

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босна и Херцеговина

Case No. S1 1 K 020032 17 Kžk

Session held on: 3 November 2017

Written Judgment sent out on: 7 December 2017

Before the Panel of Judges: Mirza Jusufović, Presiding

Dr. Miloš Babić, member

Tihomir Lukes, member

PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA

v.

the accused MATO BAOTIĆ

SECOND-INSTANCE JUDGMENT

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

Counsel for the accused Mato Baotić: Attorney Irena Pehar

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No. S1 1 K 020032 17 Kžk
Sarajevo, 3 November 2017

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, sitting in an Appellate Division Panel, comprising Judge Mirza Jusufović, as the Panel Presiding, and Dr. Miloš Babić and Tihomir Lukes, as the Panel members, with the participation of legal advisor Elma Čorbadžić, as the record-taker, in the criminal matter versus the accused Mato Baotić, charged with the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1), as read with Article 22 of the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY) and the criminal offense of War Crimes against Prisoners of War in violation of Article 144 of the CC SFRY, upon the Indictment filed by the Prosecutor's Office of Bosnia and Herzegovina No. T20 0 KTRZ 0002867 12 of 23 November 2015, which was confirmed on 26 November 2015, and amended on 24 October 2016, after the hearing held before the Appellate Division Panel, in the presence of the Prosecutor of the Prosecutor's Office of BiH, the accused and his defense counsel, on 3 November 2017 issued and announced the following:

J U D G M E N T

THE ACCUSED:

MATO BAOTIĆ aka Čikin, son of Ivo and Ruža, nee Oršolić, born on 11 April 1967 in the place of Donja Mahala, Municipality of Orašje, Personal Identification Number..., citizen of ..., ethnic ..., with registered place of residence at the address 5 Vinkovačka Str., settlement of Donja Mahala, Municipality of Orašje, with current residence in the FR Germany, Schöne Aussicht 4, Frankfurt am Main, literate, secondary school graduate, welder, employed in Frankfurt am Main, FR Germany, average financial standing, compulsory military service served in the JNA in 1986/87, holds no reserve officer rank, holder of an HVO captain rank, no prior convictions,

I

IS HEREBY FOUND GUILTY

because:

during the war in Bosnia and Herzegovina and the armed conflict between the Army of Republika Srpska (VRS) and the Croat Defense Council (HVO), within the period between early May 1992 and late September 1993, in the capacity of the Commander of the 2nd

Detachment of the Military Police of the 106th HVO Brigade, in the Municipality of Orašje, he acted in breach of the rules of international humanitarian law, violating the rule of Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilians in Times of War of 12 August 1949 and the 1977 Additional Protocol II thereto, in the manner that, by acting alone or in concert with other members of the HVO known to him, he participated in and inhumanely treated civilians, in as much as:

1. On an unidentified day during the summer 1992, at the Donja Mahala camp, in a classroom used for interrogation and beating of captured Serb civilians, inflicted severe bodily and mental pain to civilian **Pero Božić**, in the manner that, after he (Božić) had been brought to the referenced room, the military police officer he knew ordered him to strip off to his waist and sit on a chair, and after the injured party did so fearing for his own life, the accused Mato Baotić vigorously beat him with a metal chain he had with him all over the injured party's body, particularly on his back, and gave him several blows, as a result of which the skin on the injured party's back ruptured and he bled from the wounds inflicted by the received blows.

2. During the period between 12 June 1992 and late August 1992, alone or in concert with other members of the HVO, known to him, the accused inflicted severe bodily and mental pain to civilian **Jovan Cvijanović**, in such a way that, in mid-June 1992, after the injured party had been brought, along with V.P. and F.I., to a classroom of the primary school in Donja Mahala, used by members of the military police for interrogations and beating of prisoners, and after Pero had hit the injured party with a multi-strand cable in his right upper, as a result of which Jovan's hand was injured, and vigorously punched the injured party.

3. On an unspecified day, twice or three times during June and July 1992, the accused inflicted severe bodily and mental pain on civilian **S-2** by taking him out of the room where civilians were kept imprisoned at the Donja Mahala primary school, and bringing him to the classroom used for interrogations and beating of prisoners, interrogated him about Serb military posts and weapons and, along with other members of the HVO military police known to him, punched and kicked him with military boots on his legs, all over the victim's body.

Thus, violating the rules of international law during the armed conflict between the Croat Defense Council and the Republika Srpska Army, the accused accorded inhuman treatment to civilians

whereby

he committed, by the acts described in Sections 1, 2 and 3 of the convicting part of the judgment enactment clause (or Counts 4, 5a) and 6 of the amended Indictment), the criminal offense of War Crimes against the Civilian Population in violation of Article 142(1), as read with Article 22 of the Criminal Code of the Socialist Federative Republic of

Yugoslavia, which was adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY¹,

wherefore the Court, by applying Articles 33, 38 and 41 of the CC SFRY and Article 285 of the CPC BiH

SENTENCES HIM

TO IMPRISONMENT FOR A TERM OF 6 (SIX) YEARS

and,

*having considered as **fixed** the previously imposed prison sentence of 10 (ten) years* for the perpetrated criminal offense of War Crimes against the Civilian Population under Article 142(1), as read with Article 22 of the Criminal Code of the Socialist Federative Republic of Yugoslavia, which was adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY², under the Judgment of the Court of BiH, No. S1 1 K 020032 15 Kri of 9 December 2016, upheld in its convicting part by the Judgment of the Appellate Division Panel No. S1 1 K 020032 17 Krž 11 of 14 April 2017,

by applying Article 49, as read with Article 48(3) of the Criminal Code of the SFRY

SENTENCES THE ACCUSED

TO A COMPOUND SENTENCE OF 13 (THIRTEEN) YEARS IN PRISON

Pursuant to Article 50(1) of the CC SFRY, the time the accused Mato Baotić spent in custody, running from 12 August 2015 onwards, shall be credited towards the prison sentence imposed.

¹ Hereinafter: CC SFRY – The Assembly of the SFRY adopted the Criminal Code of Bosnia and Herzegovina at the Federal Council session held on 28 September 1976 and published it in the Official Gazette of the SFRY, No. 44 of 8 October 1976. After the declaration of the BiH independence, the CC SFRY was adopted, pursuant to the Decree with the force of law of 22 May 1992, as the law of the Republic of Bosnia and Herzegovina (with minor amendments), and entered into force on the day of its publication.

² Hereinafter: CC SFRY – The Assembly of the SFRY adopted the Criminal Code of Bosnia and Herzegovina at the Federal Council session held on 28 September 1976 and published it in the Official Gazette of the SFRY, No. 44 of 8 October 1976. After the declaration of the BiH independence, the CC SFRY was adopted, pursuant to the Decree with the force of law of 22 May 1992, as the law of the Republic of Bosnia and Herzegovina (with minor amendments), and entered into force on the day when it was published.

In terms of Article 188(4) of the CPC BiH, the accused shall be relieved of the obligation to reimburse the costs of this part of the criminal proceedings, which shall be paid from within the budget appropriations of the Court.

Pursuant to Article 198(2) of the CPC BiH, the injured parties are instructed to pursue their claims under property law in a civil action.

II

Pursuant to Article 284(c) of the CPC BiH, the accused Mato Baotić

IS HEREBY ACQUITTED OF THE CHARGES

That:

During the war in Bosnia and Herzegovina and the armed conflict between the Republika Srpska Army (VRS) and the Croat Defense Council (HVO), during the period between early May 1992 and the end of the same year, in the capacity of the 2nd Detachment Commander, exercising the duty of Deputy Commander of the Military Police within the 106th Brigade HVO from the beginning of 1993 until late September 1993, as a commander of the camp located at the primary school in Donja Mahala, in the Municipality of Orašje, the accused acted in breach of the rules of international humanitarian law, by violating Article 3(1)(a) and (c) of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949, Article 3(1)(a) of the Geneva Convention on the Treatment of Prisoners of War of 12 August 1949 and the 1977 Additional Protocol II thereto, in such a manner that he, alone or in concert with other members of the HVO known to him, partook in the rapes, torture and inhuman treatment, in as much as:

1. On an unspecified day during the period between mid-May 1992 and early August 1992, on a dozen occasions, alone or in concert with other members of the HVO military police known to him, he inflicted severe bodily and mental pain to war prisoner Jovo Stevanović by taking him out of the room where prisoners were kept to a classroom used for interrogations and beating of prisoners, at the Donja Mahala primary school, where he punched him all over his body, alone and sometimes along with other members of the HVO military police, and when the injured party would fall on the ground, kept kicking the injured party with his military boots,

whereby

he would have committed, by the act described in Section 1 of the acquitting part of

the Judgment enactment clause (or Count 7 of the Indictment), the criminal offense of War Crimes against Prisoners of War under Article 144 of the CC SFRY.

Pursuant to Article 189(1) of the CPC BiH, the accused is relieved of the obligation to reimburse the costs of the proceedings in relation to the acquitting part of the Judgment, which will be paid from within the Court's budget appropriations.

Pursuant to Article 198(3) of the CPC BiH, the injured parties were instructed to pursue their 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, No. S1 1 K 020032 15 Kri of 9 December 2016, found the accused Mato Baotić guilty of committing, by the acts described in Sections 1, 2, 3, 4a), 4b) and 4c) of the convicting part of the Judgment enactment clause, the criminal offense of War Crimes against the Civilian Population under Article 142(1), as read with Article 22 CC SFRY, wherefore the Court sentenced him to imprisonment for a term of 10 (ten) years. Pursuant to Article 284(c) of the CPC BiH, the same Judgment, acquitted the accused Mato Baotić of the charges that, by the acts described in Sections 1, 2, 3 and 5 of the acquitting part of the Judgment enactment clause, he committed the criminal offense of War Crimes against the Civilian Population under Article 142(1), as read with Article 22 CC SFRY, or that by the acts described in Section 4, he committed the criminal offense of War Crimes against Prisoners of War under Article 144 of the CC SFRY.

2. Under the same Judgment, the accused was ordered, pursuant to Article 188(1) of the CPC BiH, to reimburse the costs of the criminal proceedings concerning the convicting part of the Judgment, the amount of which will be decided by the Court in a separate decision.

3. In deciding on the appeals filed by the Prosecution of BiH and the Accused's defense counsel, the Panel of the Appellate Division of the Court of BiH rendered a Judgment No. S1 1 K 020032 17 Kž 11 of 14 April 2017, upholding the convicting part of the Trial Judgment, Section 5 of its acquitting part, and the sentencing decision, by which the accused Mato Baotić was found guilty of the criminal offense of War Crimes against the Civilian Population and sentenced to imprisonment for a term of 10 (ten) years, and revoking the Trial Judgment in relation to Sections 1, 2, 3 and 4 of its acquitting part and

ordering a hearing before the panel of the Appellate Division of the Court of BiH.

4. On 9 March 2017, a hearing was opened before the Appellate Panel pursuant to Article 317 of the CPC BiH, at which the Prosecutor fully stood by his Indictment allegations and presented his opening argument.

A. CLOSING ARGUMENTS

a. Prosecution

5. In its closing argument, the Prosecution referred to the course of the proceedings conducted before the Appellate Division Panel and the individually tendered evidence. The Prosecutor argued that there are general elements of the criminal offenses of War Crimes against the Civilian Population under Article 142 of the CC SFRY and War Crimes against Prisoners of War under Article 144 of the CC SFRY, because these offenses were already found in the Trial Judgment and upheld, in part, in the Appellate Panel's Judgment. Further in its closing argument, the Prosecution examined the contents of the statements of witnesses Pero Božić, Jovan Cvijanović, witness S1 and Jovo Stevanović, which were reproduced before the Appellate Panel. According to the Prosecution, the quality of witness Pero Božić's testimony is such that it can be concluded from it with certainty that the accused Mato Baotić is exactly the person who mistreated him in the manner as described in Count 4 of the Amended Indictment. In addition, it ensues from the remaining three Counts of the Amended Indictment 5a), 6 and 7 (or Sections 2, 3 and 4 of the acquitting part of the Trial Judgment) and the contents of the examined witnesses' testimony, that the accused Mate Baotić's treatment of the injured party indeed reached the level of inhuman treatment provided for in common Article 3 of the Geneva Conventions. According to the Prosecution, the general health condition of the injured parties, the fear which one must feel during daily beatings and the poor diet, particularly considering the fact that certain prisoners had even died due to daily mistreatment, are the key facts for drawing the conclusion as to whether the level of inhuman treatment was indeed reached on the concrete occasion. Therefore, the Prosecution moves the Appellate Panel to find the accused guilty as charged and impose on him a criminal sanction proportionate with the gravity and serious nature of the criminal offense he had committed, which is a prison sentence compliant with the Court of BiH's case law developed in similar cases.

b. Defense

6. Counsel for the accused Mato Baotić moved the Panel, in her closing argument, to acquit the accused of the charges because it does not ensue from the reproduced witnesses' testimony that the accused is responsible for the acts charged against him under the Counts of the Amended Indictment. The Defense contested the credibility of Pero Božić's testimony by submitting that it was unconvincing and unclear, and that it

could not be clearly concluded from it that exactly the accused took the referenced acts against him, namely that the accused's possible acts caused the prohibited consequences, because no medical documentation was tendered in the case record. In the context of this witness's credibility, Counsel submitted a Judgment of the District Military Court in Bosanski Brod, No. KI-11/93 of 12 May 1993, which showed that the injured party Pero Božić had taken part in the preparations for armed rebellion whereby he committed the criminal offense of Armed Rebellion under Article 124(1) of the CC SFRY. As to the remaining three counts concerning the revoked acquitting part of the Trial Judgment, Counsel submitted (in relation to the event with the injured party Jovan Cvijanović) that the injured party spoke about the consequences of the treatment accorded to him by Pero Konj, wherefore it cannot be concluded solely from his testimony that, in case that the factual allegations under this Count were proved, the accused indeed made a violation of international humanitarian law. In relation to the events concerning the injured party-protected witness S-2 and Jovan Stevanović, Counsel submitted that these witnesses did not speak about the consequences caused by the accused they might have experienced and that therefore it cannot be concluded from their testimony that the accused's referenced acts indeed reached the level of inhuman treatment.

C. TENDERED EVIDENCE

7. Pursuant to Article 317(2) of the CPC BiH, and upon the Prosecution's motion, the Appellate Panel accepted, in whole, the evidence tendered in the first-instance proceedings and included it in the evidentiary materials on the basis of which the second-instance decision was delivered. During the hearing before the Appellate Panel, the Prosecutor's Office of BiH did not have any new evidentiary proposals, but it did propose that the witnesses' testimony in relation to the revoked Counts of the Indictment be reproduced, namely the testimony of witnesses Pero Božić, S-2, Jovan Cvijanović and Jovo Stevanović, and that these witnesses not be summoned before the Court, which was accepted by the Appellate Panel.

8. The Appellate Panel also granted the defense's proposal that new documentary evidence concerning the accused Mato Baotić's financial status be tendered in the case record. The Defense had no other evidentiary proposals.

9. All pieces of the evidence included in the evidentiary materials were listed in the Annex to the Judgment and form an integral part thereof.

10. Having evaluated the tendered evidence, individually and in combination, the Appellate Panel concluded, pursuant to Article 285 of the CPC BiH, that the accused is guilty of committing, by the acts described in Sections 1, 2 ad 3 of the convicting part of the Judgment (or Counts 4, 5a and 6 of the Amended Indictment), the criminal offense of War Crimes against the Civilian Population under Article 142(1), as read with Article 22 of

the CC SFRY.

D. APPLICATION OF SUBSTANTIVE LAW

11. The Appellate Panel also accepted, in whole, the arguments presented in the Trial Judgment of the Court of BiH concerning the application of substantive law and the Criminal Code of the SFRY in the concrete case. The Panel primarily took into account that the Indictment alleged that the charged criminal act was committed during 1992 and 1993, when the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC SFRY) was in effect, which was adopted pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY.

12. In deciding on the substantive law application and the legal qualification of the offense, the Panel was mindful of the principles provided for in Articles 3 and 4 of the Criminal Code of Bosnia and Herzegovina (CC BiH), and Article 7(1) of the European Convention on Human Rights (ECHR). Having applied the referenced provisions, the Panel concluded that the accused committed the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the adopted CC SFRY, as read with Article 22 of the same Code, and accordingly found him guilty as charged.

13. Article 3 of the CC BiH provides for the principle of legality, namely that no punishment or another criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which no punishment has been prescribed by law (*nullum crimen sine lege, nulla poena sine lege*). However, Articles 3 and 4 of the same Code do not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law (Article 4a of the CC BiH). Article 7 of the European Convention on Human Rights and Fundamental Freedoms (Convention) similarly provides for the principle of legality.

14. The referenced legal provisions provided that, as a rule, the law effective at the time of the crime commission shall apply to the perpetrator of the crime.

15. The referenced principle may be derogated from only in the interest of accused persons, that is, in a situation when, after the act, the law has been changed in the manner that the amended law is more lenient to the perpetrator. The Court evaluates on a case-to-case basis which law is more lenient to the perpetrator. Being mindful of the case law of the Constitutional Court of BiH regarding the substantive law application, the Panel concluded that it is necessary to apply the adopted CC SFRY as the law that was in effect at the time of the crime commission, and that, in the concrete case, it is more lenient to the perpetrator, considering the sentence prescribed therein for the offense at issue.

16. Specifically, a mere comparison of the legal texts can provide a clear response to the concrete case only if the new law has decriminalized the act which was criminal under the old law, since obviously the new law is a more lenient one. When a criminal act carries a punishment under the both laws, it is necessary to determine all the circumstances relevant to the decision as to which law is more lenient in the concrete case, taking into account the sentencing-related provisions. In doing so, one should take into account all the provisions concerning the prescribed criminal sanctions, types and measures, their fixing or reduction, security measures, accessory punishments, measures which substitute the punishment and other relevant provisions concerning the criminal sanction imposition.

17. However, it does not suffice to determine which law provides for larger possibilities to render a more favorable judgment, but, rather, which law provides for a more favorable outcome in the concrete case for the concrete perpetrator. This clearly ensues from Article 4(2) of the CC BiH, which stipulates that the law that is “*more lenient to the perpetrator*” shall apply. Accordingly, it is not excluded as an option that the law providing for a more stringent punishment is ultimately more lenient for the perpetrator because the application of some other provisions thereof leads to the solution more favorable for the perpetrator.

18. In the concrete case, the law effective at the time of the crime commission – the adopted CC SFRY, equally as the presently effective law – the CC BiH, provides for the criminal acts for which the accused was found guilty of the criminal offense of War Crimes against the Civilian Population and the criminal offense of War Crimes against Prisoners of War in relation to which the accused was acquitted of the charges. Given the foregoing, the legal requirements to conduct the criminal proceedings against the perpetrator of the referenced criminal offenses and his punishment clearly exist.

19. Considering both the foregoing and the views of the Constitutional Court of BiH derogating from the European Court’s jurisprudence, because it does not anticipate that the application of the more lenient law to the perpetrator should be reviewed on a case-to-case basis but rather clearly determines that in all cases where both laws provide for the same criminal offense the adopted CC SFRY shall apply to the perpetrator, the Panel applied the referenced law to the concrete case considering that the Constitutional Court of BiH’s position is also binding on the Court of BiH.

20. The criminal offense of War Crimes against Civilians under Article 173 of the CC BiH and the criminal offense of War Crimes against Prisoners of War under Article 175 of the CC BiH, charged against the accused in the concrete case, were also provided for in Articles 142 and 144 of the CC SFRY. In accordance with both the foregoing and the case law of the Constitutional Court of BiH regarding the application of substantive law, the adopted CC SFRY should apply as the law which was in effect at the time of the crime commission and the law which is, in the view of the Constitutional Court of BiH, more lenient to the perpetrator than the CC BiH.

II. FINDINGS OF FACTS BY THE APPELLATE PANEL

A. CONVICTING PART OF THE JUDGMENT

21. The Judgment found the accused Mato Baotić guilty under Counts 4, 5a) and 6 of the consolidated Indictment of the commission of the criminal offense of War Crimes against the Civilian population under Article 142(1) of the adopted CC SFRY, as read with Article 22 of the same Code. Article 142 of the adopted CC SFRY reads as follows:

“Whoever in violation of rules of international law effective at the time of war, armed conflict or occupation, orders that civilian population be subject to killings, torture, inhuman treatment, biological experiments, immense suffering or violation of bodily integrity or health; dislocation or displacement or forcible conversion into another nationality or religion; forcible prostitution or rape; application of measures of intimidation and terror, taking hostages, imposing collective punishment, unlawful bringing in concentration camps and other illegal arrests and detention, deprivation of rights to fair and impartial trial; forcible service in the armed forces of enemy's army or in its intelligence service or administration; forcible labor, starvation of the population, property confiscation, pillaging, illegal and self-willed destruction and stealing on large scale of a property that is not justified by military needs, taking an illegal and disproportionate contribution or requisition, devaluation of domestic currency or the unlawful issuance of currency, or who commits one of the foregoing acts, shall be punished by imprisonment for not less than five years or the death penalty.”

22. **The following general elements of the criminal offense of War Crimes against the Civilian Population** ensue from the quoted legal provision:

- i. The act of the perpetrator must be committed in violation of the rules of international law in the manner that the commission of act is directed against the civilian population, that is persons taking no active part in the armed conflict, or have laid down their arms or been placed hors de combat and who are protected under the provisions of the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949;*
- ii. The violation must be committed in time of war, armed conflict or occupation;*
- iii. The act must be linked with the war, armed conflict or occupation;*

iv. *The perpetrator must order or commit the act.*

23. This Panel upholds all the conclusions and explanations of the Trial Panel related to the general elements of the criminal offense of War Crimes against the Civilian Population (that the act of the perpetrator must be committed in violation of the rules of international law; that the violation must be made in time of war; that the perpetrator's act must be linked with the war; and that the perpetrator must order or commit the act), also considering the fact that these elements were already established in the Trial Judgment, which was even uncontested in this part by the defense's appeal, and which was upheld by the Appellate Panel's judgment and became final.

24. In order to find a violation of the rules of international law, it is necessary to determine the target of the act commission, that is, whether the act was directed against a special category of persons protected by Article 3(1) of the Convention. In the concrete case, the Panel concluded that the accused Mato Bačić undertook the criminal acts against civilians-injured parties Pero Božić, S-2 and Jovan Cvijanović, that is, against the categories of persons who enjoyed protection under common Article 3 of the Conventions.

25. Pursuant to the definition under Article 3(1) of the Geneva Convention IV, the protected categories of persons are persons "*taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other reason*". In addition, pursuant to Article 3(2) of the same Convention, the wounded and sick enjoy special protection. Therefore, in terms of common Article 3 of the Convention, a civilian is a person "*taking no active part in the hostilities*".

26. The Panel established the referenced feature of the injured parties primarily on the basis of the personal testimony of the injured parties, who were mostly arrested at their homes in the Orašje municipality. The Panel also concludes that all imprisoned civilians were unlawfully arrested. This is so because, notwithstanding that pursuant to the rules of international humanitarian law the detention of civilians in an armed conflict may be permissible in certain circumstances, it is unlawful if the detention or forcible imprisonment of protected persons is not absolutely necessary. In addition, even if the arrest was initially legal, it ceases to be such at the moment when the arrested person is prevented from having his arrest examined by the responsible court or administrative body in the shortest period of time possible.³

27. The injured party Pero Božić stated that, until 9 May 1992, he had lived in the village of Bukova Greda, working as a postman, when members of the HVO police arrived at around 04:00 or 05:00 hrs in the morning, forced them out of their houses and locked up

³ Trial Judgment in *Prosecutor v. Dario Kordić and Mario Čerkez*, IT-95-14/2-T of 26 February 2001, paras. 286-287.

at Mirza Filipović's shed, after which they were transferred to the primary school in Donja Mahala. On the other hand, the injured party Jovan Cvijanović was arrested by members of the military police in an apartment in Orašje, where he was hiding after he had fled from his village of Bukova Greda, when the Serb population had been taken away. Witness S2 testified that he was arrested as a civilian by (members of) the HVO on a route toward the village of Kopanci, where he had headed in order to move out his family, but failed to reach them.

28. In view of the foregoing witnesses' testimony, uncontested in this part by the Defense with any piece of concrete evidence, the Panel concludes that, in the concrete case, the persons at issue were indeed civilians taking no active part in the hostilities, or the category enjoying protection under common Article 3 of the Convention, as also found by the Trial Panel.

29. On the other hand, in relation to his status, the injured party Jovo Stevanović personally confirmed in his testimony that he was a member of the 2nd Posavska Unit, and that he had the status of a soldier even at his arrest on 2 May 1992. Considering that common Article 3 of the Geneva Convention defines prisoners of war as *members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention or any other reason*, it undoubtedly ensues from the foregoing that the injured party Stevanović had the status of a war prisoner.

30. However, despite the Panel's conclusion, beyond a doubt, that the injured party Stevanović had the status of a war prisoner, the Appellate Panel acquitted the accused of the charges under this Count because the other underlying elements of the criminal offense of War Crimes against Prisoners of War under Article 144 of the CC SFRY were not satisfied. This will be addressed in more detail in the part of the Judgment concerning the reasoning of the acquitting part of the Judgment.

31. In relation to the existence of the next element of the criminal offense, that *the violation must be committed in time of war, armed conflict or occupation*, the accused's Defense did not contest during the proceedings that, at the time of the events included in the Indictment, an armed conflict existed in the territory of Bosnia and Herzegovina, concretely in the Municipality of Orašje, between the Croat Defense Council (HVO) and the Army of Republika Srpska (VRS), while the existence of combat actions was confirmed by witnesses Mirko Sarić, Pero Božić, Vlado Dervenić and Zlatko Porobić, and the tendered documentary evidence, primarily the Decision of the Presidency of the Republic of Bosnia and Herzegovina to Declare Imminent War Danger of 9 April 1992⁴, the Decision of the Presidency of the RBiH to Declare the State of War of 20 June 1992⁵, the Decision of the Presidency of the Serb Republic of BiH to Declare Imminent War Danger of 15 April

⁴ Prosecutor's Office of BiH, Exhibit T-15.

⁵ Exhibit T-20.

1992, confirmed by the Decision of the Assembly of the Serb People in BiH of 12 May 1992⁶, and the Decision of the Presidency of the RBiH to Terminate the State of War of 28 December 1995.⁷

32. In addition to the foregoing, the tendered evidence also confirms the facts of the establishment of the Croat Community of Herzeg-Bosna, and its armed forces known as the Croat Defense Council (HVO), and the military structure of these armed forces in certain parts of the BiH territory, including the Municipality of Orašje, and on the other hand, the establishment of the Army of the Serb Republic of BiH, subsequently the Army of Republika Srpska (VRS), as the other armed party to the conflict.⁸

33. Another requirement under Article 142 of the CC SFRY is that there *must be a link between the accused's act and the armed conflict*. Therefore, in order to prove the existence of the referenced element, it is necessary to address the accused's status at the critical time and the existence of a *nexus* and dependence between the act commission and the existence of the earlier reasoned armed conflict in the wider area of the Municipality of Orašje. Concretely, the Panel examined if *"the existence of an armed conflict have played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed"*.⁹

34. The decisive fact in establishing a *nexus* between the accused's acts and the armed conflict is the accused's status at the time of the crime commission, that is, the fact that the accused Mato Baotić committed the act as a member of the Military Police of the 106th HVO Brigade. The accused's membership in this military formation, and the formation activities in the Municipality of Orašje, have certainly affected the accused's ability to commit the crime, the manner in which it was committed and the purpose for which it was committed.

35. The fact that at the critical time the accused Mato Baotić was a member of the 106th HVO Brigade Orašje, or a member of the military police, also ensues from the reports submitted by the accused, as the Commander of the 2nd Military Police Detachment within the 106th HVO Brigade,¹⁰ to the responsible Command, as well as from the testimony of many witnesses, including Vojin Milojević, Zlatko Porobić, Ilija Stanić and others.

⁶ Exhibit T-18.

⁷ Exhibit T-24.

⁸ Decision of the People's Defense Ministry of the Serb Republic of BiH to Establish the Territorial Defense of the Serb Republic of BiH No. 1/92 of 16 April 1992, Decision to Establish the Army of the Serb Republic of BiH No. 03-234/92 of 12 May 1992 and the Decision of the Assembly of the Serb People in BiH to Establish the Army of the Serb Republic of BiH of 12 May 1992, Decision of the Presidency of the Serb Republic of BiH on the Establishment, Organization, Formation, Management and Command over the Army of the Serb Republic of BiH of 15 June 1992, and the Decision to Establish the Croatian Community of Herzeg-Bosnia.

⁹ *Kunarac et al.*, IT-96-23 and IT-96-23/1-A, Judgment of 12 June 2002, para. 58.

¹⁰ Prosecution Exhibit T-38 – Intervention Report for 10-11 June 1992; T-34 Intervention Report for 30-31 May 1992; T-2 – Intervention Report for 10 May 1992.

36. The Panel did not accept the Prosecution's submissions that, during the period between early May 1992 until the end of the same year, the accused performed the function of a Military Police Deputy Commander within the 106th HVO Brigade, and from the beginning of 1993 to late September 1993, the duty of the commander of a camp located at the Donja Mahala primary school, because it provided no piece of evidence supporting the referenced circumstances, except for the testimony of the witnesses who had been imprisoned therein.

37. In addition, while testifying in the capacity of a witness for the Defense, the accused personally stated that he was the Commander of a platoon of the 2nd Military Police Detachment, and that, in October 1992, the Military Police Commander, Pero Vincetić, asked him to take over only the command over the detention and imprisonment of Croats who had been interned on the premises of the school in Donja Mahala.¹¹ That the accused was indeed the Commander of the 2nd Military Police Detachment of the 106th HVO Brigade Orašje was also confirmed by the defense witness Ilja Stanić.¹²

38. Accordingly, the accused committed all the acts in the capacity of a member of the Military Police of the 106th HVO Brigade, which is exactly the position which enabled him to commit the referenced offenses at the time and in the place as stated in the enacting clause of the Judgment.

39. The last general element of the criminal offense of War Crimes against the Civilian Population is that the perpetrator must either directly commit an unlawful act or order others to commit it, in order to be held responsible as the direct perpetrator of the act, with which the accused was charged under the Indictment at issue. Having evaluated all the presented evidence, the Panel concluded that it was proved, in the concrete case, that the accused indeed committed the acts as the direct perpetrator, of which he was found guilty in Sections 1, 2 and 3 of the convicting part of the Judgment enactment clause.

40. The Appellate Panel fully upholds the Trial Judgment's findings concerning the accused's identity considering the Defense's efforts to prove that another person named Mate was in question. Also, there were no doubts for this Panel that, at the time, there were two persons with the same name of Mato, that both these men were members of the Military Police, that the latter Mato's family name was Živković and that he was also known as "Rakijica". However, it ensues from the examined witnesses' testimony and the documentary evidence that the accused and Mato Živković differed from each other very much, both in terms of their physical appearance and the functions they performed at the

¹¹ Transcript of the examination of the accused Mate Baotić in the capacity of a witness for the Defense, 11 October 2016.

¹² Transcript of the examination of witness Ilja Stanić, of 11 October 2016.

time, as confirmed by the witnesses Marija Tunde-Benković, Marko Benković and witness S-5.

41. That the physical appearance of the accused Mato Baotić and the person named Mato Živković aka “Rakijica” was very much different was also confirmed by the Defense witness Krešo Benković, also a former member of the Military Police of the 106th HVO Brigade. This witness had known the accused even before the war, because they were neighbors, and he identified him during his trial testimony. In describing the physical appearance of the accused Baotić and the person named Mato Živković, the witness stated that Živković was a short person, had a scar on his face, probably as a result of some injury, that his face was all covered in pimples, and that he had a short and thick beard, unlike the accused, who looked “*exactly as he looks now, neat and tidy, combed and shaved*”.¹³ The witness also knows that Mato Živković’s nickname was “Rakijica” because he was always drunk.

42. In view of the foregoing, the Appellate Panel concludes that, in the concrete case, all general elements of the criminal offense of War Crimes against the Civilian Population under Article 142 of the CC SFRY were satisfied.

(a) **Inhuman treatment**

43. Pursuant to Article 285 of the CPC BiH, the Appellate Panel found the accused Mato Baotić guilty of the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the adopted CC SFRY, as read with Article 22 of the same Code, for the acts of inhuman treatment.

44. The “inhuman treatment” is not defined under Article 142 of the CC SFRY. The ICTY jurisprudence, however, offers many examples of the concrete criminal offenses, namely: mutilation and other types of severe bodily harm¹⁴; beatings and other acts of violence¹⁵; infliction of serious bodily or mental harm¹⁶; serious violence to life and person¹⁷; serious attack on human dignity¹⁸; forced labor which caused serious mental harm or physical injury, or the act constituted a serious attack on human dignity¹⁹;

¹³ Transcript of the testimony of witness Krešo Benković of 4 October 2016.

¹⁴ See *Kvočka et al.*, Judgment of the ICTY Trial Chamber, IT-98-30/1, para. 208.

¹⁵ *Ibid*, para. 208.

¹⁶ See *Kordić and Čerkez*, Judgment of the ICTY Appeals Chamber, IT-95-14/2, para. 117.

¹⁷ See *Blaškić*, Judgment of the ICTY Appeals Chamber IT-95-14, para. 239. *Krstić*, Judgment of the ICTY Trial Chamber IT-98-33 para. 523.

¹⁸ See *Vasiljević*, Judgment of the ICTY Trial Chamber, para. 239-240.

¹⁹ See *Naletilić and Martinović*, Judgment of the ICTY Trial Chamber, paras. 271, 289 and 303.

deportation or forcible transfer of groups of civilians²⁰; forced prostitution²¹ and enforced disappearance of persons²².

45. To assess the seriousness of an act, consideration must be given to all the factual circumstances. These circumstances may include the nature of an act or omission, the context in which it occurred, the personal circumstances of the victim including age, sex and health, as well as the physical, mental and moral effects of the act upon the victim. The fact that an act has had long term effects may be relevant to the determination of seriousness of an act.²³

46. Article 3 of the European Convention on Human Rights (ECHR) provides that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. It was noted in the case of *Ireland v. the United Kingdom*, that “ill-treatment must attain the minimum level of severity” if it is to fall within the scope of this article. The assessment of this minimum is, in the nature of things, relative and depends on all the circumstances of the case, such as the duration of such treatment, its physical and mental effects and, in certain cases, sex, age and health of the victim”.²⁴

47. The European Court and the European Commission of Human Rights developed a voluminous jurisprudence concerning various forms of ill-treatment, such as torture, inhuman and humiliating treatment prohibited under Article 3 of the ECHR.²⁵ For example, in *Tomasi v. France*, the European Court found an obvious inhuman treatment in breach of Article 3 when the applicant was slapped, kicked, punched, and given forearm blows, made to stand for long periods and without support, hands handcuffed behind the back; he had been spat upon; and made to stand naked in front of an open window, deprived of food and threatened with a firearm. The European Court has held that a large number of blows received by Mr. Tomasi and their intensity are the two elements sufficiently serious to render such treatment as inhuman and degrading.²⁶ Treatment has been held by the Court to be “inhuman” if it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical and mental suffering.²⁷

48. In addition, the Human Rights Commission (Commission) found that being forced to stand blindfolded and handcuffed for 35 hours while listening to cries of other tortured prisoners, threaten with punishment and forced to sit blindfolded and still on a mattress for

²⁰ See *Kupreškić et al.*, Judgment of the ICTY Trial Chamber, para. 566.

²¹ *Ibid*, para. 566.

²² *Ibid*, para. 566.

²³ See *Vasiljević*, Judgment of the ICTY Trial Chamber, para. 235. See *Blaškić*, Judgment of the ICTY Trial Chamber MKSJ, para. 243.

²⁴ *Ireland v. United Kingdom*, Judgment, Application No. 5310/71, 18 January 1978, para. 162.

²⁵ *A v. the United Kingdom*, Judgment of 23 September 1998, ECtHR, para. 20 (quotation from *Costello-Roberts v. the United Kingdom*, Judgment of 25 March 1993, 247-C ECtHR (Ser. A) 1993).

²⁶ *Tomasi v. France*, 13 EHRR 1, 1993, para. 115.

²⁷ *Lorse et al. v. The Netherlands*, Judgment, Application No. 52750/99, 4 May 2003, para. 60. See *Gasal Nisvet*, Judgment of the Court of BiH, No. S 1 1 K 003485 12 Kžk of 18 December 2013.

several days constituted inhuman treatment.²⁸ Also, subjecting a person to ill-treatment in detention such as being hit with batons in the knees, threaten with knives, punched while lying on the floor, repeatedly hit with sticks, metal bars and batons, being left with no medical treatment regardless of the sustained head and body injuries, constitutes cruel and inhuman treatment.²⁹

49. Having analyzed the meaning of inhuman treatment in the international practice context, the Panel concluded that inhuman treatment is an intentional act or omission, namely an act which is, objectively, an intentional rather than a random act, which causes serious mental or physical suffering, or which is a serious attack on human dignity or bodily harm.

50. The Prosecution reasonably also pointed to the norms of the European Court of Human Rights in the Grand Chamber case of *Bouyid v. Belgium*, where the European Court, in addressing the minimum level of severity required to be classified as torture, inhuman or degrading treatment, found that **any unjustified use of force by law-enforcement officers on persons under their control constitutes a humiliating treatment, even if the mere physical force (e.g. slap) was not so intense to cause long-term effects.**³⁰

51. In determining the level of inhuman treatment, in addition to the injured parties' testimony, the Appellate Panel also took into account the general health and the fear which one had to feel during every beating, poor diet, the deprivation of medical treatment, and that all these circumstances constitute decisive facts in drawing the conclusion as to whether, on the concrete occasion, the level of inhuman treatment provided in common Article 3 of the Geneva Conventions was attained, as one of the essential elements of the criminal offense of war crime.

52. In the context of determining whether the referenced treatment constitutes inhuman treatment and the appellate complaints evaluation, the Appellate Panel took into account the jurisprudence of the ICTY³¹, where it is stated that *the degree of physical or mental suffering* required to prove either inhuman treatment or cruel treatment is *lower* than the one required for torture.³²

²⁸ *Soriano de Bouton v. Uruguay*, No. 37/1978. Mentioned above in footnote 12, p. 163.

²⁹ *Leslie v. Jamaica*, No. 564/1993, para. 9.2.; *Bailey v. Jamaica*, No. 759/1997, para. 9.3.

³⁰ *Bouyid v. Belgium*, Application No. 23380/09, Grand Chamber Judgment of 28 September 2015, para. 105-107.

³¹ *Naletilić*, Trial Chamber Judgment, para. 246; *Kvočka*, Trial Chamber Judgment, para.161; *Radislav Krstić*, Trial Chamber Judgment of 2 August 2011, para. 513.

³² That the standards of proving the degree of bodily and mental suffering in inhuman treatment and intentional infliction of serious harm or injury are the same. This criminal offense is distinct from the criminal offense of inhuman treatment because it requires a serious mental or bodily harm. Offenses where the damage caused therewith only concerns a person's dignity are not classified as a criminal offense of intentional infliction of serious harm or injury.

53. In order to classify a treatment as inhuman, it should be considered on a case-to-case basis, depending on the type of acts, and the effects caused by the acts upon the victims and their bodily and mental integrity, environment and circumstance, that is, the context in which the acts are being taken on victims and depending on their duration and intensity.

54. The effects need not be long-term in order to classify the conduct which caused them as inhuman treatment. It suffices that it is degrading treatment which must be more severe than distress, unease or humiliation.

55. In order to gain a view of the overall context of the events during the imprisonment at the primary school in Donja Mahala, the Panel paid particular attention to the analysis of the parts of the testimony of the witnesses concerning the atmosphere of fear. Thus, in describing the days in prison, witness Jovo Cvijanović stated that *the accused Mato “pulled out the pistol as a cowboy when he shot at a bulb in the room among us. He came there, (I don’t know) whether he was drunk, probably he was, and he opened a burst of fire. At one moment, he pulled out his pistol and fired at the bulb”*. Witness S2 stated that there were instances that prisoners died while being imprisoned; the witness described the ill-treatment of Aćim Cvijanović, in which *some other men also took part along with soldiers of the HVO, Pero, Mato Baotić and Šikan. “They took a wood parcel, spread his five fingers and cut off finger by finger. Pero was the first one (to pass away). Shortly thereafter, Aćim also passed away”*. All the foregoing shows the atmosphere of fear in which the injured parties were ill-treated, and the Panel took it into account in evaluating the nature of the accused Mato Baotić’s acts.

56. Considering the foregoing standards of inhuman treatment, the Appellate Panel addressed the accused’s acts in the context of the injured parties’ overall position. The Panel took into account that the beatings used to take place immediately upon the capture of men; that their health was damaged; the fact that they every day lived in fear for their own lives. The Panel concluded beyond a doubt that, by the acts described in Sections 1, 2 and 3 of the convicting part of the Judgment, in violation of the rules of international law in time of war, the accused Mato Baotić, as a member of the HVO, inhumanely treated civilians by (Section 1) vigorously beating Pero Božić with a metal chain all over his body, particularly on his back, as a result of which the skin on his back ruptured; (Section 2) along with Pero Vincetić and Ivo Filipović aka Čorak, strongly hit the injured party Jovo Stevanović, punched and kicked him, and (Section 3) on two or three occasions, took S2 for interrogation, and beat him during the interrogation along with other members of the HVO military police, punched him with his closed fists and kicked him with boots on their legs all over his body.

57. The Panel also notes that all three injured parties, Pero Božić, Jovan Cvijanović, and witness S-2, as well as the other examined witnesses imprisoned at the primary school in Donja Mahala, confirmed that there was indeed a classroom used for the interrogation and beating of prisoners. Asked by the Prosecutor where they had taken him, the witness responded: *“To the same classroom where the beatings took place”*. The

witness further described one of the beatings by Pero Vincetić and Mato Baotić, stating that they were in the classroom where “the beatings lasted for 13 months.” In addition, witness Pero Božić stated that they were also taken to another classroom for interrogation; the witness made a distinction between the room where they were interned and the other room where they were interrogated.

(i) Section 1 of the convicting part of the Judgment

58. The Panel made minor interventions in the factual part of Section 1 of the convicting part of the Judgment in terms of specification of the accused’s acts of commission and the time–frame, being mindful that they are not to the prejudice of the accused, and without affecting the subjective and objective identity of the Indictment. Thus, along this line, the Panel specified the time frame by maintaining the words “during the summer 1992”, and deleting from the factual description the words “or autumn”, because the witness stated that the event took place during the summer time. The Panel further adjusted the factual description of the offense to the contents of witness Pero Božić’s testimony, rendered by the Panel as credible and authentic, and deleted from the factual description provided in the Indictment the part concerning the statement that the accused beat the injured party with a metal chain on his head, as a result of which the skin of his head also ruptured.

59. It ensues from the testimony of the injured party Pero Božić that, as a member of the HVO, the accused Mato Baotić inhumanely treated him in the manner that, on an unspecified day during the summer 1992, at the Donja Mahala camp, in a classroom used for interrogations and beating of imprisoned Serb civilians, he inflicted upon him serious bodily and mental pain, namely that the witness was once brought to the referenced room, upon an order of a military police officer known to the accused, fearing for his own life, the witness stripped off to this waist and sat on a chair, whereupon the accused *vigorously beat Pero Božić with a metal chain he had with him all over his body, particularly on his back, which resulted in skin ruptures on the injured party’s back, and bleeding from the injuries caused by the received blows.*

60. In their closing argument, the Defense contested witness Pero Božić’s testimony, believing that it was unconvincing and unclear. The Defense submitted that it could not be clearly concluded from the referenced testimony that it was none other than the accused who undertook the acts against him, namely that the accused’s possible acts caused the prohibited consequences. It was also highlighted that the injured party’s medical documentation was not tendered in the case record. In the context of this witness’s credibility, Counsel also tendered a Judgment of District Military Court in Bosanski Brod, No. KI-11/93 of 12 May 1993, which showed that the injured party Pero Božić took part in the preparations of an armed rebellion, whereby he committed the criminal offense of Armed Rebellion under Article 124(1) of the CC SFRY.

61. Contrary to the Defense’s position, the Panel accepted the testimony of injured party Pero Božić as reliable and authentic, and correlated it with the testimony of other witnesses, also unlawfully imprisoned at the same time on the same premises, and

concluded beyond a reasonable doubt that the accused Mato Baotić had beaten Pero Božić with the iron chain all over his body, as a result of which his back skin ruptured and heavily bled.

62. The Panel has held that the witness further clarified his vague words in the direct examination and removed all related doubts in the cross-examination and answers to the Court's questions. Witness Božić was very clear and resolute in this part of the testimony with regard to the role and acts undertaken by the accused personally, whom he had known from before, as well as with regard to the injuries the accused inflicted upon him and the related effects.

63. That the witness was imprisoned at the primary school in Donja Mahala was not at all contested by the Defense. This fact was undoubtedly confirmed by witnesses Senahid Džudžić, Petar Cvijanović, Vojin Milojević and witness S-2.

64. During the cross-examination, the injured party Pero Božić stated that he was taken to the other premises in the school, where he was beaten and ill-treated by members of the military police in all possible ways. In responding to the Prosecutor's question as to whether the accused had ill-treated him in any way, the witness stated that he believed that he did, but could not remember the exact date. The witness also believed that the accused had beaten him with a chain on his bare back and all over his body. The witness stated that it was a dog chain, the length of which was 2 m. He also remembered that the beating took place on the school premises, but could not recall the time when it began and ended, since the beating had taken place repeatedly. The witness thinks that, subsequently, the accused never ill-treated him again, because after the conversation between his brother-in-law and Pero Vincetić, the witness also became "protected".

65. Having examined the witness's testimony, the Appellate Panel noted that the witness provided his answers by using phrases "I think this....I think that...", and concluded from the contents of the witness's answers, in correlation with his answers given in the cross-examination by the Defense and the Court's questions, that the witness was not uncertain in his answers, as found by the Trial Panel, but rather that his vocabulary and the manner of expression were specific.

66. Specifically, the Panel has held that by correlating the referenced contents of the witness's answers given to the questions posed in both the cross-examination and the Court's questions, any vagueness and dilemmas were removed in relation to the reasons for which the witness started his answers by using the words "I think" and the manner in which his testimony should be evaluated. In the referenced part of his testimony, the witness stated very clearly and resolutely that exactly Mato Baotić, whom he had known from before, had beat him with an iron chain on his back, that the beating lasted for a short period of time, and that he received a couple of blows. When questioned by the accused's Counsel "if any other present HVO soldier also beat him while Mato Baotić was beating him, and for how long the beating lasted", the witness responded that "he could not remember if anybody else, in addition to Mate Baotić, was beating him". In relation to the

duration of the beatings, the witness stated that “he would not have survived had the beating lasted any longer”. It clearly ensues from the foregoing that, on the referenced occasion, the witness suffered strong pains and severe consequences, which he also confirmed in his answers to the questions posed by the Panel Presiding.

67. Thus, in responding to the question of the Panel Presiding whether “he had any injuries due to the blows he received from Mato Baotić and whether he consequently suffered any pains”, witness Pero Božić stated that, as a result of the received blows, the skin on his back ruptured and bled.

68. The Panel evaluated witness Božić’s testimony as objective, and concluded that the witness told the truth. The Panel found no motives in the witness’s testimony to charge the accused with more criminal activity than what the accused actually did and with what he was charged. Such a conclusion is supported by the fact that, in showing the scars in the courtroom, the witness responded to the judge’s question “whether the scar on his head was caused by the chain” that: “It was not directly inflicted by the chain, but another man did it to him.” With regard to the injuries inflicted by the accused with the chain, the witness stated that they were superficial and that they had healed. When the Panel Presiding asked the witness to compare the intensity of the blows he received from the accused and those possibly received from other persons, and “did anybody else beat him with the chain”, the witness resolutely answered that no one but Mato beat him with the chain, but that “others broke his hands, legs and testicles.” A correlation of all the foregoing with witness Jovan Cvijanović’s statement, that the accused Mato Baotić also beat him with an iron chain, of which the accused was convicted under the final Judgment of the Court of BiH, No. S1 1 K 020032 15 Kri, of 9 December 2016, confirms beyond a doubt that the accused Mato Baotić indeed used an iron chain to beat the prisoners, that witness Božić told the truth and that there is no justifiable reason not to credit him.

69. Considering the foregoing, the Appellate Panel concludes that the Defense’s objections contesting witness Pero Božić’s credibility of are ill-founded. According to the Panel, there is no doubt that the accused, rather than Mato Rakijica or some other person, undertook the acts indicated in the factual part of Section 1 of the present Judgment enactment clause. In support of such a conclusion also stands the fact that the witness provided a comprehensive description of the accused and identified him with no dilemmas from the photos and in the courtroom.

70. By subsuming such an established state of facts under the established international standards concerning inhuman treatment, the Panel concluded that the accused Mato Baotić’s beating of the injured party Pero Božić with the iron chain all over his body, as a result of which the skin on his back ruptured and bled, during his imprisonment, when he was in constant fear for his own life and received no medical treatment, was beyond a doubt a serious threat not only to the injured party’s bodily integrity, but also his personal dignity, which indeed constitutes inhuman treatment.

(ii) Section 2 of the convicting part of the Judgment

71. Having made minor interventions in the factual description concerning the time of the crime commission, the Appellate Panel found the accused Mato Baotić also responsible under Section 2 of the convicting part of the Judgment enactment clause, namely that, during the period between *12 June 1992 and late August 1992, alone or along with other members of the HVO that he knew, the accused inflicted serious bodily and mental pain on civilian Jovan Cvijanović, in such a manner that in mid-June 1992, after the injured party had been brought, together with V.P. and F.I., to a classroom in the primary school in Donja Mahala, which was used for interrogations and beating of prisoners, and after Pero had hit the injured party in his right upper arm with a multi-strand cable, as a result of which Jovan sustained an arm-injury, **strongly punched the injured party with his fists.***

72. The injured party Jovan Cvijanović was examined about the foregoing circumstances. He firstly spoke about his capture and the places at which he was imprisoned, as well as about the ill-treatments preceding his arrival in the Donja Mahala primary school, where he had also been before. This witness stated that he “was taken for beatings for 21-22 times, and for around 100 times outside.” In addition to being beaten immediately upon his arrival, he was also ill-treated for three days in a row. This witness’s turn was on 13 June 1992, when he was taken from one of the classrooms at which he was imprisoned to another one, where the accused Mato Baotić, Filipović Ivo known as Čorak, or mostly “three or four of them” were present. This witness stated that “First, Mato hit him in his abdomen, while someone else hit him from behind his back.” Then he heard Pero Konj’s voice saying “*Who has come to us*”, in which moment he felt a strong pain in his right arm after Pero Konj had hit him with a multi-strand cable as a result of which his arm “*turned backwards*” and he could not bring it back to its original position. The injured party further stated that Čorak and Baotić also hit him, that is, they slapped and punched him. **Witness Cvijanović remembers that, on the referenced occasion, the accused punched him twice or three times, but he did not faint.** In addition, the injured party could not remember if he was bleeding, but stated that the beating lasted for around 10-15 minutes. He was also taken outside in the following days, on 14 and 15 June, but Mato did not beat him at the time; he was just watching the others beating him.

73. Witness Cvijanović also testified about the incident which had taken place on 23 August 1992, when the accused beat him on his back with a dog chain; he hit him for 10-15 times and ordered him to sing a song about Mato and Boban, which he had to do. The witness testified that both the accused and Šikan had taken him outside one more time and beat him for a half an hour. The witness also spoke about Mato’s and Pero’s boxing, and the other incidents of which the accused was already convicted under Section 4 of the Trial Judgment, which was upheld in that part.

74. The Appellate Panel accepted the witness Cvijanović’s testimony, as reliable and objective in whole, and found no reason for which this witness should not be credited. This

witness was a victim of the acts of the accused and others, and, logically, he is best positioned to most reliably testify about his personal experiences.

75. Having accepted the injured party Cvijanović's testimony as reliable and authentic, the Appellate Panel harmonized the factual description of this Count of the Indictment with the contents of this witness's testimony, and specified that the beatings took place on 13 June 1992. Along this line, the Panel deleted from the factual description the phrase "*on an unspecified day,*" and omitted the word *closed* from its last segment in relation to the manner in which the accused had beaten the injured party, because the notion *fist*, in and out of itself, implies that the hand is closed.

76. The ill-treatment to which Jovan Cvijanović was subjected by the accused Mato Baotić, as described in Count 5a) of the Indictment, cannot be viewed in isolation from the acts taken by Pero Vincetić, but rather in unison with them, particularly taking into account that the accused was in relation to the referenced Count charged with having acted as a co-perpetrator. The injured party Jovan Cvijanović testified that the accused Baotić had punched him and hit him twice or three times with his hands, after he had already sustained an injury on his arm inflicted upon him by Pero Vincetić with a multi-strand cable. Having considered this witness's testimony in the context of the above referenced standards established in international law for the criminal offense at issue, the Appellate Panel concluded that the accused's acts constitute the acts of inhuman treatment.

77. In addition to the incident of 13 June 1992, the injured party-witness Cvijanović described several different beatings which he had suffered, as already described, while noting that he was beaten once in June and three times in August. In describing the incident of 13 June 1992, the witness stated that the torture had lasted through 13, 14 and 15 June 1992, but that the accused Mato Baotić beat him only on 13 June, rather than on 14 and 15 June 1992. The Defense submitted that the injured party merely spoke about the effects of the blows he had received from Pero Konj, and that it cannot be concluded from the injured party's testimony only if the Indictment allegations regarding the referenced Count were proved, namely that the accused violated international humanitarian law.

78. Having analyzed the contents of witness Jovan Cvijanović's testimony, however, the Appellate Panel concluded that the accused Mato Baotić indeed undertook the prohibited acts against this witness. Also, the Panel concluded that considering the overall context in which the acts took place, the accused thereby caused *severe bodily and mental pain* in the injured party, which also constituted a serious attack on his dignity, and thus reached the level of inhuman treatment.

79. According to the Panel, the treatment accorded to the injured party by Baotić could not be evaluated in isolation, as the Defense did it, but rather in the context of the circumstances and the time in which the referenced events took place, including the effects of the beatings inflicted upon him by Pero Konj. This is so because, in terms of the

space and time, it was obviously the very same incident when, during his imprisonment, the injured party was subjected to ill-treatment, which included the beating with a multi-strand cable, slapping and punching, continuous death threats and subsequent deprivation of any **medical treatment regardless of his head and body injuries**. The described treatment constitutes cruel and inhuman treatment also pursuant to the standards established by the European Court of Human Rights in the case of *Leslie v. Jamaica*.³³

80. Therefore, in the concrete case, the Appellate Panel considers as absolutely inadmissible the Defense's objections that the injured party only spoke about the injuries inflicted upon him by Pero Konj, and that the acts taken by the accused against him did not reach the level of inhuman treatment, and concludes that the accused is also responsible for this Count of the Indictment.

(iii) Section 3 of the convicting part of the Judgment

81. The Appellate Panel also found the accused Mato Baotić guilty of the acts he undertook against the injured party S2, namely that he had taken him twice or three times to the interrogation room, and while interrogating him about the Serbs' military posts, punched and kicked him with his military boots all over his body, along with other members of the HVO. According to the injured party's statement, he was not bleeding after being beaten by the accused Baotić, but each time he fell on the ground and each time the beating lasted for around 15-20 minutes.

82. In this Count of the Indictment, the Panel intervened with the factual description and omitted therefrom its last part "*while other military police officers were beating him with various batons*", because the tendered evidence did not confirm this part of the factual description.

83. Having analyzed the testimony of the injured party, who gave evidence under the pseudonym S2, the Appellate Panel concluded that, in describing the period of his captivity, the injured party described the beatings that took place first in a shed, where he had been previously detained, and subsequently the beatings that took place in a classroom at the primary school in Donja Mahala.

84. At the beginning of his testimony, the injured party first stated that he had been captured on 2 May 1992 by (members of) the HVO, along with Makso Gajić, Jovo Stevanović and Senahid Džudžić, and taken to a shed, but he was not certain if the shed was located in the settlement of Ugljara or Donja Mahala. The injured party remembers that, while being kept in the shed, he was taken out for interrogation in turns, and was mostly interrogated about the RS Army's posts. During the cross-examination, the witness explained that Mato did not beat him inside the shed, but rather ill-treated him along with

³³ *Leslie v. Jamaica*, No. 564/1993, para. 9.2; *Bailey v. Jamaica*, No. 759/1997, para. 9.3.

others, forcing him to stand on *his hands' fingers and the legs' toes*. The witness was subsequently transferred to the primary school in Dona Mahala. There was a special room to which they had been taken and beaten on a daily basis. During the cross-examination, the injured party further explained the developments at the *Donja Mahala* primary school. The witness stated that the accused Mato Baotić personally took him out for a couple of times and that interrogations lasted for around 15-20 minutes, sometimes during the day, and sometimes during nights. In describing one of the beatings to which he was subjected by the accused Mato Baotić, the witness stated that the accused personally *kicked him with his boots and slapped him; that he was not bleeding, but would fall down on the ground after being kicked by boots*.

85. According to the Panel, there is no doubt that the accused had personally taken the witness-injured party outside the room where he was kept, brought him to a special room designated for interrogations and beatings, and beat the injured party S-2 during his imprisonment at the *Donja Mahala* primary school on two-three occasions. The injured party described one of the beatings and its effects upon him, that is, he described the pattern pursuant to which the beatings were taking place.

86. In comparing the injured party's statement that the accused "*kicked and slapped him*" with the Indictment factual description indicating that the accused "*punched (the injured party) with his closed fists and kicked him with the military boots on his legs*", the Panel concludes that there are no substantial differences because, in fact, it was the beating (accorded to the injured party) by the accused with his hands and the military boots on his legs.

87. In view of all the foregoing and the circumstances, in which the accused physically and mentally ill-treated the injured party, and the fact that, in responding to the question related to the effects of being beaten by the accused Mato Baotić upon his health, the injured party stated that he still feels pains in his spine, the Appellate Panel rendered as unacceptable Counsel's submission that it cannot be claimed that the accused's acts reached the level of inhuman treatment.

88. On the contrary, in this Panel's view, the circumstances where the beatings were taking place on a daily basis, and where the beatings were not executed solely by the accused but rather by many other persons involved, the fact that the injured party S-2 was unlawfully imprisoned and kept in a small and unfit room, with insufficient food and water supply and without any medical aid, being in constant fear for his own life, viewed in whole with the individual act of the beating of the injured party S2 by the accused, reach beyond the threshold of inhuman treatment, because not only that the accused's prohibited acts caused both the physical and mental effects upon the injured party but also such a treatment was a humiliating and inhuman treatment which is more serious than distress, unease or humiliation. These are the requirements provided for in international law in order to render such a specific treatment as inhuman treatment.

89. Therefore, all these acts of physical ill-treatment committed by the accused

personally and in concert with others, in the context of time, place and environment, constitute inhuman treatment under Article 142(1) of the CC BiH against civilians, and increase their mental suffering caused by helplessness, fear for their own lives, and the fact that they were fully placed at the mercy of soldiers who had controlled them.

90. With such a state of facts, the Panel had no valid reason whatsoever not to credit the witness S2, and the foregoing witnesses-injured parties. This is so particularly considering the fact that the witnesses had no dilemmas about the accused's identity, and that during their testimony the Panel did not observe that the witnesses tried to charge him with more criminal activities than the actually existing one. Starting from the facts that the events forming the subject of the indictment were taking place within the ill-treatment that was ongoing on a daily basis, that the witnesses were simultaneously in fear for their own safety and lives, the Panel concludes that, in such circumstances, it is quite logical and acceptable that the witnesses could not remember all the details concerning these events, and that sometimes they could not specify the time to a sufficient extent.

b. Subjective element

91. The Panel has no doubts that, in the wartime events circumstances, the accused Mato Baotić had a dominating position and powers over all these three injured parties in the present case, including other prisoners, that the accused had a privileged status over the subordinated victims who were in the state of helplessness and constant fear for their own lives, wherefore the accused was aware of his superior position and could undertake the prohibited acts, as a result of which the injured parties' bodily and mental integrity and dignity were violated.

92. The *mens rea element (subjective element)* for inhuman acts under the referenced article was satisfied when, at the moment of act or omission, the perpetrator had the intent to inflict severe bodily or mental harm, or to commit a serious attack on the victim's human dignity, or if he knew that his act or omission was likely to cause a severe physical or mental suffering or serious outrage upon human dignity, and acted with the intent to commit it.

93. In the concrete case, the accused had awareness and knowledge that, by his acts against the injured parties, he would inflict on them serious bodily and mental suffering, and increase their fear for their own lives, but he wanted those acts and willingly committed them. The Panel reached this conclusion based on a comprehensive analysis and evaluation of the tendered evidence, individually and in combination, as already addressed in the explanation of the Judgment previous segment.

94. The Panel further concluded that the accused is responsible as a co-perpetrator of all Sections of the convicting part of the Judgment. Article 22 of the CC SFRY provides that: "*If several persons jointly commit a criminal offense by participating in the act of commission or in some other way, each of them shall be punished as prescribed for the act*". Complicity under this Article implies several persons, joint commission and joint

intent.

95. With regard to the foregoing, the Panel concluded beyond a reasonable doubt that the accused, along with other members of the Military Police of the 106th HVO Brigade Orašje, undertook the prohibited acts, as already stated and explained in the individual Sections of the convicting part of the Judgment. Pursuant to the case law, in case of the acts of several perpetrators, it suffices to prove that they acted jointly and that they are responsible as direct perpetrators in inhuman treatment of the victims. Considering all the circumstances under which the referenced acts were committed, it could be concluded beyond a reasonable doubt, based on the offered evidence, that the accused Mato Baotić also took part in the underlying elements of the criminal offense of War Crimes against Civilians and that he is responsible for their effects upon the victims.

B. THE ACQUITTING PART OF THE JUDGMENT ENACTMENT CLAUSE

96. Unlike the three previous Counts, the Appellate Panel concluded that the commission of the criminal act described under Count 7 of the consolidated Indictment (Section II of the present Judgment) enactment clause was not proved beyond a reasonable doubt and, therefore, pursuant to Article 284(c) of the CPC BiH, acquitted the accused of the charges in the referenced part of the Indictment.

97. The Appellate Panel acquitted the accused of the charges due to the lack of evidence in compliance with the principle of *in dubio pro reo* under Article 3 of the CPC BiH, pursuant to which all the facts to the prejudice (*in peius*) of the accused must be proved with certainty, and if this has not been done, it will be concluded that such facts do not exist. On the other hand, pursuant to the same principle, all the facts in favor (*in favorem*) of the accused will be considered as existent even if there is merely a likelihood that they exist.

98. Specifically, the accused was charged under this Count of the Indictment that, *on an unspecified day, during the period between mid-May 1992 and early August 1992, on a dozen of occasions, alone or in concert with other members of the HVO military police he knew, he inflicted serious physical and mental pain upon war prisoner Jovo Stevanović, by taking him out of the room in which prisoners had been held and bringing him to a classroom designated for interrogations and beating of prisoners, where he alone interrogated him for several times, and sometimes along with other members of the military police, punched him all over his body, and when he fell on the ground, the accused kicked him with his military boots.*”

99. The Panel could not conclude beyond a reasonable doubt that the injured party Jovo Stevanović’s testimony, where he described that the accused Mato Baotić punched him in his chest, concerned exactly the incident included in the Indictment rather than some other incident non-included therein. Thus, the injured party Jovo Stevanović described the beatings to which he was subjected on two occasions, indicating that the accused Mato Baotić undertook the prohibited acts against him, but stating that

this incident took place in the autumn, while the incidents referred to in the Indictment concerned the period between mid-May and early August 1992.

100. Witness Jovo Stevanović specifically remembers that the accused Mato Čikin had taken him to a room where he saw another military police officer, who was tall and blond, who held him from behind his back while the accused was punching him in his chest, and that he received a number of blows. The witness then went on to describe another beating by the accused Baotić, on which occasion the injured party was not taken outside alone, but along with other three-four prisoners, when they were not beaten just by the accused, but rather by other members of the HVO. The injured party Jovo Stevanović described that they were beaten in such a way that some of them kicked them, some beat them with a baseball stick, or military baton, and once they had fallen down on the ground due to the received blows they would be kicked. When the Prosecutor asked him if the accused Baotić kicked him, the injured party responded that he did, once when all 17-18 prisoners were all taken outside, when the men from Borovo had also been imprisoned with them and when they were all beaten together. The injured party responded that this incident took place in the autumn.

101. It undoubtedly ensues from the witness's testimony that he was beaten up several times. In the Panel's view, the witness was very convincing and quite objective wherefore the Panel fully credited him. However, it does not ensue from the referenced testimony, which was not brought into serious doubt by any piece of evidence whatsoever, that any of the described incidents indeed occurred during the period between mid-May and early August 1992, as indicated in the Indictment factual description, but rather in the autumn. This is of essential importance because the beatings that took place during this specified period are the subject of the Indictment rather than those that took place in the autumn of the same year.

102. In addition, the factual description of the accused's act of commission provided in the Indictment does not correspond, even in other segments of its contents, to the injured party's testimony. Thus, it ensues from the Indictment that, on a **dozen occasions**, the accused took the injured party from the room where prisoners had been held to a classroom in the primary school, which preceded the beatings by the accused and other members. The Indictment further stated that the accused **alone** beat the injured party Stevanović **several times**, and **sometimes** along with others. Despite the fact that there is a confusion regarding the number of acts in which the accused had actually participated, all the foregoing contradicts the injured party's statements, namely that he was repeatedly beaten in the primary school in Donja Mahala, but that the accused alone took him outside **only once**. The injured party also stated that it was in the autumn when the accused punched and kicked him, whereupon he would fall on the ground.

103. Considering the foregoing, the Indictment's subject and framework defined by the factual description, and the mere basis of the testimony of the witness-injured party who testified about the events that took place in the autumn rather than during the critical period, in the absence of any other evidence on which the Indictment allegations could be

proved beyond a reasonable doubt, the Appellate Panel had no other choice but to acquit the accused of the charges under this Count of the Indictment in compliance with the principle of *in dubio pro reo*.

C. SENTENCING

104. Considering the established state of facts, the Panel imposed on the accused a sentence of imprisonment for a term of 6 years for the criminal offense of War Crimes against the Civilian Population under Article 142(1) as read with Article 22 of the CC SFRY, and, having taken as fixed the previously imposed prison sentence of 10 years for the criminal offense of War Crimes against the Civilian Population under Article 142(1) as read with Article 22 of the CC SFRY, under the Judgment of the Court of BiH, No. S1 1 K 020032 15 Kri of 9 December 2016, sentenced the accused to a compound prison sentence for a term of 13 years, having applied Article 49 (Deciding upon Punishment for a Convicted Person), as read with Article 48(3) CC SFRY. In addition, the Appellate Panel found no particularly extenuating circumstances in relation to the accused. The Appellate Panel has held that the imposed sentence of 13 years is proportionate with the gravity of the offense and the accused's role, and that it will achieve the purpose of punishment in terms of Articles 33, 38 and 41 of the CC SFRY.

105. In meting out the punishment for the accused, the Panel took into account all the circumstances important for fixing the punishment in terms of Article 41 of the CC SFRY, in particular the punishment limits prescribed by the law, the purpose of punishment and all the circumstances affecting the imposition of a less or more stringent punishment, such as: the degree of guilt, motives out of which the act was committed, the circumstances under which the act was committed, the perpetrator's previous life, personal circumstances and conduct after the act commission. The Panel also took into account that the accused has no prior convictions, that he is a family man and father of four children, as well as the aggravating circumstance that he showed ruthlessness and persistence in the commission of individual charges.

106. Thus, the Panel started from the previously established extenuating and aggravating circumstances, and the fact that the referenced criminal offense of which the accused is found guilty carries a sentence of at least 5 years in prison. Having found the accused responsible of the three acts of inhuman treatment within the criminal offense of War Crimes against the Civilian Population (Section 1, 2 and 3 of the convicting part of the Judgment), the Panel sentenced the accused to 6 (six) years in prison.

107. In view of both the foregoing and the previous sentence of 10 (ten) years in prison imposed under the Trial Judgment, which was upheld in its convicting part, the Panel applied the CC SFRY's provisions governing a compound sentence (Article 49 of the CC SFRY and Article 48(3) of the CC SFRY), and decided to impose on the accused under this Judgment, a prison sentence for a term of 13 (thirteen) years.

108. According to the Panel, the acts referred to in Sections 1, 2 and 3 of the

convicting part of the Judgment significantly increased the degree of criminal activity concerning the criminal offense of War Crimes against the Civilian Population under Article 142(1) of the CC SFRY, in relation to the previously established and adjudicated degree of criminal activity, which had to affect the total length of the compound sentence imposed on the accused.

109. Pursuant to Article 50(1) of the CC SFRY, the time spent by the accused Mato Baotić in custody, running from 12 August 2015 onwards, shall be credited towards the imposed prison sentence.

D. DECISION ON THE COSTS OF CRIMINAL PROCEEDINGS AND CLAIMS UNDER PROPERTY LAW

110. Having accepted as authentic and relevant the Defense's evidence tendered during the appellate proceedings proving that the accused is presently indigent³⁴, in terms of Article 188(4) of the CPC BiH, the Panel relieved the accused of the obligation to reimburse the costs of the criminal proceedings conducted before the Appellate Panel, with a conclusion that the payment of the referenced costs would bring into question the support of the accused's family and their normal life. The Panel therefore decided that the related costs of the criminal proceedings will be paid from within the Court's budget appropriations.

³⁴ Provisional social benefits award to the name of Kate Baotić of 19 December 2016; Certificate for the Welfare Cases Agency concerning Kata Baotić of 2 May 2016; Certificate of Residence issued to the name of Ana Baotić of 4 February 2016; Certificate of attendance of voluntary welfare year issued to the name of Ana Baotić of 17 August 2016; Certificate of Residence issued to the name of Danijel Baotić, of 20 June 2016; Certificate of school attendance for Danijel Baotić for the school year 2016/17; Certificate of Reported Residence issued to the name of Kata Baotić of 18 April 2016; Certificate of Reported Invoice – Language School Sprachtreff Frankfurt, of 16 September 2016; Certificate of Withdrawal issued to the name Ružica Baotić of 18 January 2017; Residence Certificate to the name of Kata Baotić of 4 February 2016; Certificate of the AWO to the name of Kata Baotić, of 17 August 2016; Employment Cancellation to the name of Mato Baotić, of 7 September 2015 with a gyro-account excerpt; Certificate of the Tax Administration of the Federation of BiH, Cantonal Tax Office in Orašje, No.13-02/01-15-1-00030172/17 of 26 May 2017 confirming that Mato Baotić has no obligations pursuant to tax records; Certificate of the Tax Administration of the Federation of BiH, Cantonal Tax Office in Orašje, No.13-02/01-15-1-00030138/17 of 30 August 2017, confirming that Mato Baotić has no obligations pursuant to tax records; Statement given to notary Ivo Oršolić on 16 June 2017 to the name of Kata Baotić, the accused's wife, that she has no valuable property, and that she does not own any non-movable property jewelry, or money deposits, or time deposits, etc.; Certificate of the Municipal Court in Orašje, Lan Registry Section, No. 118/2017 of 26 May 2017 confirming that Mato Baotić is not registered as an owner of any real estate in the Municipality of Orašje; Testimonial issued to the name of Mato Baotić for participation at the 7th ŠIVP OS RH of 23 August 2017; Commendation to the name of Mato Baotić for exemplary execution of military and police tasks 2 April 1996; Homeland War Participation Testimonial issued to the name of Mato Baotić, Decision of the President of the RC, Dr. Franjo Tuđman, of 20 August 1997; RC Defense Ministry – Police badge with a seal to the name of Mato Baotić of 10 April 1997; Croatian Pleter Order Decoration for Mato Baotić pursuant to the Decision of the President of the RC, Dr. Franjo Tuđman of 24 December 1996.

111. In relation to the acquittal, the accused had to be relieved of the obligation to reimburse the related costs of the criminal proceedings pursuant to Article 189(1) of the CPC BiH.

112. Pursuant to Article 198(2) and (3) of the CPC BiH, the injured party was instructed that he may pursue his claim under property law in a civil action since the information presented to the Panel during the criminal proceedings did not offer sufficiently reliable basis for either complete or partial adjudication on the matter.

Record-taker
Legal Advisor
Elma Čorbadžić

PANEL PRESIDING
JUDGE
Mirza Jusufović

NOTE ON LEGAL REMEDY: No appeal lies from this Judgment, pursuant to Article 317(1)(b) of the CPC BiH (under which the necessary prerequisite for the right to appeal a second instance judgment is the fact that the trial judgment was acquitting **in whole**, rather than partly acquitting in its certain sections and convicting in other sections thereof).

III. ANNEX

1. Evidence taken over from the first instance proceedings:

Pursuant to the Prosecution of BiH's proposal, the following witnesses were examined during the proceedings: protected witness S-3 on 16 February 2016; protected witness S-4 on 23 February 2016; Marija Tünde-Benković on 8 March 2016; Marko Benković on 8 March 2016; Pero Božić on 22 March 2016; Jovan Cvijanović on 22 March 2016; protected witness S-2 on 29 March 2016; Jovo Stevanović on 29 March 2016; Mirko Sarić on 5 April 2016; Sretko Dragojlović on 5 April 2016; Vlado Dervenić on 5 April 2016; Zlatko Porobić on 19 April 2016; Milo Krunic on 19 April 2016; Petar Cvijanović on 19 April 2016; Ilija Maksimović on 26 April 2016; Senahid Džudžić on 26 April 2016; Spasoje Ristanić on 10 May 2016; Cvijetin Maksimović on 10 May 2016; Slobodan Panić on 10 May 2016; protected witness S-5 on 17 May 2016; Nikola Čikojević on 31 May 2016, while Witness Examination Records for Vojin Milojević and Ivo Matuzović of their statements given during the investigation phase were read out at the hearing held on 31 May 2016 pursuant to Article 273(2) of the CPC BiH.

Pursuant to the Prosecution of BiH's proposal, the following expert witnesses were examined during the proceedings: Dr Vjekoslav Kovačević on 31 May 2016 and Prof. Dr. Alma Bravo – Mehmedbašić on 6 June 2016. Attorney Nedžla Šehić was

examined as an authorized representative for the injured parties Marija Tünde-Benković, S-4 and S-5, with regard to the filing of a claim under property law.

During the proceedings, the following witnesses were examined in the capacity of witnesses for the Defense: Nada Oršolić on 12 July 2016; Pavo Kobaš on 12 July 2016; Kata Baotić on 12 July 2016; Ilija Vincetić on 12 July 2016; Pejo Delić on 30 August 2016; Ivo Klaić on 30 August 2016; Ivo Matuzović on 30 August 2016; Marko Maskaljević on 6 September 2016; Ilija Baotić on 6 September 2016; Pavo Stanić on 6 September 2016; Ilija Knežević on 27 September 2016; Antun Maskaljević on 27 September 2016; Marko Jurić on 27 September 2016; Marjan Martinović on 4 October 2016; Kata Simić on 4 October 2016; Krešo Benković on 4 October 2016; Iljo Stanić on 11 October 2016; and on 11 October 2016, the accused Mato Baotić in the capacity of a witness for the Defense.

a) Evidence of the Prosecutor's Office of BiH

T-1	Witness Examination Record for S-4, No. T20 0 KTRZ 0002867 12 of 19 October 2015, with a Photo-album No. T20 0 KTRZ 0002867 12 of 28 September 2015, Photo-album form the investigation and Photo-album on the basis of which the witness identified the persons at the hearing held on 23 February 2016, which was dated 28 August 2015.
T-2	Intervention Report of 10 May 1992 – signed by the Section Commander Mato Baotić, a copy verified by the seal of the Croatian Memorial Center
T-3	Person Identification Record of 5 February 2015 with a Photo-album of 23 January 2015 and 28 September 2015 – signed by Marija Tünde-Benković
T-4	Person Identification Record of 5 December 2015 with a Photo-album of 23 January 2015 and 28 September 2015 – signed by Marko Benković
T-5	Person Identification Record No. T20 0 KTRZ 0002867 12 of 8 October 2015 and a photo-album, Pero Božić
T-6	Person Identification Record No. T20 0 KTRZ 0002867 12 od 08.10.2015 and a photo-album Jovan Cvijanović
T-7	Person Identification Record No. T20 0 KTRZ 0002867 12 of 13 October 2015, with two photo-albums No. T20 0 KTRZ 0002867 12, one dated 28 September 2015, with a signature dated 13 October 2015, and the other of 28 September 2015, with the witness's signature dated 29 March 2016 – Jovo Stevanović
T-8	Witness Examination Record for Ilija Maksimović No. T20 0 KTRZ 0002867 12 of 28 October 2015
T-9	Photo-album No. T20 0 KTRZ 0002867 12 of 28 September 2015 signed by witness S-5 on 17 May 2016, Photo-album No. T20 0 KTRZ 0002867 12 of 28 September 2015, signed by witness S-5 on 27 October 2015, with a Person Identification Record from the CJB Doboje, No. 11-04/4-230-618/15 of 27 October 2015

T-10	Findings and Opinion of expert witness, Dr. Vjekoslav Kovačević of 23 May 2016, with an Order of the Prosecution of BiH for an expert evaluation of witness Vojin Milojević of 10 May 2016 and Vojin Milojević's personal health card
T-11	Witness Examination Record for Vojin Milojević, No. T20 0 KTRZ 0002867 12 of 30 October 2015
T-12	Witness Examination Record for Ivo Matuzović No. KT-RZ-49/06 of 18 March 2011, and an Excerpt from the Register of Deaths for Ivo Matuzović, No. 03-13-202-3-94/2015 of 3 September 2015
T-13	Order for an expert evaluation of witness-injured party, Prosecution of BiH, Special Department for War Crimes, No. T 20 0 KTRZ 0002867 12 of 19 February 2016 Order for an expert evaluation of witness-injured party „S-5“, Prosecution of BiH, Special Department for War Crimes, No. T 20 0 KTRZ 0002867 12 of 10 May 2016 Order for an expert evaluation of the witness-injured party S-1, Prosecution of BiH, Special Department for War Crimes, No. T 20 0 KTRZ 0002867 12, of 2 March 2016; Forensic psychiatric evaluation of the witness-injured party S-1 by expert witness in neuropsychiatry, Prof. Dr. Alma Bravo-Mehmedbašić, of 18 March 2016 Forensic psychiatric evaluation of the witness-injured party S-4 by expert witness in neuropsychiatry, Prof. Dr. Alma Bravo-Mehmedbašić, of 29 February 2016 Forensic psychiatric evaluation of the witness-injured party S-5, by expert witness in neuropsychiatry, Prof. Dr. Alma Bravo-Mehmedbašić, of 24.05.2016
T-14	Discharge letter of the Koml Hospital, Protocol No. 856/92 (translation dated 30 August 1994), with the original made in the Hungarian language; Personal Health Card, Delivery Department No. 2829 of 5 June 1992 (translation), with a copy of Personal Health Card made in Hungarian; Document concerning the surgery-delivery procedure (abortion) of 5 June (translation), with a copy of Personal Health Card made in Hungarian; Document of the Prosecution of BiH, No. T20 0 KTRZ 0002867 12 of 8 March 2016 concerning the medical documentation hand-over
T-15	Decision of the Presidency of the Republic of Bosnia and Herzegovina to Declare Imminent War Danger of 9 April 1992 (Official Gazette of the RBiH, Year I, No. 1 of 9 April 1992)
T-16	Decree of the Presidency of BiH to abolish the then Republic Territorial Defense Staff and establish the Territorial Defense Staff of the Republic of BiH of 9 April 1992 (Official Gazette of the RBiH, Year I, No. 1 of 9 April 1992)
T-17	Decision of the Ministry of Defense of the People's Defense of the Serb Republic of BiH to establish the Territorial Defense of the Serb Republic of BiH, No. 1/92 of 16 April 1992
T-18	Decision of the Presidency of the Serb Republic of BiH to Declare Imminent War Danger of 15 April 1992, confirmed by the Decision of the Assembly of Serb People in BiH of 12 May 1992 (Official Gazette, Year I, No. 6, 12-17 May 1992)

T-19	Decision to establish the Army of the Serb Republic BiH, No. 03-234/92 of 12 May 1992 and the Decision of the Assembly of Serb People in BiH to establish the Army of the Serb Republic BiH of 12 May 1992 (Official Gazette, Year I, No. 6, 12-17 May 1992)
T-20	Decision of the Presidency of the Republic of Bosnia and Herzegovina to Declare the State of War of 20 June 1992 (Official Gazette RBiH No. 7, 20 June 1992)
T-21	Decision of the Presidency of the Serb Republic of BiH on the Establishment, Organization, Formation, Management and Command over the Army of the Serb Republic BiH of 15 June 1992
T-22	Decision to Establish the Croatian Community of Herzeg-Bosnia (ICTY Document No. 03270528, 03270529), and evidence tendered on <u>27 September 2016</u> - Decision to Establish the Croatian Community of Herzeg-Bosnia, ICTY No. 00608300-00608301
T-23	Decision on the Amendments to the Decision Establish the Croatian Community of Herzeg-Bosnia (ICTY Document ERN No. 00570602)
T-24	Decision of the Presidency of the Republic of Bosnia and Herzegovina to Terminate the State of War of 28 December 1995, entered into force on 22 December 1995 (Official Gazette of the R BiH, 50/95)
T-25	Letter No. T20 0 KTARZ 0002867 12 of 20 August 2015, sent to the MUP PK, PU Orašje
T-26	Letter of the MUP PK with enclosed scanned ID card, Department for Administration and Support Orašje, No. 02-3/5-13-1185/15 of 24 August 2015
T-27	Officer Personal Record for Mato Baotić Personal Record for Mato Baotić Unit I Record for Mato Baotić
T-28	Certificate of citizenship, Municipality of Orašje, issued to the name of Mato Baotić, No. 03-13-204-3-14/15 of 28 January 2015
T-29	Certificate of the Red Cross Municipal Organization, Municipality of Šamac, No. 68/98 of 15 February 1999
T-30	Personal details concerning a member of the HVO 106 th Brigade of Bosanska Posavina for Mato Baotić
T-31	List of members of the Military Police Platoon, with the name of Mato Baotić aka Čikin, indicated under No. 11 as the II Detachment Commander
T-32	(is not entered on the Indictment Evidence List) but it was tendered by the Prosecution-Letter Rogatory sent to the State Attorney's Office in Croatia, war Crimes Department, with enclosed Letter to the BiH Ministry of Justice, No. T20 0 KTRZ 000 1245 08 of 7 July 2014
T-33	Order for 27 May 1992, No. 9/00, of the Military Police of the HVO 106 th Brigade of Bosanska Posavina
T-34	Intervention Report for 30-31 May 1992, by the Military Police of the HVO 106 th Brigade of Bosanska Posavina
T-35	List of Prisoners No. 124/92 of the Military Police of the 106 th Brigade of Bos. Posavina

T-36	List of Military Police Officers of Orašje of the Military Police of the 106 th Brigade of Bos. Posavina of 21 July 1992
T-37	Daily Report for 27-28 October 1992, No. 01-4-183/92 of 28 October 1992 HZHB-a, HVO-a, Military Police Main Staff, Orašje
T-38	Intervention Report for 10-11 June 1992 of 21 May 2008, by the Military Police of the HVO 106 th Brigade of Bosanska Posavina
T-39	List of Military Police Members-Main Staff of 10 November 1992 – Military Police Main Staff Orašje of 10 November 1992
T-40	List of Prisoners at the Orašje Military Police Prison of 11 January 1992, Military Police Main Staff Orašje
T-41	Daily Report for 18-19 November 1992, No. 01-4-205/92 of 19 January 1992 RBiH, HZHB, HVO, Military Police Main Staff, Orašje
T-42	Daily Report for 20 November 1992, the HVO 106 th Brigade of Bos. Posavina, Orašje
T-43	List of Persons Held in Isolation on 11 December 1992, RBiH, HZHB, Military Police Main Staff, Orašje
T-44	List of Prisoners at the Orašje Military Police Prison of 15 January 1993, RBiH, HZHB, HVO, Military Police Main Staff, Orašje
T-45	List of Persons Held in Isolation on 15 January 1993 RBiH, HZHB, HVO, Military Police Main Staff, Orašje
T-46	List of Prisoners at the Orašje Military Police Prison of 2 February 1993, RBiH, HZHB, HVO, Military Police of the 5 th Battalion Orašje
T-47	Report on detention-imprisonment for 10-11 February 1993, RBiH, HZHB, HVO, Military Police of the 5 th Battalion Orašje
T-48	Report on detention-imprisonment for 9-12 April 1993, RBiH, HZHB, HVO, Military Police of the 5 th Battalion Orašje, of 11 April 1993
T-49	List of military police officers to escort the prisoners along the route: Orašje-Županja-Zagreb-Karlovac-Split-Ljubuški of 15 July 1993 RBiH, HZHB, HVO, the 5 th Battalion Military Police Orašje
T-50	Complete Case Record of the Military Prosecutor's Office Orašje to the name of Pero Vincetić, No. 784/94 of 6 July 1994
T-51	Criminal Record Excerpt for Mato Baotić, No. 02-2/4-1-04-7-3/15 of a 23 January 2015
T-52	Daily Report No. 01-4-189/92 of 3 November 1992 for 2-3 November 1992

b) Defense's evidence

O-1	Photo, original, tendered at the hearing of 12 July 2016
O-2	Photo, original, tendered at the hearing of 12 July 2016
O-3	Letter of Thanks to the name of Zoran Simić of 28 April 2013 (unverified copy)
O-4	Letter of the Prosecutor's Office of BiH
O-5	Indictment of the Prosecutor's Office of BiH No. T20 KTRZ 0001109 11 of 17 February 2012 versus Marko Vidović (Pero Vincetić)

O-6	Complete Case Record of the Military Prosecutor's Office Orašje No. 784/94 (criminal report of 28 June 1994, Letter of the Military Prosecutor's Office Orašje No. Kt-784/94 of 4 August 1994, Letter of the Military Prosecutor's Office Orašje No. Kt-784/94 of 22 September 1994, Official Note by the Military Prosecutor's Office Orašje No. Kt-784/94 of 12 October 1994, Excerpt from the case records with a note of 12 October 1994, and medical documentation with a translation from Hungarian.
O-7	HVO, Administration of Military Police Orašje – Command Personnel Analysis of 17 August 1993
O-8	1 st Orašje Brigade – Order to close the territory establishment 11 May 1992
O-9	Proposal to appoint officers at the Administration of Military Post (VP), No. 02-4/3-01-1470/93 of 26 June 1993, ICTY number 01518303
O-10	HVO Defense Department – Decision No. 02-1-730/93 of 28 June 1993, ICTY number 01518300
O-11	Order to establish a Military Police company, No. 317/92 of 7 June 1992
O-12	Military Police – Review of developments in the HR HB Territory 1992/1993 "Crime", ICTY number 01543881 – 01543904
O-13	Žarko Krstanović - "With Genocide against Serbs (1992 -1994)", published by the Committee for the Collection of Information about Committed Crimes against Humanity and International Law
O-14	District Military Court in Bosanski Brod (Orašje) - Decision No.KV-4/93 of 26 May 1993 extending custody against Pero Božić
O-15	District Military Court in Bosanski Brod (Orašje) – Decision No. Ki-11/93 of 12 May 1993 to conduct investigation against Pero Božić
O-16	District Military Court in Bosanski Brod (Orašje) – Indictment No. Kt. 85/93 of 7 June 1993 versus the accused Anđelko Gavrić et al.
O-17	Military Court in Orašje – Judgment No. K-13/93 of 27 April 1994 versus the accused Anđelko Gavrić et al.
O-18	Municipal Court in Orašje – Decision No. K-104/97 of 13 December 1997 to apply amnesty concerning the convicted persons in Anđelko Gavrić et al.

O-19	Letter of the Croatian Memorial and Documentation Center of Homeland War, Zagreb, Republic of Croatia, dated 30 May 2016, with enclosed documents: Daily Report for 2-3 October 1992, No. 01-4-158/92 of 3 October 1992; Daily Report 3-4 October 1992, No. 01-4-159/92 of 4 October 1992; Daily Report 4-5 October 1992, No. 01-4-160/92 of 5 October 1992; Daily Report 7-8 October 1992, No. 01-4-163/92 of 8 October 1992, Daily Report 12-13 October 1992, No. 01-4-168/92 of 13 October 1992, Daily Report 19-20 October 1992, No. 01-4-175/92 of 20 October 1992; Report for 7 September 1992, No. 01-4-132/92 of 7 September 1992, Report for 11 September 1992, No. 01-4-136/92 of 11 September 1992; Report for 13 September 1992, No. 01-4-138/92 of 13 September 1992; Daily Report for 16-17 September 1992, No. 01-4-142/92 of 17 September 1992, Daily Report for 17-18 September 1992, No. 01-4-143/92 of 18 September 1992, Daily Report for 19-20 September 1992, No. 01-4-145/92 of 20 September 1992, Report for 24-25 September 1992, No. 077/92 of 25 September 1992, Daily Report for 26-27 September 1992, No. 01-4-152/92 of 27 September 1992, Interventions Report for 14-15 August 1992, No. 109/92 of 15 August 1992, Daily Report for 16.-17 August 1992, No. 01-4-111/92 Intervention Report for 7-8 June 1992, Interventions Report for 15-16 June 1992, No. 48/92 of 16 June 1992, Interventions Report for 15 May 1992; Order for 20 May 1992, No. 1/00, Interventions Report for 20 May 1992, Order for 23 May 1992, No. 5/00; Order for 24 May 1992, No. 6/00; Order for 25 May 1992, No. 7/00; Order for 26 May 1992, No. 8/00; Order for 27 May 1992, No. 9/00; Interventions Report for 30-31 May 1992
O-20	Witness Examination Record of the Prosecution of BiH No. T20 0 KTRZ 0002867 12 of 22 October 2015 for Nikola Čikojević
O-21	Serb Crimes against Croats and Muslims in Bosanska Posavina and North-West Bosna 1991-1995, publisher – Union of Associations of Croat Refugees and Returnees, Zagreb 2000, ICTY number 03277753, 03277813, 03277819
O-22	Decision FBIH, Municipality of Orašje, Head of Municipality No. 04-22-536/16 of 29 April 2016 and Decision of the Municipal Secretariat for Administrative and Legal Issues, Department for Economy and Finance, No. 03/II-354-25/89 of 25 December 1989
O-23	Letter of the Court of BiH, No. S1 1 K 020032 15 Krl of 26 May 2016 and Criminal Record Excerpt from the Police Administration Orašje, Crime Police Sector, No. 02-2/4-1-04-7-36/16 of 24 May 2016 concerning Marko Benković
O-24	Certificate issued by the Croatian Catholic Mission in Wien of 5 November 2015
O-25	Certificate of Baptism, Excerpt from the Baptism Records of 12 April 1992, original in German, court interpreter translation
O-26	Memory of the First Holy Communion
O-27	Excerpt from the Register of Marriages for the place of Donja Mahala, Municipality Orašje, No. 03-13-201-2-50/2016 of 6 May 2016

O-28	Excerpt from the Register of Births, Register of Births for Donja Mahala, Municipality Orašje to the name of Ivana Nedić, No. 03-13-200-1-219/2016 of 6 May 2016
O-29	Excerpt from the Register of Births, Register of Births for Donja Mahala, Municipality Orašje to the name of Ružica Baotić, No. 03-13-200-1-220/2016 of 6 May 2016
O-30	Excerpt from the Register of Births, Register of Births for Donja Mahala, Municipality Orašje to the name of Ana Baotić, No. 03-13-200-1-222/2016 of 6 May 2016
O-31	Excerpt from the Register of Births, Register of Births for Donja Mahala, Municipality Orašje to the name of Danijel Baotić, No. 03-13-200-1-221/2016 of 6 May 2016

c) The Court's evidence

S-1	Proposal to effectuate the claim under property law filed by the injured party-witness Marija Tünde-Benković, of 6 June 2016; Power of Attorney for Nedžla Šehić, given by the injured party Marija Tünde-Benković, of 19 May 2016
S-2	Proposal to effectuate the claim under property law filed by the injured party-witness S-4, of 6 June 2016; Power of Attorney for Nedžla Šehić, given by the injured party S-4, of 22 February 2016
S-3	Proposal to effectuate the claim under property law filed by the injured party-witness S-5 of 6 June 2016; Power of Attorney for Nedžla Šehić, given by the injured party S-5, of 17 May 2016.

d) The Defense's evidence presented before the Appellate Division Panel during the second instance proceedings:

1.	Temporary Approval of Social Benefits to the name of Kata Baotić of 19 December 2016
2.	Certificate for the Welfare Cases Agency, Kata Baotić, of 2 May 2016.
3.	Certificate of residence to the name of Ana Baotić, 4 February 2016
4.	Certificate of voluntary welfare attendance, Ana Baotić, 17 August 2016
5.	Certificate of residence to the name of Danijel Baotić, 20 June 2016
6.	Certificate of school attendance to the name of Danijel Baotić for the year 2016/17
7.	Certificate of residence to the name of Kata Baotić of 18 April 2016
8.	Account Report Certificate – Language School Sprachtreff Frankfurt, 16 September 2016
9.	Certificate of Withdrawal to the name of Ružica Baotić, of 18 January 2017
10.	Certificate of residence to the name of Kata Baotić of 4 February 2016

11.	Certificate AWO to the name Kata Baotić, of 17 August 2016
12.	Employment Cancellation to the name of Mato Baotić, of 7 September 2015 with a gyro-account excerpt
13.	Certificate of Tax Administration of the Federation BiH, Cantonal Tax Office, Municipal Tax Office Orašje, No. 13-02/01-15-1-00030172/17 of 26 May 2017, confirming that Mato Baotić has no obligations toward tax records
14.	Certificate of Tax Administration of the Federation BiH, Cantonal Tax Office, Municipal Tax Office Orašje, No.13-02/01-15-1-00030138/17 of 30 August 2017, confirming that Mato Baotić has no obligations toward tax records
15.	Statement given by Kata Baotić, the accused's wife, to notary Ivo Oršolić on 16 June 2017, indicating that she does not possess any valuable assets, property, precious metals, long-term money deposits, etc.
16.	Certificate of the Municipal Court in Orašje, Land-Registry Office, No. 118/2017 of 26 May 2017 that Mato Baotić is not registered as an owner of any immovable property in the Municipality Orašje
17.	Testimonial given to Mato Baotić for his attendance at the 7 th ŠVP OS RH dated 23 August 2017
18.	Commendation to the name of Mato Baotić for exemplary execution of military police tasks, dated 2 April 1996