survived traumas, and who are being subjected to re-traumatization when they have to testify again about the experiences survived. In such circumstances, special caution and attention must be paid to the evaluation of the credibility of their evidence.

35. Important for the evidence of a witness is not only that it is given sincerely (the Panel assumes that, after taking a solemn oath before the Court, each witness intended to testify sincerely about the facts and circumstances in relation to which he/she had information), but also that the evidence is reliable. Variety of factors affect the reliability of a witness's

evidence, particularly his/her ability to observe, the variability of human perception, the elapsed period of time, the traumatic nature of the incident itself, but also the witness's bias. As a result of all the referenced factors, the two witnesses, who had attended the same incident, may view this incident from different mental, physical and even chronological perspective, and can give different evidence. Therefore, in evaluating the testimonies of the witnesses, the Panel has compared the facts about which the witness testified with the facts established by the other witnesses, and the facts ensuing from the documentary evidence. Based on such a comprehensive evaluation, the Panel drew the conclusion on the reliability of the evidence each witness gave individually.

36. It needs to be particularly highlighted that, after evaluating the testimonies of the witnesses, the Panel has concluded that certain witnesses were sincere and reliable, even to their own prejudice. Other witnesses were sincere, but certain parts of their evidence were not convincing for various reasons: limited perception, poor power of observation, the elapsed period of time, personal interests, as well the interest to influence on the outcome of the proceedings, loyalty to the accused or arbitrariness towards the accused or the victims, which could result in certain conclusions on the part of the witnesses as to what they had indeed seen or heard. Nevertheless, even in relation to such witnesses, there were situations where the Panel concluded, despite considering certain parts of their evidence unreliable, that some parts thereof contained precise observations on certain facts. In such a situation, the Panel has concluded that dismissing such evidence in its entirety would not be compliant with the interests of justice. Therefore, the Panel evaluated such evidence in terms of reliability and accuracy of each fact or circumstance about which the witness was examined.

37. The Panel has further compared the testimonies the witnesses had given at different stages of the proceedings, and analyzed their statements made during the investigation, when there were certain inconsistencies regarding the decisive facts in relation to their evidence given at the main trial. Based on such an evaluation, the Panel concluded which evidence could be credited.

38. In addition to the statements of the witnesses in the concrete case, the large body of documentary evidence tendered in the case record by both the Prosecution and the Defense for the Accused, is a significant segment of evidence of importance for the issue of the existence of the criminal offense and the guilt of the accused.

39. In evaluating the authenticity of the documents, the Panel has considered evidence in relation to all other presented evidence, such as the other documentary evidence and the testimonies of the witnesses.

40. Even when the Panel was satisfied that the considered document was authentic, it was not automatically accepted that the content of the referenced documents was a true presentation of the facts. The authenticity of the content was evaluated in each specific case.

41. In view of the foregoing, and considering both the referenced principles provided for in the domestic law and Article 6(1) of the ECHR, pursuant to which all courts shall be bound to “indicate in a sufficiently clear manner the grounds on which their decision is based”, the Panel has carefully evaluated all the presented evidence, which will be addressed further in the reasons for the verdict.

IV. APPLICABLE LAW

42. The Indictment of the BiH Prosecutor’s Office charged the accused Veselko Raguž and Ivo Raguž that, by the acts factually described in the Indictment, they committed the criminal offense of War Crimes against Civilians under Article 173(1)(c) of the Criminal Code of BiH, as read with Article 180(1) and Article 29 of the same Code.

43. Considering Article 280(2) of the CPC BiH, pursuant to which the Court is not bound to accept the proposals of the Prosecutor regarding the legal evaluation of the act, and that the CC BiH entered into force after the criminal offenses charged against the accused Veselko Raguž and Ivo Raguž had been committed, and taking into account one of the fundamental principles of criminal law, which is the principle of time constraints regarding the applicability of law, pursuant to which the law that was in effect at the time when the criminal offense was committed will apply to the perpetrator, and if the law has been amended one or several times, the law which is more lenient to the perpetrator shall apply, the Panel was under obligation to examine which law is, in the concrete case, more lenient to the accused and should be as such applied in the case at hand. In addition, the Defense for the Accused has itself also raised this issue.

44. In evaluating which law is more lenient to the Accused, considering that both laws (the adopted CC SFRY, as the law which was in effect at the time the criminal offense was

committed, and the CC BiH, as the subsequent law) provide for the same essential elements of the criminal offense charged against the Accused, and differ only with regard to the prescribed sentence framework, the Appellate Panel has, from this very aspect, examined which law is to be considered less stringent in relation to the Accused.

45. Pursuant to the CC BiH, the prescribed sentence for the criminal offense of War Crimes against Civilians is imprisonment for a term *not less than 10 (ten) years or long-term imprisonment*, while the adopted CC SFRY prescribes for the same offense *not less than 5 years in prison or the death penalty*.

46. Mindful of the referenced sentencing frames, and pursuant to the domestic and international case law established through the decisions of the ECtHR and the Constitutional Court of Bosnia and Herzegovina, the Panel has concluded that, in the concrete case, the adopted CC SFRY is more lenient to the Accused and that the criminal offenses charged against the Accused should be qualified pursuant to this Code.

47. In drawing the foregoing conclusion, the Panel took into account that, in *Maktouf and Damjanović*, the European Court of Human Rights has held that the application of the more lenient law must be evaluated on a case-to-case basis, and found a violation of Article 7 of the ECHR in relation to the applicants Maktouf and Damjanović „...*since there is a realistic possibility that the retroactive application of the 2003 Code operated to the Applicant's disadvantage...*“. The ECtHR's starting point for such a conclusion was the minimum sentence prescribed for the referenced criminal offense, finding that the sentences the Applicants received were imposed towards the statutory minimum, namely, in relation to Maktouf, the sentence was even reduced below minimum. The previous law, the adopted CC SFRY, provided for the death penalty as a special maximum sentence for the offenses of which the Applicants were found guilty. Obviously, this sentence could be imposed only for the most serious forms of war crimes. Certainly, the crimes of which the accused Maktouf and Damjanović were found guilty were not such crimes. Therefore, in evaluating which law is more lenient to the applicants in the concrete case, it had to be examined which law is more lenient in terms of minimum sentence.

48. According to this Panel, such a view may be completely applied to the case at hand. The Panel was first mindful of the facts that, like in *Maktouf and Damjanović*, the Indictment did not charge the accused Veselko Raguž and Ivo Raguž with a loss of lives, and that the crimes charged against them were not categorized as the most serious crimes

the commission of which would generally possibly carry the death penalty, even if they were tried at the time when it was possible to impose such a sentence. Therefore, the issue of application of the more lenient law in relation to the Accused needs to be considered starting from the minimum prescribed sentence. According to the Panel, the adopted CC SFRY is undoubtedly the more lenient law since it prescribes a 5-year prison sentence as a minimum sentence for the criminal offenses at issue, and which can be reduced to the imprisonment for a term of 1(one) year by applying the provisions of the referenced Code.

49. The Panel has therefore concluded that the adopted CC SFRY, which was in effect at the time when the criminal offenses charged against the Accused were committed, and which is more lenient to the Accused than the subsequent CC BiH, should be applied in the case at hand.

V. FINDINGS OF FACT

A. ESSENTIAL ELEMENTS OF THE CRIMINAL OFFENSE

50. The essential elements of the criminal offense of War Crimes against Civilians, as ensues from Article 173(1) of the CC BiH, are the following:

- violation of rules of international law
- the offense must be committed in time of war, armed conflict or occupation
- the accused must order to perpetrate the act.

(a) Violations of rules of international law

51. The first underlying element of this criminal offense is a violation of the rules of international law. The Prosecution's Indictment charged the accused Veselko Raguž and Ivo Raguž with acting in violation of Common Article 3(a) and (c) and Article 27 of the Third Geneva Convention on the Protection of Civilian Persons in Times of War. The Panel has concluded that the elements of violation of Common Article 3 of the Geneva Conventions have been satisfied by the acts of the Accused.

52. Common Article 3 of the Geneva Conventions constitutes a minimum of rules each Contracting Party is bound to observe. The referenced Article provides as follows:

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

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

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

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

53. To find a violation of Common Article 3 of the Geneva Conventions, which is a prerequisite for the existence of the criminal offense of War Crimes against Civilians, as a blanket norm, the Panel must determine whether the acts of the Accused, in the concrete case of the accused Veselko Raguž and Ivo Raguž, were directed against the category of persons who enjoy protection pursuant to the referenced rule, that is, persons taking no active part in the hostilities. To the same effect, it also needs to be determined whether the Accused, by his acts, acted in violation of the obligation transpiring from Common Article 3 of the Geneva Conventions, the obligation to accord human treatment, specifically, whether he acted in violation of one or all subparagraphs, (a) through (d) of Common Article 3 of the Geneva Conventions. Ultimately, with regard to the Accused's awareness, it is clear from the provisions per se that the perpetrator need not be aware or have intent to act in violation of the international norm, but it rather suffices that the commission itself is in violation of the rules of international law.

(i) Status of the victims

54. The Appellate Panel has concluded, on the basis of the adduced evidence, that the injured parties Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan had the status of civilians, or persons that took no active part in the hostilities, and that, therefore, they were a protected category of the population pursuant to Article 3 of the Geneva Conventions.

55. All injured parties testified that they had been arrested at their homes, that they had lived with their families in their places of origin and that they had been arrested in an action in which the entire Muslim population of the villages of Aladinići and Pješivac Greda, including a large number of women and children, had been expelled from their homes and detained on the premises of the local primary school. Until the moment when they were arrested or shortly before the arrest, all the four injured parties were members of the HVO, who had been demobilized at the beginning of the conflict between the ARBiH and HVO, but there is no evidence that they were members of the ARBiH at any point of time, as the other party to the conflict, by which their status when they were arrested could be brought into question.

56. Witness-victim Selvedin Kaplan testified he had been arrested by two members of the HVO at his house in the village of Pješivac Greda on 14 July 1993, and that he was in civilian clothing. The witness further testified that he had been arrested within the attack in which Sanida Kaplan was killed in the village. Members of the HVO, who had arrested them, ordered them to bury Sanida Kaplan and to take a disabled old woman up to a hill, where another woman from the village had come too. Medin Kaplan testified that he had been in his house at the time when he was arrested, together with several relatives and friends of his, and that they were all in civilian clothing, while the persons who had arrested them wore HVO uniforms and carried weapons. Witness Edin Đulić also testified that, on 1 July 1993, when the war between Croats and Muslims broke out, he was arrested in his village of Pješivac Greda, together with other members of his family: his children, father, mother, grandmother. They were all transported to Blagaj, while he and several of his male neighbors were taken first to Stolac, thereupon to the Koštana Hospital (Bones Hospital) and ultimately to Dretelj. Witness Semir Balavac testified that, until his arrest, he had been a member of the military component, the HVO, but that HVO members arrested him on 1 July 1993, when after his leave he went to report to the frontline. Witness Balavac stated there was a notice on the referenced day that all Muslims had to lay down their arms,

which they did. After surrendering the weapons and returning to the school, members of the HVO military police arrived in a military vehicle and forced them to strip off their clothes and remain in their underwear. Witness Balavac was in his underwear most of the time during the period of his detention at the Dretelj camp. The witness testified that his father, mother, brother, wife and children had been captured on the same day together with the rest of the civilian population of the Aladinići village, and taken to the school. They were thereupon transferred to the Kaplan's hamlet, and subsequently transported to Blagaj. Witnesses Esmā Kaplan and Indira Bešo testified about the attack on their village of Pješivac Greda. They were, together with the other women and children, confined in the primary school, while the men from the village, including the injured parties in the concrete case, were taken away and detained at the camp.

57. In view of the foregoing, the Panel has concluded that the injured parties subjected to the actions described in the enacting clause of the Verdict, had civilian status, which was uncontested by the Defense for the Accused, which means that they were a protected category of the population pursuant to Common Article 3 of the Geneva Conventions.

(ii) Torture

58. Considering the contents of Common Article 3 of the Geneva Conventions, the second prerequisite to be satisfied in order to meet the first underlying element of the criminal offense of violations of the rules of international law is that the perpetrator acted in violation of the obligation to accord human treatment to the protected category of the population, or to the civilians in the concrete case. The obligation of human treatment, as it ensues from the wording of Common Article 3 of the Geneva Conventions, implies an explicit ban, at any time and at any place, on any form of violence to life or person against the protected category of the population, in particular murder of all kinds, mutilation, cruel treatment and **torture**, as well as a series of other inhuman acts listed in subparagraphs of the same Article.

59. Torture is prohibited under both conventional and customary international law, and it is prohibited both in times of peace and during an armed conflict. The prohibition can be said to constitute a norm of *ius cogens*.

60. Torture was as a war crime also prohibited under Article 142 of the adopted CC SFRY at the time when the criminal offense at issue was committed.

61. The Geneva Conventions have not provided for a definition of torture. The adopted CC SFRY, the application of which in the concrete case the Panel considers justified, has provided for no definition of torture either. The definition of torture, however, may be drawn from the international case law.

62. In attempting to define an offense under international humanitarian law, one should be mindful of the specificity of this body of law, particularly in relation to the definition of the notion of “torture” existing in the context of human rights protection. Upon a comprehensive analysis of the 1948 Universal Declaration on Human Rights, the 1984 Convention against Torture and Other Cruel, Inhuman or Humiliating Treatment or Punishments, and the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms, the ICTY’s Trial Chamber in *Kunarac* has found that the act of torture in international humanitarian law includes the following specific elements: (i) the infliction, by act or omission, of severe pain or suffering; (ii) act or omission must be intentional; (iii) the act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing a victim or a third person, or at discriminating, on any ground, against a victim or a third person.

63. The Panel has concluded, on the basis of the adduced evidence, that the acts of the accused Veselko Raguž and Ivo Raguž have satisfied the elements of torture as a form of commission of the criminal offense of War Crimes against Civilians. It ensues from the testimonies of the witnesses-injured parties, that when they were taken for interrogation aimed at obtaining information or confession (as to who torched a church or destroyed the bridge, etc.) by the accused Veselko and Ivo Raguž, and others, they were physically abused in various ways, *inter alia*, by being kicked with military boots, by being subjected to electric current from an inductor telephone, and by salt being pressed on the open wounds of the injured party Semir Balavac. All these acts inflicted severe physical and mental pain and suffering on the injured parties. In the Panel’s view, the referenced acts, to be analyzed in detail in the part of the Verdict addressing the evaluation of evidence and the findings of fact, have met the standard of torture.

64. The Appellate Panel has not concluded that the Accused’s acts have satisfied the underlying elements of the violations charged against the Accused, including violations of Common Article 3(1)(c) and Article 27 of the Geneva Convention relative to the Protection of Civilian Persons at Times of War of 12 August 1949. Article 3(1)(c) of the Geneva Conventions prohibiting “*outrages upon personal dignity, in particular humiliating*

and degrading treatment“, which are the essential elements of inhuman treatment as an act of commission of war crimes against civilians. Since torture, the elements of which have been satisfied by the acts of the Accused, which is strictly prohibited under Common Article 3(a) of the Geneva Conventions, is a more severe form of violation of the referenced norm of international law, the Panel has qualified the Accused’s acts as torture, by subsuming these acts under violations of Common Article 3(1)(a) of the Geneva Convention. The Panel has held that, due to the prohibition of double punishment, the same act cannot and must not be qualified at the same time as torture and inhuman treatment, as it factually ensues from the Prosecution’s Indictment.

65. Article 27 of the Third Geneva Convention also stipulates that “*Protected persons are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs...*“. Since the Prosecution’s evidence was directed at proving the above described elements of torture, strictly prohibited under Common Article 3(1)(a) of the Geneva Conventions, the Panel has qualified the Accused’s acts as a violation of the minimum right of all protected persons, in which the essential element of the referenced offense has been satisfied. The Panel, however, did not examine in more detail the alleged violations of Article 27 of the Third Geneva Convention.

(b) The existence of an armed conflict

66. The Panel has concluded, beyond a doubt, based on the presented evidence, that at the relevant time, there was an armed conflict between the ARBiH and the HVO. The injured Bosniak parties testified that they had been members of the HVO up until late June, or formally even up until the moment they were arrested, but that, at the time, the armed conflict between the ARBiH and the HVO broke out and they had to lay down their arms, whereupon they were arrested. The Defense witnesses also testified that, at the critical time, which is August 1993, there was an armed conflict between the ARBiH and the HVO. This fact is supported by a series of tendered documentary evidence. Exhibit T-40 shows that the First HVO Brigade started disarming members of the Army BiH and cleansing the territory of Gubavica. The contents of this Exhibit showed that the armed conflict between these two parties had already started by then, that there were no dead or injured on the HVO side, and that the other actions of cleansing the remaining parts of the Army BiH in the zone of responsibility of the First HVO Brigade continued throughout June. This Exhibit presented the information about the number of the wounded, killed or

captured members of the Army BiH. Exhibit T-44² shows that this armed conflict continued, and addresses full combat readiness of the First, Second, Third and Fourth Battalion, whose Commander was the accused Veselko Raguž, while Ivo Raguž was its member, including the combat readiness of the Neum Battalion. The same Exhibit-Order showed that such combat readiness was ordered exactly because of the conflict with the ARBiH, and because Item 10 of the order stated that: *“The Muslim forces launched a general offensive, and most probably the Chetniks’ forces offensive will be launched too. Quite certainly, we can defend the area...”*

67. The Defense for the accused Veselko and Ivo Raguž did not contest this essential element of the criminal offense. The Panel has therefore concluded it has been proved beyond a reasonable doubt.

(c) Nexus between the acts of the Accused and the armed conflict

68. In addition to the existence of an armed conflict, the Prosecution must also establish an obvious link between the alleged acts of the accused and the armed conflict.³ The armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played substantial part in the perpetrator’s ability to commit it.⁴

69. In determining whether or not such a link existed, the Appeals Chamber in *Kunarac*, took into account, *inter alia*, the following factors: whether the perpetrator was a combatant, whether the victims were members of the opposing party and whether the crime was committed as part of or in the context of the perpetrator’s official duties.⁵

70. That the accused Veselko Raguž and Ivo Raguž were at the critical time members of the HVO, specifically that the accused Veselko Raguž was a member of the IV Battalion, ensues from both the documentary evidence and the testimonies of the heard witnesses. Considering that, before being arrested, all the four injured parties were members of the HVO IV Battalion, they were aware of the fact that the Commander of the Battalion was the accused Veselko Raguž. In addition, Prosecution Exhibit T-73⁶ shows that the accused

² Order of the 1st HVO Brigade „Knez Domagoj“, No. 1100-01-01-93-521 of 28 July 1993.

³ *Čelebići*, Trial Chamber Judgment, para. 193.

⁴ *Kunarac*, Appeals Chamber Judgment, para. 58.

⁵ *Kunarac*, Appeals Chamber Judgment, para. 59.

⁶ Document of the CSB Mostar, CJB Stolac No. 18-16-I-90/96 of 8 January 1996, number 2.

Veselko Raguž “assumed the duty of the Town Defense Commander in late June 1993, and that he held this office at the time when mass-scale arrests and persecution were carried out.” That the accused Veselko Raguž had a military engagement in the HVO, and that his name was entered in the salary list for the critical period (August 1993) ensues from the Form VOB-8 and the “monthly strength” for August 1993⁷, which equally applies to the accused Ivo Raguž⁸.

71. The Defense for the Accused also did not contest the capacity of the accused Veselko Raguž as a commander, and of the accused Ivo Raguž as a member of the IV Battalion. Based on the testimonies of the witnesses-injured parties, to be analyzed in more detail in the examination of evidence relating to the incident which is the subject of the Indictment, the Panel has concluded it was proved beyond a doubt that both Accused had been present at the site, and took part in the interrogation and ill-treatment of the injured parties, who had been arrested and detained at the Dretelj camp, together with a large number of Bosniak men brought to the camp within the cleansing action carried out by the HVO in the territories inhabited by the Muslim population.

72. The interrogation itself, in combination with severe physical abuse, which has satisfied the elements of torture, was aimed at obtaining information about the ARBiH, the party with which the HVO, whose members the Accused were, was in conflict, and the information about the crimes committed by members of the other belligerent party. In the Panel’s view, all these are circumstances confirming beyond a doubt that the acts of the Accused were directly linked with the armed conflict.

(d) The perpetrator must order or commit the act

73. In relation to the last essential element of the criminal offense of War Crimes against Civilians, it has been provided that the perpetrator must order others “...to commit murder, **torture**, inhuman treatment against the civilian population...” or some other criminal offense, or to commit it personally. During the proceedings, the Defense teams for the accused Veselko Raguž and Ivo Raguž have contested exactly the referenced element.

74. The Defense teams for the accused Veselko Raguž and Ivo Raguž did not contest the fact that victims Semir Balavac, Edin Đulić, Medin Kaplan i Selvedin Kaplan, as well as

⁷ T-84.

⁸ T-85.

hundreds of other Bosniak civilians detained at the same time at the Dretelj camp, had indeed survived various forms of ill-treatment, including the abuse to which the four injured parties were subjected as described in the factual description of the enacting clause of the Verdict. The Defense teams for the two Accused, however, contested that the Accused had been in any way connected with the interrogation of the captured civilians, particularly with the abuse to which they were subjected on the referenced occasion. The Defense teams even contested that a garage made of sheet-metal existed at all within the camp perimeter, in which the abuse at issue had taken place according to the witnesses' evidence.

75. The Panel has concluded that the testimonies of the witnesses-victims (injured parties) were consistent with regard to the decisive facts, as supported with the other evidence too. In view of the foregoing, the Panel has concluded it was proved beyond a doubt that, on the critical day, the accused Veselko Raguž and Ivo Raguž had been present in the Dretelj camp, and that they took part in the interrogation of the injured parties Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan. In this way, the Accused participated in and contributed to the torture of these victims, and thereby committed the criminal offense charged against them under the Indictment. The Panel will address in more detail the very form of the participation of the Accused in the commission of crime further in the reasoning of the Verdict.

VI. FINDINGS OF FACT

76. In evaluating the evidence and determining the decisive facts, the Panel took account of the facts and the circumstances that were undisputed among the parties during the proceedings. More precisely, the Panel had in mind that the Defense teams for the Accused did not contest, during the proceedings, the fact that the injured parties Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, together with several hundred Bosniak civilians, were in the critical period detained at the Dretelj camp, and that the detained Bosniak civilians, including the referenced four victims, were subjected to various forms of abuse while they were held in the Dretelj camp. Therefore, having considered that the foregoing facts were established beyond a doubt, the Panel will pay no special attention to explaining the referenced circumstances.

77. The Defense teams for the accused Veselko Raguž and Ivo Raguž, however, did contest the incident factually described in the Indictment, including the presence of the accused Veselko and Ivo Raguž in the Dretelj camp. The Defense for the accused Veselko Raguž did not contest only that he was once present in the immediate vicinity of the camp reception booth, when he came to pick up repairman Miho Vukić to fix a mechanical breakdown on his vehicle. On this occasion, like in no other occasion whatsoever, the Accused did not enter the camp perimeter, or make any contacts with the detained Bosniaks. In particular, the Defense teams for the Accused contested that the Accused was in any way connected with interrogations, especially with the abuse of the detained Bosniak civilians. Also contested by the Defense teams was the very existence of the garage made of sheet-metal as an object where, according to the victims, the abuse and ill-treatment charged against the Accused had taken place. The Panel will further in the reasoning of the Verdict comprehensively examine the evidence of both the Prosecution and the Defense for the Accused with regard to the referenced circumstances, in the context of the existence of the crime charged against the Accused and the Accused's guilt for the commission thereof.

78. The Panel has concluded, beyond a doubt, that the incident charged against the Accused, and factually described in the enacting clause of the Verdict, had indeed occurred, primarily evaluating the testimonies of the witnesses-victims themselves and correlating such evidence to the other corroborating evidence.

79. The Panel bore in mind the fact that all the four witnesses-victims, Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan, identically testified that, in early August 1993, Vide Palameta took them out of a hangar in the Dretelj camp, where they had been detained together with the other detained Bosniak men, and ordered them to run after him towards a garage made of sheet-metal, which was located within the camp-perimeter.

80. The Defense teams for the Accused contested that any garage made of sheet-metal had at all existed in the camp perimeter as an object where the described abuse occurred. Witnesses Ante Čoko, Ante Krešić and Miho Vukić were examined with regard to the referenced circumstances. These witnesses explicitly denied that any object made of sheet-metal had existed within the Dretelj camp perimeter. The Panel has correlated the testimonies of these witnesses with the testimonies of witnesses-victims and concluded they were not convincing, and that they were given specifically with the aim to help the

Accused.

81. Witnesses-victims Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan testified identically, in relation to the decisive facts, that on an unspecified day in early August 1993, Vide Palameta known as “Dugi” came to the hangar where they had been detained, and took them to a garage located in the immediately vicinity of the camp reception. Even though the Defense had underlined the discrepancies in the testimonies of these witnesses concerning the appearance of the garage itself, and the order of their entrance into the garage, the Panel has not considered them significant to such an extent so as to bring into question both the existence of the garage itself and the reliability of the witnesses’ evidence.

82. All the witnesses consistently testified that, on the critical day, four of them were called out and taken out of the hangar where they had been detained; that they were ordered to run after Vide Palameta to the camp reception, and that they waited in front of a garage into which they were subsequently taken one by one. Witness Medin Kaplan described the garage as a “*garage made of sheet-metal, large enough for a small car to fit in*”, with no windows and no option of looking into it from outside. Witness Selvedin Kaplan also testified that they had been left to wait in front of the garage, into which they entered one by one. This witness described the garage in more detail as an object of 5-6m in length, which was located to the right from the camp gate, and, as witness Medin Kaplan testified, that it was made of sheet-metal from the ground up to the ceiling. Witness Selvedin Kaplan testified that those who stood outside the garage could not see what was going on inside. Witness Semir Balavac testified that the place where the abuse had taken place was a tin-sheet fabricated hangar. Subsequently in his testimony, this witness did not object to using the term “garage” and, just like the two other witnesses, he stated that this object was located near the camp gate, that they were taken into it one by one, and that the interior of the object was invisible from outside. Witness Edin Đulić also described the garage within the Dretelj camp perimeter, in front of which they had been brought by Vide Palameta and first left to wait, and thereupon called to enter it, one by one, and that they were abused inside, but that while waiting outside, they could not see what was going on inside.

83. Based on these witnesses’ statements, the Panel has concluded, contrary to the unconvincing submissions of the Defense witnesses, that it was proved, beyond a doubt, that there was a garage inside the camp perimeter, to the right near the camp gate,

in which the four victims had been subjected to ill-treatment in the way as described in the enacting clause of the Verdict. According to the Panel, that fact that not all witnesses described quite identically the garage at issue does not affect the reliability of their evidence with regard to the referenced fact, or the fact highlighted by the Defense during the proceedings, that the witnesses did not provide identical information about the order in which they had entered the garage. It is true that witnesses Medin Kaplan, Edin Đulić and Semir Balavac each claimed to be the last one, of them four, who entered the garage. The Panel has held, however, that this fact, by itself, is not important to the extent to which it could bring into question the reliability of these witnesses' evidence. The sequence of entrance itself is not a decisive fact for the existence of the offense itself. None of the witnessed has brought into question that exactly four of them were there (while witness Đulić also mentioned one Asim Rahimić). They testified identically about the way of entrance – one by one, while the others waited to be called out. Bearing in mind the elapsed period of time, the traumatic nature of the incident itself and the fact that the witnesses, as they testified, did not communicate with each other while waiting to be called out and brought into the garage, being at the same time aware that nothing good could be expected, judging from the moans and cries they had heard from inside the garage, the Panel considers it possible that the witnesses have confused the sequence of their entrance in the garage, or that even each of them thought that exactly he was the last one to enter it. In the Panel's view, the referenced fact supports the reliability of the witnesses' evidence, contrary to the Defense's efforts to bring it into doubt. In the Panel's view, such discrepancies, which does not pertain to the decisive facts, further indicate that the witnesses presented their own view of the incident at issue, relying on their own perception and memories, and that their testimonies were not learned, staged and mutually agreed evidence, as the Defense made efforts to present them in the course of the entire proceedings, because otherwise the witnesses would have harmonized their evidence, at least when it comes to the sequence of their entrance into the garage.

84. In view of the foregoing, the Panel has fully credited the testimonies of the witnesses-victims, and, based on this, found proved both the existence of the facility itself and the fact that the victims were abused inside this tin-sheet made object in the way as described in the enacting clause of the Verdict, and that the fact as to whether it was a garage, barrack or a tin-sheet hangar was not decisive in nature.

85. The Panel has also concluded that the witnesses-victims consistently testified about

the manner in which they were abused inside the garage.

86. Witness Semir Balavac testified that, after Vide Palameta had called the Kaplan men, Đulić and him, on 2 August 1993, to come out of the hangar and follow him in double time for around 600-700 m towards the camp gate, he ordered them to stand by the wall, with their hands put behind their heads, and the heads bowed down, and then called them, one by one, to enter the hangar made of sheet-metal. The witness stated that “as soon as you get inside, you get beaten”⁹. The witness described it as follows:

“...I am getting inside. I see Veso at the entrance. I entered and (saw) Ante Krešić and Ivo Raguž, two of them, waiting for me. Thereupon, first Ante Krešić hit me without asking me anything. I was first hit with an iron bar or stick. I do not know, that was a stick 4-5 cm thick and one or 1.2 m long. He beat me on my back, legs, and hands. I got this big injury on my hand after one of the blows ...His (Krešić’s) assistant is Ivo Raguž, and both of them are beating me, but mostly Ante, who is in charge, and Ivo assists him...”¹⁰

The witness further stated that they had posed him questions such as “*Who torched the church in (the village of) Aladinići?*”, and “*Who planted mines under the bridge, a sort of bridge on the Bregava River?*” Ivo asked him why he had come to Stolac to kill him. The witness stated that the abuse had continued in the way that they “made him sit” on a military bed placed in the corner, and thereupon:

“...they put a wire, a bare wire, plus and minus poles, and connected this bare wire to my ear, and (the other end) to a field phone, and dialed it. As the phone is being dialed, one gets a short circuit in his head and falls down on the ground as a result of pains ... This happened for three or four times. These pains are unbearable. One does not end up in coma, but loses his consciousness...”¹¹

According to the witness, the ill-treatment did not stop even then, but on the contrary, when he fell from the bed after the third or fourth time the short circuit was caused in his head by the phone electric current, they started kicking him on his head, body and back with military boots on their legs. Witness Semir Balavac stated that Ivo, Ante Krešić and 7-8 other members of the military police component, whom he did not know, beat him, and that, on the average, they all hit him for 3-4 times, mostly on his head and ribs. The witness was bleeding from his nose and mouth as a result of the blows received. The witness stated that Ivo Raguž had pressed a handful of salt into his wound.

⁹ Transcript from the main hearing of 24 October 2012, p.9.

¹⁰ Ibid, p.9.

¹¹ Ibid.

87. It further ensues from the witness Balavac's evidence that he was generally abused between 15 minutes and half an hour, as was the case with the other victims who had entered the garage before him. While the witness waited for his turn to be brought inside the garage, and while one of the other victims was in the garage, the witness could hear moans from inside the garage from the distance of around 15-20 meters from the place where he was standing. On this occasion, that is, upon entering the garage, the witness saw Veselko Raguž at the entrance, but not in the garage itself. The Prosecutor strictly asked the witness if he had seen Veselko Raguž in the garage, and the witness responded:

"I did not, you cannot even see when you are beaten non-stop ... you could not see even your own mother, let alone someone else. So, there were around 7-8 police officers, and I really do not know who else was there with them ... It means, there were 7-8 of them, plus the other two¹² who kept beating..."¹³

88. Witness Medin Kaplan testified he was, once in August, subjected to abuse in a tin-sheet made garage, when Vide Palameta called out him, Selvedin Kaplan, his relative Edin Đulić and Semir Balavac, and ordered them to report to the gate in double time, which they did. They waited in front of a garage, and while he waited for his turn to enter it, a soldier came by and told him: "*The Commander of the town of Stolac has arrived, so God help you if you had done anything wrong*"¹⁴. When the witness's turn came, he entered the garage and was told to sit down. Veselko Raguž and Ivo Raguž stood opposite from him, and the witness identified Ante Krešić too, but he did not know the other police officers. The witness stated that Veselko and Ivo started posing the following questions to him:

"...Who torched the house, who torched the church, which, of course, I did not do. It's normal that I cannot admit that I had torched it ...but it was not even important...because whatever I say, either I did or did not torch it, it was certain they would beat me."¹⁵

Witness Medin Kaplan further stated that they had started beating him all over his body. They even knocked out four of his teeth. The mistreatment did not end with the beating. The witness further testified they had connected electric current to his ears. The witness described the way in which this was done as follows:

¹² It can be concluded from the contents that the witness implies Ivo Raguž and Ante Krešić whom he had identified.

¹³ Ibid. p. 12.

¹⁴ Transcript from the main trial of 24 January 2012, p.12.

¹⁵ Ibid.

„An inductor telephone, one cable to one ear, the other cable to the other one ... Did I torch the church? I said I did not. I did not torch it....and I ask Veselko, why are you beating me, neighbor, what harm have I done to you...and he said:” I am not a neighbor for you, I am Ustasha for you...”¹⁶

The witness stated that the inductor telephone current was in this way connected to his ears for six times, the consequences of which he still suffers, on the day when he gives evidence, due to impaired hearing of one of his ears. The witness stated that Ante Krešić had put electric current on his ears, and that Veselko and Ivo Raguž had questioned him, while the other present persons had beat him. Ultimately, when he was about to leave the premise, the police officers lined up in two lines, and he had to pass between them while they beat him on his way out. The witness stated that Veselko Raguž did not beat him. He also stated that he would not have received the beating in the garage had two of them not arrived there, and that “this tells it all”.¹⁷ The witness added that Veselko had ordered them to beat him by telling him to “confess”. It can be concluded from the witness’s evidence that, even if no order was given for the beating, the blows were interrogation-related, or more specifically, they were aimed at forcing his confession as a response to the questions posed to him by Veselko and Ivo Raguž, as the witness explained at the beginning of his testimony.

89. Witness Selvedin Kaplan gave evidence about the same incident that took place in the “tin-sheet barrack” or the “garage” when four of them (Medin Kaplan, Edin Đulić, Semir Balavac and the witness), were shortly left at the gate by Vide Palameta which they had to reach running, and that thereupon Ivo Raguž and Veselko Raguž arrived. The witness stated he was the first one who entered the garage for interrogation. Questions were posed by Veselko and Ivo, that is, the questions like “Who torched the church at Pileta? Was it Semir Balavac? Was it Semir Hajdarović?” Considering that the witness knew no answer to the posed questions, they “lightly tapped his head and his leg, or his long bone”. Thereupon, Ante Krešić came and connected to his ears the wires of a “field phone” which Dugi Palameta had brought in earlier, and Ante “dialed the phone”. The witness explained the incident as follows:

“When they ask you what and how, and the phone is on, you start talking but you cannot stop your mouth and you bite your own tongue and the current makes you

¹⁶ Ibid.

¹⁷ Ibid. p. 31.

fall from one place to another, from the bench on which I had sat. When the wires fell off, it was easier, and it puts you back on the bench.”¹⁸

Witness Selvedin Kaplan testified that the beating had lasted for at least half an hour, that Ante Krešić kicked him in his chest, and that “*when he (the witness) fell down on the ground, he continued kicking him*”¹⁹. The witness explained in detail the course of abuse. At one moment, when Ante forcefully dialed the phone and the electric current threw him to the other end of the garage, Veselko told him to stop it. The witness stated “*they did not allow being called by their names*”. The witness was asked whether the tapping on his head and leg was painful. The witness stated it had to be painful, although later, in cross-examination, he stated “*the pain was not so strong*”. When Counsel for the First-Accused cross-examined him, the witness was asked if Veselko Raguž had ordered his beating or if he himself had beat him, the witness responded that he had “*beaten by his interrogation*”.²⁰

90. Witness Edin Đulić also testified about the interrogation and abuse that had taken place in the garage within the Dretelj camp perimeter. Consistently with the other witnesses-victims, Vide Palameta had taken all of them for the interrogation. Also consistently with the other witnesses, witness Đulić stated that they had been brought into the garage one by one, and that they stayed in there for some period of time. When it was his turn, the witness stayed there for around 10-20 minutes. Although the witness could not see what was happening while the others were inside the garage, he had heard “yelling and shouts from inside, once, twice”. The witness could not remember whom precisely he had seen upon entering the garage because immediately “*the pushing started, this and that*”, and, “*Ante grabbed me, then the police, and Krešić*.”²¹ Witness Đulić further stated that there were around 10 police officers. As to the interrogation, the witness stated the questions were like “*Who torched the church, who did this, who did that*”. The interrogation was conducted by Ante and one Kraljević. Ante and (members of) the police beat him and connected him to the phone wires and turn the electricity on. The witness explained that “God knows, you faint and you do not know where your are...”, and that during that time Ante hit him and connected his ears to electric current. The witness stated that “*he received blows from everyone, from both Ante and police officers*.” The witness was asked explicitly if the accused Veselko Raguž and Ivo Raguž were present in the

¹⁸ Transcript from the hearing of 2 February 2012, p. 47.

¹⁹ Ibid, p.66.

²⁰ Ibid, p.66.

²¹ Transcript from the hearing of 27 March 2012, p. 9.

garage during the abuse, and the witness responded he did not remember. When he was presented with the statement made in the investigation phase, where he stated he had been questioned by Veselko (“Who torched the church at Pileta”), and that he hit him twice in his legs when he knew no answer to the question posed, the witness confirmed this statement was true, but that Veselko had asked him this “*in front of the garage*”. The witness further stated: “*Judge, he hit me like this twice in my leg... down here, on my shoe... and on my sole (of the feet)*”. The witness kept minimalizing the importance of the act by stating “*He did me no harm, and that’s that*”.²²

91. The Panel has held that the testimonies of the witnesses-injured parties (victims) were mutually consistent with regard to both how they were taken out and brought to the garage, the way in which they entered the garage one by one, and the way in which they were abused. All the witnesses testified that a large number of members of the military had beat them in different ways, including kicking them with boots on their legs, on all parts of their bodies, among whom they all had identified Ante Krešić. All the witnesses consistently described the torture with electric current of an inductor phone, whose wires Ante Krešić mounted on the ears of each of them. In view of the foregoing, the Panel has concluded it was proved beyond a doubt that the incident, in which the injured parties Semir Balavac, Edin Đulić Medin Kaplan and Selvedin Kaplan were abused, in early August, to which period they all related this incident, indeed occurred in the way as described in the enacting clause of the Verdict. The Panel has further evaluated the testimonies of the referenced witnesses, in correlation with the other evidence adduced, and concluded it was proved that the accused Veselko Raguž and Ivo Raguž participated as co-perpetrators in the acts of interrogation and abuse of the injured parties, and that in the course of interrogation, the accused Ivo Raguž pressed a handful of salt on the bleeding wounds in the nose and mouth of victim Semir Balavac, that appeared after he had been subjected to the abuse, in consequence of which the victim suffered even greater pain. The Panel has concluded that the testimony of witness Balavac in relation to this part was fully reliable and found no reason not to fully credit the testimony of this witness.

92. The Panel has paid due attention to examining the discrepancies between the evidence of the heard witnesses-injured parties, particularly the inconsistencies in their

²² Ibid, p. 20-21.

trial evidence related to their investigation examination records. Despite these inconsistencies, which do not diminish the reliability of their evidence, but on the contrary, reflect the subjective perception of each witness about the abuse he had suffered, the Panel concluded that these testimonies were sincere, reliable and convincing, that it was proved, beyond a doubt, that the incident at issue had indeed occurred as described, and that the Accused had taken part therein.

93. The Panel first bore in mind that the mistreatment itself lasted for a certain period of time. Considering the evidence of the witnesses-injured parties who stated how long each of them had spent in the garage, it can be concluded that the interrogation of all four victims lasted for at least an hour, supposedly even longer. Also, it is possible that the Accused, whom all the injured parties had seen either in the garage or at the entrance, or, as witness Đulić stated, near the garage, at a certain moment went out of the garage and then returned, more precisely, that they were not present there all the time. This fact, however, neither excludes nor brings into question the Accused's presence and involvement in the incident. Witnesses Medin Kaplan and Selvedin Kaplan explicitly testified that the interrogation, during which they were abused, was conducted by Veselko and Ivo Raguž. Witness Semir Balavac testified that the interrogation was conducted by Ivo Raguž and Ante Krešić, but that he saw Veselko at the entrance to the garage where the interrogation and ill-treatment were conducted. Witness Edin Đulić did not remember whether the accused Veselko and Ivo Raguž had been inside the garage where they were abused. When witness Đulić was presented with the record of his statement given in the investigation, where he, describing the incident at issue, stated that Veselko had interrogated him and hit him twice in his leg, he confirmed that on the critical day Veselko was indeed present there, but that he (Veselko) asked him (the witness) who had torched the church at Pileta near the garage, when he received a blow, the importance and force of which the witness indeed minimized. The Panel was also mindful that all the injured parties had known the Accused from before the war, as they were neighbors or schoolmates, thus there is no dilemma they could have confused them with someone else.

94. The indirect witnesses to the critical incident confirmed that it had indeed occurred and provided their information related to the abuse of the injured parties Medin Kaplan, Selvedin Kaplan, Edin Đulić and Semir Balavac.

95. Witness Zijo Vukičević testified that, despite not being abused by Veselko Raguž

during his internment at the Dretelj camp, he has heard from certain detainees that he had abused them.

96. Witness Alija Kaplan too was detained at the Dretelj camp in early August. The witness stated that he had seen Veselko Raguž and Ivo Raguž inside the camp perimeter, and that his brother, Medin Kaplan, told him that they had connected electric current to his ears, as well as to Selvedin's and Edin's ears. The witness stated that, when he had seen Veselko and Ivo inside the camp perimeter, he wanted to address them since „until yesterday, they had been on good terms”. The witness said that to his brother, but his brother responded:

“...let them be, he has just connected electric current to my ears ...and to Selvedin's too, and to this Edin...he said shut up, do not fool around, you'll be gone...”

The witness further testified that, after being abused in this way, his brother was all black and blue, and that the condition of Selvedin Kaplan, Semir Balavac and Edin Đulić, who had been at the same time subjected to this abuse, was very bad. The witness stated he had subsequently seen all of them, after the abuse, and that he had not seen the abuse itself, but rather that his brother gave him an account of what had happened. On the other occasion, the witness saw when they were abused outside, within the camp perimeter.

97. Even though the witnesses Esmā Kaplan and Indira Bešo did not stay at the camp and did not eye-witnessed the incident at issue, they presented their indirect information about it. Witness Esmā Kaplan stated that, even though her husband was detained at the Dretelj camp, he did not directly tell her what had happened during his interment at the camp. The witness has heard from the neighbors and relatives Medin and Selvedin that they had met Veselko Raguž and Ivo Raguž, who had visited the camp, that they had been beaten in their presence and that electric current had been connected to their ears in their presence.

98. Witness Indira Bešo stated that her brother had spent 9 months in the Dretelj camp, that he was beaten and that he never told her or their mother what had happened to him. The witness has heard from her neighbors, however, that “he had been beaten with various items, that electric current was connected to his ears, that he was beaten with

chains, bars, whatever...and that: "my brother still suffers and has pains as a result of such a heavy beating."²³

99. In the Panel's view, the very fact that the injured parties have showed a certain degree of uncertainty regarding some of the circumstances pertaining to the incident at issue, but which are not decisive in nature, such as the sequence of entrance to the garage, points, contrary to the Defense's submissions, to their objectivity and reliability. If those were indeed learned and fabricated testimonies motivated by retaliation, as the Defense for the Accused tried to argue, the witnesses would have first harmonized such details, which they obviously did not do, in the Panel's view. In crediting the testimonies of the witnesses-injured parties, also indicative for the Panel was the fact that, upon their examination, it can be concluded that the witnesses did not augment the degree of criminal activity charged against the Accused, because some of them sincerely stated that the Accused had not beat them, or that the blows they had received from them were not strong. Witness Selvedin Kaplan described such blows as "tapping". Witness Edin Đulić, despite confirming the accuracy of the evidence where he stated that the accused Veselko Raguž had kicked him twice in his leg, stated that *he had nothing to say, he (the Accused) did no harm to him*, and that what he had experienced was nothing terrible in comparison with what the other detainees had survived. The Defense indicated witness Medin Kaplan as an initiator, motivated by retaliation, of such allegedly false charges against the accused Veselko and Ivo Raguž. Even this witness, however, objectively presented both what he had indeed experienced and his subjective view that *"there would have been no beatings had the two of them (two Accused) not come to Dretelj"*, but he did not augment the degree of criminal activity by stating, for example, that these two Accused had beaten him too. In the Panel's view, this has raised a logical question as to why this witness did not state, at any moment, that the accused Veselko or Ivo Raguž had beaten him if he had intended to falsely incriminate the Accused.

100. Ultimately, it is true that witness-injured party Semir Balavac is the only witness for the charges that Ivo Raguž had pressed salt into his bleeding wounds on his face, as a result of which he suffered even greater pains. Upon examining this witness's testimony, the Panel concluded it was both objective and convincing, and that the remaining part thereof, relating to the decisive facts, or the nature and the way of abuse, is consistent with

²³ Transcript from the hearing of 8 May 2012, p.75.

the testimonies of the other witnesses-injured parties (victims). In addition, considering that each victim was individually brought into the sheet-metal garage where they were abused, and that one could not see from the outside what was happening inside the garage, no one else but the witness himself could testify about the salt being pressed into his wounds. With regard to the referenced charge, the Defense for the accused Ivo Raguž argued that the testimony of witness-victim Semir Balavac was unreliable in the related part because the witness had already testified in this regard in the proceedings conducted against Ante Krešić before the Cantonal Court in Mostar, but without identifying the accused Ivo Raguž as a person who had pressed salt into his wounds. To this effect, the Defense for the accused Ivo Raguž presented evidence, that is, the Judgment of the Cantonal Court in Mostar No. 07 0 K 000205 01 K of 10 April 2008²⁴ against the accused Petar Matić and Ante Krešić, and the Witness Examination Record for Semir Balavac made after the hearing before the investigative judge of 6 May 1997 in Mostar.²⁵ Contrary to the Defense's argument, the Panel has held that the referenced Witness Examination Record for Semir Balavac does not contradict his testimony from the main trial in the concrete case. This is so because the witness had described, for the same record, the incident of abuse in a separate facility in the Dretelj camp, which occurred on 2 August 1993, and stated consistently with the testimony given in this case that Ante Krešić and the present members of the HVO police component had beaten him, that Ante Krešić had connected the field phone wires to his ears and dialed it, whereupon electric current hit his body, and that when he was all covered in blood as a result of all the abuse, one of these *members of the HVO, other than Ante Krešić*, pressed a handful of salt into his bleeding wounds. Therefore, the Panel has held that the witness identically described the referenced incident, including the fact that a member of the HVO had put salt into his bloody wounds. In these criminal proceedings, the witness identified the accused Ivo Raguž as that member of the HVO, whom the other witnesses-victims had too identified as a participant in their interrogation and abuse on the critical day, and correlated him with the crime scene. Ultimately, the Panel has considered logical and reasonable the explanation witness Balavac gave at the main trial of the reason why he did not mention, before the court in Mostar, the name of the HVO member who had put salt into his wounds, specifically the reason why he did not tell it was the accused Ivo Raguž, namely because he had not even been asked about these facts. Establishing the guilt of Ante Krešić was

²⁴ Exhibit O-2-2.

the subject of the above referenced court proceedings, and the witness obviously focused his testimony on the facts relevant to the existence of the offense and guilt of Ante Krešić, and did not mention the full names of any other participants in the incident at issue. In addition, witness Indira Bešo, witness Balavac's sister, testified that her brother never told her or their mother what he had experienced in the camp, and who had abused him. Obviously, he did not talk much about his traumatic experience. Therefore, the Panel has held that the very fact that, already in 1997, when witness Balavac gave a statement regarding the abuse in the garage in the Dretelj camp on 2 August 1993, he described that one of the present members of the HVO had put salt into his bleeding wounds, and subsequently identified him, by his full name, as the accused Ivo Raguž, whom the other witnesses also identified as a participant in the incriminating incident, points to the reliability of his evidence.

101. Contrary to these mutually consistent testimonies of the witnesses-injured parties, supported with the other documentary and subjective evidence of the Prosecution, stand the testimonies of the Defense's witnesses, which the Panel considers as unreliable, unconvincing and obviously given with the aim to assist the Accused in diminishing their criminal liability, and which are as such contradictory to the other evidence adduced.

102. The Defense for the accused Veselko Raguž made efforts to prove the Accused's alibi through the examined witnesses, primarily his wife Janja Raguž, or more precisely, that he could not have committed the incriminating act because, in early August 1993 he was preparing his wedding and got married on 7 August 1993.²⁶

103. Witness Janja Raguž testified that, seven days before the wedding, which took place on 7 August 1993, the accused Raguž came to Gradac, where she had taken refuge, that on their way to Herzegovina they had a car accident in which their vehicle was damaged as a result of which "they had a bumpy ride". Veselko Raguž told her they would pass by the "Dretelj military barrack" so that repairman Miho Vukić could check the vehicle, which they did. The witness further stated that they reached the military barrack at around noon, parked their vehicle in front of it and Veselko went to the reception booth and stayed there for several minutes with Vide Palameta and Edin Đulić, while she (witness Janja Raguž)

²⁵ Exhibit O-2-3.

²⁶ Exhibit O-1-29 Excerpt from the Register of Weddings proving that Veselko Raguž and Janja née Milanović got married on 7 August 1993.

stayed in the vehicle. They waited for (the arrival of) repairman Miho Vukić for half an hour in total. In the meantime, Vide Palmeta and Anto Čoko came to congratulate them as they had heard there would be a wedding. When repairman Vukić arrived, Veselko went with them with the vehicle to Stolac for its repair, but they had first left her at home. The witness explicitly stated that on that particular day Veselko was dressed in civilian clothing. After the wedding on 7 August 1993, Veselko and witness (Janja Raguž) went to Croatia, where they stayed for around 10 days visiting their relatives, whereupon they spent another 10 days on their honeymoon in Gradac. The witness stated that, during the week before the wedding, Veselko and she had spent all the time together.

104. Witness Miho Vukić confirmed that, in early August 1993, at around noon, he received information from the gate that Veselko Raguž had asked about him, and that he met him at the gate where Vidoje Palameta and Anto Čoko were present too. Witness Vukić congratulated Veselko and his future wife on the wedding, whereupon they proceeded toward the military barrack to fix the car, but, prior to that, they had left Janja at her house. The witness stated that, on that occasion, he had seen neither Ante Krešić nor Ivo Raguž inside the camp perimeter.

105. Witness Ante Čoko also testified that he had once seen Veselko Raguž in the Dretelj camp, more precisely, at the camp entrance, and that he went to him to greet and congratulate him on his wedding.

106. These testimonies corroborate each other and the testimony of witness Janja Raguž, who attempted to provide an alibi for her husband. The Panel has analyzed her testimony and found certain inconsistencies and contradictions in relation to the other adduced evidence, and therefore did not credit such a testimony.

107. Considering the testimonies of the examined Prosecution witnesses and the documentary evidence tendered in the case record, showing that the 1993 period was a full combat readiness period,²⁷ the testimony of witness Janja Raguž, that the accused Veselko Raguž had spent this entire period with her, both the week before the wedding and 20 days after the wedding on their honeymoon, is fully unconvincing. In addition, salary lists tendered as evidence by the Prosecution, including the monthly strength for

²⁷ Exhibit T-44.

August 1993²⁸, prove that the Accused was together with his unit in August too rather than on leave for their honeymoon, as witness Janja Raguž said, despite the Defense's efforts to contest their probative value by stating that it was not always kept in the records that the Commander was present in his unit, which remains solely an arbitrary submission with no supporting evidence. Witness Janja Raguž contradicted herself by stating that she and Veselko had been together for the whole week before the wedding, whereupon she stated that, before she got married, she had stayed with her parents in the village of Pješivac. The testimony of witness Janja Raguž, the part where she stated she had, at one moment, seen Veselko standing with Edin Đulić, was not supported with the testimony of witness Đulić, because in such a situation, Edin Đulić, a neighbor from the same place of origin, should have undoubtedly noticed the presence of a woman, particularly his neighbor, inside the camp perimeter. Witness Janja Raguž explicitly stated that the Accused wore civilian clothing, while, on the contrary, witness Đulić stated that Veselko Raguž had been in his uniform on the critical day. According to the Panel, all these contradictions indicate that the testimony of witness Janja Raguž aims at providing an alibi for the accused Veselko Raguž, as well as the testimonies of witnesses Miho Vukić and Ante Čoko, which were harmonized with her testimony to corroborate such a prepared alibi. In view of the foregoing, the Panel has concluded that the testimonies of the Defense witnesses were unreliable and unconvincing, and did not credit them as such.

108. The testimonies of witnesses Ivica Džakula and Ante Krešić too did not bring into question the reliability of the testimonies of the Prosecution witnesses. The Panel has held that the Defense's theory that the witnesses-victims were motivated by retaliation to testify against the accused Veselko Raguž and Ivo Raguž with regard to which the Defense examined witness Ivica Džakula, was not convincing. Contrary to the foregoing, having fully evaluated the testimonies of the witnesses-victims and correlated them both mutually and with the other evidence, the Panel concluded that they truly reflect the witnesses' individual and personal perception of the abuse to which they had been subjected. The Defense's arguments of retaliation as a motive, and the alleged false testimony of Medin Kaplan (about which witness Ivica Džakula also gave evidence), remain arbitrary and lack concrete and convincing proof. The Panel has therefore concluded that those arguments were ill-founded.

²⁸ Exhibits T-82 and T-84.

109. Witness Ante Krešić, who had received a final judgment before the court in Mostar for the incident which is the subject of the concrete criminal proceedings, was summoned to contest the credibility of witness Semir Balavac. Witness Krešić testified that, in the proceedings conducted against him, witness Balavac explicitly testified he had been beaten only by Krešić, and made no mention of Veselko and Ivo Raguž. The Panel has already provided the reasons explaining why the non-mentioning by witness Balavac of the names of the other participants in the incident which was the subject of the proceedings conducted against Ante Krešić does not bring into question the reliability of his testimony, and therefore will not repeat them here.²⁹

110. In addition, the Panel did not find convincing the Defense's theory that the testimonies of the witnesses-victims were inconsistent, that the witnesses did not tell the truth, and that they falsely incriminated the Accused, with possible motives for such acting. In the Panel's view, the discrepancies in the testimonies which do not pertain to the decisive facts, as already addressed, do not render the witnesses' testimonies mutually contradictory, but rather further confirm that the witnesses have told the truth, and presented their own perception of the incident, that they were not harmonized and matched before they gave evidence, as the Defense made efforts to present, for which the Panel provided the reasons in the evaluation of such evidence.

A. FORM OF PARTICIPATION IN THE COMMISSION OF A CRIME

111. Article 22 of the adopted CC SFRY defines complicity as a form of commission of a crime as follows:

“If several persons jointly commit a criminal act by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act.”

112. Having evaluated all the presented evidence, the Panel concluded it was proved beyond a doubt that, on the critical day, both the Accused attended and contributed to the interrogation and abuse of the injured parties Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan. The Accused were charged, and the Panel rendered it proved, that

²⁹ See para. 101 of the Verdict.

they committed the criminal offense at issue as co-perpetrators, along with Ante Krešić and a number of unidentified members of the military police.

113. It ensues from the above quoted definition of co-perpetration that for the existence of this form of participation in the commission of a crime each co-perpetrator even need not participate in the act of commission, but he/she can contribute to the commission of a crime “in some other way”. It is important to prove, however, that the perpetrators were aware of the commission of the criminal offense at issue, and that each of them wanted the offense as his own.

114. Considering the role and contribution of the accused Veselko and Ivo Raguž to the commission of the crime at issue, the Panel bore in mind that the take-out, interrogation and abuse of the injured parties was, in fact, a single incident, in the commission of which each perpetrator played his own role. Thus, the injured parties were mostly interrogated by Veselko Raguž, but by the accused Ivo Raguž and Ante Krešić too, as it ensues from the testimony of witness Edin Đulić; that in order to obtain forced confession, the injured parties were physically beaten, mostly by the present members of the military police, tortured by electric current from an inductor telephone (according to the witnesses, Ante Krešić activated the phone and placed wires on their ears); and lastly, the accused Ivo Raguž pressed salt into the bleeding wounds of victim Semir Balavac, which was proved beyond a doubt, according to the Panel. As already described, due to their severity, gravity and the resulting consequences and aim to extort confession from the injured parties, the acts of abuse undertaken against the victims have satisfied all the elements of torture, as defined through the international case law.

115. As can be concluded beyond a reasonable doubt on the basis of their testimonies, the injured parties were tortured with the aim of extorting their confession. Particularly indicative for such a conclusion are parts of witness Medin Kaplan’s testimony . This witness stated that, in the course of interrogation and physical abuse, the accused Veselko Raguž was telling him to “confess“, that he “*beat him with interrogation*”, and that when the witness asked him “Why are you beating me, neighbor”, the Accused responded “*I am not a neighbor for you, I am Ustasha for you*”. Witness Semir Balavac stated that Ivo Raguž asked him why he had come to kill him. Further examination of the evidence given by all the four witnesses-injured parties clearly shows that they have connected the blows they received on that occasions with the questions posed (mostly by the accused Veselko

Raguž), to which they could not respond or could not confess the acts they had not committed.

116. In view of the foregoing, the Panel has concluded that both Accused were undoubtedly aware that the undertaken acts were unlawful, that they wanted to commit them and that therefore both of them acted with direct intent in the commission of the offense. Since the mental competence of both Accused at the time of the commission of the crime was not brought into question, the Panel has found them guilty as co-perpetrators in the commission of the criminal offense of War Crimes against Civilians under Article 142(1) of the adopted CC SFRY.

VII. SENTENCING

117. In fashioning the sentence for the accused Veselko Raguž and Ivo Raguž, for the criminal offenses of which they were found guilty under this Verdict, the Panel first bore in mind the purpose of punishment set forth in Article 33 of the adopted CC SFRY. The referenced rule essentially aims at ensuring special deterrence, or more precisely, at preventing the concrete perpetrator from committing criminal acts and his rehabilitation, as well as general deterrence, or rehabilitative influence on others not to commit criminal acts. Such prescribed purpose of punishment requires imposing a sentence which is adequate, and, as such, necessary and proportionate with the aim and circumstances already taken into account in relation to the offense itself and its effect on the society, but, at the same time, adjusted to the need of preventing the concrete perpetrator from committing new criminal offenses and his rehabilitation.

118. Even though the legislator has prescribed a range of sentences for each criminal offense individually, which the court is bound to comply with, and even though in meting out the punishment the Court is obliged to take into account the purpose of punishment, the Panel is obliged to comply with the rules related to the fashioning of sentence set forth in Article 41(1) of the adopted CC SFRY, including all other circumstances which may affect imposing a less or more stringent sentence (extenuating and aggravating circumstances). The circumstances on which the Panel can rely in fashioning the sentence, in order to achieve the purpose of rehabilitation and deter commission of new criminal offenses by the concrete perpetrator are, *inter alia*, the degree of responsibility,

conduct of the perpetrator before the commission of crime, immediately before or at the time when the criminal actions were undertaken, as well after the commission of a crime, motive, personal characteristics of the perpetrator, which all can affect the type and duration of the punishment, imposed within the statutory limits, and depending on whether the referenced circumstances were considered as inculpatory or exculpatory.

119. In addition, Article 42 of the adopted CC SFRY provides that the court may set the punishment below the limit prescribed by statute, or impose a milder type of punishment when provided by statute that the offender's punishment may be reduced, or when it finds that such extenuating circumstances exist indicating that the aims of punishment can be attained by a lesser punishment.

120. With the purpose of achieving the purpose of punishment, the legislator prescribes, in Article 41(1) of the adopted CC SFRY, the general principles in fixing the punishment, particularly the degree of criminal responsibility, the motives from which the act was committed, the degree of danger or injury to the protected object, the circumstances in which the act was committed, the past conduct of the offender, his personal situation and his conduct after the commission of the criminal act, as well as other circumstances relating to the personality of the offender.

121. All the foregoing circumstances were taken into account by this Panel in meting out the sentences for the accused Veselko Raguž and Ivo Raguž. The Panel first bore in mind the limits of the sentence prescribed by the law for the criminal offense of which the accused Veselko and Ivo Raguž were found guilty, namely that the sentence prescribed for the referenced criminal offense is imprisonment for a term not less than 5 (five) years or the death penalty. The Panel further bore in mind the gravity of the committed crimes, which despite being severe and which as such qualify as the criminal offenses enshrined in the provisions of both the national law and international law, for which there is no statutory limitation, but which undoubtedly do not fall under the category of the gravest criminal offenses of the kind, considering the nature of the undertaken actions and the consequences thereof (did not result in lost lives).

122. In fixing the sentences, the Panel particularly took into account the number of victims, or the fact that four detained civilians were subjected to torture, the gravity of the committed crimes apparent from the cruelty of acts undertaken against the victims, particularly torture with the telephone electric current or putting of the salt into their open

wounds, the exposure of the victims to moans and cries coming from inside the garage while they waited for their turn to enter, which undoubtedly resulted in strong feelings of discomfort, and the fear felt over an extended period of time (the interrogation and abuse lasted for more than an hour, while each victim stayed in the garage for a minimum of 15-20 min), as well as the degree of their criminal liability in acting with direct intent.

123. As for the extenuating circumstances on the part of both the Accused, the Panel took into account their family situation, the fact that they had no prior convictions, nor criminal proceedings pending against them, as well as their proper conduct before the court in the course of the criminal proceedings, and the period of time elapsed since the commission of the crime during which they committed no new criminal offense, which circumstances, in their entirety, are particularly extenuating circumstances justifying the reduction of sentence below the statutory minimum. In the Panel's view, the imposed sentences of 3 years in prison are proportionate with the gravity of crime and the degree of criminal liability of each Accused, and they will fully achieve the purpose of punishment from the aspect of both special and general deterrence.

VIII. DECISION ON THE COSTS OF CRIMINAL PROCEEDINGS

124. Article 188(1) of the CPC BiH provides that, when the Court finds the accused guilty, it shall declare in the verdict that the accused must reimburse the costs of criminal proceedings. Considering that it does not ensue from the case record that their payment would jeopardize the support of the accused or of persons whom the accused are required to support economically so that the Court may relieve them of the duty to reimburse all or part of the costs of criminal proceedings, pursuant to Article 188(4) of the CPC BiH, the Panel has decided that the accused Veselko Raguž and Ivo Raguž shall jointly reimburse the costs of criminal proceedings. Pursuant to Article 186(2) of the CPC BiH, the Court shall decide on the amount of reimbursement in a special decision, upon obtaining the required data. The Panel concluded that the Accused shall jointly reimburse the costs of criminal proceedings considering it was not possible to determine the amount of costs for each Accused individually, wherefore Article 188(3) of the CPC BiH was applied.

IX. DECISION ON CLAIMS UNDER PROPERTY LAW

125. The Panel has concluded that the information in the case record did not offer a reliable basis to render a decision on the claims under property law. Therefore, pursuant to Article 198(2) of the CPC BiH, the Panel decided to instruct the injured parties Semir Balavac, Edin Đulić, Medin Kaplan and Selvedin Kaplan that they may pursue their possible claims under property law in a civil action.

MINUTES-TAKER

Nevena Aličehajić

PANEL PRESIDENT

JUDGE

Redžib Begić

NOTE ON LEGAL REMEDY: Pursuant to Article 317.a, paragraph 1, subparagraph b), of the Criminal Procedure Code of Bosnia and Herzegovina, an appeal may be filed from this Verdict before the third instance panel of the Appellate Division within 15 days after the receipt of a written copy of the Verdict.

X. ANNEX

A. DOCUMENTARY EVIDENCE

1. Prosecution Documentary Evidence

126. The Panel has granted the Prosecution's proposal to admit into evidence, without reading out or reproducing again the documentary evidence presented in the first instance proceedings, as follows:

T-20 Decision Proclaiming the State of War, Official Gazette of the R BiH No 7, p. 234 of 20 June 1992;

T-21 National composition of the population – 1991 Republic results per municipalities and populated places;

T-22 Form VOB data for Veselko Raguž;

T-23 Personal file of Officer Veselko Raguž;

T-24 Form VOB – 1 for Ivo Raguž;

T-25 Personal record for Officer Ivo Raguž;

T-26 Military department personal file for Ivo Raguž;

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

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

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

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

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

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

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

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

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

T-74 Document “HVO Camps in Herzegovina”;³⁰

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

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

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

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

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

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

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

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

³⁰ The same evidence was proposed by the Defense for Veselko Raguž and Ivo Raguž.

B. DOCUMENTARY EVIDENCE FOR THE DEFENSE

1. Documentary evidence proposed by the Defense for the accused Veselko Raguž

127. The Panel has granted the proposal of the Defense for the accused Veselko Raguž to admit into evidence, without reading out or reproducing again the documentary evidence presented in the first instance proceedings, as follows:

- O-I-6: Order by the HVO South Sector of 6 July 1993;³¹
- O-I-7: Official Note of the BiH Prosecutor's Office of 24 January 2012;
- O-I-8: Witness Examination Record for Alija Kaplan of 6 December 2010³²;
- O-I-29: Excerpt from the Register of Marriages kept for Stolac of 2 September 2013 proving that Janja Raguž and Veselko Raguž entered into marriage;

2. Documentary evidence proposed by the Defense for the accused Ivo Raguž

128. The Panel has granted the proposal of the Defense for the accused Ivo Raguž to admit into evidence, without reading out or reproducing again the documentary evidence presented in the first instance proceedings, as follows:

- O-II-1 Photograph of witnesses Prleta's and Kaplan's houses;
- O-II-2: Judgment of the Cantonal Court in Mostar No. K 205/01 of 10 April 2008 against Ante Krešić;
- O-II-3: Witness Examination Record for Semir Balavac of 6 May 1997;
- O-II-3 a: Continued Record of the main trial of 10 December 1997 against Ante Krešić;
- O-II-4: Medical documentation for Ivica Džakula: Disease history of 16 February 1993, Specialist's Finding of 23 July 1993, Findings and Opinion of 16 June 1993, Surgery Clinic Findings of 10 May 1993 and 17 June 1993, Findings of 12 August 1993, Hospital Referral Form of 23 August 1993, Referral Form and Discharge Letter of 9 December 1993.
- T-8 Examination Record for Suad Boškailo, No 17-13/3-1-04-2-29-219/10 of 30 November 2010, Regional Office Mostar (SIPA);
- T-11: Examination Record for Alija Kaplan, No P-16-12/3-1-04-2-Z-125/11 of 29 March 2011, Regional Office Mostar (SIPA);

³¹ The same evidence was proposed by the Defense for Ivo Raguž.

³² The same evidence was proposed by the Defense for Ivo Raguž.

T-18 Witness Examination Record for Indira Bešo, BiH Prosecutor's Office, No T20
0 KTRZ0000436 05 of 5 May 2011;

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