

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босна и Херцеговина

Case number: S1 1 K 003541 15 Kžk

Announced on: 6 August 2015

Written copy sent out on: 23 October 2015

Before the Trial Panel composed of Judges: **Mirza Jusufović, Panel Presiding**
Senadin Begtašević, member
Mirko Božović, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

the accused Milun Kornjača

JUDGMENT

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

Mr. Dževad Muratbegović

Counsel for the accused Milun Kornjača: Mr. Rade Golić, Attorney

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Number: S1 1 K 003541 15 Kžk
Sarajevo, 6 August 2015

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting in the Panel of the Appellate Division of Section I for War Crimes, composed of Judge Mirza Jusufović, as the Panel Presiding, and judges Senadin Begtašević and Mirko Božović, as members of the Panel, with the participation of Legal Advisor Denis Podžić, as the Record-taker, in the criminal matter against the accused Milun Kornjača, for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) of the Criminal Code of Bosnia and Herzegovina (CC BiH), as read with Article 180(1) and (2) of the CC BiH and Article 29 of the CC BiH, having held an oral and public hearing before the Appellate Division Panel, in the presence of the Prosecutor of the Prosecutor's Office of BiH, Mr. Dževad Muratbegović, the accused Milun Kornjača and his Defense Attorney, Mr. Rade Golić, after the secret deliberation and voting, on 6 August 2015 rendered and publicly announced the following:

J U D G M E N T

I

The accused *MILUN KORNJAČA*, son of *Nikola and Dobrinka neé Kajević*, born on 6 January 1954 in the place of ..., Municipality..., where he permanently resides, ethnic ..., citizen of ..., literate, cutter by occupation, retired, married, father of two children, served the compulsory military service, PIN: ..., no prior convictions,

IS GUILTY

Because

During the period between mid-April 1992 and late May 1992, in the Čajniče Municipality, within a widespread and systematic attack of members of the Territorial Defense of the

Serb Municipality Čajniče, members of the *Plavi orlovi* paramilitary unit and the police of the Public Security Station of the Serb Municipality Čajniče, assisted by paramilitary formations from Serbia and Montenegro, directed against the non-Serb civilian population in the territory of Čajniče municipality, being aware of such an attack, as the Commander of the *Plavi orlovi* unit, ordered and committed persecution of the non-Serb civilian population from the territory of the Čajniče municipality on ethnic and religious grounds, by way of **imprisonment**, intentionally causing great suffering, or serious injury to body or to physical or mental health, in as much as he:

1n. On or around 27 May 1992, in front of the *Čajniče* Hotel in the town of Čajniče, after members of the *Plavi orlovi* unit had deprived of liberty the following civilians: Mirsad Bakal, Šefko Drakovac, Dževad Džambegović, Suad Džambegović, Fuad Džambegović, Enver Džambegović, Izet Džambegović, Džemal Džambegović, Sabahudin Hurlov, Nedžad Borovac, Safet Hurlov and Džemail Šišić in the village of Brdo, municipality of Čajniče, and brought them in front of the referenced Hotel, **ordered** the armed members of the *Plavi orlovi* unit to transport the captured civilians to Mostina on the car body of the freight vehicle and **confine** them to a metal container without any legal grounds, which they did, whereupon on the following day unidentified persons took Mirsad Bakal, Šefko Drakovac, Dževad Džambegović, Suad Džambegović, Fuad Džambegović, Enver Džambegović, Izet Džambegović, Džemal Džambegović, Sabahudin Hurlov, Safet Hurlov and Džemail Šišić from the metal container, brought them to a nearby meadow, executed them using fire weapons, and covered up with dirt the bodies of the injured parties, which were exhumed on 21 and 22 October 2002 as well as on 29 June 2006 from the graves at the sites of Mostina and Podjovanovići, Čajniče municipality, and identified on 29 October 2002 and 2 and 3 November 2006 on the premises of the *Azot* Public Company in the place of Vitkovići near the town of Goražde,

Therefore, within a widespread and systematic attack directed against the civilian population in the territory of Čajniče municipality, being aware of such an attack, launched with the aim of persecuting the entire Bosniak population on ethnic and religious grounds, committed persecution in connection with detention,

Whereby the accused Milun Kornjača committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) of the CC BiH (persecution), in connection with

Sub-paragraph e) of the same Article, all as read with Article 180(1) of the CC BiH and Article 29 of the same Code,

Thus, applying the above referenced provisions as well as Articles 39, 42(1) and (2) and Article 48(1) of the CC BiH to the criminal offense at issue, the Court *i m p o s e s* on the accused the following:

Sentence of imprisonment for a term of 5 (five) years

and, *taking as confirmed the previous sentence of imprisonment for a term of 5 (five) years* for the committed criminal offense of Crimes against Humanity by persecution under Article 172(1)(h) of the CC BiH, as read with Article 180(1) of the CC BiH and Article 29 of the CC BiH, imposed under the Judgment of the Court of BiH number S1 1 K 003541 10 Kri of 21 May 2014, upheld in the convicting part of the Judgment rendered by the Appellate Division Panel number S1 1 K 003541 14 Krž 12 of 10 March 2015,

and, applying Article 53(1) and (2) of the Criminal Code of BiH,

S E N T E N C E S T H E A C C U S E D

TO A COMPOUND PRISON SENTENCE FOR A TERM OF 7 (SEVEN) YEARS

Pursuant to Article 56 of the CC BiH, the time the accused Milun Kornjača spent in custody, running from **16 December 2009 through 30 August 2012**, that was ordered under the Decision of the Court of BiH, number X-KRN-09/848 of 18 December 2009, and thereupon revoked under the Decision of the Court of BiH number S1 1 K 003541 10 Krl (X-KR-09/848-1) of 30 August 2012, will be credited towards the imposed prison sentence.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused Milun Kornjača shall be relieved of the obligation to reimburse the costs of the criminal proceedings, which will be paid from within the budget appropriations.

Pursuant to Article 198(2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties were instructed to pursue their possible claims under property law in a civil action.

II

Pursuant to Article 284(c) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused Milun Kornjača is hereby

ACQUITTED OF THE CHARGES

That,

During the period between mid-April 1992 and late May 1992, in the Čajniče municipality, within a widespread and systematic attack of members of the Territorial Defense of the Serb Municipality Čajniče, members of the *Plavi orlovi* paramilitary unit and the police of the Public Security Station of the Serb Municipality Čajniče, assisted by paramilitary formations from Serbia and Montenegro, directed against the non-Serb civilian population in the territory of the Čajniče municipality, being aware of that attack, as the Commander of the *Plavi orlovi* unit, he ordered and committed persecution of the non-Serb civilian population from the territory of the Čajniče municipality on ethnic and religious grounds, by way of killings, imprisonment, torture and other inhumane acts of a similar character, intentionally causing great suffering, or serious injury to body or to physical or mental health, and, as a superior person, failed to take the necessary and reasonable actions to have the perpetrator of the killings of imprisoned Bosniak civilians at the Hunter's Home at Mostina punished, in as much as:

11. Since 19 May 1992, as the Commander of the *Plavi orlovi* unit, after Veljo Tadić, member of the *Plavi orlovi* unit, had killed prisoners Zlatko Bukva, Jusuf Čaušević, Enver Gluščić, Hasan Hasović, Safet Kulelija, Jasmin Došlo, Fuad Gabela, Hamzalija Bavčić, Fehim Oruč, Hajrudin Trgo, Salih Čolak, Muharem Cicvara, Hamdo Hurlov, Dedo Šehović, Ahmo Agović, Mehmed Agović, Mehmed Živojević, Mušan Vrana, Zijad Velić, Meh Bukva, Hajrudin Gazap, Šemsudin Paldum, Fehim Čolak, Suad Gabela, Hamšo Kešan, Ibro Kešan, Mujo Kešan and Ismet Kešan, in the afternoon hours of 19 May 1992, in the Hunter's Home at Mostina, by firing from an automatic gun, despite learning from the persons present at the premises of the TO Staff Čajniče in Čajniče on the very day when the imprisoned persons had been killed that Veljo

Tadić, member of the *Plavi orlovi* unit had killed the persons imprisoned at the Hunter's Home at Mostina, he failed to take any action, in compliance with his rights and duties of the Commander of the *Plavi orlovi* unit, to have the perpetrator of the killings of the imprisoned individuals punished,

Therefore, as a superior person, despite being aware that his subordinate had murdered the imprisoned civilians, he failed to take the necessary and reasonable actions to have the perpetrator of the offense punished,

Whereby the accused Milun Kornjača would have committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) of the CC BiH (persecution), in connection with Sub-paragraph a), as read with Article 180(2) of the CC BiH.

Pursuant to Article 189(1) of the CPC BiH, the Accused will be also relieved of the obligation to reimburse the costs of the criminal proceedings in the acquitting part of the Judgment, which will be paid from within the budget appropriations.

Pursuant to Article 198(3) of the CPC BiH, all injured parties 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

I. PROCEDURAL HISTORY

1. The Trial Judgment of the Court of BiH, number S1 1 K 003541 10 Krl of 21 May 2014, the accused Milun Kornjača was found guilty of committing, in the way described in Sections 1, 2 and 3 of the Operative Part of the contested Judgment, the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH, all as read with Article 180(1) of the CC BiH and Article 29 of the CC BiH, for which he received, pursuant to Article 285 of the CPC BiH, as well as Articles 39, 42, 48, 49 and 50 of the CC BiH, the sentence of imprisonment for a term of 5 (five) years. Pursuant to Article 56 of the CC BiH the time the Accused spent in custody, running from 16 December 2009 through 30 August 2012, was credited towards the sentence imposed. Pursuant to Article 188(4) of the CPC BiH, the Accused was relieved of the obligation to reimburse the costs of the criminal proceedings and the scheduled amount, which will be paid in full from within the Court's budget appropriations. Pursuant to Article 198(2) of the CPC BiH, the injured parties were instructed to pursue their claims under property law in a civil action.

2. Under the same Judgment, the Accused was, pursuant to Article 284(1)(c) of the CPC BiH, acquitted of the charges that, in the way described in Sections 1g, 1k, 1l and 1n of the Operative Part of the Judgment, he committed the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH (persecution), as read with sub-paragraphs a), e), f) and k), all as read with Article 180(1) and (2) of the CC BiH and Article 29 of the CC BiH. Thus, pursuant to Article 189(1) of the CPC BiH, the Accused was relieved of the obligation to reimburse the costs of the criminal proceedings, which will be paid from within the Court's budget appropriations. Pursuant to Article 198(3) of the CPC BiH, all injured parties were instructed that they may pursue their possible claims under property law in a civil action.

3. Pursuant to Article 283(b) of the CPC BiH, the charges against the accused Milun Kornjača that, in the way described in the Operative Part of the contested Judgment, he committed the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH (persecution), as read with Sub-paragraphs a), e), f) and k), in connection with Article 180(1) and (2) of the CC BiH, were dismissed. With regard to the foregoing, the Accused was, pursuant to Article 189(1) of the CPC BiH, relieved of the obligation to reimburse the costs of the criminal proceedings, which were to be paid from within the Court's budget appropriations. Pursuant to Article 198(3) of the CPC BiH, all injured parties were instructed to pursue their possible claims under property law in civil action.

4. The Judgment of this Panel number S1 1 K 003541 14 Krž 12 of 23 January 2015 dismissed as ill-founded in whole the appeal filed by Counsel for the accused Milun Kornjača from the convicting part of the Judgment of the Court of BiH number S1 1 K 003541 10 Krl of 21 May 2014, as well as the appeal filed by the Prosecution of BiH from Section 1g of the acquitting part of the same Judgment and from the decision on sentence for the acts of which he was convicted; thus the Judgment was upheld in the referenced part, and the Prosecution's appeal upheld in the part concerning Sections 1l and 1n of the acquitting part of the Trial Judgment, which was revoked in this part. The Panel thus revoked the Judgment in the referenced part and ordered a hearing to be held before the Panel of the Appellate Division of the Court of Bosnia and Herzegovina.

II. PROCEEDINGS BEFORE THE APPELLATE DIVISION PANEL

1. Indictment

5. Considering the referenced decision of the second instance Panel, the sole subject of deliberation and hearing before the Appellate Division Panel was Section 1l and Section 1n of the acquitting part of the Trial Judgment, in which the first instance Judgment was revoked.

6. Section 1l concerned the events that occurred on 19 May 1992, in the afternoon hours, when, according to the Prosecution, Veljo Tadić, member of the *Plavi orlovi* unit, killed 28 captured Bosniaks in the Hunter's Home at Mostina, which the Accused learned on the same day on the premises of the TO Čajniče Staff, but took no action to punish the perpetrator of the crime pursuant to the rights and duties of the unit commander.

7. Section 1n concerned the incident that occurred on or about 27 May 1992, when members of the *Plavi orlovi* unit, under the Accused's order, arrested 12 civilians from the village of Brda, and brought them in front of the *Čajniče* Hotel in Čajniče, on which occasion, according to the Prosecution, the Accused ordered, with the intent to deprive the captured civilians of their lives, that they be transported to Mostina and confined in a metal container without any legal grounds, from which, according to the Indictment, they were taken on the following day by unidentified members of the *Plavi orlovi* unit, brought to a nearby meadow and killed from automatic weapons, whereupon the bodies of the killed persons were covered with dirt.

8. For the acts referred to in Section 1l, the Accused was charged on the grounds of command responsibility, and for the acts referred in Section 1n as a co-perpetrator.

2. Evidentiary proceedings

9. Pursuant to Article 317 of the CPC BiH, a hearing was held before the Appellate Division Panel. During the hearing, upon the Prosecutor's and the Defense's proposals, the testimonies of the following witnesses were reproduced: Rade Danilović, Nura Hurlov, Fadila Džambegović, Nedžad Borovac, protected witness M2, protected witness Kraj 280, Desimir Đerić, Siniša Vujović, Njegoš Manović and Slobodan Perendija, which were given during the first instance proceedings, as well as the testimony of the accused Milun

Kornjača given in the capacity of a witness for the Defense. Also, the following documentary evidence was introduced as new evidence for the Defense: Document of the Čajniče Municipality Sector concerning Veljo Tadić's membership, number 02/3-831-5/15 of 24 March 2015, List of members of the Čajniče police who were issued with long-barrel arms, and a Request forwarded to the IPTF on 24 July 2002, for the revision of the decision concerning Milorad Živković's appointment.

3. Closing arguments

a) Prosecution

10. The Prosecutor argued in his closing argument that the Prosecution indeed proved beyond a reasonable doubt that, by the acts described in detail in the Amended Indictment of 31 March 2015, the accused Milun Kornjača committed the criminal offense of Crimes against Humanity under Article 172(1)(h), as read with sub-paragraphs a) and e) of the CC BiH, in connection with Article 29 of the CC BiH, all in connection with Article 180(1) and (2) of the CC BiH.

11. The Prosecutor argued that the Prosecution proved the existence of the general elements of the criminal offense at issue, namely that a widespread and systematic attack indeed existed, that it was directed against the civilian population, that the Accused was aware of such an attack and that the Accused's acts formed part of the attack.

12. As to Count 11 of the Amended Indictment, the Prosecutor argued that the accused Milun Kornjača, as the Commander of the *Plavi orlovi* company, was under obligation to file a motion to have Veljo Tadić punished for his acts. The foregoing primarily ensued from the reproduced evidence of Rade Danilović, who testified about the Accused's role and the duties he should have complied with as the Company Commander after learning that a member of his unit had killed the captured individuals, as well as from the reproduced statements given by both the Accused in the capacity of a witness and witness KRAJ 280. The Prosecution argued that it had offered sufficient evidence based on which the accused Milun Kornjača should be held liable for the committed criminal offense of Crimes against Humanity under Article 172(1)(h), as read with sub-paragraph a) of the CC BiH, in connection with Article 180(2) of the CC BiH, on the ground of command responsibility, because, as a superior, he failed to take the necessary and reasonable

actions to have his subordinate Veljo Tadić, who had killed the captured civilians at the Hunter's Home at Mostina, punished.

13. With regard to Count 1n of the Amended Indictment, the Prosecutor particularly pointed out in his closing argument the fact that members of the *Plavi orlovi* company, the Commander of which was the accused Milun Kornjača, had been present in the village of Brdo a day before the civilians were taken away, and seized from the villagers their hunting weapons, and on the following day arrested the civilians in the referenced village, brought them to the Čajniče Hotel, where the accused Milun Kornjača was present, from where the captured civilians were, under the Accused's order, escorted to Mostina by armed members of the *Plavi orlovi* company. The Prosecution argues that, by his oral order that the captives from the village of Brdo be taken to Mostina on the freight vehicle body and confined in a metal container, the Accused significantly contributed to the referenced victims' killings, which was one of the necessary actions in the line of actions which led to their murder. The Prosecutor briefly referred to the reproduced testimonies of the witnesses who gave evidence with regard to the circumstances pertaining to this Count of the Indictment, having considered that it undoubtedly ensued from both these testimonies and the other evidence admitted during the trial proceedings, that the accused Milun Kornjača gave a decisive contribution to the imprisonment and murder of the civilians from the village of Brdo, by which acts the elements of the criminal offense under Article 172(1)(h), as read with Sub-paragraphs a) and e) of the CC BiH, in connection with Article 29 of the CC BiH, all in connection with Article 180(1) of the CC BiH, were satisfied in whole.

14. When it comes to the decision on the length of sentence, the Prosecution proposed that, among the aggravating circumstances, the Accused's position of the Commander of the *Plavi orlovi* Company, who knew the rules concerning the treatment of civilians, the number of killed civilians, mental and physical pain suffered by civilian Bosniaks at the moment of being killed in the metal container at Mostina, as well as the fact that the victims' families still feel permanent and deep psychological consequences resulting from the loss of their beloved ones, be taken into account. Among the extenuating circumstances on the Accused's part, the Prosecution proposed taking into account the facts that the accused is a family man, that he has no prior convictions and that his capacity to understand the crime and direct the actions during the crime commission was diminished, but not to a significant extent.

b) Defense

15. Mr. Rade Golić, defense attorney for the accused Milun Kornjača, submitted in his closing argument that various conclusions can be drawn in the concrete case and that the basis for each of them can be found in the state of facts. However, if the state of facts is viewed in the context of the principle of *in dubio pro reo*, the only reasonable conclusion transpiring from the foregoing is that the accused Milun Kornjača is not guilty of the events that occurred in Čajniče on 19 and 27 May 1992.

16. With regard to Count 1l of the Amended Indictment, Counsel submitted that the adduced evidence points that, in the second half of May 1992, there was no superior-subordinate relationship between the accused and Veljo Tadić, namely that it was not proved beyond a reasonable doubt that Veljo Tadić was a member of the *Plavi orlovi* unit at the critical time, which ensues from the testimony of witness KRAJ 280, who did not mention Tadić as a member of the guard under the Accused's command. Counsel also recalled the testimonies of the other witnesses who could not confirm that the Accused was a member of the *Plavi orlovi* unit, and also that witness KRAJ 280 stated that Veljo Tanasković had formed his own unit, known under the name of *Oganj*, which was, according to Desimir Đerić's testimony, joined by Veljo Tadić. Having compared the time when Veljo Tanasković got killed with the time of retaliation, that is, 19 May 1992, Counsel submitted that the only reasonable conclusion is that, in the first half of May, Veljo Tanasković and Veljo Tadić left the unit whose Commander was the accused Milun Kornjača.

17. As to Count 1n of the Amended Indictment, the Defense again referred to the protected witness KRAJ 280 who stated that he had participated in the events related to the village of Brdo. This witness was decisive that he acted in compliance with the orders issued by the Municipality Čajniče Crisis Staff, and that Marijan Mikanović, along with 20 persons, had led the operation in the Brdo village. Counsel submitted that the Prosecution did not prove pursuant to the 'beyond a reasonable doubt' principle that, under the accused's order, members of the *Plavi orlovi* unit arrested civilians Mirsad Bakal and others in the village of Brdo, and brought them in front of the Čajniče Hotel. Besides, Counsel submitted that the Accused's instruction "directly to Mostina", given in front of the Čajniče Hotel, could not constitute, formally or substantially, any order to have the civilians

imprisoned, indicating that the accused had issued no such order, and that there is no evidence proving that the accused issued any further orders or took any actions in the context of the transportation of prisoners. The Defense also submitted that there is no evidence that, on the following day, unidentified members of the *Plavi orlovi* unit deprived the imprisoned civilians of their lives and that there is no information whatsoever about this unit's activities related to this incident, wherefore it cannot be concluded beyond a reasonable doubt that the death of the referenced persons resulted from an act or omission by either the accused or his subordinates.

18. The accused Milun Kornjača stated in his closing argument that the Muslim people started leaving the Čajniče municipality after the meeting held by the SDS representatives. The accused stated it is true that the Čajniče municipality defense had indeed formed a company composed of several soldiers and that he was its Commander, but that he had no authority over Veljo Tadić and Velimir Tanasković, since "they had abandoned him" after the establishment of an accompanying platoon.

19. Having evaluated all the evidence tendered before the Appellate Division Panel, as well as those adduced during the first instance proceedings, in relation to Counts 1I and 1n of the Amended Indictment of the Prosecution BiH, the Appellate Panel decided as stated in the Operative Part herein for the reasons that follow.

III. CONVICTING PART OF THE JUDGMENT

20. Under Count 1n of the Amended Indictment, the Prosecution charged the accused Milun Kornjača with participating, as a co-perpetrator (Article 29 of the CC BiH), under individual criminal responsibility (Article 180(1) of the CC BiH), in the act of killing the civilians from the Brdo village confined at Mostina, by ordering that they be arrested, transported to and confined at Mostina, with the intent to deprive them of their lives there, whereby he committed the criminal offense of Crimes against Humanity under Article 172(1)(h), in connection with (a) and (e) of the CC BiH, in connection with the foregoing provisions of the CC BiH.

1. General elements of the criminal offense of Crimes against Humanity under Article 172(1) of the CC BiH

21. In order to qualify a criminal act as crimes against humanity, in addition to the concrete elements of the criminal offense, it is primarily necessary to also prove the general elements of crimes against humanity, namely: the existence of a widespread and/or systematic attack directed against a civilian population, the accused's knowledge of such an attack, the awareness that the accused's acts formed part of the attack and that he was aware that his acts formed part of the attack. The existence of the general elements of crimes against humanity has already been established in the first instance Judgment, confirmed in its convicting part by the Appellate Panel Judgment of 23 January 2015, whereby the referenced part of the Judgment has already become final.

a) Widespread and systematic attack

22. With regard to the existence of a widespread and/or systematic attack, it should be first noted that, during the evidentiary proceedings, the Defense did not contest the existence of this general element at all, except for the fact that, in his closing argument, Counsel submitted that the Indictment charged Milun Kornjača for the critical period from mid-April 1992 through late May 1992, and that the second half of May 1992 was omitted from the operative part of the first Instance Judgment, wherefore the referenced period can be considered as an adjudicated matter.

23. With regard to the foregoing, this Panel has held that, due to the Trial Panel's factual findings, the Trial Judgment omitted only the period concerning the second half of May, and indicated the period corresponding with the relevant part of the convicting part of the Judgment. Regardless of the foregoing, however, and taking into account all the facts and circumstances, the Panel has held that, when it comes to the existence of the widespread and/or systematic attack, the period concerning the second half of May is not, in any way, distinct from the previous period, and that it cannot be viewed in isolation from the charged period indicated in the convicting part of the Trial Judgment, but rather that it follows the preceding period and forms a whole together with it.

24. The adduced evidence showed beyond a doubt that during the entire charged period indicated in the Amended Indictment, that is, also in the second half of May 1992, a widespread and systematic attack indeed existed in the Čajniče municipality, which was exclusively directed against the non-Serb civilian population. According to the Panel, the widespread and systematic attack did not, in any case, cease after the commission of the acts addressed in the convicting part of the Trial Judgment, but it rather continued, as obvious from the events covered by Sections 1l and 1n, the occurrence of which the Defense did not contest, but rather just the Accused's role therein.

25. Thus, it ensues from the testimonies of almost all the witnesses that the attack in the territory of the Čajniče municipality included a wide scope of actions directed against the non-Serb population, such as the restriction of freedom of movement, setting up barricades and check points, at which the non-Serb population was regularly stopped and searched, the searching of their homes, dismissing them from their work posts, and the fact that the general mobilization that occurred on 15 April 1992 included the Serb population only. In addition, the lining up of the police and members of the Territorial Defense of the Čajniče Municipality in early May 1992 in front of the *Orijent* Hotel and the Culture Center in the Čajniče downtown itself, as well as the arrivals of armed and unidentified soldiers in Čajniče already since 12 April 1992, pointed to the existent extraordinary situation and tensions in the municipality. The firing from fire arms during the evening hours, the arrests of the non-Serb population in their houses and at work posts, and their taking to Mostina, and subsequent beating and killing them in the Hunter's Home at Mostina, the burning of houses in the villages of Miljeno, Brdo and Borajna, as well as the destruction of two mosques in the Čajniče downtown were, beyond any doubt, in the function of the attack on the non-Serb civilian population.

26. The Prosecution Exhibit tendered under number T-115 shows that the Crisis Staff of the SDS Čajniče had taken actions even prior to April 1992, more specifically on 3 March 1992, when it notified the Government of the SR BiH Sarajevo and Ministry of Interior of the SR BiH (MUP SR BiH) that barricades had been set up at the main routes in the territory of the Čajniče municipality and would not be removed as long as the requests on admission to the SJB Čajniče of six police officers and a communications officer of Serb ethnic origin were met, which was in close connection with the subsequent events.

27. Also, the events that had preceded the attack also included the planting of an explosive device in a cobbler's shop in February 1992, about which Midhat Gabela and Nedžad Borovac testified. Witness *Midhat Gabela* owned the cobbler's shop. In relation to the cessation of his work and the explosion that occurred on 28 February 1992, he stated the following: "*At the time of the explosion, I was in my house in the Goražde municipality. At around 11:00 or 12:0 hrs, I received a call from Živković, not Živković but rather police officer Đerić from Čajniče, who represented himself, said his name and told me that an explosion had occurred in a cobbler's shop in Čajniče. I asked him what and how, and he told me: "Gabela, do not come here tonight. The situation here is tense and you should better come some other day."*" Witness Midhat Gabela came to his shop a day after. Citizens of Čajniče as well as Milun Kornjača, Duško Kornjača and Milorad Živković, the Goražde Crime Police, were present in front of his shop. The witness gave a statement on the premises of the police station and did not return to Čajniče thereafter because the situation was very tense already in February.

28. In relation to the explosion in the cobbler's shop, witness *Nedžad Borovac* stated the following: "*The incident concerned a planting an explosive device in the cobbler's shop. That's what I have learned since I did not eye-witness it at that moment. A mine exploded in the market place. You know what it feels like when you learn about an incident like that.*" In relation to the referenced incident, the Prosecution tendered as documentary evidence the *Report on the planting an explosive device in the cobbler's shop in February 1992*².

29. The witnesses KRAJ 280, Safet Bičo and others confirmed that soldiers from Serbia and Montenegro also took part in the attack in addition to members of the TO, members of the *Plavi orlovi* unit, and police officers from the SJB Čajniče. These witnesses stated that, already on 12 April 1992, unidentified soldiers and tanks had arrived in Čajniče. Witness *KRAJ 280* testified that armored vehicles had also arrived in Čajniče, specifically tanks from Nikšić, and stayed in the territory of the Čajniče municipality until the end of the war, and that some of them were destroyed.

¹ Examination of witness Midhat Gabela on 26.12.2011.

² Report concerning the explosion in the "OBUČAR" shop (cobbler's shop) in Čajniče on 28.02.1992.

30. Witness *Safet Bičo* testified that, at the meeting held on 12 April 1992, he had asked Duško Kornjača: “*Duško, who are these men?*”, and that Duško Kornjača responded: “*They are my friends from (the town of) Pljevlja*”.

31. Witness *Valerio Gebs Aquila* testified that late Mehmed Trgo had stated that paramilitary units controlled by Milun Kornjača, which had patrolled in camouflage uniforms containing the SDS or *Plavi orlovi* insignia, participated in the abduction of Bosniaks. With regard to the arrival of soldiers from Serbia and Montenegro, witness *Mehmed Trgo* also said in his statement: “A person known as “*Vuk*”, who had come to Čajniče from Belgrade two months earlier as a volunteer, along with one Čaruga and one Rađa from Pljevlja, as well as around 15 individuals from Serbia and Montenegro, were accommodated in the Čajniče Hotel”.

32. Witness *Alija Močević*³ testified about the security situation in the Čajniče municipality. This witness stated that the situation changed after the elections and that after 12 April 1992, persons in Chetniks’ uniforms from other towns appeared in the Čajniče municipality, and that the domestic population was armed from head to foot. After the multi-partisan elections, the government authorities had to be organized according to its results, namely 60% votes in favor of the SDS and 40% of the SDA. As a consequence of the election results, departments were taken over by the Serb authorities. In the security situation context, the witness mentioned the document he authored under the title ‘*The Appeal to support the non-Serb population in the Čajniče municipality*’, which was forwarded to the Bosnia and Herzegovina authorities.

33. The document titled ‘*Notification for the Citizens of Čajniče*’ was tendered during the examination of witness Alija Močević. The document stated that *control check points are being set up in the interest of providing individual and material security for all citizens in the Čajniče Municipality*. The referenced document was also tendered by the Accused’s Defense. However, the events that followed up showed that the referenced checkpoints were not set up with the aim of providing individual and material security of all citizens of the Čajniče Municipality but rather with the aim of controlling the movement of the non-Serb population in the Čajniče Municipality.

³ Witness Alija Močević gave evidence on 15.05.2012 in the case of Milun Kornjača.

34. Almost all examined witnesses testified about the tense situation and the panic among the non-Serb population in the Čajniče municipality since the beginning of 1992, that was getting worse on a daily basis. Thus, in response to the accused Milun Kornjača's question "*Were the Muslims arming themselves in an organized manner*", witness *Rasim Korora* answered that they were not. However, in relation to the question of whether Muslims stood guard too, the witness maintained his statement given during the investigation: "*As to the Muslim people in Čajniče, I state under full responsibility that they did not arm themselves in an organized manner, and that no military formations were organized. In early '92, due to tensions, fear, and (unclear) safety in the hamlet of (unclear), guards were organized among the Muslim population with (unclear) hunters' and sport rifles, and just a few individuals had bought military weapons with their own money.*"⁴

35. Witness *Alija Močević* further testified about the restricted freedom of movement of the non-Serb population in the Čajniče municipality. Documentary evidence was also tendered in relation to the existing pass permits signed by Duško Kornjača, Milorad Živković, and sometimes also by Milun Kornjača, for the purpose of safe departure from Čajniče. That the accused had signed the referenced pass permits was confirmed by witness *Hamdija Hasović*, who described the way in which he had fled Čajniče. The witness was ..., wherefore Dr. Milan Tupeša gave him a referral form to visit (the town of) Pljevlja. However, the witness needed a pass permit from the SDS Main Staff so he can pass Mostina, which was signed by Milun Kornjača. In his testimony, witness Hasović stated: "*However, he approached me, and I was bent down like that and lost in my thoughts. He approached me and greeted me, asking me what was going on. I told him that I was ill; that I was given a referral form to visit Pljevlja, and that I did not know if I needed any other additional permit. Then he (the accused) called Slavko and told him to bring some paper over to him. Slavko always had some paper and pencil handy, and he gave him the paper, so the accused wrote down on it: "Vito, let Amid pass through, Milun". He greeted me, and told me Goodbye and good luck. That's' how it was.*"

36. Based on the referenced evidence, the Trial Panel found that the check points were not set up with the aim of providing material and individual security to all citizens in the

⁴ Witness Examination Record for Rasim Korora, number 17-14/3-1-141/06 of 24.11.2006.

Čajniče municipality, but rather with the aim of controlling the movement of the non-Serb population. This finding was also upheld by the Appellate Panel, which has noted that clear and concrete evidence was presented with regard to the foregoing, and that the finding was based on the adduced evidence evaluated quite properly.

37. Witnesses Nedžad Borovac, Selim Trgo, Mirzet Čolak, Suad Močević and Arifa Pita gave evidence in relation to the security situation in Čajniče. Witness *Nedžad Borovac* testified that, already in the beginning of 1992, barricades had been set up in the village of Brdo and the arming of the Serb population in the Čajniče municipality started. The witness saw the trucks bringing the cases filled with ammunition in front of the premises of the TO Staff. Witness *Selim Trgo*⁵ took part in the unloading of the cases containing arms, along with Džambegović and Babić. After opening one of the cases, they saw semi-automatic rifles in it. Witness *Mirzet Čolak* testified that firing had occurred already in the beginning of 1992; that Milun Kornjača and witness KRAJ 280 fired from the weapons wherefore the police had to react. Witness *Suad Močević*⁶ testified that: “On 12 April 1992, the situation in Čajniče was tense. Armed members of some paramilitary or military formations, I don’t know, were most active in firing and provoking. They fired every day, in fact, every evening from the barracks located on the high ground above Čajniče, in the village of Kamen Selo further behind Čajniče, all using automatic weapons. This created panic. I hear and see, I see fire, and reflection of weapons. I see flames. The Kamen village is located to the right from Čajniče. There was shooting at certain hours every evening”. This situation lasted throughout the summer 1991, from July until the war outbreak”. Witness *Arifa Pita* testified that, in April and May '92, unrest ruled over Čajniče; the Serbs were arming themselves, taking on camouflage uniforms, and getting out on the streets. Fear and fright were created. There was shooting every night and the population was intimidated. This witness also stated that members of the military were lined up in April '92.

38. Witness *Nedžad Borovac* testified about the line-up of Serb soldiers in front of the Culture Center. The witness stated that this event was horrible; that soldiers wore different uniforms; and that their number equaled a company. One part of the line-up was directed

⁵ Main trial resumed at 24 October 2011 – Testimony of witness Selim Trgo.

⁶ Witness Suad Močević gave evidence at the hearing of 13.06.2011.

by Milun Kornjača. With regard to the line-up, witness *Mirzet Čolak*⁷ stated that he did not know that, on the referenced day, a line-up was scheduled to be carried out at the plateau in front of the Culture Center, so he went to a news stand. *“There was a kiosk, a tobacco shop across over the Hotel, so I had to pass it by without thinking that anything would happen. I went down passing by them and I heard Milun Kornjača calling my name. He (Kornjača) literally told me to get lost and expelled me from the town threatening me that I would end up in a container at Mostina. Normally, I turned back and went home”*. Witness *Mehmed Trgo* testified as follows: *“In late March 1992, the so called Serb soldiers line-up took place in front of the Culture Center in Čajniče. I could watch this line-up from the distance of around 50 m, where I had come by a fire engine to fill up the water from a fire plug. Around 200 Chetniks were lined-up there at the time. Duško Kornjača, President of the SDS, came in front of the line, and Ratomir Savić, who had worked in the Municipal Staff of the TO Čajniče before the war, reported to him. After Duško Kornjača had greeted the line with the traditional Chetnik salute “Good help you, heroes”, Duško’s brother, Milun Kornjača, addressed the Chetniks. Among other things, he stated: “Men, we are going to (carry out) a task. Those who feel fear can get out from the line”. I think that this line-up was carried out prior to the attack on Foča.”*

39. Witness *Suljo Paldum* testified that the line-up in front of the Culture Center occurred on 12 April 1992; that doctor Duško Kornjača, Milun’s brother, lined up a company composed of around 60-80 soldiers. They were lined up in three rows in front of the Culture Center, and they gave an oath that they would defend Republika Srpska, and this was an unpleasant event that we watched at this site. *I once made a joke with a Serb friend of mine when I asked him if I could join those lines; he responded that it was out of question because I do not belong to that nation. This was just a joke but at the same time a serious matter too. The Prosecutor asked the witness how he had felt while watching the line-up. The witness responded that everything pointed to a war. A day after this event, the non-Serb population started leaving the town. Witness Ajka Fazlagić, who gave her statement during the investigation and the record of which was tendered as Prosecution’s Exhibit pursuant to Article 273(2) of the CPC BiH, stated the following: “I saw Serb soldiers lined up near the Culture Center in Čajniče. They were all armed and their number was large. I remember that they gave an oath at the time and that Duško and Milun Kornjača*

⁷ Witness *Mirzet Čolak* gave evidence on 22.05.2012.

addressed them. The words by which he addressed them still cause anxiety in me. These words were: "Are we going to slaughter all Muslims that exist? Are we going to create a Great Serbia? And the soldiers responded "We are".

40. Witness *Mirzet Čolak* gave evidence about the first arrests. The witness stated that *Salih Čaušević*, *Derviš* and *Rasim Korora* were taken to Mostine on April 25/26. In the context of taking people to Mostine, witness *Sulejman Homoraš* stated that the abduction of people had started already prior to April 1992; that he was arrested three times, and that different persons came to take him away twice. Many witnesses testified about the Bosniak men's abduction from their homes during May, on no legal grounds, including witness *Rabija Trgo*, who stated that her husband had been abducted in the morning of May 5, and her son in the evening on that very day.

41. Witness *Mirzet Čolak*⁸ testified about the non-Serb population leaving the Čajniče municipality. This witness stated that, already on 12 April 1992, the first convoys with the population left towards *Goražde* and *Pljevlja*, stating their fear as the main reason for leaving since *"the shooting became frequent, and they simply felt fear. We were not armed, while armed individuals walked around the town. We watched them going to those exercises. Simply, the fear was present, the population felt fear"*. Witness *Mirzet Čolak* confirmed that the Muslim population was neither mobilized nor armed.

42. Considering the foregoing, this Panel has upheld as logical and grounded the Trial Panel's finding that, at the critical time indicated in the Amended Indictment, the events in the Čajniče municipality territory were the result of an organized attack launched in furtherance of the plan to establish the Serb Municipality Čajniče where the non-Serb population would not live at all and that it cannot be considered that such an attack was isolated in character. In addition, the Panel has concluded that the attack against the non-Serb civilian population in the Čajniče municipality was systematic in nature, namely that it was launched in the identical manner as in the other municipalities, over a short period of time, with the participation of a plurality of persons who had planned persecution of the non-Serb population.

⁸ The hearing held on 22.05.2012.

43. Also important for proving the existence of a systematic attack, namely for proving that the attack was organized, is to prove an existent plan or policy. To this effect, the Panel has concluded that the Bosnian Serb leadership wanted to change the ethnic composition of the population in the territories under their control by expulsion and by the resulting drastic decrease of the share of Bosnian Muslims and Bosnian Croats in the population residing in those territories.

44. Thus, the *Instructions on the Organization and Activity of the Organs of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances*⁹ established the way in which certain defined activities will be carried out in all municipalities where the Serbs resided. Essentially, it was a draft plan of the Bosnian Serbs to take over the power in the municipalities where they formed majority population (Variant A) and the municipalities where they were in minority (Variant B). The objective defined in the Instructions Variant A and Variant B was “to implement the plebiscite decision under which the Serb people in Bosnia and Herzegovina chose to live in a single state” and “to increase the mobility and readiness to defend the interests of the Serb people”.¹⁰ The Instructions with its Variant A and B contained, *inter alia*, a directive pursuant to which the SDS Municipal Boards will establish crisis staffs of the Serb people in their municipalities.¹¹ The “Tasks, measures and other activities” addressed in the Instruction with its Variants A and B will be carried out exclusively under the direction of the SDS President.

45. In addition, the *Decision on the verification of proclaimed Serb Autonomous Regions in Bosnia and Herzegovina, issued on 21 November 1991*¹², addresses the establishment of the Serb Autonomous Region of Herzegovina composed of the Bileća, Čajniče, Gacko, Kalinovik, Nevesinje, Rudo and Trebinje municipalities, as well as other parts of the other municipalities in this region with the Serb majority population, with its seat in Trebinje. The Decision also established that all Serb autonomous regions referred

⁹ The Instruction tendered in the case record as Prosecution’s documentary exhibit (T-113).

¹⁰ Variant A and B Instructions, Section I, Items 1-2. The Bosnian Serb leadership was fully aware that the establishment of the Bosnian Serb authority, particularly in the areas where the Bosnian Serbs formed a majority, will necessarily imply the use of force and fear.

¹¹ Variant A and B Instructions, Instruction 3. Establishment of crisis staffs in a war was already provided by the law in the SRBiH. In case of crisis staffs foreseen in the Variant A and B Instructions, the exemption was the fact that those were crisis staffs of the *Serb* people, namely the bodies established by the political party whose members will be holders of functions.

¹² The Decision has been tendered in the case record as Prosecution Documentary Exhibit T-116.

to in the previous paragraph form a constituent part of Bosnia and Herzegovina, as a federal unit in the common state of Yugoslavia.

46. Therefore, considering the sequence of the described events, this Panel has concluded that the concrete case concerned an organized attack by its character, namely that the events that occurred during the period from mid-April through late May 1992 cannot be viewed as individual and randomly carried out isolated acts. On the contrary, they indicate beyond a reasonable doubt that the charged acts forming the substance of the launched attack, in their nature, the ways of their commission and their results must be the result of the planning, organization and coordination of the military and civilian structures, which undoubtedly attributes to this attack the character of a systematic attack.

47. In the case of *Momčilo Krajišnik*¹³ the Chamber found that *this was the general pattern followed in the municipalities at issue, and recognized that there were differences, mostly depending on the ethnic composition of the population of the municipality in question. In municipalities where Muslims were a majority, and had control over local institutions, such as Bratunac, Rogatica, Vlasenica and Zvornik, local Serb civilians were evacuated, whereupon Serb paramilitary forces launched attacks expelling the Muslims and Croats, and repopulating the areas with displaced Serbs. In municipalities where the Serbs were a majority and had control over the local institutions, such as Banja Luka, Bijeljina, Bosanski Novi, Serb authorities and armed forces exercised relentless and methodical pressure on Muslims and Croats, which included threats, arrests, and killings, as well as destruction of their religious and cultural institutions, in order to compel them to leave.*

48. On the basis of the foregoing, this Panel has concluded that it is established beyond a doubt that there existed a widespread and systematic attack directed against the non-Serb population in the Čajniče municipality, during the charged period between mid-April and late May 1992, carried out by members of the SJB Čajniče, members of the TO, members of the *Plavi orlovi* unit and soldiers from Serbia and Montenegro, whereby the first general element necessary for the existence of the criminal offense of Crimes against Humanity under Article 172(1) of the CC BiH was satisfied.

¹³ Judgment of 27.09.2006, para. 709.

b) The attack directed against the civilian population

49. Another necessary precondition required for the existence of the criminal offense at issue is that the attack be directed against the civilian population. To this effect, in evaluating the status of attacked persons, the Panel took into account the provision of common Article 3 of the Geneva Conventions, which defines the requirements under which persons enjoy the protection of the Conventions, specifying that civilians shall be “*persons who do not take active part in the hostilities, including members of armed forces who have laid down their arms and those placed ' hors de combat.*”

50. In the concrete case, the nature of the attack itself indicates that it was directed against the non-Serb civilian population. The Panel has concluded that it was proved beyond a doubt that the persons subjected to the attack enjoyed protection under common Article 3 of the Conventions. Also, it should be noted that the expression “*directed against*” means that the civilian population is the primary object of the attack. It is not required that the attack be directed against the civilian population in the entire geographical area under consideration.¹⁴

51. That the concrete case concerned an attack directed against the non-Serb civilian population the Panel established on the basis of the testimonies of the witnesses examined during the first instance proceedings, which, in the Panel’s view, were reasonably credited. These witnesses clearly stated that the non-Serb population was not engaged in military actions, that they had no weapons and that they wore civilian clothing, namely that they were arrested in their homes, at their work posts or on the streets.

52. *Mirzet Čolak* was among the survived witnesses deprived of liberty and confined at the container at Mostina. Witness Čolak stated that the arrests of the Muslim population around the town had started on 1 May 1992. In the witness’s estimate, around 16-17 men were crammed in the container in a very difficult condition. They were all Muslim civilians. Witness M1 corroborated witness *Mirzet Čolak*’s testimony and also stated that all persons taken to the Hunter’s Home were civilians.

¹⁴ Appeals Judgment in *Kunarac et al.*, para. 90.

53. Witness M1 was the only person in a camouflage uniform confined in the container. He was serving the JNA compulsory service, and at the moment when he was arrested the witness was on leave and on his way to visit his parents in the town of Čajniče. The witness was not involved in any military activity, and was in his uniform solely for the fact that he had been serving his compulsory military service in the JNA, rather than as a member of any party to the conflict.

54. It also ensues from the testimony of *Njegoš Manović*¹⁵, reserve police officer who at the relevant time provided security at the Hunter's Home, that those were all civilians. This witness stated that he discharged the duties of a military police officer, and that on 19 May 1992 he provided security to the *Bosniak population held* at the Hunter's Home at Mostina.

55. As to the assertions that some civilians owned hunting weapons and pistols, which they had handed over on the premises of the SJB Čajniče under the order of the Crisis Staff President long before being arrested, the Panel has also held that the referenced fact does not deprive those persons of their civilian status, since they were not involved in any military activity at the moment of their arrest. Common Article 3 of the Conventions provides that civilians are "*persons taking no active part in the hostilities*", who are not members of armed forces, that is, who are not combatants.

56. For the foregoing reasons, this Panel has also concluded that the attack in the Čajniče municipality was not directed against military and armed forces of the opposing military party, but rather exclusively against the non-Serb civilians, whereby the second general element of the criminal offense in question was satisfied.

c) The accused's knowledge that the attack existed and that his acts formed part of the attack

57. The Panel has also concluded that, during the proceedings, it was proved beyond a reasonable doubt that the accused Milun Kornjača, as the Commander of the *Plavi orlovi* unit, subsequently transformed into the 7th Infantry Company, had knowledge of the existing widespread and systematic attack, and that his actions, both those referred to in

¹⁵ Main hearing of 15.05.2013.

the convicting part of the Trial Judgment and the acts that were the subject of the hearing before the Appellate Panel, formed part of the attack.

58. The Panel has primarily concluded that it was proved beyond a doubt that, at the charged period, the accused was the Commander of the *Plavi orlovi* unit, or the 7th Infantry Company, which is essentially one and the same unit under his command, except that he named it in one way, and others in the other way. In this regard, in responding in the capacity of the witness for the Defense, to the question as to whether the Čajniče inhabitants had called his unit *Plavi orlovi*, the accused stated: "*I did not name it like that. Someone named it like that. I do not know. I could not forbid anyone to call it however he liked it, but I did not call it like that. I named it the 7th Infantry Company, firstly the Territorial Defense Infantry Platoon, subsequently the 7th Infantry Company of the Čajniče Military Territorial Defense*". Therefore, the accused did not deny the assertion that his unit was called *Plavi orlovi*, but rather just stated that he used to call it "the 7th Infantry Company". Thus, it was concluded that the accused himself did not state that these were two different units, but rather the very same unit under his command.

59. In addition, witness *Njegoš Manović* testified that the Commander of the *Plavi orlovi* unit was Milun Kornjača, which he had heard at the beginning of the war; and when combat actions commenced, he learned the same from his colleagues, friends and citizens. Witness *Desimir Đerić* testified that the accused Milun Kornjača had his own unit called *Plavi orlovi*, and that "*no one can contest this, because everyone knew this*".

60. When it comes to the accused's knowledge of the existent attack and that his acts formed part of the attack, it is important that the perpetrator must not only have intent to commit the underlying offense or an offense, but must also 'know that *there is an attack on the civilian population and that his acts comprise part of that attack, or at least that he took the risk that his acts were part of the attack*'. This requirement does not entail the knowledge of the details of the attack.¹⁶ The acts of the accused need only be a part of this attack. This element attempts to exclude isolated acts¹⁷. In its Judgment in *Kunarac*, the ICTY has held that the crime would be considered an 'isolated act' when it is so removed

¹⁶ *Kunarac et al.*, ICTY Appeals Chamber Judgment, para. 102.

¹⁷ Appeals Judgment in *Blaškić*, para. 100.

from the attack that, having considered the context and the circumstances in which it was committed, it cannot be reasonably said to have been part of the attack.¹⁸

61. Thus the perpetrator must have knowledge of the existing widespread and systematic attack directed against the civilian population, and that his acts constitute a part of that attack. This knowledge does not entail knowledge of the details of the attack.¹⁹ The motives of the accused taking part in the attack are irrelevant. The accused need not share the purpose or goal behind the attack, and a crime against humanity may be committed for purely personal reasons.²⁰

62. The fact is that the criminal offenses of Crimes against Humanity can be committed in the context of the attack, which is well known. As explained earlier, the attack in the Čajniče municipality was widespread and systematic, and it was apparent from the Muslim employees being fired from their work posts, the division of the police, the arming of the Serb population, the restriction of freedom of movement, arrests of Muslims, burning of their houses and destruction of mosques. It is not necessary that the accused's acts are identical with the offenses committed during the attack. The Panel has concluded, however, that the acts of imprisonment and the inhumane acts the accused took against non-Serb civilians constitute part of the attack whose ultimate goal was persecution of the non-Serb population of the Čajniče municipality.

63. The Panel has held that the accused knew that a widespread and systematic attack is being undertaken against the non-Serb civilian population in the Čajniče municipality considering that he was the Commander of the *Plavi orlovi* unit, which subsequently became the 7th Infantry Company; that he lived in Čajniče, in the apartment owned by his brother Duško Kornjača; that he moved around the town and knew what was happening in it; that he was in contact with the Crisis Staff led by his brother; that he gave a significant contribution to this attack by ordering the imprisonment of non-Serb citizens of the Čajniče municipality; and that the ultimate goal of all the acts was persecution of the non-Serb population from the Čajniče municipality.

¹⁸ Appeal Judgment in *Kunarac et al.*, para. 100.

¹⁹ Appeal Judgment in *Kunarac et al.*, para.102.

²⁰ Appeal Judgment in *Tadić*.

64. Even though the Defense witnesses Njegoš Manović and Ratomir Milović, as well as the Prosecution witness Desimir Đerić, testified that the goal of the confinement of persons at Mostina was the exchange of Serb prisoners from Goražde, rather than the killing of civilians, there is no doubt that the captured civilians were beaten on a daily basis in the container at Mostina, confined and held in inhumane conditions, interrogated and accorded extremely inhumane treatment.

65. In view of the foregoing, the Panel has concluded that it was proved, beyond a reasonable doubt, that the accused Milun Kornjača, as the Commander of the *Plavi orlovi* unit or the 7th Infantry Company, had knowledge of the existent widespread and systematic attack, that his acts formed part of that attack, and in this context ordered the imprisonment of non-Serb civilians without any legal grounds. This also ensues from the conviction part of the Trial Judgment, which was upheld by this Panel's Judgment number: S1 1 K 003541 14 Krž 12 of 23 January 2015, which established that the accused took the acts of inhumane treatment of civilians; that he beat and held them confined in inhumane conditions, knowing that all imprisoned persons were non-Serbs; that they were surrounded; that their freedom of movement was restricted; that they could not leave Čajniče, namely that they lived in the Čajniče municipality where the Serbs only had formed the authorities, the police and the military.

66. It is therefore obvious that the policy of the establishment of Serb municipalities and taking over power by Bosnian Serbs was led in the referenced manner, with the aim of reducing the share of Bosnian Muslims and Croats in accordance with the *Instructions on the Organization and Activity of the Serb People in Bosnia and Herzegovina in Extraordinary Circumstances*. The adduced evidence also indicates that the accused Milun Kornjača's unit visited battlefields towards Goražde, that the accused Milun Kornjača also took part in those actions, and that he was from this aspect aware of the goals of fight. At the critical time, the accused Kornjača lived with his brother Duško Kornjača at his brother's apartment, he was aware of the decisions made by the Crisis Staff and his brother as the Crisis Staff President, wherein it was not required that the accused should have knowledge of all aspects of the attack.

67. In view of all the foregoing, the Panel has considered as proved the existence of all general elements of the criminal offense of Crimes against Humanity under Article 172(1) of the CC BiH, as found in the convicting part of the Trial Judgment, which has already

become final in this part. Since this part of the Judgment has been upheld, the previous decision of this Panel also upheld the validity of the adduced evidence evaluation, including the witnesses' testimonies and the documentary evidence indicated in this Judgment. For this reason, the Panel has held that it is redundant to state the same reasons anew in this Judgment with regard to the evaluation of individual pieces of evidence, the witnesses whose testimonies were credited and the parts thereof which were or were not credited.

68. In relation to the existence of general elements of the criminal offense of Crimes against Humanity under Article 172(1) of the CC BiH, it should be noted that this Panel has held that the adduced evidence shows beyond a doubt that the widespread and systematic attack against the non-Serb civilian population continued throughout the second half of May 1992, as undoubtedly indicated by the events of 19 and 27 May 1992. The Defense did not contest the occurrence of these events, but rather the Accused's participation therein (in relation to Section 1n), or that he was superior to Veljo Tadić, who committed the killings referred to in Section 1l.

2. Factual and legal findings

69. After the conclusion that the general elements of the criminal offense of Crimes against Humanity under Article 172 of the CC BiH were satisfied was made, a further question was raised in relation to the satisfaction of the elements of individual charges underlying the crime under Sub-paragraph h) of this Article, since the accused was charged with the commission of the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH, that is, by the acts described in the Operative Part of the Judgment under Sub-paragraphs a) and e), all as read with Article 180(1) of the CC BiH and Article 29 of the CC BiH.

a) Definition of persecution under Article 172(1)(h) of the CC BiH

70. The referenced definition reads as follows:

- (1) Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack, perpetrates any of the following acts:

- a) **depriving another person of his life (murder);**
- b) extermination;
- c) enslavement,
- d) deportation of forcible transfer of population;
- e) **imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;**
- f) torture;
- g) coercing another to sexual intercourse or an equivalent sexual act (rape) enforced prostitution, forced pregnancy, enforced sterilization or any other form sexual violence of comparable gravity;
- h) **persecution against any identifiable group or collectivity on political, racial, national ethnic, cultural religious, sexual or any other grounds** that are universally recognized as impermissible under international law, in connection with any offense listed in this paragraph of this Code, any offense listed in this Code or any offense falling under the competence of the Court of Bosnia and Herzegovina;
- i) enforced disappearance of persons;
- j) the crime of apartheid;
- k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health,

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

71. Paragraph 2g) of the same Article provides that: **Persecution** means the intentional and severe deprivation of fundamental rights, contrary to international law by reason of the identity of a group or collectivity.

72. In the commission of this offense in a grossly violent manner and in violation of international law the perpetrator has deprived one or more persons of their fundamental or human rights, wherein the selection of such person(s) was made on the basis of their identity of a group or collectivity, or the perpetrator targeted exactly the specific group or collectivity. Such a selection is based on marked distinctions among groups or other reasons generally recognized as impermissible under international law.

73. In view of the foregoing, in terms of Article 172(1)(h) of the CC BiH, the elements of the criminal offense of persecution as a crime against humanity are the following:

- 1) international and severe deprivation of fundamental rights;
- 2) in violation of international law;
- 3) for an identity of a group or collectivity;
- 4) against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or any other grounds that are universally recognized as impermissible under international law; and
- 5) in connection with any offence listed in this paragraph of this Code, any offense listed in this Code or any offense falling under the competence of the Court of Bosnia and Herzegovina.

74. Therefore, it can be concluded, upon the interpretation of Article 172(1)(h) of the CC BiH, that the offense of persecution can be committed by all the acts which, in their entirety, constitute intentional and severe deprivation of fundamental rights in violation of international law, for the reason of an identity of a group or collectivity.

75. The ICTY case law concerning the act of commission (*actus reus*) of persecution has held the following:

- a) A narrow definition of persecution is not supported in customary international law.
- b) In their interpretation of persecution, courts have included acts such as murder, extermination, torture and other serious acts on the person such as those stipulated in Article 5 of the ICTY Statute.
- c) Persecution can also involve a variety of other discriminatory acts including attacks on political, social and economic rights.
- d) Persecution is commonly used to describe a series of acts, rather than a single act. Acts of persecution will usually form part of a policy or at least a patterned practice and must be regarded in their context. In reality, persecutory acts are often committed pursuant to a discriminatory policy or a widespread discriminatory practice. However, a single act may constitute persecution. In such a case, there must be clear evidence of the discriminatory intent.²¹
- e) Discriminatory acts charged as persecution must not be considered in isolation. Some of the acts mentioned above may not, in and out of themselves, be so serious as to constitute a crime against humanity. For example, restrictions placed

²¹ Kupreškić, Trial Chamber, 14 January 2000, para. 624.

on a particular group to curtail their rights to participate in certain aspects of social life (such as visits to public parks, theaters or libraries) constitute discrimination, which is in itself a reprehensible act; however, they may not, in and out of themselves, amount to persecution. These acts must not be considered in isolation.²²

76. Persecution is a form of discrimination on the grounds of race, religion or political opinion with the intent and resulting in violations of the fundamental rights of individuals,²³ and crime of persecution involves a variety of acts including, among others, the acts of physical, economic or legal nature by which the fundamental rights of individuals are being violated.

77. Discrimination is one of the referenced elements required to prove that the criminal offense of persecution has been committed.

b) Persecution by imprisonment or other severe deprivations of physical liberty in violation of the fundamental rules of international law

78. The criminal offense of unlawful imprisonment exists whenever a perpetrator detained one or more persons or in any other way deprived one or more persons of their personal liberty, wherein the gravity of the committed act is such that it violates the fundamental rules of international law, and the perpetrator was aware of the realistic circumstances which have led to the gravity of the act. The conduct formed part of a widespread or systematic attack directed against the civilian population, and the perpetrator had knowledge of the nature of his conduct.

79. The ICTY²⁴ Chamber in *Momčilo Krajišnik* has stated that the crime of “imprisonment” consists of the following elements:

1. an individual is deprived of liberty,
2. the deprivation of liberty is carried out arbitrarily, that is, there is no legal basis for it, and

²² *Kupreškić*, Trial Chamber, para. 615.

²³ *Tadić*, Trial Chamber, paras. 697 and 710.

²⁴ Judgment in *Prosecutor v. Momčilo Krajišnik*, para. 752.

3. the perpetrator acted with the intent to deprive the individual arbitrarily of his or her liberty.

80. Unlawful imprisonment committed on discriminatory grounds, for which the general requirements for a crime against humanity have been satisfied, amounts to the crime of persecution.

81. The element of the offense under Article 172(1)(e) of the CC BiH - **imprisonment**, which was, *inter alia*, charged against the accused under Count 1n of the Amended Indictment (imprisonment of civilians from the village of Brdo), was satisfied when the perpetrator imprisoned one or more persons, or in some other way deprived one or more persons of his or her liberty, wherein the fundamental rules of international law were violated by the severity of the committed act, and the perpetrator was aware of the realistic circumstances which had led to the gravity of the act.

82. The fundamental rules of international law concerning the imprisonment of civilians are contained in Article 42 and Article 43 of the Geneva Convention on the Protection of Civilians in Time of War (IV Geneva Convention) 11, Article 9 of the Universal Declaration on Human Rights (Universal Declaration) and Article 9 of International Covenant on Civil and Political Rights (ICCPR). Article 42 of the IV Geneva Convention provides that the internment or placing in assigned residence of protected persons may be ordered only if the security of the Detaining Power makes it absolutely necessary. Article 43 of the IV Geneva Convention guarantees the minimum procedural guarantees to which the protected persons are entitled. In addition, Article 9 of the Universal Declaration provides that “no one shall be subjected to arbitrary arrest, detention or exile.”

c) Section 1n of the Operative Part of the Judgment

83. Count 1n of the Amended Indictment (of the Prosecution of BiH) charged the accused Milun Kornjača that, on or around 27 May 1992, after members of the *Plavi orlovi* unit **had under his order deprived civilians from the village of Brdo of their liberty**, with 12 of them being brought in front of the Čajniče hotel with **the intent to deprive the detained civilians of their lives, he ordered** armed members of the same unit to transport the detained civilians to Mostina, and imprison them in a metal container on no legal grounds, which they did, and, on the following day, according the Indictment,

unidentified members of the *Plavi orlovi* unit took them out of the metal container to a nearby meadow and deprived them of their lives by using automatic weapons, and thereupon covered their dead bodies with dirt.

84. With regard to this Count, it was indisputable that the 12 civilians from the village of Brdo, mentioned in the Operative Part herein, were deprived of liberty on or about 27 May 1992, that they were imprisoned in the metal container at Mostina, from which they were brought out on the following day and taken to a nearby meadow, and deprived of their lives by automatic weapons, and thereupon covered with dirt, and that they were subsequently exhumed and identified. The accused's Defense did not contest the foregoing facts either.

85. What was disputable, however, is whether the foregoing acts were committed by members of *Plavi orlovi*, as well as the accused's role in all that. Considering the factual description of the Amended Indictment, from the aspect of the accused's responsibility, it is crucial whether he indeed ordered the members of the unit under his command to deprive the civilians from the Brdo village of their liberty, whether the order to take them to Mostina was given only with the intent to imprison them there on no legal grounds, or with the intent to deprive them of their lives, and whether this was done by members of the *Plavi orlovi* unit which was under the accused's command.

86. With regard to the foregoing, the Trial Panel found in the contested Judgment that the civilians from the Brdo village were deprived of liberty under the order of Duško Kornjača, Commander of the Čajniče Municipality Crisis Staff, that the accused Milun Kornjača knew about that order but did not personally take part in the civilians' arrest and abduction, but he joined the previously given order with his acts, which in the Trial Panel's view did not affect the execution or non-execution of the referenced order.

87. When it comes to the very order to go to the village of Brdo and deprive male civilians-inhabitants of the village of their liberty, none of the examined witnesses explicitly confirmed that such an order was issued personally by the accused Milun Kornjača, although there are certain indicia to that effect. Therefore, also bearing in mind the principle of *in dubio pro reo*, that fact could not be considered as proved, because the adduced evidence did not so indicate beyond a reasonable doubt. However, the Panel has considered as proved beyond a doubt the fact that, even if he did not personally ordered the going to the village of Brdo, the accused conscientiously and of his free will joined the

order issued by his brother Duško Kornjača, in whose apartment he resided, wherefore it could not have possibly remained unknown to him. In any case, this Panel has held that the accused Milun Kornjača was the person who accepted such an order, supported it with his conduct and joined it by organizing its execution. Such a conclusion is undoubtedly also supported by the accused's decisive and repeated assertion that he was a very strict commander and that his soldiers did nothing without his knowledge. This points to the conclusion that the accused undoubtedly joined the order by having accepted it and by having organized its execution. Several other pieces of evidence also point to such a conclusion.

88. Thus, witness Nura Hurlov, whose husband and son had been taken from the village of Brdo to Mostina and killed there, stated that on the referenced occasion a soldier had told her: "*Hanuma (lady), we are not doing anything without Kornjača*", and allegedly he had in mind Milun Kornjača, according to the witness. However, this cannot be concluded with certainty only based on the mentioning of the family name Kornjača, because in addition to the accused, his brother Duško was constantly mentioned too, and the accused had the same family name as the first man of the Čajniče Crisis Staff, who had a much greater authority and position than the accused himself.

89. Witness Fadila Džambegović, wife of Enver, who was on the same occasion arrested and killed, stated that her mother-in-law Hajra told her that her husband and others had been arrested under Milun's order by their neighbors wearing military uniforms. Even though this is a logical and significant information learned by the witness, considering the other evidence and the fact that the arrest was indeed carried out by members of the unit under the accused's command, it should be taken into account that this is nevertheless a circumstantial evidence regarding the fact of who issued the order for going to the village of Brdo and arresting the referenced civilian men.

90. Witness Kraj 280, who had as a member of the accused's unit participated in the arrest of civilians in the Brdo village, confirmed in relation to the order issuance that Duško Kornjača issued orders mostly to the men from Milun's unit.

91. Witness Nedžad Borovac is the only survivor from the group of captured civilians. This witness testified, and the Panel fully credited his testimony as well as those of the previously mentioned witnesses, that it was their neighbors from the town who had taken

them away from the village: Kraj 280, Žvaka, Hans and others, and that the driver was one Tadić (witness did not state which Tadić, and the data in the case record show that there were several men with the last name of Tadić). Witness Borovac also testified that Milun's men had visited them even before and asked for weapons, and that "Orlovi" had come to the village on the referenced day too. The witness also stated that on that occasion, on 29 May 1992, a soldier told them that they were being taken for exchange, and that when they arrived in the town of Čajniče, the accused Milun was sitting in front of the Hotel restaurant, that he jumped up on his feet and asked the soldiers "Where are Almas and Smail?", and that having got no answer, he immediately told the soldiers: "Off to Mostina!".

92. That the accused was the person with whose knowledge and organization the whole operation was carried out, is clearly shown by the fact that, after being taken to Mostina and confined in the container, witness Nedžad Borovac was taken out of the container, returned to Čajniče and brought exactly before the accused Milun, who interrogated him about Smail, Almas, weapons, etc. Milun was sitting and the witness was standing in front of him, which is also indicative. In support of the foregoing conclusion, that the accused had known about the action and was involved in it, also stands the accused's answer to witness Borovac's question if he could leave: *"Do not leave now, wait, an ambush is organized for Smail and Almas, so (do that) when it is all over"*.

93. In support of the conclusion that the capturing of villagers of the village of Brdo was carried out by soldiers-members of the *Plavi orlovi* unit, led by the accused, is witness Borovac's assertion that, on that very day, when he too was taken to Mostina and brought back to the village after being interrogated by Milun, he found Milun's men in his grandfather's house, that certain soldiers offered their assistance to him, including witness Kraj 280 (who was undoubtedly a member of the *Plavi orlovi* unit), and that they calmed him down since he was very agitated; that one of Milun's soldiers told him: *"When you start off to work, let us hear from you"*. In addition to the accused's persistent stating that he was a very strict commander, and that no one could do anything without his knowledge, there is no doubt that the accused was behind the abduction of civilians from the village of Brdo and the entire operation, including their confinement in the container at Mostina and an ambush set up for Smail and Almas.

94. Considering the foregoing facts and the accused's undoubted authority among soldiers, this Panel has also held that the words the accused spoke out in front of the

Hotel, that is, “*Off to Mostina!*” have the character of an order given to his soldiers to transport the given group of civilians to Mostina. There is no doubt that this abduction meant imprisonment and interrogation accompanied with abuse, torture and similar treatment, which has already happened to the others who had been present there from before. However, the dilemma is if this was just a realistic intent on the part of the accused, or whether it also included what happened on the following day – the taking of all imprisoned men to the nearby meadow and depriving them of their lives.

95. None of the examined witnesses could decisively state who had actually killed the prisoners, who ordered that and who buried the bodies of the killed men. The Prosecutor argued that this was done by members of the *Plavi orlovi* unit, since they had brought the victims to the site. Even though such an assumption is quite logical, considering what preceded it, it is in and out of itself insufficient for rendering a conviction for what followed on the following day – depriving the captured civilians of their lives; rather it should have been proved with clear and concrete evidence. However, none of the examined witnesses confirmed that. On the contrary, all witnesses examined about those circumstances responded that they did not know who actually killed the imprisoned civilians. In addition to the fact that the captured men were met in front of the container by a former police officer Janić, in a police uniform but with military insignia, and the witnesses’ statements that the container was secured by police officers and that one Marijan Milkanović and his soldiers took part in the action, the dilemma as to who actually killed the victims has become even greater. In this way, the Prosecutor’s assertion that the perpetrators were members of the *Plavi orlovi* unit has been further brought under suspicion.

96. The fact that the civilians were killed on the following day rather than on the very day of their arrest also contributes to the dilemma concerning the existence of the accused’s intent to deprive the imprisoned civilians of their lives. This also leads to the conclusion that the option that the accused was not behind the execution of prisoners is also quite realistic, even if members of his unit indeed did that. Otherwise, had the accused been behind that and had he issued the order in front of the Hotel that the prisoners be taken to Mostina, exactly with the aim of depriving the prisoners of their lives, there is no logic that he would not immediately ask for their execution, at the site, already in the village of Brdo or in the town of Čajniče. If the accused wanted that the prisoners be deprived of their lives, there is no logic in their further transportation to Mostina, calling them out, placing them in the container and holding them therein until the following day to

kill them, if they could have done it promptly. Therefore, the conclusion that the captured civilians from the village of Brdo were deprived of their lives **under the accused's order** and their dead bodies covered with dirt exactly by members of the *Plavi orlovi* unit could not be drawn beyond a reasonable doubt, which was the requisite level of credence for the rendering of a convicting decision in this part.

97. Considering the existent doubt into the existence of the accused's intent to deprive the captured civilians from the village of Brdo (it is possible that others did have such an intention, but the accused was not even aware of it), the part of Count 1n concerning the Prosecution's allegation that the accused issued the order for the abduction and imprisonment of captured civilians with the intent to deprive them of their lives, could not be accepted. Therefore, those parts had to be omitted from the factual description, including the part that, **under the accused's order**, members of the *Plavi orlovi* unit went to the village of Brdo and deprived 12 civilians of liberty (for which the reasons were already provided), and the factual description needed to be formulated in the manner as stated in the Operative Part of the Judgment.

98. This Panel has held that it was proved beyond a reasonable doubt, on the basis of the adduced evidence credited by the Court for the previously established reasons, that the accused was the person who ordered that the captured civilians be transported to Mostina and deprived of liberty without any legal grounds, but that he did not issue the order with the intent to deprive them of their lives.

99. It undoubtedly ensues from the adduced evidence that abducting the civilians from the village of Brdo and **depriving them of liberty was committed with discriminatory intent**, since the victims of the crime were selected exclusively based on religious and ethnic grounds.

100. Specifically, all the persons who were, on the concrete occasion, rounded up in the village of Brdo, deprived of liberty and imprisoned in the metal container at Mostina were members of one and the same ethnicity. Undoubtedly, they were all Muslims or Bosniaks, as well as the persons imprisoned previously, in April and May 1992, in relation to the acts referred to in the convicting part of the Trial Judgment, which has already become final, and the persons referred to in Section 11. All the foregoing clearly points to the proper character of the Trial Panel's finding, also upheld by this Panel, that the referenced actions

and imprisonment of non-Serb inhabitants were conscientious, and that their ultimate goal was to reduce the Muslim population in the Čajniče municipality.

101. Also, all segments of the previously mentioned widespread and systematic attack, manifested through the restriction of movement, barricades and check points, dismissal from work posts, arresting and taking men to Mostine, destruction of the mosques in Čajniče, targeted the Muslim population, while the accused Kornjača directly participated in some of those actions, as previously established.

102. The accused was well aware of the national, ethnic and religious origin of the victims of the attack, since they had all lived and resided in the Čajniče territory, and almost all knew each other, as they were fellow citizens and neighbors.

103. This Panel, as well as the Trial Panel, has taken into account the ethnic structure accepted as an established fact:

Pursuant to the 1991 census of the population in Bosnia and Herzegovina, the national composition of the Čajniče municipality comprised 4709 (53 %) Serbs, 4024 (45 %) Muslims, 5 Croats, 77 Yugoslavs and 141 person from among the group of others or unidentified ethnic origin.

104. The ethnic structure of the population drastically changed as a result of persecution of the Bosniak civilian population from the territory of the Čajniče municipality on ethnic and religious grounds, since a large number of the Bosniaks has still not returned to this area.

105. The act referred to in Section 1n, which is the subject of the proceedings before the second instance Panel, is certainly just one in a series of the actions forming part of the widespread and systematic attack on the non-Serb civilians in the Čajniče municipality, wherefore it cannot be considered in isolation. Therefore, in evaluating whether the persecution was also committed by the act referred to in Section 1n, the Panel had to be mindful of the testimonies of the witnesses already mentioned in the upheld part of the Trial Judgment.

106. Thus, the Panel had to take into account witness Ajka Fazlagić's testimony that, while giving a solemn oath in front of the Culture Center, the persons lined up (soldiers and police officers), responding to Duško Kornjača's question "Are we going to slit throats of all Muslims", stated "Yes, we are.". The Prosecutor asked the witnesses-injured parties what were the reasons, in their opinion, for which they had been arrested and taken to Mostina, and some of them even beaten, they all unanimously responded that it was because they are Muslims.

107. The Panel has noted that, pursuant to the interpretation of Article 172(1)(h) of the CC BiH, the act of persecution may be committed by all the acts which in whole amount to intentional and serious deprivation of the fundamental rights, by reason of identity of a group or community, in violation of international law. Discrimination is one of the elements required to prove the commission of the crime of persecution. The other two elements of persecution are satisfaction of all the elements required for the existence of crime against humanity, and gross and flagrant deprivation on discriminatory grounds of a fundamental right recognized by international or conventional law, which reaches the same extent of severity as the other offenses prohibited under Article 172 of the CC BiH.

108. That the accused Milun Kornjača acted, in the way and at the time specified in the Operative Part of the Judgment, with the discriminatory intent in furtherance of the established plan to persecute the Bosniak population in the territory of the Čajniče municipality on ethnic and religious grounds is clearly shown by the adduced evidence confirming that the accused indeed ordered that the Bosniak population be unlawfully imprisoned in metal containers at Mostina.

109. The mere definition of persecution provides that the crime of persecution involves various offenses including, *inter alia*, the offenses of physical, economic or legal nature violating the fundamental rights of an individual, such as the right to life and the right to freedom of movement, which was done by the accused and his acts against the victims.

110. This Panel has concluded beyond a reasonable doubt, based on the comprehensive evaluation of all adduced evidence, that the accused Milun Kornjača indeed committed the criminal offense of Crimes against Humanity by the act of imprisonment. The Panel has found that the Prosecution did prove the existence of all elements of the criminal offense of Crimes against Humanity, that is, the existence of a

widespread and systematic attack in the territory of the Čajniče municipality during the period between April and late May 1992, directed against the non-Serb civilian population, that the accused knew about the attack and that there was a nexus between the accused Milun Kornjača's acts and the attack.

111. Bearing in mind that all general and special elements of the referenced offense were satisfied, and the fact that the accused acted with intent, of his free will, with a diminished capacity to form judgment, but not to a significant extent (as established upon the expert evaluation during the first instance proceedings), the accused was found guilty that, by the acts described in the Operative Part of the Judgment, he committed the criminal offense of Crimes against Humanity under Article 172(1)(h) of the CC BiH, in connection with Paragraph e) - Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, and as read with Article 180(1) of the CC BiH and Article 29 of the same Code.

3. Sentencing

112. In deciding on sentence, the Panel took into account the already established extenuating and mitigating circumstances, as well as the fact that the criminal offense of which the accused was found guilty carries a sentence of imprisonment for a term of at least ten years. Having accepted the fact that the extenuating circumstances pertaining to the accused amount in whole to particularly extenuating circumstances indicating that the purpose of punishing may be also achieved by a reduced sentence, this Panel has concluded, as well as the Trial Panel, that it is justified to apply the provisions of the Criminal Code concerning the reduction of punishment, considering that Article 50(1)(a) of the CC BiH provides that the prescribed 10-year prison sentence may be reduced to a maximum of 5 years, and decided to impose on the accused a 5-year prison sentence for the criminal offense at issue.

113. In view of both the foregoing and the earlier imposed 5-year prison sentence under the Trial Judgment and upheld in its convicting part, this Panel has decided, applying the provisions of the CC BiH concerning a compound sentence (Article 53 of the CC BiH), to impose on the accused a compound sentence of imprisonment for a term of 7 (seven) years. The Panel was particularly mindful of the accused's severely impaired health condition as well as of the fact that during the trial proceedings the expert witness

established that the accused's capacity to form judgment was diminished, but not to a significant extent.

114. This Panel has held that the referenced compound sentence of 7 (seven) years in prison is adequate/appropriate to the perpetrator's personality and the severity of the criminal offense, and that the purpose of punishment, both general and special deterrence, will be achieved by this sentence, namely that it will sufficiently deter the accused, as well as other persons, from committing the same or similar offenses in the future.

115. In deciding on and imposing a compound sentence, the Panel has properly taken into account the fact that, under the final part of the Trial Judgment, the accused received a 5-year prison sentence for the same criminal offense, but for different criminal acts, which is now taken into account as an established sentence. Thus, the referenced sentence did not include the acts under Count 1n, which must also be sanctioned appropriately. In this Panel's view, in relation to what has been established earlier, the acts referred to in Section 1n have significantly increased the degree of the accused's criminal activity in the commission of Crimes against Humanity under Article 172(1)(h) of the CC BiH, as read with paragraph e), exactly for a 2-year period, for which period the originally imposed sentence would have certainly been lengthier if the actions referred to in Section 1n had been included therein.

116. Pursuant to Article 56 of the CC BiH, the time the accused spent in custody, running from 16 December 2009 through 30 August 2012, was also credited to the sentence imposed.

4. Decision on the costs of criminal proceedings and the claims under property law

117. In relation to the costs of the criminal proceedings referred to in Article 188(4) of the CPC BiH, the Panel has relieved the accused Milun Kornjača of the obligation to reimburse the costs of the criminal proceeding considering that the accused is indigent, and that the support of both the accused and his family would be jeopardized. Considering the foregoing, the Panel decided that the costs of the criminal proceedings would be paid from within the budget appropriations of the Court.

118. Pursuant to Article 198(2) and (3) of the CPC BiH, the Panel instructed the injured parties that they may pursue their possible claims under property law in a civil action, considering that the establishment of facts concerning the amount of the claim would require a lengthier period of time.

IV. ACQUITTING PART OF THE JUDGMENT

Section 1I of the Operative Part of the Judgment (the Accused's command responsibility for the killing of civilians at Mostina)

119. Count 1I of the Prosecution's Amended Indictment charged the accused with a failure to take appropriate actions to punish the participants in the event that took place in the evening hours of 19 May 1992, when Veljo Tadić (a member of the *Plavi orlovi* unit according to the Prosecution's allegation) killed 28 captured Bosniaks at the Hunters' Home at Mostina, which the accused learned on that very day on the premises of the TO Staff in Čajniče but took no action, in accordance with his rights and duties of the unit Commander, to punish the perpetrator of these murders.

120. Therefore, the accused was in relation to this Count charged on the grounds of command responsibility. For this reason, the Panel had to start from the elements of command responsibility and Article 180(2) of the CC BiH, which provides that "the fact that any of the offenses referred to in Article 171 through 175 and Article 177 through 179 of the CC BiH was committed by a subordinate does not relieve his superior of culpability if he knew or had reason to know that his subordinate was about to commit such acts, or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof".

121. It follows from the foregoing that the first requirement for responsibility on the grounds of command responsibility is that the act committed pertains to the acts referred to in the referenced articles of the CC BiH. The second requirement is the existence of superior/subordinate relationship and that the superior has certain powers and control over the acts of his subordinates. Also, it is necessary to establish that the superior knew or had reason to know that his subordinate was about to commit a crime or that he already committed the act, but despite this knowledge the superior failed in his duty to act properly, that is, to take the necessary and reasonable measures to prevent the commission (if the

perpetrator was about to commit an offense) or to punish the perpetrator, if the offense/act was already committed. In any case, the superior must have an effective control – command and control over the persons who committed any offenses, wherein it does not suffice that he has solely *de iure*, but also *de facto* control.

122. In the concrete case, it was established beyond a doubt that the criminal offense - the killing of detained Bosniaks at the Hunter's Home at Mostina, was indeed committed. Also, there is no doubt that this crime was committed by Veljo Tadić on 19 May 1992 after the death of Velimir-Veljo Tanasković, and that the accused Milun Kornjača learned about this on the same day on the premises of the TO Staff, that his reaction was very loud, and that he stated that the one who did that should be executed immediately without standing any trial. In addition, there is no doubt that, apart from this verbal reaction, the accused took no concrete action whatsoever which would result in the punishment of the perpetrator.

123. What is disputable, however, is whether Veljo Tadić, as the perpetrator of the crime at issue, was the accused Milun Kornjača's subordinate at the time of the crime commission, whether he was a member of the unit led by the accused and whether the superior/subordinate relationship existed between them at the relevant time. The positions of the parties were diametrically opposite with regard to these issues. While the Prosecutor was alleging that, at the time of the crime commission, Veljo Tadić was a member of the unit called *Plavi orlovi*, which was led by the accused, the Defense was submitting that, at the mere beginning, Veljo Tadić had indeed been a member of the unit led by the accused, but he subsequently left the unit along with Velimir-Veljo Tanasković, who formed his own unit called *Bijeli orlovi*, and thereupon artillery too, and that thus, at the moment of killing the captured Bosniaks at the Hunter's Home at Mostina, Veljo Tadić was a member of the *Oganj* unit, drove a vehicle called "Pinc Gauer", which was the only vehicle that could drag cannons known as 'Zis'. The Prosecutor's allegation, that at the time of the crime commission the accused was superior to Veljo Tadić, was based on the testimonies of the protected witness Kraj 280, Rasim Korora, the accused's testimony and Exhibit T-30 – Photograph of the *Plavi orlovi* unit.

124. The Prosecutor argued that the testimony of the protected witness Kraj 280 should be credited because it is corroborated with the accused's testimony and the testimonies of witnesses Dževad Šeko, Selim Trgo, Rasim Korora, Safet Omeragić, as well as with

Exhibit T-30. The Prosecutor pointed to witness Kraj 280's statement that, in addition to him, Veljo Tadić, Duško Tadić, Vito Kajević, Velimir Tanasković and Željko Kuvelja also stood guard at Mostina.

125. Truly, witness Kraj 280 mentioned the above referenced persons as the persons who had, together with him, stood guard at Mostina. However, the period when they did so is still unclear – was it just at the beginning, which is not disputed at all, or also on 19 May 1992, when Veljo Tadić came by a vehicle make *Lada Niva* to the container at Mostina, requesting witnesses Njegoš Manović and Siniša Vujević to open the container, using open threats that he would use his automatic weapon that he had already cocked. Witness Kraj 280 did not say anything about that, nor had anyone asked him anything to this effect. Therefore, his testimony cannot be considered as a confirmation of the Prosecutor's allegation that, at the time of the crime commission, Veljo Tadić was a member of the *Plavi orlovi* unit which was under the accused' command.

126. Witness Kraj 280, however, confirmed that, under Duško Kornjača's order, Veljo Tadić had left Čajniče immediately after the incident and hid in Montenegro, but returned in around seven days, after recounting in an inn that he had killed the Muslims. It should be noted that witness Kraj 280's previous testimonies differed with regard to the time of Veljo Tadić's return from Montenegro since the witness also mentioned lengthier periods (of two months and more), but did not mention, in any of them, what unit Veljo Tadić was a member of after his return from Montenegro (had he been in the accused's unit, it would have clearly pointed to the conclusion that he had been a member of the same unit also at the time of the crime commission). However, witness Kraj 280 was determined that Veljo Tanasković had formed his own unit and that he got killed on 18 May 1992, that is, a day before Veljo Tadić killed the men detained in the container.

127. In addition, when asked if at the time Veljo Tadić was a member of the *Plavi orlovi* unit, witnesses Siniša Vujević and Njegoš Manović, who had secured the container on the critical day (19 May 1992) as reserve police officers and described Veljo Tadić's arrival in detail, responded that they did not know that. Witness Siniša Vujević just added that Veljo Tadić had a camouflage uniform, which not an indicator at all, because many others had such an uniform, regardless of whether they were members of one unit or another, or of no unit at all.

128. When asked if Veljo Tadić was a member of the *Plavi orlovi* unit, witness Slobodan Perendija also responded that he was not certain about that.

129. With regard to this Count of the Indictment, witness Desimir Đerić stated that he heard that Veljo Tadić had killed some 30 Bosniaks, that Duško Tadić was also mentioned in relation to this, and that Veljo went away immediately after the incident at issue. This witness, however, said nothing about who was Veljo Tadić's superior at the time and of which unit he was a member on 19 May 1992.

130. During the investigation, however, witness Đerić stated for the Prosecution's Record number KT-RZ-40/05 of 6 May 2010, tendered in the case record as Exhibit (T-16), that Rus (*Duško Tadić*) was a member of the *Plavi orlovi* unit or of Veljo Tanasković's unit called *Oganj*, and that Veljo Tadić was a member of the *Oganj* unit.

131. Protected witness M2, who was not at all present in Čajniče at the time but rather in the place of Goražde, testified that rumors had it that Veljo Tadić and Duško Tadić had killed those Muslims after Velimir Tanasković's death in revolt, and that on the following morning all Muslims left Čajniče, which was undisputed anyway. Witness M2, however, did not state that at the time Veljo Tadić was a member of the *Plavi orlovi* unit.

132. In relation to witnesses Selim Trgo, Rasim Korora, Nura Hurlov and Almas Gabela, the information in the case record showed that they testified about the facts indicating that Milun Kornjača had effective control over the unit he had led, but not about Veljo Tadić's possible membership of the *Plavi orlovi* unit at the time of the crime commission (19 May 1992), which was led by the accused, which is only relevant to the accused's responsibility as a superior for the acts committed by his subordinate on the ground of command responsibility.

133. Also, the photo depicting members of the *Plavi orlovi* unit – Exhibit T-30, cannot automatically mean that Veljo Tadić was a member of this unit on 19 May 1992. Specifically, there is no doubt that, at the beginning, during the first period after the unit formation, Tadić indeed was its member. This does not, however, automatically mean that he was its member on 19 May 1992, which had to be proved beyond a reasonable doubt. A positive conclusion to this effect is quite possible as it is quite logical. However, what the accused asserted cannot be excluded either, namely that prior to the referenced day, Veljo

Tadić had left the *Plavi orlovi* unit along with Veljo Tanasković, who formed a unit of his own, of which Veljo Tadić became a member as a driver of the vehicle called Pinc Gauer (the *Oganj* unit). Indicative of the foregoing are also the assertions that Veljo Tadić killed the captured civilians in revolt or retaliation because of the death of vojvoda/duke Veljo Tanasković a day before. This points to a close relationship between the two men with the same first name of Veljo, and also renders logical the accused's assertion that Veljo Tadić was a member of the unit under the command of the slain Tanacković.

134. In view of all the foregoing, based on the adduced evidence, this Panel could not conclude, beyond a reasonable doubt, as a standard and prerequisite for entering a convicting judgment, that at the time of killing the detained Muslims-Bosniaks on 19 May 1992, Veljo Tadić was indeed a member of the unit led by the accused, namely that a superior/subordinate relationship existed between these two men. Since the superior/subordinate relationship was not proved beyond a reasonable doubt, no existence of the accused's effective control over Veljo Tadić's acts can be proved either. The foregoing is also supported by the Trial Panel's finding of the parallel system of orders issuance when it comes to the *Plavi orlovi* unit and Duško Kornjača's role as the Head of the Municipality.

135. There is no dilemma for the Panel that the duty of the commander of the unit to which Veljo Tadić belonged was to file a report on the incident that had occurred on 19 May 1992 at Mostina, regardless of all the circumstances addressed by certain witnesses (isolated position of Čajniče, the absence of military police in Čajniče, etc.), along with a proposal for punishing the perpetrator(s) thereof. The Panel has also held that Veljo Tadić's leaving to Montenegro was not an obstacle to do so. However, the question of who was Veljo Tadić's superior at the time of the killing of the detained civilians and who actually had this obligation, should have been proved beyond a reasonable doubt by the Prosecutor, on whom the burden of proof lies.

136. Had it been proved during the proceedings that the accused Milun Kornjača was Veljo Tadić's superior at the time of the crime commission, his verbal reaction, although very loud and clear, would not suffice to exculpate him from his failure to file a report and motion to have Veljo Tadić punished and from his responsibility for those failures on the ground of command responsibility. Since the burden of proof lies on the Prosecutor, the Panel had no other choice in the concrete situation but to act pursuant to Article 3 of the

CPC BiH and apply the principle of *in dubio pro reo*, namely to conclude in favor of the accused when in doubt and, in view of the foregoing, due to the lack of evidence, acquit the accused of the responsibility for the acts described in Count 1I of the Amended Indictment.

2. Decision on the costs of the criminal proceedings and claims under property law

137. Considering that the Panel acquitted the accused Milun Kornjača of the charges concerning the acts described in Count 1I of the Amended Indictment, the costs of the criminal proceedings will also in this part be reimbursed from within the budget appropriations, pursuant to Article 189(1) of the CPC BiH.

138. For the same reason, pursuant to Article 198(3) of the CPC BiH, all injured parties were instructed that they may pursue their possible claims under property law in a civil action.

**Record-taker:
Legal Advisor**

Denis Podžić

**PANEL PRESIDENT
JUDGE**

Mirza Jusufović

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

(Pursuant to Article 317(1)(b) of the CPC BiH, the necessary prerequisite to contest the second instance judgment is the fact that the trial judgment be acquitting **in whole**, rather than just in certain sections, and sentencing in its other sections).