



Number: X-KR-05/40
Sarajevo, 3 November 2006

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, sitting in the Panel consisted of Judge Davorin Jukić as President of the Panel and Judges Almiro Rodrigues and Lars Folke Bjur Nystrom as members of the Panel, with the participation of Legal Assistant Elvira Begović as the Minutes-taker, in the criminal case against the accused Kovačević Nikola, for the criminal offense Crimes against Humanity in violation of Article 172 (1) h), in conjunction with items a), e), f) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH), with regard to the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-31/05 of 28 December 2005, after the main and public hearing was held in the presence of the accused Kovačević Nikola, the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Džemila Begović, and the defense counsels for the accused, Ranko Dakić and Jovo Đukanović, attorneys practicing in Prijedor, on 2 November 2006 rendered, and on 3 November 2006 publicly announced the following

VERDICT

THE ACCUSED: KOVAČEVIĆ NIKOLA (previously Kajtez Daniluško), son of Kajtez Gojko and Milka, maiden Branković, born on 19 April 1968 in the village of Kruhari, Sanski Most Municipality, completed secondary school, locksmith-welder by vocation, maintaining permanent residence in Mačvanski Pričinac, Cara Dušana bb Street, Šabac Municipality, State Union of Serbia and Montenegro, holds dual citizenship of, respectively, Serbia and Montenegro and Bosnia and Herzegovina, in custody as of 10 October 2005,

IS FOUND GUILTY

BECAUSE:

In the period between April and August 1992, as a member of the local unit known as SOS (Serb Defense Forces) which, by the conclusion of the Crisis Staff of the Serb Municipality of Sanski Most No. 00/02, of 22 April 1992, became a special unit of the Serb Territorial Defense for the Sanski Most Municipality, as part of a widespread and systematic attack of the Army of the Serb Republic of Bosnia and Herzegovina, territorial defense, members of police and paramilitary formations directed against the civilian population of Bosniak and Croat ethnicities, on a wider region of Bosanska Krajina, including an attack on the territory of the Sanski Most Municipality, that commenced on 19 April 1992 by an armed attack on the Sanski Most Municipality building and continued from 25 May 1992 by apprehending intellectuals, police officers, politically active Croats and Moslems, by detaining them at the Public Security Station in Sanski Most, followed by an armed attack on the settlements of Muhići Mahala and Otoka and on the villages of Hrustovo, Vrhpolje and other areas of the Municipality inhabited predominantly by Croats and Moslems, in the course of which civilian objects were shelled, the entire population was forced to leave their homes that were set to fire and pillaged, the civilian population that was forced to leave their homes was taken to locations where they were collected and separated and then detained in detention facilities formed in Sanski Most, such as the Public Security Station, Hasan Kikić Primary School, Betonirka Factory garages, Secondary School Sports Hall and other facilities in which the detained men were subjected to physical and mental abuse, after which a large number of the detained Croats and Moslems were transported to the Manjača Camp at Manjača, located in the territory of the Banja Luka Municipality, and, knowing about those attacks, he participated in them as described thereto.

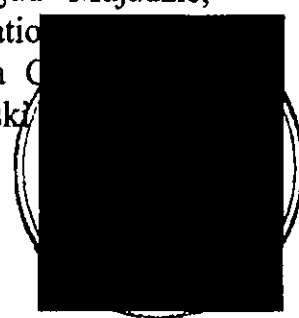
1. In the period between May and August 1992, he, alone or together with Milan Martić and other members of the army and police, detained in detention facilities and tortured the detained civilians, particularly in the Betonirka garages, including Mirzet Karabeg, Faik Basarić, Zikrija Bahtić, Faruk Botonjić, Osman Talić, Nihad Ključanin, Ahmet Zulić, Hasan Osmančević, Ejub Dedić, in a way that he hit them with his fists, legs, batons and other objects in all body parts, made them fight one another, to which he forced Nihad Ključanin and Mirzet Karabeg, he threatened Mirzet Karabeg that he would cut off his body parts with a knife, and insulted them in other ways, inflicting upon them severe bodily and mental pain and suffering.

2. In June and July 1992, together with other members of the army and police, including Dušan Šaović aka "Njunja", Dušan Mudrinić aka "Medeni", Milorad Krunić, Drago Vujanić, he participated in taking away civilians that were detained at the Public Security Station, Betonirka garages, Hasan Kikić Primary School, Secondary School Sports Hall to the Manjača Camp by overloading trucks in which they forced the exhausted detainees to get in while beating them in the process, and on arriving to the Manjača Camp, when they got off the trucks they formed a gauntlet, thereby torturing all those who were getting off the trucks, and:

2a. On 6 June 1992, after the truck with the detained civilians arrived in front of the Manjača Camp, together with the persons referred to in item 2, separated when they were getting off the truck approximately seven detainees, among them Haris Bišćević, Neron Mahođić, Nedim Hađiahmetović, Jasmin Jelečević, Ermin Bahtić aka "Šime", beat them up in a particularly cruel way by hitting them with fists, legs, rifle butts, batons all over their bodies, inflicting on them such severe injuries that made them lay motionless in blood, after which their bodies were put back in the truck and taken in an unknown direction after which they disappeared without a trace.

2b. On 11 June 1992, after the truck with the detained civilians arrived at the Manjača Camp, together with the persons referred to in item 2, as they were beating up the detainees who were getting off the truck, he beat up Ejub Dedić aka "Vuk" and together with another person he beat up in a brutal manner a certain Topalović aka "Čapi" who was then put into a truck along with five other detained civilians, including Sadik Rekić, Ilijaz Rekić and one „Tofo“ from the settlement of Otoci and took them in an unknown direction after which those persons disappeared without a trace.

2c. On 7 July 1992, together with the persons referred to in item 2, they loaded on a truck approximately 60 detainees from the Betonirka garages to be taken to the Manjača Camp, where they had no space but were crammed on one another and were placed under the truck cover that the detainees were not allowed to lift because of the threats of the armed escort; as a result of enormous heat, injuries and exhaustion, at least nineteen detainees suffocated, among them: Jasmin Bajraktarević, Adam Delić, Salahudin Durmišević, Mirsad Halimović, Hivzo Hodić, Ismet Hodžić, Sevdaga Hukanović, Adem Jakupović, Ramo Jusić, Fadil Kamić, Vinko Matanović, Besim Materić, Izet Mehić, Josip Mlinar, Dževad Muhić, Nedžad Muhić, Zijad Mujadžić, Muharem Pršić and Kemo Talić, and when the camp administration accept such detainees, upon arrival in front of the Manjača Camp detainees were returned to the truck and taken back to Sanski



bodies were exhumed and identified at the mass grave site „Ušće Dabar“ in Sanski Most.

2d. On the same date as referred to in item 2c, when the suffocated detainees who were being taken to the Manjača Camp were returned to the truck, the suspect and others from within the armed escort of the detainees did not turn over to the camp administration the detainees who attempted to help the persons who were suffocating; instead, approximately six of them, including Edin Bišćević, Ventislav Mauzner and Enver Burnić, were taken in an unknown direction after which they disappeared without a trace.

Hence,

As part of a widespread or systematic attack directed against the civilian population in the territory of the Sanski Most Municipality, with knowledge of such an attack and participating in it, executed, aided and abetted, and instigated the persecution of Moslems and Croats, on the ground of their national, religious, political and ethnical affiliation,

Whereby he committed the criminal offense of crime against humanity in violation of Article 172(1) (a), (e), (f), (h) and (k) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) thereof,

Thus, on the basis of the foregoing statutory regulations, and with application of Article 42 and Article 48 of the CC BiH, the Court

**SENTENCES HIM
TO THE PUNISHMENT OF IMPRISONMENT
FOR A TERM OF 12 /twelve/ YEARS**

Pursuant to the application of the statutory regulation referred to in Article 56 of the CC BiH, the time the accused spent in custody, starting as of 10 October 2005 further on, shall be credited towards the imposed punishment of imprisonment.

Pursuant to Article 188 (4) of the CPC BiH, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings.

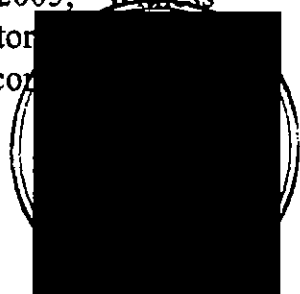
Pursuant to Article 198 (2) of the CPC BiH, the injured Hasan Osmančević and Sadržir Alibegović with their claims under property law, and Suad Šabić, Zikrija Bahtić, Adil Draganović, Ismet Kolaković, Redžep Zukić, Rufad Zukić, Nijaz Halilović, Mehmed Mujagić, Redžo Kurbegović, Zikret Zukić, Adem Seferović, Sakib Muhić, Mirzet Karabeg, Nihad Ključanin, Enis Šabanović, Ejub Dedić, Senad Šupuk and Osman Talić with potential claims under property law, shall be instructed to initiate a civil action.

R e a s o n i n g

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-31/05, of 28 December 2005, confirmed on 5 January 2006, Kovačević Nikola (previously Kajtez Daniluško), by the actions described in items 1 and 2 (2a, 2b, 2c and 2d) of the Indictment, he was charged with the criminal offense of Crimes against Humanity in violation of Article 172 (1) h), in conjunction with items a), e), f) and k) of the same Article and with Article 180 (1) of the CC BiH.

The accused Nikola Kovačević plead not guilty to the criminal offence he is charged with under the Indictment.

At the main and public hearing, the Prosecutor presented witnesses and submitted documents as evidence. Faruk Botonjić, Nedim Biščević, Hasan Osmančević, Sadržir Alibegović, Ilijaz Mehmedović, Dragan Majkić, Suad Šabić, Zikrija Bahtić, Adil Draganović, Ismet Kolaković, Mira Mauzner, Redžep Zukić, Rufad Zukić, Jure Lovrić, Mile Dobrijević, Nijaz Halilović, Mehmed Mujagić, Redžo Kurbegović, Zikret Zukić, Adem Seferović, Sakib Muhić, Mirzet Karabeg, Nihad Ključanin, Enis Šabanović, Ejub Dedić, Senad Šupuk, Osman Talić, Boško Grubiša and Stanko Erceg were heard as witnesses. Ramiz Čaldarević was heard graphology expert. Also at the main trial, the following documents were inspected: photo-documentation of the detention facilities in the territory of Sanski Most (35 photos), No. 264/05 of 21 October 2005; Witness Examination Record of Faruk Botonjić by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 20 October 2005; Witness Examination Record of Nedim Biščević by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 17 October 2005; Witness Examination Record of Hasan Osmančević by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 15 October 2005; Witness Examination Record of Sadržir Alibegović by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 14 October 2005; Witness Examination Record of Ilijaz Mehmedović by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 17 October 2005; Witness Examination Record



Majkić by the BiH Prosecutor's Office, No KT-RZ-31/05 of 28 November 2005; Witness Examination Record of Suad Šabić by the BiH Prosecutor's Office, No.KT-RZ-31/05 of 19 October 2005; Witness Examination Record of Zikrija Bahtić by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 20 October 2005; Witness Examination Record of Adil Draganović by the BiH Prosecutor's Office No.KT-RZ-31/05 of 21 October 2005; Witness Examination Record of Ismet Kolaković by the BiH Prosecutor's Office, No.KT-RZ-31/05 of 29 November 2005; Witness Examination Record of Mira Mauzner by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 16 October 2005; Witness Examination Record of Redžep Zukić by the Prosecutor's Office No. KT-RZ-31/05 of 30 November 2005; Witness Examination Record of Rufad Zukić by the Prosecutor's Office No. KT-RZ-31/05 of 1 December 2005; Official Note-Informative Interview with Mehmedović Ilijaz, SJB Sanski Most of 8 June 1992; Official Note-Informative Interview with Avdić Safet, SJB Sanski Most of 29 May 1992; Official Note-Informative Interview with Keranović Zuhdija of 4 July 1992; Official Note-Informative Interview with Kandžić Zijad of 4 July 1992; Official Note-Informative Interview with Alihodžić Nedim of 5 July 1992; Official Note-Informative Interview with Eminić Mesud of 4 July 1992; Official Note -Informative Interview with Beširević Mesud of 4 July 1992; Official Note-Informative Interview with Fočak Ismet, SJB Sanski Most of 31 May 1992; Official Note-Informative Interview with Ališić Mehmed, SJB Sanski Most of 10 June 1992; Official Note-Informative Interview with Kandžić Ahmo, SJB of 8 June 1992; Official Note-Informative Interview with Mujagić Fadil, SJB Sanski Most of 31 May 1992; Official Note-Informative Interview with Jakupović Senad, SJB Sanski Most of 29 May 1992; Witness Examination Record of Mile Dobrijević by the BiH Prosecutor's Office No. KT-RZ-31/05 of 11 November 2005; Witness Examination Record of Nijaz Halilović by the BiH Prosecutor's Office No. KT-RZ-31/05 of 18 October 2005; Witness Examination Record of Mehmed Mujagić by the BiH Prosecutor's Office No. KT-RZ-31/05 of 20 October 2005; Witness Examination Record of Redžo Kurbegović by the BiH Prosecutor's Office No. KT-RZ-31/05 of 19 October 2005; Witness Examination Record of Redžo Kurbegović by the BiH Prosecutor's Office No. KT-RZ-31/05 of 2 December 2005; Witness Examination Record of Zikret Zukić by the BiH Prosecutor's Office No.KT-RZ-31/05 of 15 October 2005; Witness Examination Record of Adem Seferović by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 16 October 2005; Witness Examination Record of Sakib Muhić by the BiH Prosecutor's Office No. KT-RZ-31/05 of 30 November 2005; Witness Examination Record of Mirzet Karabeg by the BiH Prosecutor's Office No. KT-RZ-31/05 of 14 October 2005; Witness Examination Record of Nihad Ključanin by the BiH Prosecutor's Office No. KT-RZ-31/05 of 18

October 2005; Witness Examination Record of Enis Šabanović by the BiH Prosecutor's Office No. KT-RZ-31/05 of 20 October 2005; Witness Examination Record of Ejub Dedić by the BiH Prosecutor's Office No. KT-RZ-31/05 of 2 December 2005; Witness Examination Record of Senad Šupuk by the BiH Prosecutor's Office No. KT-RZ-31/05 of 1 December 2005; Witness Examination Record of Osman Talić by the BiH Prosecutor's Office No. KT-RZ-31/05 of 16 October 2005; Findings and opinion of graphological handwriting expert Ramiz Čaldarević, No. KT-RZ-31/05 of 20 November 2005; Photo-documentation of the graphological expert examination of the handwritten content of the letter of the accused (21 color photos) No. KT-RZ-31/05 of 20 November 2005; Photo-documentation of the graphological expert examination of the handwritten content of the letter of the accused; the letter of the accused; the undisputed handwriting of the accused; the list of persons who died of suffocation; scanned photos of the accused (2 color photos) from the passport and identity card of the accused and a floppy with the said photos; a photo of the accused (2 original photos) from the war period; the PSC Banja Luka document No. 10-1-137/05 of 22 November 2005 and the Decision of the PSC Prijedor No. 14-09/1-203-23 of 25 September 1996 on the change of personal name of the accused; Document of the Crisis Staff of the Serb Municipality of Sanski Most No. 5/92 of 21 April 1992; Document of the Crisis Staff of the Serb Municipality of Sanski Most No. 7/92 of 22 April 1992 (Conclusions from the Crisis Staff meeting of 21 and 22 April 1992); Document of the Crisis Staff of the Serb Municipality of Sanski Most No. 7/92 of 22 April 1992; Proclamation of the Staff of SOS (Serb Defense Forces) of the Serb Municipality of Sanski Most of 13 April 1992; Proclamation of SOS Sanski Most, No. 5/92 of 30 May 1992; Report of 16 September 1992 on the work and activities of SOS as an intervention squad as a part of the 6th Krajiška Brigade between 1 May 1991 and 16 September 1992; Pages 77 and 78 of the telephone directory of the 079 Sanski Most telephone area; Documentation enclosed with the graphological expert examination of the handwritings of the accused (Order of the BiH Prosecutor's Office for Expert Examination, No. KT-RZ-31/05 of 31 October 2005; Record No. KT-RZ-31/05 of 10 November 2005 on the conduct of investigative action required for graphological expert examination; Official Note No. KT-RZ-31/05 of 10 November 2005; Document of the BiH Prosecutor's Office No. KT-RZ-31/05 of 22 November 2005, with 3 applications of the accused); Conclusions of the Crisis Staff of the Serb Municipality Sanski Most No. KŠ-23/92 of 22 May 1992; Minutes from the 12th session of the Executive Committee of SO Sanski Most of 22 August 1992; Order of Colonel Branko Basara, Commander of the 6th Krajiška Brigade; Report on the activities of the Municipal Protection Staff for the period 15 July – 15 October 1992; Dispatch

Sanski Most SJB, No. 11-14-1288/92 of 17 August 1992; Act of the Sanski Most SJB sent to the Banja Luka Public CSB, No. 11-14 of 5 August 1992; Act of the Sanski Most SJB, No. 11-14-31/92 of 6 June 1992; Act of the Sanski Most SJB, No. 11-14-sl of 23 August 1992; Certificate of the Sanski Most SJB, No. 11-14-sl of 23 August 1992; Official Note-Informative Interview with Sadmira Alibegović, SJB Sanski Most of 25 June 1992; Official Note-Informative Interview with Nedim Bišćević-Camp Manjača of 26 August 1992; Official Note-Informative Interview with Adem Seferović of 4 July 1992; Official Notes on the interviews conducted with the detained persons during the critical period (Official Note on Informative Interview with Delić Ejub of 8 July 1992, Official Note on Informative Interview with Majdankić Hilmija of 26 August 1992, Official Note on Informative Interview with Hodžić Emsud of 26 August 1992, Official Note on Informative Interview with Buljubašić Esnef of 8 July 1992, Official Note on Informative Interview with Kadirić Jusuf of 26 August 1992, Official Note on Informative Interview with Halimović Smail of 26 August 1992, Official Note on Informative Interview with Suljanović Zijad of 15 July 1992, Official Note on Informative Interview with Brković Adem of 8 July 1992, Official Note on Informative Interview with Halilović Sead of 29 June 1992, Official Note on Informative Interview with Official Note on Informative Interview with Kugić Rahim of 8 July 1992, Official Note on Informative Interview with Džafić Ilijaz of 8 July 1992, Official Note on Informative Interview with Memić Sead of 8 July 1992, Official Note on Informative Interview with Mušić Ismet of 8 July 1992, Official Note on Informative Interview with Kadirić Derviš of 8 July 1992, Official Note on Informative Interview with Zenković Senad of 13 July 1992, Official Note on Informative Interview with Pašalić Sead of 26 August 1992, Official Note on Informative Interview with Jelečević Fadil of 26 August 1992, Official Note on Informative Interview with Sinanović Osmo of 13 July 1992, Official Note on Informative Interview with Seferović Ibrahim of 4 July 1992, Official Note on Informative Interview with Sinanović Besim of 26 August 1992, Official Note on Informative Interview with Alibegović Denis of 11 August 1992, Official Note on Informative Interview with Musić Adem of 8 July 1992, Official Note on Informative Interview with Begić Hasan of 11 July 1992, Official Note on Informative Interview with Seferović Jasmin of 11 July 1992, Official Note on Informative Interview with Seferović Semir of 26 June 1992, Official Note on Informative Interview with Grbić Ismet of 8 July 1992, Official Note on Informative Interview with Handanagić Velid of 20 June 1992, Official Note on Informative Interview with Beširević Samir of 8 July 1992); Dispatch note by the Sanski Most SJB, No. 11-14/01-1286/92 of 14 August 1992; Dispatch note by the Sanski Most SJB, No. 11-14/01-1316/92 of 9 September 1992; Record of the Cantonal Court in Bihać, No. Kri-44/01 of

24 September 2001, on exhumation from a mass grave site at the locality of „Ušće Dabar“ and „Tomina Markovići“ in the territory of Sanski Most Municipality (Sketch of the „Ušće Dabar“ exhumation location in the Municipality Sanski Most, No.51/01 of 17 July 2001; Act of the Police Station 3, Sanski Most, No. 05-6/03-611/05 of 14 September 2005; Findings of DNA analysis and records of identification of corpses, namely: Findings of DNA analysis No.ICMP 245/02 of 6 June 2002 and Record of Identification of Jasmin Bajraktarević of 31 July 2001, Findings of DNA analysis No.ICMP 246/02 of 6 June 2002, and Record of Identification of Adam Delić of 17 June 2002, Findings of DNA analysis No.ICMP 6297/05P of 15 September 2002, and Record of Identification of Salahudin Durmišević of 1 August 2002, Findings of DNA analysis, No.ICMP 248/02 of 6 June 2002 and Record of Identification of Mirsad Halimović of 20 June 2002, Findings of DNA analysis, No. ICMP 241/02 of 6 June 2002, and Record of Identification of Hivzo Hodžić of 11 June 2002, Findings of DNA analysis, No.ICMP 253/02 of 6 June 2002, and Record of Identification of Ismet Hodžić of 2 August 2002, Findings of DNA analysis, No.ICMP 1175/02 of 6 June 2002, and Record of Identification of Sevdaga Hukanović of 27 July 2002, Findings of DNA analysis, No.ICMP 255/02 of 6 June 2002, and a Record of Identification of Adem Jakupović of 6 June 2002, Findings of DNA analysis No.ICMP 257/02 of 6 June 2002 and Record of Identification of Ramo Jusić of 30 July 2002, Findings of DNA analysis No.ICMP 4042/04 of 4 August 2004 and Record of Identification of Fadil Kamić of 8 September 2004, Findings of DNA analysis, No.ICMP 240/02 of 6 June 2002 and Record of Identification of Vinko Matanović of 27 July 2001, Findings of DNA analysis, No.ICMP 1180/02 of 30 January 2003, and Record of Identification of Besim Materić of 5 March 2003, Findings of DNA analysis, No.ICMP 242/02 of 6 June 2002, and Record of Identification of Izet Mehić of 11 June 2002, Findings of DNA analysis, No. ICMP 247/02 of 6 June 2002, and Record of Identification of Josip Mlinar of 27 July 2001, Findings of DNA analysis, No.ICMP 939/02 of 27 November 2002, and Record of Identification of Dževad Muhić of 30 April 2003, Findings of DNA analysis, No. ICMP 243/02 of 6 June 2002, and Record of Identification of Nedžad Muhić of 5 July 2002, Findings of DNA analysis, No.ICMP 254/02 of 6 June 2002, and Record of Identification of Zijad Mujadžić of 25 August 2001, Findings of DNA analysis, No.ICMP 256/02 of 6 June 2002 and Record of Identification of Muharem Pršić of 13 June 2002, Findings of DNA analysis, No. ICMP 252/02 of 6 June 2002, and Record of Identification of Kemo Talić of 26 July 2001; Photo-documentation-mass grave „Dabar Ušće“, No. 170-01/01 of 8 July 2001; Photo-documentation-mass grave „Dabar Ušće“, No. 181-1/01 of 16 July 2001); Decisions of the Municipal Court of Sanski Most on the pron

deaths of persons (namely, the Decision of the Municipal Court of Sanski Most on the pronouncement of death of Ermin Bahtić, No.R-702/99 of 31 January 2001, Decision of the Municipal Court of Sanski Most on the pronouncement of death of Mirzet Jahić, No.R-388/98 of 31 August 1998, Decision of the Municipal Court of Sanski Most on the pronouncement of death of Rufad Mujagić, No. R -129/98 of 24 March 1999, Decision of the Municipal Court of Sanski Most on the pronouncement of death of Ilijaz Rekić, No. R- 903/97 of 4 February 1998, Decision of the Municipal Court of Sanski Most on the pronouncement of death of Ventislav Mauzner, No. R-414/97 of 2 July 1997, Decision of the Municipal Court of Sanski Most on the pronouncement of death of Enver Burnić, No. R- 430/97 of 104 July 1997, Decision of the Municipal Court of Sanski Most on the pronouncement of death of Safet Topalović, No. R- 476/2000 of 22 December 2000); Order of the SDS Sarajevo of 29 October 1991; Conclusions of the Autonomous Province of Krajina, No. 03-297/92 of 8 May 1992; Conclusions of the Autonomous Province of Krajina, No. 03-297/92 of 9 May 1992; Instruction on Organization and Activities of the Serb People Authorities in Bosnia and Herzegovina in State of Emergency, No. 101-3 of 19 December 1991; Decision of the Presidency of Republika Srpska on the Return of Displaced Persons to the Territory of the Serb Republic of BiH, No. 03-507 of 2 June 1992, published in Official Gazette of the Serb People, No. 8/92; Declaration of the Assembly of the Serb People of Bosnia and Herzegovina on the Social and Political System of the State, No. 02-803/92 of 3 September 1992, published in Official Gazette of the Serb Republic, No.14/92; Law on Serb Citizenship, published in Official Gazette of the Republika Srpska, No. 19/92; Decree on the Promulgation of the Law on Refugees, published in Official Gazette of the Republika Srpska, No. 5/93; Decision on the Strategic Goals of the Serb People in BiH, No. 02-130/92 of 12 May 1992, published in Official Gazette of the Republika Srpska, No. 22/93; Constitution of the Republika Srpska, published in Official Gazette of the Republika Srpska, No. 21/92; Partial Decision of the Constitutional Court of BiH adopted at its sessions held on 28, 29 and 30 January 2000 with regard to the Constitution of the Republika Srpska and Constitution of the Federation of Bosnia and Herzegovina; Partial Decision of the Constitutional Court of BiH adopted at its sessions held on 18 and 19 February 2000 and 18 and 19 August 2000 with regard to the Constitution of the Republika Srpska and Constitution of the Federation of Bosnia and Herzegovina; Partial Decision of the Constitutional Court of BiH adopted at the session held on 30 June and 1 July 2000 with regard to the Constitution of the Republika Srpska and Constitution of the Federation of Bosnia and Herzegovina; Decision of the BiH Presidency on Declaring the State of War, No.1201/92 of 20 June 1992, published in Official

Gazette of the RBiH, No. 7/92; Decree of the BiH Presidency on abolishment of the former Republic Territorial Defense Staff and Formation of the RBiH Territorial Defense Staff, No. 01-011-302/92 of 8 April 1992, published in Official Gazette of the R BiH, No. 1/92; a CD with Judgments of the International Criminal Tribunal for the Former Yugoslavia (ICTY) (including ICTY Judgment (IT-00-398-40/01) against Biljana Plavšić, ICTY Judgment (IT-95-8) against Duško Sikirica, Dragan Kulundžija and Damir Došen, ICTY Judgment (IT-97-30) against Miroslav Kvočka, Mlado Radić, Milojea Kos, Zoran Žigić and Dragoljub Prcać, ICTY Judgment (IT-94-1) against Duško Tadić, ICTY Judgment (IT-02-61) against Miroslav Deronjić, ICTY Judgment (IT-95-9) against Simo Zarić and ICTY Judgment (IT-97/24) in the case of Milomir Stakić); excerpt from the register of deaths for Bišćević Faik, No. 05-13-3-663/05 of 19 December 2005; Witness Examination Record of Faik Bišćević by the BiH Prosecutor's Office, No. KT-RZ-31/05 of 17 October 2005; Report of 16 September 1992 on the work and activities of SOS as an intervention squad as part of the 6th Krajiška Brigade between 1 May 1991 and 16 September 1992; Report on the activities of SOS and participation in combat activities under the plan of the 6th Krajiška Brigade, confidential, No. 9/92 of 4 September; Notes of Nedeljko Rašula, President of the Crisis Staff of the Serb Municipality of Sanski Most; List of members of SOS; Conclusion of the Executive Committee of the SO Sanski Most, No. 01-012-46 of 26 November 1992 signed by the President of SO Sanski Most Vrkeš Vlado; Conclusion of the Executive Committee of the SO Sanski Most No. 01-012-40/ of 21 October 1992; Conclusion of the Executive Committee of the SO Sanski Most No. 01-012-33/2 of 2 September 1992; Dispatch Note by the Sanski Most SJB, No. 11-14-1288/92 of 17 August 1992 signed by the Head of SJB Vručinić Mirko attached therewith the act of SJB Sanski Most-Report on the activities of SJB Sanski Most for six months 1992; List of persons captured during the war-time operations in the territory of the Sanski Most Municipality between 18 May and 6 June; List of persons captured during the war-time operations in the territory of the Serb Municipality of Sanski Most; List of most extremist persons from the territory of Sanski Most; Handwriting on the processing ??? of a person by an unidentified author; Information about detained persons contained in the handwriting by an unidentified author; Handwritten list of persons of non-Serb ethnicity containing marks next to the names by an unidentified author; Handwritten list Manjača of 3 July – 5 July 1992 by an unidentified author, Handwritten list Manjača of 21 July – 24 July 1992 by an unidentified author; Dispatch Note by the Banja Luka CSB, No. 11-1/01-OD-439 of 19 August 1992; Order of the Command of the 6th Partizanska Brigade, No. 1-29/92, from 6 September 1992 to 9 [REDACTED] 1992; telefax „received from 07011606, 30/11 92. 13,14 0781100


Luka“; Act of the Association of Detainees Sanski Most-camps in the territory of the Municipality Sanski Most, with a list of registered detainees Sanski Most; Act of the Ministry of Defense of the Republika Srpska, number: 8-04-713-64/05 of 27 December 2005, with a copy of the Act of General Staff of the Army of Republika Srpska; Letter of the Court of BiH number: X-KRN-05/40 of 15 December 2005, with a copy of the Request of Nikola Kovačević sent to the Preliminary Proceedings Judge of 13 December 2005; Motion of the BiH Prosecutor's Office to conduct single proceedings, number: KT-RZ-31/05 of 13 January 2006; Comment of the defense counsel for the accused, attorney Dakić Ranko on the Motion of the BiH Prosecutor's Office of 16 January 2006 to conduct single proceedings; Indictment of the Military Prosecutor's Office of Republika Srpska of 2 June 1993; Decision ordering custody of the Military Court in Banja Luka, number: Kr-109/92 of 7 December 1992; Decision on termination of Custody of the Military Court in Banja Luka, number: Ki 335/92 of 2 January 1993; Decision ordering custody of the District Court in Banja Luka number KV-252/01 of 20 November 2001; Decision ordering custody of the District Court in Banja Luka number: K-105/00 of 7 December 2000; Dispatch Note of the MoI Republika Srpska Banja Luka, number 02/2-2199/01 of 9 February 2001; “A request for the release of my son Dane from prison”, signed by Kajtez Milka; Record on Questioning of the Suspect Kovačević Nikola by the BiH Prosecutor's Office number KT-RZ-31/05 of 4 November 2005; Record on Questioning of the Suspect Record Kovačević Nikola by the BiH Prosecutor's Office number KT-RZ-/05 of 30 September 2005; Record on Questioning of the Suspect Kovačević Nikola by the BiH Prosecutor's Office number: KT-RZ-31/05 of 30 September 2005; Record on Questioning of the Suspect Kovačević Nikola by the BiH Prosecutor's Office number KT-RZ-31/05 of 31 October 2005; Record on Questioning of the Suspect Kovačević Nikola by the BiH Prosecutor's Office number KT-RZ-31/05 of 1 October 2005.

With the consent of the parties, the Court inspected the statement of the Prosecution witness, Faik Biščević, in terms of the statutory provision referred to in Article 273 (2) of the CPC BiH, because the witness died on 6 December 2005, as it arises from the excerpt of the Register of Deaths No. 05-13-3-663/05 of 19 December.

During the proceedings, the Defense also presented witnesses and submitted documents as evidence. Dragan Majkić, Duško Babić, Lazar Popović, Adil Draganović and the accused Kovačević Nikola were heard as witnesses. Also, the following documents were inspected: the Act of the Ministry of Interior of Republika Srpska, PSC Banja Luka, PSC Prijedor, number 10-1-10/02-2-RP-

483/06 of 21 September 2006; Decision on admission to the citizenship of Yugoslavia and Republika Srpska, Federal Ministry of Internal Affairs in Belgrade 25-01 number 600-9342/2001 of 21 December 2001; Military record, series BC number 138025; the book "It is a Crime to Forget Crime", by Zilhad Ključanin and Hazim Akmadžić (the part of the book up to page 55); the Document of the Secretariat of the Serb Democratic Party, number: 05-1-891-10/06 of 13 October 2006.

After the completion of the evidentiary proceedings, the Prosecutor presented her Closing Argument. Then she stated that, at the time the accused committed the acts he is charged with, there was a widespread and systematic attack directed against the civilian Bosniak and Croatian population. The fact arises from the evidence presented and from the final ICTY Judgments in Biljana Plavšić, Duško Sikirica et al. and Miroslav Kvočka et al. cases. It also arises from the evidence that the aim was to create the Municipality of Sanski Most in which the overall power would be held only the ethnic Serb group. That purpose was accomplished by establishing parallel institutions of the authorities and creating an atmosphere in which everybody would feel insecure and in which the SOS unit was established „which by the volume and equipment was capable of protecting the Serb people in the territory of Sanski Most at a given time“. After the SOS had been established, activities started for take over the power in the municipal territory, active non-Serb police officers were asked to pledge loyalty to the new Serb police in writing and an ultimatum was set for the representatives of the then legitimate authorities to leave the building, or otherwise it would be shelled. The public was informed by "Srna" that the Serb Municipality Sanski Most had become functional as of 20 April 1992, after which Moslems and other non-Serbs who had held the leading positions were dismissed and fired for no reason and explanation, and on 25 May 1992, the arrests of prominent SDA activists and intellectuals started, in which the accused participated. The settlements inhabited by Muslim population were shelled thereafter and civilians who were not actively involved in the conflict lived. Many Prosecution witnesses testified about their experiences in various camps in Sanski Most, were then transported to Manjača. Here, according to the statements of the witnesses, each time the trucks were loaded and unloaded, a gauntlet was formed by the present Serb soldiers through which each detainee had to run while being beaten. The witnesses Nedim Biščević, Ejub Dedić, Adem Seferović, Mehmedović Ilijaz testified that they saw the accused in different occasions concerning the transport and bringing the detainees to Manjača. The Prosecutor further reminded that, during the cross-examination of the witnesses, the not deny what the witnesses had said, but that his questions were



on the circumstances regarding the security situation in Sanski Most and the arming of Moslems. Finally, the Prosecutor's Office proposed to the Court to find the accused guilty on all Counts of the Indictment and to sentence him pursuant to the Law, considering that there were no extenuating circumstances on the side of the accused and, on the contrary, there was a number of aggravating circumstance, among which the Prosecutor's Office points to the particular cruelty and persistence showed in the commission of the offenses.

The defense counsels for the accused, attorneys Ranko Dakić and Jovo Đukanović, also presented their Closing Arguments. Primarily, they pointed out that the Indictment of the BiH Prosecutor's Office filed against Kovačević Nikola is general in its nature and its major part does not concern the specific offenses of the accused. In addition to this, the Prosecutor's Office failed to prove the systematic attack or any role of the accused in it whatsoever. In relation to this, the Defense objected to the introduction of the the ICTY Judgments, since it constituted a violation of Article 6 (3) (d) - the right to a fair trial – of the European Convention on Human Rights (ECHR). Finally, the Defense objected the considerable differences between the testimonies of the Prosecution witnesses, namely because they were contradictory. The Defense also held that the Prosecutor's Office failed to prove that the accused was a SOS member and that it was unequivocally proved that he has never been a member of the SDS. In sum, the defense counsels proposed to the Court not to prejudge the guilt of the accused because the change of his name and the letter he had written to Vrkeš Vlado and, in view of the lack of evidence that the accused committed the criminal offences he was charged, to render an acquitting verdict.

The accused, following the Closing Arguments of his defense counsels, stated that, during the critical period, he had not been in Sanski Most at all, but on the frontlines. There cannot be discussed in the present case about the attack on the civilian population because it arose from the testimonies of the witnesses that there was a resistance in Sanski Most offered by the „Moslem formations“, namely that there were conflicts and the war, but that the Croat population lived as free citizens in their homes during the critical period, until they moved out collectively with the Serb population in 1995. The accused further held that the testimonies of the Prosecution witnesses are mutually contradictory, the witnesses were selectively chosen by the Prosecutor, and a certain number of witnesses were prepared to give a false testimony. The accused also submits that his appearance, equipment and arms during the critical period were in accordance with the rules and regulations of the Republika Srpska Army, which was one of the parties in the „unfortunate

conflict in the region". Taking that into account, the activities and evidence of the Prosecutor's Office constitute, in fact, an attempt to put in the dock everybody who carried a rifle on the Serb side, instead of establishing the individual responsibility. The accused submits that he accidentally moved to the SOS because he had escaped from the frontline in Slavonija, thus he had to engage himself somewhere. Considering the conflict with Commander Dušan Šaović, he stayed in that unit for a month and, after he had left the SOS, reported himself to the 4th Battalion of the 6th Sana Brigade, within which he went to the frontlines. The accused stopped at the Sport Hall and near the Factory „Betonirka“, because he wanted to help his friends Samir Zukić and Enver Burnić. He helped the release of his four Croat neighbors for which they subsequently thanked him. Finally, denying the commission of all the incriminated acts he is charged with, he proposed to be acquitted of the charges.

On 26 April 2006, the Court, after having heard the parties, rendered and orally announced the decision refusing the proposal of the accused Nikola Kovačević to exclude the public from the main trial. Namely, on 25 April 2006, the accused proposed in writing that the public be excluded from the main trial, namely that „journalists be excluded from the proceedings at least until 1 June“, because of his fear that the media representatives would not be informing the public objectively about the course of the main trial, which might have a negative influence and prejudice the accused. The Prosecutor submitted its written response to the proposal and, at the hearing held on 26 April 2006, the Court heard the parties, The Court refused the proposal, primarily, because it did not contain any reason whatsoever to exclude the public under the provision of Article 235 of the CPC BiH and, secondly, because the right of the public to be informed about the proceedings prevailed over waiving the right to a public trial and, in particular, due to the lack of legal requirements to exclude the public. After an oral decision, the Court also delivered in written the Decision No. X-KR-05/40, of 26 April 2006 with more detailed explanation.

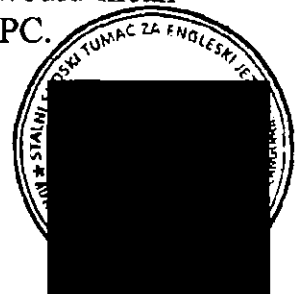
On 8 June 2006, 9 June 2006 and 13 June 2006, and having heard the parties, the Court, under Article 235 of the CPC BiH, excluded the public from a part of the main trial, in order to consider the Motion of the Prosecutor for witness protection since it was necessary, in the opinion of the Panel, to protect the interests of the witness, taking into account that the request for protective measures was initiated by the witness personally for the fear that the personal safety of the witness or his/her family would be endangered if he/she publicly testified in the proceedings. The Defense and the accused did not [REDACTED] Motion. However, at the hearing held on 13 June 2006, the [REDACTED]

withdrew the motion due to which the Court did not decide on this matter. When excluding the public, the Court under Article 236 (2) of the CPC BiH, allowed the international community representatives, whose function was to monitor the proceedings, to be present at the main trial from which the public was excluded

In the course of the main trial, the Court, having heard the parties, adjourned the hearing for a period longer than 30 days. At taking such action, the Court had in mind the provision of Article 251 (3) of the BiH CPC; however, at deciding on the adjournment of the trial for the period longer than 30 days, the Court was guided by the following reasons: the adjournment took place due to the undeferrable absence of one of the Trial Panel members, the deadline of 30 days was actually turned into the period of 41 days (accordingly, the adjournment was not much longer than allowed), and the Court especially had in mind that the parties in the proceedings, i.e. both the Prosecutor and the accused with his defence counsels, stated for the record that they did not oppose such adjournment of the trial and that they waived the right to the Appeal in this regard. The Court was especially guided by the fact that, with such action, none of the rights of the accused were denied, i.e. that there all the standards were observed that guarantee a fair trial and the right to defence pursuant to Article 6 of the European Convention on Protection of Human Rights and Fundamental Freedoms which, inter alia, guarantee to the accused the right to trial within a **reasonable** time, without defining and precisely stating reasonable time as the passage of time precisely defined. Such position in respect of exceeding the 30 days timeframe was also taken by the Supreme Court of the Federation of Bosnia and Herzegovina, deciding, inter alia, on the Appeal of the accused in respect of the complaints against the adjournment of the trial for the period longer than 30 days, where accordingly there was not any agreement of the parties in connection with such adjournment ¹

At the trial held on 5 September 2006, at the stage of presenting the Defence evidence, the Prosecutor proposed that the evidence be presented by examining the graphologist expert witness from Ukraine, Margarit Jevgenjevna Bondar, who made an expert evaluation and gave her Finding and Opinion in the Case before the ICTY against Radoslav Brđanin in respect of the circumstances whether the document which was earlier introduced as evidence of the Prosecutor's Office – Notes of the president of the Crisis Staff of the Serb Municipality of Sanski Most Rašula Nedeljko – was personally written by Rašula Nedeljko. To require that this expert witness be examined at that stage of the proceedings, and to accept the Motion of the Prosecution would mean the departing from the order stipulated by Article 261 of the BiH CPC.

¹ Verdict of the FBiH Supreme Court KŽ -402/05 of 4 May 2006



Although the procedural decision is concerned, following the oral announcement of the Decision, the Court rendered the Decision to refuse that Motion also in writing (Decision X-KR-05/40 of 5 September 2006), given that this legal issue is rather interesting and also for the reason that the BiH Court, in its case law hitherto, has not been in a situation to deal with the issue of the change to the order of the evidence presentation. The Court therefore had to go further than the CPC alone and take into account the case law of other lawfully established courts as well, especially the International Criminal Tribunal for the former Yugoslavia (ICTY), in connection with the interpretation and possibility of the presentation of rebuttal evidence and fresh evidence at particular stages of the proceedings². Following a thorough analysis of Article 261 of the BiH CPC, and bearing in mind criteria of the ICTY which have to be met in order that an evidence is considered as a "rebutting evidence", and also bearing in mind requirements under which the Court may, in order to present a "fresh evidence", alter the order of evidence presentation prescribed by the law, the Court refused the presentation of evidence obtained by the graphologist witness expert at the then stage of the proceedings. Such Decision was rendered by the Court, in the first place, for the reason that it cannot be regarded as the "rebutting evidence", but "fresh evidence", and the change to the adopted order of the evidence presentation could create an imbalance in the proceedings, thereby the atmosphere of unpredictability, which, in turn, could be unfair to the accused. More detailed analysis of the relevant legal regulations, in the first place, Article 261 (2) of the BiH CPC and the ICTY case law concerning the issue of the order of evidence presentation and reasons for rendering such decision were brought forward by the Court in the said Decision which was made in a written form. In such decision of the Court, the Court did not prejudge possible application of the provision of Article 276, in other words, the Decision by which the presentation of that evidence of the Prosecution at that stage of the proceedings was not allowed, did not mean the impossibility for the Prosecution to possibly propose the supplement of the evidentiary procedure. In this regard, the Prosecutor made use of this possibility, so at the hearing held on 16 October 2006, referring to Article 276 of the BiH CPC, proposed that the Court, pursuant to the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BiH (Law on the Transfer), introduce into material evidence the Finding of the graphologist expert witness, Margarita

² *Case against Radislav Krstić-Decision on the Defense Motions to Exclude Exhibits in Rebuttal Evidence and Motion for Continuance, 4 May 2001; "Čelebići" Case, IT-96-A, 20 February 2001 and Kordić and Čerkez Case "Lašvanska dolina" (IT-95-14/2)*



Jevgenjevna Bondar which was given before the ICTY in the case against Radoslav Brđanin in connection with the graphological analysis of the notes, i.e. the diary of Rašula Nedeljko. To this Motion the Defence objected for the reason of impossibility of cross examination of the expert witness. Pursuant to Article 263 (2) of the BiH CPC, the Court refused the presentation of this evidence as unnecessary. In connection with that, the Court had in mind the provision of Article 6 (1) of the Law on Transfer according to which "The statement of an expert witness entered into evidence in any proceedings before a Trial Chamber of the ICTY shall be admissible as evidence in domestic criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings", but it refused the presentation of this evidence as unnecessary for the reason that the referenced expert evaluation referred to the graphologist's evaluation of evidence, which was, as stated, introduced earlier as evidence of the Prosecution "Notes of Nedeljko Rašula, President of the Crisis Staff of the Serb Municipality of Sanski Most" (Exhibit number 99T), which is, according to the allegations of the Prosecution, essential in establishing the composition of the SOS Unit and the role of the accused in it. Since at the moment of the bringing forward of this Motion, as well as the former Motion of the Prosecutor in connection with the graphologist's expert evaluation of the handwriting of this evidence (Exhibit 99T), the Court was aware of the contents of this evidence, the Court, without analysing the contents and without evaluating that evidence at that time, concluded that the presentation of the offered evidence-testimony of the expert witness which is included into the evidentiary material in the case before the ICTY was not necessary, given that certain pieces of evidence have already been presented, both on the part of the Prosecution and the Defence in respect of the existence of the SOS Unit, its composition and the role of the accused in that Unit, for which reason the presentation of this evidence would only contribute to the delay of the proceedings, but not to a more correct or complete establishing of the facts in connection with these circumstances. In connection with that, the Court also had in mind that the referenced evidence was proposed by the Prosecution, but not the Defence of the accused, in which case, in terms of ensuring balance between the evidence of the Prosecution and evidence of Defence, the Court should have to be mindful of the right of the accused that he, at all times, has the possibility to challenge the evidence that incriminate him and, in this regard, to present his evidence, otherwise Article 6 (3) d) of the European Convention on Protection of Human Rights Fundamental Freedoms would be violated, which is not the case here, because, as stated, it would exactly be the evidence of the Prosecution, but not of the Defence.

The Court received the evidence of both the Prosecution and Defence, and evaluating all pieces of evidence individually and their correlation, the Court has reliably and positively found that the accused Kovačević Nikola committed the criminal offence of Crime against Humanity, exactly in the way as presented in the Indictment of the BiH Prosecutor's Office. The only facts which could not be positively established by the Court are those in connection with Count 2b of the Indictment, so the Court, without interfering with the identity of the Indictment, left out some parts of this Count. These parts were thoroughly reasoned in the further text of the Verdict, in the assessment of evidence related to Count 2b. On the other hand, all other facts related to this Count as well as to all the other Counts of the Indictment have unequivocally been established.

In particular, it is indisputable that in the critical period in the area of Bosanska Krajina, that is, in Sanski Most, the non-Serb population, mainly Muslims and Croats, were arrested, detained at the Public Security Station in Sanski Most, and then in other detention facilities such as "Hasan Kikić" Primary School, "Betonirka" Factory garages, Secondary School Sports Hall in which the detained men were subjected to physical and mental abuse, after which a large number of them were transported to the "Manjača" Camp at Manjača. That fact is not disputed either by the Defence or the accused and it has been confirmed by many witnesses of the Prosecution, as well as of the Defence.

However, It was disputed whether the accused took part in the actions described in more details in Counts 1-2 (2a-2d) of the Indictment, in the way as presented by the Indictment. Resolving the contested circumstances, the Court started from the uncontested fact that the then name of the accused was Kajtez Daniluško (in 1996, he changed this name into Kovačević Nikola), that he was a member of the SOS, that in the critical period he was armed and that he occasionally came to the said detention facilities. There are many witnesses who saw Kovačević Nikola at various places at which they were detained in Sanski Most or as a direct perpetrator of the criminal offences he is charged with. Indeed, the witnesses remember the accused and mention him as Kajtez Daniluško or a person known by the nickname Dane, or Dane-Chetnik. However, it arises from the document of Banja Luka CJB no. 10-1-137/05 of 22 November 2005 and from the Decision of Prijedor CJB no. 14-09/1-203-23 of 25 September 1996, on the change of his personal name, that it is the accused Kovačević Nikola. In addition, many witnesses who testified under oath recognized the accused in the courtroom without any doubt. Some witnesses knew the accused from before, as for instance Faruk Betanović, Nedim Biščević who knows the accused, as he says, "from his birth", Hasan



Osmančević, Sadržir Alibegović, Ilijaz Mehmedović, Zikrija Bahtić, Adil Draganović, Nijaz Halilović, Mehmed Mujagić who went to the same primary school as the accused, Ređo Kurbegović, Zikret Zukić, Enis Šabanović and Nihad Ključanin.

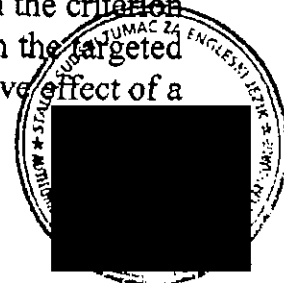
Crime against Humanity

The accused is charged of having committed the Crime against Humanity, in violation of Article 172 (1) a), e), f), h) and (k), in conjunction with Article 180 (1) of the BiH CC. Hence, the Prosecutor was obliged to prove all the essential elements of the criminal offence, such as the existence of a widespread and systematic attack directed against any civilian population, the knowledge of the perpetrator about such attack, the actions of the perpetrator as part of the attack, i.e. that there is a nexus between the actions of the accused and the attack on the civilian population of which the perpetrator knew.

It is incontestable that, in the period to which the Indictment refers (between April and August 1992), there was a widespread **and** systematic attack against the Muslim and Croat civilian population within a wider area of Bosanska Krajina, including the area of Sanski Most Municipality. The Court has drawn such conclusion by considering the material evidence of the Prosecutor's Office, ICTY Judgment against perpetrators of war crimes committed in the area of Bosanska Krajina, the part of which is Sanski Most. In the first place, the Court considered the final Judgment of the ICTY (IT-95-8) in the case against Duško Sikirica, Dragan Kulundžija and Damir Došen from which it is evident that a campaign of persecution of the civilian population, "Bosnian Muslims, Bosnian Croats and other non-Serbs" was underway; then, the ICTY final Judgment (IT-02-61) against Deronjić Miroslav and the final ICTY Judgment (IT-97/24) in the case against Stakić Milomir. It is evident from these judgments that, in the critical period, the activities and policy of the SDS and Crisis Staff of Sanski Most coincide with activities and role of the SDS and Crisis Staffs in other BiH municipalities. In the final ICTY Judgment (IT-00-39&40/1-S), Biljana Plavšić pleaded guilty to all the crimes she was charged with, including crimes against humanity that were committed in the territory of Sanski Most. With regard to the Defence's Motion which refers to the introduction of the evidence contained in ICTY Judgments, the Court finds that Article 6 of the ECHR has not been violated by the introduction of those pieces of evidence and that it is not contrary to the European Convention, with the restriction that the use of the stated evidence must not bring into question the fairness of the proceedings as a whole and the responsibility of the accused

in particular. Providing the Defence with the possibility to rebut this evidence, the Court was mindful of the fairness of these criminal proceedings.

The testimonies of examined witnesses of the Prosecution contributed to such Court's finding as to the existence of a widespread and systematic attack. They testified that police officers (the then "milicija") of the Sanski Most SJB, in the second half of April 1992 and in the building of Sanski Most SJB, were requested to pledge in writing the "loyalty to the Republika Srpska and the Republika Srpska MUP". In fact, the witnesses Faruk Botonjić, Sadržir Alibegović, Dragan Majkić, Zikrija Bahtić, Mile Dobrijević were at that time the members of Sanski Most SJB; Suad Šabić was the then vice-president of the SDA; Ređo Kurbegović the then president of the SDA and Mirzet Karabeg was until then the president of the Executive Board of Sanski Most Municipal Assembly. They testified about the attack on the building of the Sanski Most Municipal Assembly by Serb forces (the witnesses Faruk Botonjić, Sadržir Alibegović, Suad Šabić, Zikrija Bahtić, Ređo Kurbegović, Mirzet Karabeg) and also on their arrest, as well as the arrest of other Muslims and Croats from the area of Sanski Most, as well as the subsequent shelling of civilian facilities in the settlements of Muhići Mahala, Otoke, the villages of Vrpolje, Hrustovo (which is testified by the witnesses Faruk Botonjić, Redžep Zukić, Rufad Zukić, Mehmed Mujagić, Zikret Zukić, Adem Seferović, Sakib Muhić and Ejub Dedić), in which, according to the statements of these witnesses, a large Muslim and/or Croat population lived. Non-Serb civilians were expelled from their houses, taken to locations where they were assembled and separated. Thereafter, a part of them was detained in different facilities in Sanski Most. The witness Adil Draganović said that, on 15 May 1992, he was "unlawfully and by force" replaced from the position of the president of the Municipal Court, the then Basic Court of Sanski Most under a decision of the SDS Crisis Staff, and that he was ordered then to immediately leave the building of the Court. Mr. Stanić Radovan, the then Serb judge, was appointed straight off as a president of the Court. Likewise, Mr. Draganović's other Bosniak colleagues were ordered to leave the building of the Court and take compulsory annual leave. In that process, the Bosniaks did not receive any written decision thereof. The witness Zukić Rufad also testifies that, on 25 May 1992 and on his coming to work, in his capacity as director of the Branch Office of the PBS Banka Sanski Most, he was informed by a receptionist that the bank was closed, that he had to take his belongings and leave the Bank building which actually was already emptied and that he as a director did not know anything about it nor was he asked about anything whatsoever. After that date, the Bank continued to operate, with the Serbs as the only employees. Given the criterion and possible factors of a **widespread attack** (its consequences on the targeted population, the number of victims, the nature of the acts, cumulative effect of a



series of inhumane acts or the singular effect of an act of extraordinary magnitude³) and also the factors of a **systematic attack** (regular repetition which is not accidentally of a similar criminal conduct, namely the organization of the action and a small probability that those actions occurred at random⁴), the Court drew the conclusion that in this case it was a widespread **and** systematic attack. As it was found in the evidentiary procedure that civilian population was a prime object of that attack (given the status of victims, number of them, discriminating character of the attack – Muslim and Croat population), the Court established that it was unequivocally the attack “directed against” civilian population.

The Court had in mind that the parties agreed about the existence of an armed conflict in the area of Sanski Most Municipality. However, the Court also is aware that the attack within the context of the Crime against Humanity, pursuant to international customary law, is not restricted exclusively to the existence of “the armed conflict”, i.e. the attack does not necessarily have to be a part of the conflict. Even, according to the jurisprudence of the ICTY, (although according to the definition of the Crimes against humanity, Article 5 of the ICTY Statute, “The International Tribunal shall have the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character and directed against any civilian population...”), “The attack could precede, outlast, or continue during the armed conflict, but it need not be a part of it.”⁵ “The concepts of “attack” and “armed conflict” are distinct and independent.”⁶ Bearing in mind that the existence of the armed conflict is not a requirement necessary under the definition of Crimes against Humanity referred to in Article 172 of the BiH CC, the Court does not find the existence of the armed conflict as a key one for the existence of a widespread and systematic attack, where it is irrelevant in any case whether the other party also committed a crime, i.e. “when establishing whether there was an attack upon a particular civilian population, it is not relevant that the other side also committed atrocities against its opponent’s civilian population. The existence of an attack from one side against the other side’s civilian population would neither justify the attack by that other side against the civilian population of its opponent nor

³ See ICTY Judgments against Kunarac, Kovač and Vuković (Appeals Chamber), 12 June 2002, Paragraph 95 and Kordić and Čerkez (Trial Chamber), 26 February 2001, Paragraph 179

⁴ See ICTY Judgments against Kunarac, Kovač and Vuković (Appeals Chamber), 12 June 2002, Paragraph 94 and Naletilić and Martinović (Trial Chamber), 31 March 2003, Paragraph 236

⁵ See ICTY Judgments against Kunarac, Kovač and Vuković (Appeals Chamber), 12 June 2002, Paragraph 86

⁶ See ICTY Judgments against Vasiljević (Trial Chamber), 29 November 2002, Paragraph 30

displace the conclusion that the other side's forces were in fact targeting a civilian population as such..."⁷.

In connection with the knowledge of the perpetrator about the attack and necessary nexus between the acts of the perpetrator and the attack, it is incontestable that the accused Kovačević Nikola lived in the critical period in the area of Sanski Most Municipality, that he was a member of the SOS Unit. Many witnesses confirmed that fact as well. Therefore, the accused undoubtedly knew about the existence of the attack upon the civilian population of Muslim and Croat ethnicity at that time. Therefore, according to the nature and consequences of the committed offence, the Court has concluded that not only the accused was aware of that attack, not only he did agree that his acts be a part of that attack, but also it was exactly what he wanted his acts to be. It results from testimonies of many witnesses (injured parties and survived detainees of the camps "Betonirka", Hasan Kikić Primary School, Secondary School Sports Hall in Sanski Most and Manjača camp). Some of them have directly testified about the presence of the accused at the said locations in the critical period. They also testified about their hearing and seeing the accused Kovačević Nikola (at that time known as Kajtez Daniluško or Dane Chetnik) abusing and torturing other detainees and how notorious he was as a person who terrified people and of whom people were especially afraid. The testimonies of the witnesses Mirzet Karabeg, Nihad Ključanin and Dedić Ejub are particularly illustrative when testifying about their being beaten up by the accused personally, having recognized, in the courtroom without any doubt, the accused as a perpetrator and whose testimonies will subsequently be referred to at the Court's evaluation of evidence in respect of individual Counts of the Indictment. Consequently, the Court has unequivocally established that the accused Kovačević knew about the widespread and systematic attack which was carried out against the civilian population of Muslim and Croat ethnicity and his actions constituted a part of that attack. Therefore, **all major elements of the Crime against Humanity have been fulfilled.**

Many witnesses remember the accused Kovačević Nikola either as a person they saw as being present at different places at which they were detained in Sanski Most, or as a direct perpetrator of the criminal actions he is charged with. Indeed, the witnesses remember and refer to the accused as Kajtez Daniluško or the person known by the nickname Dane Chetnik; however, it arises from the document of Banja Luka CJB no. 10-1-137/05 of 22 November 2005 and from the Decision of Prijedor CJB no. 14-09/1-203-23 of 25

⁷ See *ICTY Judgments against Kunarac, Kovač and Vuković (Appeals Chamber)*, 12 June 2002 Paragraph 87

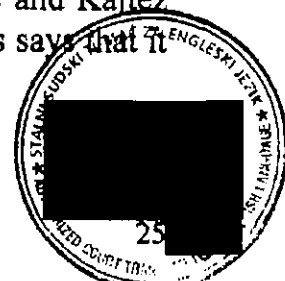


September 1996 on the change of the personal name that Kajtez Daniluško administratively changed his name into Kovačević Nikola. In addition, many witnesses, under oath and without any doubt, recognized the accused in the courtroom. Some witnesses knew the accused from before, such as Faruk Botonjić, Nedim Bišćević who knows the accused as he said "from his birth", Hasan Osmančević, Sadrž Alibegović, Ilijaz Mehmedović, Zikrija Bahtić, Adil Draganović, Nijaz Halilović, Mehmed Mujagić who went to the same school as the accused, Ređo Kurbegović, Zikret Zukić, Enis Šabanović and Nihad Ključanin.

Evaluation of presented evidence in respect of individual Counts of the Indictment.

In respect of Count 1 of the Indictment, the Court took into account the testimonies of the witnesses Faruk Botonjić, Hasan Osmančević, Sadrž Alibegović, Zikrija Bahtić, Zukić Rufad, Nijaz Halilović, Mirzet Karabeg, Nihad Ključanin, Edub Dedić and Osman Talić. After detailed analysis, the Court has established that the accused, alone or together with Martić Milan and other members of army and police, detained and tortured the detained civilians in detention facilities, especially in the "Betonirka" Factory garages in the way described in this Count of the Indictment. All the stated witnesses, in the critical period, were the detainees of the "Betonirka" garages. Thus, the witness Faruk Botonjić states, in respect of this Count of the Indictment, that upon his arrival at the "Betonirka", as soon as Kajtez Daniluško came in, he glanced over, produced a knife of the old make and said to the witness "With this my grandfather slith Balijas' throats, now I'm gonna slith yours", whereupon he started beating him with his fists and feet, grabbed his hair with both his hands and struck him against the wall, hurt his head and ear-drum, and afterwards, some 10 minutes later, he began to beat the other detainees, and he beat up perhaps about 15 of them. The witness remembers that the accused, among others, hit Mirzet Karabeg in the head, on which occasion he broke his spectacles, too. The witness Sadrž Alibegović also testifies about the beating up of the detainees Faruk Botonjić and Mirzet Karabeg, so he states that, on one occasion, Kajtez was beating Faruk Botonjić with a rubber baton and with his feet and hands, and that the beating, as is stated by the witness, "was not normal, but brutal; he behaved like an animal" and, after he ceased beating Botonjić, he started beating Karabeg Mirzet to whom Kajtez said, when his spectacles dropped, that he did not need them because "you, Muslims, needn't be intelligent, needn't be educated, needn't learn, needn't read". The witness Zikrija Bahtić testifies that, on one occasion during his detention in the "Betonirka", Kajtez Daniluško kicked him in his shin and hit him in his

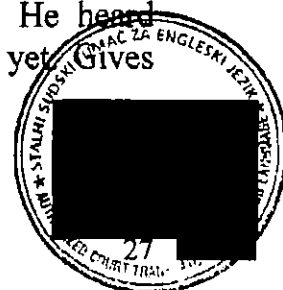
stomach and he also testifies that Faruk Botonjić, after he was beaten up, told him that Kajtez Dane was beating him. The witness Rufad Zukić, who personally was a detainee of the "Betonirka", also recalls that one day he saw, as he says "with his own eyes", Kajtez Daniluško beating Mirzet Karabeg and cursing his mother. This witness states that he does not know the accused from before, but, according to the description he got from other detainees, he could conclude that it was Kajtez Daniluško and that all the other detainees warned him to simply avoid him in any situation if possible, because he beat and kicked people, especially with his feet. Then the witness Nijaz Halilović testifies about the beating up of many civilians in the "Betonirka" garages, particularly points out that Kajtez Daniluško beat up Mirzet Karabeg and Faik Basarić and also states that, on that occasion, Karabeg's spectacles dropped and that Kajtez was striking him in his head with a police baton. The witness Nihad Ključanin testified in detail about one situation in which he and Mirzet Karabeg were beaten up; on that occasion, Dane Kajtez approached him, put a knife on his ear and asked "Which ear do you want me to cut off?", and the witness was beaten up, whereas Mirzet Karabeg was ordered to kneel down on his hands and knees, in order that Nihad Ključanin could beat him. Nihad Ključanin cannot remember if that really happened, that is, if he really was beating Karabeg, but he states that on that occasion the beating up of the two proceeded, in which process Kajtez put the police baton against Mirzet's neck and Martić Radoslav, who was sitting on a bonnet of a car from which an extremely loud music could be heard, put a pistol in his mouth. The detainees Ejub Dedić and Osman Talić also testified about events in the "Betonirka". The witness Dedić recalls that the accused turned up one night "dead-drunk" with some other five or six men and was holding a bomb in his hand and cursed the detainees Balija's mother threatening that he would throw a bomb on them and kill them all. Dedić Ejub also stated that the accused, whom he recognized in the courtroom, was a man who was beating him the most and "he is certain about it a million percent". The witness Osman Talić recalls Kajtez Daniluško as the person who evoked fear and who, immediately on arriving at the "Betonirka", demonstrated force by striking at whoever was first he came across; he particularly underlines that he recalls him beating Mirzet Karabeg and him personally; namely, he kicked him in his chest while the witness was sitting in a corner. Especially striking is the testimony of Mirzet Karabeg who described two occasions on which he was beaten up by Kajtez Daniluško and Martić Radoslav when Nihad Ključanin was also beaten up only by Kajtez Daniluško. Thus, Mirzet Karabeg confirms the testimony of Nihad Ključanin, i.e. that he had to kneel on all fours, that Ključanin was given a baton to beat him across his spine and head, whereupon Martić and Kajtez proceeded with the beating of the witness about which the witness says that it



cannot be adequately described at all, because the accused, among other things, put the baton under his neck and strangled him, Martić put a pistol in his mouth and Kajtez threatened him with the hand-made knife and asked him "Which ear do you want me to cut off?" Mirzet Karabeg thinks that this beating up lasted for more than one hour, and then they continued to beat him in the way that one of them bumped him with his bottom, whereas the other was beating him with a baton and fist, in which process they took turns. A couple of days after this beating, Kajtez entered the garage and said "Ah, there you are, damn your Balija's mother" and approached the witness, stepped on his spectacles, grabbed his ears and hair and struck him against a wall all over the garage, against concrete slabs. Mirzet Karabeg explained that the first instance of the beating up, which he described, took place within the "Betonirka" complex, whereas the second one took place in the garage itself in which he stayed. When the referenced statements of the witnesses are analysed individually and in their correlation, the Court arrives at the conclusion that the accused Kovačević Nikola (the then Kajtez Daniluško) committed the criminal actions described in Count 1 of the Indictment. In particular, all the referenced witnesses describe in a detailed, issue-oriented and extensive way and also with identical substance the events in the "Betonirka" garages at the time of their being held in captivity. These witnesses gave substantially identical statements during the investigative proceedings and subsequently at the main trial. In those statements of theirs, when viewed as a whole, there are not any discrepancies and they are fully in agreement, both the statements of individual witnesses in the investigation and at the main trial. The Court also had in mind that out of the mentioned witnesses, Faruk Botonjić, Hasan Osmančević, Sadržir Alibegović, Zikrija Bahtić, Nijaz Halilović and Nihad Ključanin knew Kajtez Daniluško from before, whereas the witnesses Faruk Botonjić, Sadržir Alibegović, Bahtić Zikrija, Rufad Zukić, Nijaz Halilović, Mirzet Karabeg and Nihad Ključanin recognized in the presented photographs at the main trial the "Betonirka" garages in which they were detained.

Count 2a of the Indictment refers to the separating of a group of people, on arriving in the Manjača camp on 6 June 1992, among whom were Biščević Haris, Mahođić Neron, Hadžiahmetović Nedim, Jelečević Jasmin, Bahtić Ermin aka "Šime", who were beaten then in an extremely cruel way, returned on a truck and taken away, from which point they have been unaccounted for. The Court has established that the accused Kovačević Nikola also participated in the separating of those people, in their beating up and in their taking away in an unknown direction. That conclusion arises first from the testimonies of the witnesses who testified under oath in these proceedings, and who were, on that critical day, brought to the Manjača camp by a vehicle from different camps (Secondary School, Betonirka or Hasan Kikić Primary School). The witness

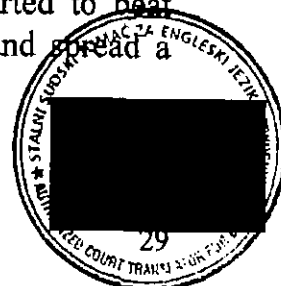
Nedim Bišćević, who was transported to the Manjača from the Secondary School Sports Hall, recalls and claims that he will never forget, when on coming to the Manjača and the truck tarpaulin was removed, seeing "a great many Chetniks in Chetnik's iconography with šajkačas (Serbs' military caps), cockades, curved knives", who were beating the detainees one by one after their getting off the truck and thus him as well. On that occasion, Nedim Bišćević heard Kajtez Daniluško saying "Hold him, he's Fajko Bišćević's son". The witness Nedim Bišćević recalls that, supposing he himself was in question, he got scared and right after that he saw Daniluško, Atlija Milan and Šlez Slaviša beating in the grass his brother Haris kicking him, among other things, with boots, for which reason blood was running from Haris's nose, mouth and ears. Thereupon they singled out a group of six, including his brother. That was the moment when the witness saw his brother Haris for last time. Nedim Bišćević told that, out of the six men who were singled out, he personally knew five: brother Haris, Mehodić Neron, Jelečević Jasmin, "Šime" and "Apač". The witness Zikret Zukić also testified about the circumstances referred to in this Count of the Indictment. After they had arrived at the Manjača and after three trucks had been parked one after the other in a row, tarpaulins were removed and the detainees were ordered to get off the trucks, to stand by the trucks with their hands against the truck and with their legs spread. Zikret Zukić recalls that, at getting off his truck, a group of men was separated. He knew four or five of them: Haris Bišćević, Bahtić Eniz, aka "Šime", who was a waiter, Mehadžić Neron, aka "Nerko" and a certain Pašić who had a house near Mašinski bridge. Those men were singled out by those who escorted the transport on Sanski Most-Manjača line and the transport included, among others, Kajtez Dane whom the witness personally saw in his immediate vicinity. Zikret Zukić is certain that those people who were singled out did not come into the "Manjača", because he was assigned as "a room trusty" and as such was obliged to know the number of people there and also he personally knew the men singled out, so that he is certain that they did not come into a stable in which 136 men entered. The examined witness Adem Seferović also recalls that on that day he saw Daniluško at getting on the trucks and then at the Manjača when they were "driven out" of the trucks. Adem Seferović also confirmed that, after they had come to the Manjača, a group of men was singled out and that the group was brought back by those trucks and that all the traces of them have been lost; among them, he personally knew Jelečević Jasmin and Neron who was a conductor. The witness Sakib Muhić also confirmed that, on the referenced date, "Apač" Hadžiahmetović, Jasko Jelečević, Fajko Pašić, Neron, Haris Bišćević and Šime were singled out and were later on thrown into a small truck. He heard someone asking "... Is it over, Kajtez?" and Kajtez replied "Not yet."



signs of life“. The witness Enis Šabanović also confirmed that the detainees, after getting out of the trucks, had to stand along the trucks with their hands raised up and their heads bowed. He recalls a comment about him saying that, although he was a doctor, “not even the Geneva Convention will help him”. However, Enis Šabanović was not beaten immediately on getting out of the truck, but he recalls that Dane was getting detainees out then, taking their hands and separated some of them. Enis Šabanović saw that Mehadžić Neron, who was among those singled out, was killed. The witness was assigned that night to visit and give water to men who suffered from diabetes, so that he knows that, among men who were brought to the Manjača together with him, six or seven young men were missing. Finally, the witness Senad Šupuk also recalls that Dane Kajtez, who was standing by the truck, singled out Bišćević Haris, Hadžiahmetović Nedim aka “Apač“, Jelečević Jasmin aka “Jasko“, Mahođić Nerko and Bahtić Šime, a waiter, who were with him in the truck and were in front of him and who were beaten up later on. After Senad Šupuk had got out of the truck, Dane pushed him away into the group which had to go through a gantlet towards the camp. Some time later, a roll-call took place and thus the witness noticed that the men who were singled out were missing. As it can be seen from the above stated, these testimonies exactly concur and do not differ in their essential and substantial elements. It is evident from the Decision of the Municipal Court in Sanski Most on declaring the person Bahtić Ermin dead that the death was established because the said person died – was killed on 6 June 1992 on the Manjača.

In respect of Count 2b of the Indictment, the Court concludes that the accused committed the incriminating actions described in this Count in detail, with referenced changes. The conclusion is based in the first place on the detailed and issue-oriented statements of the witnesses Ilijaz Mehmedović, Mehmed Mujagić, Adem Seferović and Ejub Dedić. The witness Ilijaz Mehmedović states that he remembers well the accused Kovačević from the time of the deportation of detainees from the “Betonirka“ camp to the Manjača, which took place on 11 June 1992. Ilijaz Mehmedović recalls that on that occasion the accused was standing near the exit door, when in front of the “Betonirka“ came a truck which had already been crammed with people and only to receive six more men, the witness himself being among them. Ilijaz Mehmedović remembers well the accused saying “So, you’ve had a good time here. We’ll be going camping now a bit“. The truck was escorted by a car. The witness does not know who came in that car which escorted the truck with the detainees. However he remembers that, after they had been brought to the Manjača and at getting out of the truck, he saw the accused Kovačević and Krunić Milorad-Mića. The getting off the truck was followed up by the beating of detainees in which the accused Kovačević took part as well. Ilijaz

Mehmedović especially underlines that he remembers the accused as having beaten up Dedić Ejub aka Vuk. The witness Mehmed Mujagić also stated that, on 11 June 1992, a truck which came to take detainees of the Sports Hall and drive them off, including himself, his brother Elvir, Čapi Topalović and a number of men whom the witness lists by their names, ???started upon the embarking of the detainees and stopped later on in front of the "Betonirka" when Dedić Ejub got into it. Mehmed Mujagić recalls that he saw Kajtez Daniluško who came into the "Betonirka" complex and met with Mićo Krunic, the former policeman. Upon coming to the Manjača, Mehmed Mujagić saw the accused on the right-hand side of the truck and, behind him. Mićo Krunic who was holding a notebook calling the roll. Upon getting off the truck, the detainees who were called by name were beaten up with batons. Topalović Čapi jumped out of the truck, but Kajtez Daniluško started following and beating him, together with another person, in which process a muffled sound of boot stumps could be heard. As a result of such beating Čapi moaned so loud that, as the witness said, "Manjača echoed back his moaning". He heard Kajtez cursing Čapi's mother and then, after they beat him up, he heard Kajtez, who was standing a meter or a meter and a half away from the witness on the right hand side, saying to the other man "Take his legs and let's throw him in". They did so. From that point in time, Topalović Čapi has been unaccounted for, as has been the case with other five detainees who were not called to get off the truck. They remained on the truck and among them, according to the memory of the witness, were his father's brother Rufad Mujagić, two nephews by the family name Rekić, a certain Tofo who lived in Otoke and a certain Miđo Haso Topalović's brother in law. The Mehmed Mujagić further stated that, at getting off the truck, he was struck by Kajtez Daniluško whom this witness knew from before because they attended the same school, "Hasan Kikić" Primary School. They, as the witness says, would greet each other whenever they met in town before the war. The witness Adem Seferović, who was brought together with other detainees from the "Betonirika" camp to the Manjača on 6 June 1992, said that, on each occasion of bringing detainees to the Manjača, a number of people were returned. Čapi was among those returned and this took place on 11 June. The testimonies of the said witnesses are entirely consistent with the testimony of the witness-injured party Ejub Dedić who was also a detainee of the "Betonirka" camp. According to his testimony, on 11 June 1992, following the roll-call, detainees whose names were called boarded the truck which they reached by going through a gantlet and being beaten all the way. On that occasion, Daniluško singled out Ejub Dedić and cursed his Balija's mother describing him as "a supplier of Alija's soldiers". Ten, together with other two policemen Daniluško started to beat him, whereupon they threw him into a truck, closed the truck and spread a



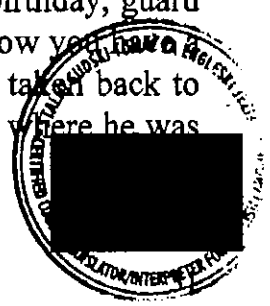
tarpaulin in such a way that the detainees hardly had any fresh air to breath. On arriving at the Manjača, the tarpaulin was removed, a roll-call took place, a gantlet was formed leading to stables, and in the gantlet there were some fifteen people on each side. As soon as detainees would get off the truck they were beaten all the time as they were walking along the gantlet. On his getting off the truck, Ejub Dedić saw the accused who, together with other three men, escorted the truck; the detainees saw that by pushing the tarpaulin aside and peeping from the truck. Thus, they saw there, as an escort, a police car with the accused in together with three more men clad in camouflage uniforms. The car was traveling at the distance of five or six meters away from the truck. Ejub Dedić further stated that in the truck were detainees from the "Betonirka", with him personally among them, and also from other camps (Dvorana and Krinks). The truck was full of detainees and they all came to the Manjača. However, six men did not enter the Manjača camp. Those were the people who were returned from Manjača as Ejub Dedić learnt later on. From that time they have been unaccounted for. In his testimony given before the BiH Prosecutor's Office, Ejub Dedić said that Dane was the first one in the gantlet which was formed at the Manjača. The witness's name was among the first called as he was among the last to board the truck, so that he received beating at going through the gantlet both from the accused and from the others. In the courtroom, Ejub Dedić recognized the accused, saying that it is a man who gave him hard time and who was beating him the most. Indeed, Ejub Dedić, in his first testimony given before the Prosecutor's Office stated that it would be difficult for him to recognize the person who was beating him the most, and whose name was Dane. Ejub Dedić did not recognize him, even after the Prosecutor had presented some photographs to him. However, at giving his first statement, the witness described Kajtez Daniluško as a person 168-170 cm tall, i.e. as a person of an average height, a bit "plump", with neatly-clipped beard. During his giving the testimony before the Court, Ejub Dedić states that he is, now that he sees him, "a million percent certain" that he is the man who was beating him the most.

In Count 2b of the Indictment, the Court, without violating the identity of the Indictment and taking into account the testimonies of the concerned witnesses, adapted the factual description in the part in which it failed to precisely state the time (whether at getting on or off the truck, or on both occasions) and the way in which the accused beat up Dedić Ejub (that it was, as the Indictments reads, "with his legs and fists all over his body"). The Court was not able to reliably establish these facts and also those in respect of the criminal actions of beating up a certain Topalović aka "Ćapi" (whether the accused committed those actions together with Krunić Milorad aka Mićo or with a third person).



For these reasons the Court left out the part which refers to Krunić Milorad, as well. On the other hand, all the other facts related to this Count of the Indictment were undoubtedly established. Such conclusion of the Court is based, in the first place, on the above testimony of Mehmed Mujagić who, at the main trial, vividly described and precisely stated that he saw Kovačević Nikola and one more person beating Topalović. Mehmed Mujagić also said that he did not see but did hear the accused ordering that he (accused) and the other person take hold of Topalović's legs and throw him into the truck, whereupon a muffled sound of a blow was heard who's sound reminded of a sack of load thrown on a board. Mehmed Mujagić emphatically confirmed that he heard Kajtez's voice issuing that order, that he was certainly able to hear it as all of that was happening at the distance of a meter to a meter and a half away from him. Mehmed Mujagić is sure that the accused ordered that, because he knew him well at that time and he was able to recognize his voice with certainty.

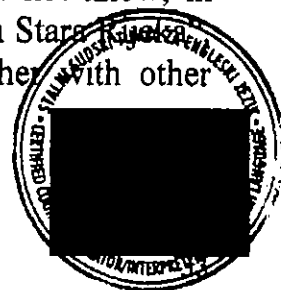
With regard to Count 2c of the Indictment, Ismet Kolaković stated that he was imprisoned in the "Betonirka" camp, from 2 July 1992 until 7 July, when they called out the names of 66 prisoners from three garages in Betonirka and loaded them on a truck, among them the witness too. After the truck had left "Betonirka", they arrived in front of the sports hall in Sanski Most, where they waited for the prisoners from the sports hall to be loaded on trucks and transported to Manjača. When they arrived at Manjača and got off the trucks, in front of the entrance gate, they realised that there were 22 dead men in the truck in which he was transported. They had suffocated in the truck due to lack of air and exhaustion. The police officers who were on the back side of the truck, on the outside, would not allow the prisoners to get some air. The witness Ismet Kolaković and another three young men, Salahudin Čehajić, Samir Čehajić, and another young man whose name he did not know, unloaded the suffocated prisoners from the truck to the area in front of the entrance gate to Manjača, and then they loaded them back on the truck again. Witness Faruk Botonjić testified that he saw Daniluško Kajtez with one Dragan, aka Gerber, in front of the garage on 7 July, when a group of prisoners was taken away from Betonirka to Manjača. Faruk Botonjić was in the garage, and he would peep from there together with other prisoners to see what was going on outside, while other prisoners were called out and loaded on a truck, and the accused stood by the truck. Witness Rufad Zukić was also imprisoned in Betonirka and he testified that on 7 July, on his daughter's 6th birthday, guard Lazo opened the door and told him to come out, saying: "We know you have a rifle, your daughter admitted that." After that Rufad Zukić was taken back to the garage, and then out again and to the offices of "Betonirka", where he was



brutally beaten up, and then, after a while, he was called to come out again. On his way out, he saw a truck, which he was told to get on. Rufad Zukić got first on the truck. Rufad Zukić remembers that he barely managed to get on, as it was rather high and he was beaten "almost to death". Those who got on first would sit down in the truck, but there was not enough room for those who got on afterwards, so they had to stand. A man from Stara Rijeka whose name was Vinko died at witness's feet. At that time, when they got to Manjača and when he somehow managed to come out stepping over the people who remained lying, he did not know that those were dead, he thought that they were only exhausted. When Rufad Zukić got off the truck, he passed out, and after he regained consciousness, he saw, as he said, an image that imprinted on his mind - his first neighbors, Biogradlija, Muhamed Kromolić and his sons Mišo and Adem, on a trailer truck. Among the people who suffocated on that occasion and who he had known personally, he remembered the Muhić brothers, Nedžad and Dževad, Kemo Talić, Adem Jakupović, Izet Mehić, one neighbour Ziko, police officer from Poljaci, whose name he could not recall, a Kamić, and one Vinko, who died at his feet. Witness Redžep Zukić, who was imprisoned in the sports hall from 27 May until 7 July, also confirmed that next to the trailer truck he was transported in, there was a truck in which people suffocated.

Besides eyewitnesses, who were prisoners of the camp in Sanski Most, another three witnesses testified indirectly about the circumstance surrounding the suffocation of the people while they were transported to Manjača on 7 July 1992. One of them is Dragan Majkić. He was the Chief of Public Security Station of Sanski Most in 1992, dismissed on 1 May and replaced by Mirko Vručinić, a member of the Crisis Staff (Serb Municipality of Sanski Most). Dragan Majkić testified that one day of July, the persons who were apprehended in Sanski Most and imprisoned in different buildings, were loaded on trucks and transferred to Manjača. That was the largest transferring of people to Manjača and it is known that 27 or 28 of them suffocated during the transport. He heard that the deceased were transported back to town, i.e. that they were transported and buried at the mouth of the River Dabar. Namely, on that day, having been called by the commander, Dragan Majkić was acting as a duty shift leader in the Sanski Most Police Station (the witness discharged this duty occasionally after he had been dismissed, in the period of three months while he was unemployed, i.e. "unassigned"). At around 1 or 2 o'clock after midnight, police officers came with a list of people, saying that those were people who suffocated during transport, so they were taken back, as they did not want to admit them to Manjača. Dragan Majkić looked up the list to check if any of the names from the list sounded familiar to him. Having seen that it was a list of 27 or 28 men, some of whom he knew, he said to the police

officers to go and see the commander. He did not know what happened next. Dragan Majkić recalled that there were four or five names of people on the list who he knew. Among them were the President of the Minor Offence Court, Muhić, and his brother, who had worked in a firehouse. Other witnesses who testified indirectly about the suffocation incident are Boško Grubiša, an MD, who was the Sanski Most Health Centre Manager as of 4 May 1992, and Stanko Erceg, an MD, who worked as a physician in the Health Centre in 1992. They confirmed that, sometime in the summer of 1992, they signed a list of people who, as they were told, had suffocated during transport to Manjača. Neither Dr Grubiša, nor Dr Erceg conducted scene investigation, that is, saw the bodies of the people they concluded to have died of asphyxiation. Boško Grubiša explained that he signed the document in question, which underneath the list contained "Following the proposal of the Court of Sanski Most and the Secretariat of Interior of Sanski Most, scene investigation was conducted regarding the above named persons, by the panel of physicians consisting of Dr Boško Grubiša and Dr Stanko Erceg, and we established that the above-named persons died of asphyxia", despite the fact that no forensic investigation had actually been conducted, because Boško Banjac, who brought the list, imparted to him that such was the order of the Crisis Staff. Stanko Erceg signed that same document without conducting forensic investigation after the Manager, Grubiša, practically ordered him to sign, having signed the document himself first. Both witnesses confirmed that the text in the upper right-hand corner of the document, which reads "List of persons from Sanski Most who suffocated, having been packed into a transport-truck on the way from prison in S. Most to the Manjača camp on 7 July 1992", was not there when they signed the document. In relation to the text cited, witness Adil Drganović (who testified as a prosecution witness, and then as a defense witness) confirmed that he personally wrote that portion of the text with his own hand on one of the copies he found, then certified it, for the purpose of sending the document to the investigators in The Hague. At the time when he wrote and certified the text, everything else that the document contains now was also then contained in the document, except for his handwriting. When looking at exhibit T44, the Court ascertains that, from among the persons Zukić Rufad recalled to have suffocated on that day in the transport: the Muhić brothers, Nedžad and Dževad, Kemo Talić, Adem Jakupović, Izet Mehić, one Ziko, one Kamić, and one Vinko, the list contains the names of Nedžad Muhić, Dževad Muhić, Kemo Talić as well as Zijad Mujadžić, Fadil Kamić and Vinko Matanović. It is reasonable to assume that they are "one Zika, Kamić and Vinko" that is, the persons whose full names the witness did not know; in relation to "Vinko", the witness stated that he was "a man from Stara Kapača" and the body identification record (exhibit introduced together with other

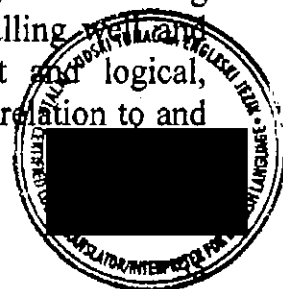


identification records and reports on DNA analysis under number 74T) shows that Vinko Matanović was resident in Sanski Most, village of Stara Rijeka. With regard to the identification of the victims, by inspecting the Record of Exhumation, Autopsy and Identification of the Cantonal Court of Bihać number KRI-44/01 dated 24 September 2001, the Court ascertained that 19 male bodies were exhumed from the mass grave "Ušće Dabar" in Sanski Most, who had died a violent death, and the DNA analysis of the remains helped to identify the following persons: Jasmin Bajraktarević, Adam Delić, Salahudin Durmišević, Mirsad Halimović, Hivzo Hodžić, Ismet Hodžić, Sevdaga Hukanović, Adem Jakupović, Ramo Jusić, Fadil Kamić, Vinko Matanović, Besim Materić, Izet Mehić, Josip Mlinar, Dževad Muhić, Nedžad Muhić, Zijad Mujadžić, Muharem Pršić and Kemo Talić. The other exhibits from the case file relating to the exhumation of 17 July 2001, autopsy and identification of the bodies located in the Ušće-Dabar mass grave and the photographic documentation enclosed with it also indicate that at least nineteen persons suffocated on 7 July 1992 during transport of persons to the Manjača camp, who were then taken back to Sanski Most and whose bodies were exhumed from the "Ušće Dabar" mass grave.

Count 2d of the Indictment is closely related to the actions under Count 2(c) in terms of time and place of the perpetration of the criminal actions (the same day - 7 July 1992 in Manjača). The Courts ascertain that the accused and others from the armed escort did not hand over the prisoners who attempted to help the people who were suffocating to the camp administration, as stated above in relation to Count 2(c). That conclusion arises primarily from the testimony of eyewitnesses Nedim Biščević, Ismet Kolaković, Redžep Zukić and Rufad Zukić. The testimony of Nedim Biščević is particularly convincing. Namely, as previously stated in terms of the evaluation of evidence pertaining to the criminal actions under Count 2(a) of the Verdict, Nedim Biščević was a prisoner in the camp in the high School Centre in Sanski Most, he was transported to Manjača on an earlier occasion, while his brother Edin remained in the High School Centre that day. It means that they were not transported to Manjača on the same day. Nedim Biščević recalled having seen Daniluško Kajtez in Manjača on 7 July 1992. On that day, Nedim Biščević and some other prisoners were on their way back from earthing up potatoes in the fields that were about a kilometre away from the camp. Since they were earthing up potatoes at the most distant plough field, they were the last to enter the compound of Manjača and went to have lunch. At that moment, they saw to their right three "Agro-komerc" trailer trucks and another truck arriving, but they had to finish up their lunch then and go to the barn. As the barn where Nedim Biščević was placed, was the closest to the "kitchen", they were able to hear a confused noise of voices, yelling and screaming, and he was told after a

while by his neighbour Selman Tica: "Look, there is Edo...at the entrance". Since the prisoners had to keep quiet "when the multi-coloured came in", otherwise they would be beaten if any voices were heard coming from the barn, Nedim Bišćević then crawled from the place where he was to the end of the barn and saw in between the boards a pile of people who had suffocated, who were outside on the grass and who he realised had suffocated as, being a medical professional, he was able to recognise the symptoms of rigor mortis. Then Nedim Bišćević saw his brother Edo pouring some water on five or six men and trying to resuscitate them. Behind them, leaned against the truck, was Daniluško Kajtez. Nedim Bišćević remembers that at that moment when he saw his brother for the first time, Edo was wearing jeans, sneakers and he had a stained T-shirt and the "horse club" emblem, but after a while, when he peeped again, Edo was wearing a black T-shirt. That was the last time Nedim Bišćević saw his twin brother Edin Bišćević. Witness Ismet Kolaković recalls that son of Fajko Bišćević was trying to help those who had suffocated, together with other three young men, after which the prisoners were lined up to enter the camp, but three of them, Edin Bišćević, Vicko Mauzer and Enver Burnić, were separated and taken back to the truck together with the dead. Witness Redžep Zukić also mentions in his testimony that the son of Fajko Bišćević, who was either a dentist or a physician, was trying to help those people who were suffocating and after that the others had never seen him again. Then, witness Rufad Zukić also mentions that some people were taken back from Manjača, together with those who had already been dead. They had been unaccounted for since, as Rufad Zukić stated "They neither got off in Manjača, nor were they brought back to Sanski Most subsequently." Witness Mira Mauzner indirectly confirmed that her husband, Ventislav Mauzner, was transported from "Betonirka" to Manjača on 7 July 1992, which she found out after she had inquired into his destiny. She further heard that her husband, whose destiny is still unknown, had carried out the dead bodies from the truck to load them back on the truck again subsequently with another two or four men, and they themselves got back on the truck together with the dead.

Taking the above testimonies together with a global view of the circumstances and with the fact that Nedim Bišćević had been brought to Manjača on an earlier occasion and he had already been there for a while, the Court concludes that it is completely normal and acceptable that all Nedim Bišćević attention was directed and focused precisely to the events relating to his twin brother, even more so as they hadn't seen each other and were without news of one another for some time. The Court has found that his testimony about having seen Daniluško Kajtez in the vicinity of his brother and recalling consistently all of those moments is reasonable to expect and logical, considering the relevance that everything that was going on in relation to and



in immediate vicinity of his brother, being a specific stimulus, bore to the selective attention of this witness. It is also reasonable to expect that other witnesses, who were brought to Manjača on that very day, would have more general and dispersive attention. They neither saw nor remember all of the details pertaining to the criminal actions under this Count, precisely because they were in a position themselves where everything they saw around them, after the trucks had been unloaded, was unknown and new to them, while they were in fear for their own destiny.

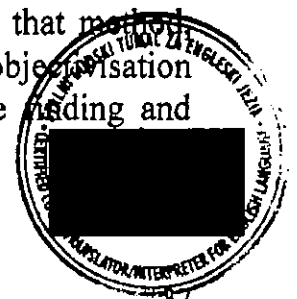
In addition to these testimonies, the documentary evidence admitted in the case file, such as the Decision of the Municipal Court of Sanski Most declaring Ventislav Mauzner and Enver Burnić dead, also points to the fact that, on the same day when the prisoners who suffocated during transport to the Manjača camp were loaded back on the truck, around six other prisoners, inter alia Edin Bišćević, Ventislav Mauzner and Enver Burnić, were taken in an unknown direction and have been unaccounted for since.

In relation to the testimonies of the witnesses who personally went through different camps in the area of Sanski Most and the Manjača camp, the Court was mindful of the circumstance that those were persons who were exposed to different forms of physical and mental torture themselves, that in the critical moments they were in constant fear for their own safety and destiny., Therefore, one may reasonably expect that the statements are not consistent in the smallest details, but it is important that they are consistent in their essential and substantial elements, both among themselves, among the different witnesses and that statements given by individual witnesses at different stages of the proceedings are also consistent.

In addition to that and in relation to the criminal act of imprisonment, it is important to point out that all of the prosecution witnesses, who were deprived of liberty and imprisoned in different camps in the territory of Sanski Most in the critical period, confirmed personally before the court that they were arrested, brought in different facilities and then held in captivity for a while. That happened without any proceedings having been conducted, or any decision served on them regarding the deprivation of liberty or imprisonment, or without being brought before the court or any other competent authority. Some of the witnesses, e.g. witness Ilijaz Mehmedović did mention though, that on the occasion of his interrogation, while he was imprisoned in "Betonirka", he was escorted together with a group of prisoners for an interrogation to the Public Security Station and a record of the interrogation was composed, which he even signed. However, Ilijaz Mehmedović added that he signed it as it was "logical that he had to sign it" given the circumstances in

which he was interrogated, without having read the record. A few witnesses, among them Ismet Kolaković stated that after their imprisonment in the camp in Manjača, they were brought before the court in Batkovići, Bijeljina. However, witness Ismet Kolaković stated that the civilians captured at that time were treated as military personnel and that he had been under investigation for one month, but it had never lead to any conviction. Testimonies like that confirm beyond any doubt that the imprisoned civilians were deprived of liberty and confined in different camps in the area of Sanski Most, as well as in the Manjača camp, without any proceedings provided for by the law, after which decisions of competent authorities would possibly follow depriving them of liberty or imprisoning them. Therefore, the essential element of the criminal offence of imprisonment contrary to the fundamental rules of international law has been met, as provided for under Article 172 (1) (e).

With regard to the criminal actions of taking away of prisoners to the Manjača camp, their beating and disappearance of a certain number of persons after their arrival in Manjača, the Court had in mind the handwritten letter of the accused Kovačević, addressed to Vlado Vrkeš, a member of the Crisis Staff of the Serb Municipality of Sanski Most, wherein Kovačević mentions several times his involvement in crimes in the "Sanski Most movement" and writes, inter alia, the following: "You know that on two occasions I liquidated 12 men in Manjača together with a few other people...". Also at the very end of the letter he says: "Detainees from different towns who are with me and who also killed Balijas and Ustashas are being released and assisted by their municipalities..." The Court, with regard to this letter, also thoroughly analysed the finding and opinion of the forensic graphologist, Ramiz Čaldarević, number KT-RZ-31/05 of 20 November 2005, in which the Court placed its full trust as being an expert, objective and a finding and opinion based on the professional code. According to the finding and opinion, presented in detail by the expert, which he stood by entirely at the main trial, it is indisputable that Nikola Kovačević wrote the entire handwritten content of the letter in question by his own hand. The letter begins with "Hello, brother Vlado and other gentlemen...", and ends with his abbreviated signature "D. Kajtez". The expert witness explained at the main trial that he came to that conclusion by analysing and comparing the handwriting of the disputed letter with an undisputed handwriting of the accused that the expert had available, applying the so-called graph method. This method is generally applied in the procedure for examination of handwritings and signatures and, in addition to that method, the expert witness applied the method of the so-called graphic objectivisation of strokes, as a supplement to the graph method. Besides the finding and



opinion, the expert witness also presented at the main trial the photographic documentation made in the procedure of drafting the finding. The accused himself confirmed subsequently at the main trial while giving evidence as a witness that he himself wrote the letter.

The Court thoroughly evaluated the evidence of accused Nikola Kovačević, who confirmed that he was a member of the SOS unit, without specifying the exact time period, but stated that it was in a period of one month, a month and a half, sometime, as he stated, between spring, perhaps through May or June 1992. According to him, he was then "forced out," of SOS by Dušan Šaović Nunjo, due to disagreement with the latter. While giving evidence, the accused also confirmed that he participated in the arrest of Adil Draganović. He also stated that he came by the Sports Hall because he wanted to find his friend Samir Zukić, aka "Bijeli", and possibly help him. He also came by "Betonirka" to take home for a bath the prisoner Enver Burnić, former police station commander. However, his intervention in leaving Burnić at home did not bear any fruit because Martić, who was a guard in "Betonirka", objected to that. The accused further states that he intervened to "let the people go home" on another occasion without being specific as to how and when. For that reason he had a conflict with Nunja, which leads the Court to a conclusion that the accused enjoyed a position of sufficient authority in the then government structure to enable him to think of himself as being in a position to help some of the arrested and imprisoned civilians. The accused was assertive, with regard to the taking away of civilians to Manjača, in saying that he had never participated in a convoy escort and, in relation to the content of the letter he addressed to Vlado Vrkeš, wherein he stated that he had participated in the liquidation of several persons in Manjača, the accused stated that he wrote the letter under certain psychological pressure, while he was in custody for a crime he did not commit. His intention was thus to blackmail Vlado Vrkeš and bring about his release from custody. It is obvious from the analysis of the accused's testimony that the accused does not deny that he was an SOS member, that he came by Betonirka on one occasion, as well as by the Sports Hall, and that he wrote a letter wherein he stated that he participated in the killings in Manjača. In his testimony, the accused only denied having committed the aforementioned crimes. However he didn't present to the Court any evidence in that direction, which would raise doubts about the allegations under Count 1 through 2(d) of the Indictment. He vaguely testified that he did not remember where exactly he was in the critical period; precisely when and how long he was involved as a former JNA member at the front in Slavonia; how long it was before he joined the SOS unit, where he also allegedly spent "a month -

month and a half". Such testimony of the accused is unconvincing and unacceptable for the Court.

The Court, when evaluating evidence, was also mindful of other pieces of evidence presented at the main trial, without, however, giving them any particular importance. The Court also did not find it necessary to analyse them in detail, as they did not bear much relevance to the final establishing of facts and the conclusions which the Court reached based on the evidence whose evaluation was reasoned in the Verdict.

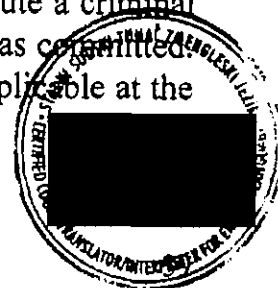
Application of substantive law

As to the substantive law to be applied, considering the time of the perpetration of the criminal offence, the Court accepted the legal qualification of the prosecution and found the accused guilty of the criminal offence of Crimes against Humanity in violation of Article 172 (1)(h) as read with item (a), (e), (f) and (k) in conjunction with Article 180 (1) of the Criminal Code of Bosnia and Herzegovina.

With regard to the application of the substantive law in this criminal case, the Court deems relevant the following two legal principles: the principle of legality, based on which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, was not defined as a criminal offence by law or international law, and for which a punishment was not prescribed by law, (Article 3 of the BiH CC) and the principle of time application of the criminal code, pursuant to which the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence, and if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied (Article 4 of the BiH CC).

The principle of legality has also been provided for under Article 7 (1) of the European Convention on the Human Rights and Fundamental Freedoms (hereinafter: ECHR) and Article 15 (1) of the International Covenant on Civil and Political Rights (ICCPR).

Article 7 (1) of the ECHR reads "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the



time the criminal offence was committed.” On the other side Article 15 (1) of the ICCPR reads “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby”.

These provisions, therefore, prohibit that a heavier penalty be imposed, without providing for a mandatory application of a more lenient law to the perpetrators, in relation to the punishment that was applied at the time of perpetration of the criminal offence.

Nevertheless, Article 7 (2) of the ECHR establishes that “This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations”. On the other hand, Article 15 (2) of the ICCPR reads “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations”.

Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR contain provisions that are exceptions in relation to the rule established, respectively, by Article 7 (1) of the ECHR and Article 15 (1) of the ICCPR.

Finally, the same exception is contained in Article 4(a) of the BiH CC which stipulates that Articles 3 and 4 of the BiH CC 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 7 (2) of the ECHR and Article 15 (2) of the ICCPR were actually taken over, thus providing for an exceptional deviation from the rule under Article 4 of the BiH CC, as well as deviation from the mandatory application of a more lenient law for acts that are criminal according to international law. This is precisely the case in these proceedings against the accused, as this is the incrimination that includes the violation of the rules of international law. This is the standpoint taken by the Appellate Division of the Court of BiH.

The State of Bosnia and Herzegovina, as a successor of former Yugoslavia, ratified the ECHR and the ICCPR. Therefore, these treaties are binding on the

State of Bosnia and Herzegovina and they must be applicable by the Bosnian authorities, including the Courts. Therefore, Article 4a of the CC of BiH is only a domestic legal reminder, as it would not be necessary for the application of these treaties. For the same reason, all the Bosnian courts are bound by the mentioned treaties and a provision like Article 4a of the CC of BiH is not needed for its application.

Article 172 of the BiH CC provides for the criminal offence of Crimes against Humanity, which are defined by Article 5 of the ICTY Statute as particular crimes, „when committed in armed conflict, whether international or internal in character, and directed against any civilian population.” At the time of the perpetration of the crimes, Crimes against Humanity were not explicitly provided for by the criminal legislation in Bosnia and Herzegovina.

The customary status with regard to punishability of crimes against humanity and attributing individual criminal responsibility for their perpetration in 1992, has been confirmed by the UN General Secretariat⁸, International Law Commission⁹, as well as by the jurisprudence of the ICTY and the International Criminal Tribunal for Ruanda (ICTR)¹⁰. These institutions have concluded that punishing crimes against humanity is a peremptory norm of international law or jus cogens¹¹, which is why it is indisputable that in 1992, Crimes against Humanity were a part of customary international law. That conclusion was confirmed by the Study on Customary International Humanitarian Law¹² of the International Committee of Red Cross. According to that Study “serious violations of international humanitarian law constitute war crimes” (Rule 156), “individuals are criminally responsible for war crimes they commit” (Rule 151) and “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects” (Rule 158).

⁸ UNGA Report pertaining to paragraph 2 of the Security Council Resolution 808, dated 3 May 1993, paragraphs 34-35 and 47-48

⁹ International Law Commission, Commentary to the Draft Code on the Crimes against the Peace and Security of Mankind (1996), Article 18.

¹⁰ ICTY, Appeals Chamber, *Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 141; ICTY, Trial Chamber, *Tadić* Judgment of 7 May 1997, paragraph 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, paragraph 563-577.

¹¹ International Law Commission, Commentary on the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26

¹² Jean-Marie Henchaerts and Louise Doswald-Beck; Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005



Article 4(a) of the BiH CC is about “general principles of international law”. Article 7 (2) of the ECHR is about “general principles of law recognized by civilised nations” and Article 15 (2) of the ICCPR is about “general principles of law recognized by the community of nations”. As neither international law nor ECHR or ICCPR recognise a term identical to that one used by Article 4a of the CC of BiH, the used phrase is then a combination of the “principles of international law”, as recognised by the UN General Assembly and International Law Commission on the one hand, and the “general principles of the rights recognised by a community of nations” as recognised by the Statute of the International Court of Justice and Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR on the other hand.

The principles of international law as recognised by the Resolution of the General Assembly 95(I) (1946) and International Law Commission (1950) refer to the “Charter and Judgment of the Nuremberg Tribunal”, therefore, to crimes against humanity as well. Principle VI(c) of the “Principles of international law recognised by the Nuremberg Tribunal Charter and Judgment” adopted by the Commission in 1950 and submitted to the General Assembly, stipulates punishment for crimes against humanity as a crime under international law. Principle I provides the following: “Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment”. Principle II provides: “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law”.

The jurisprudence of the European Court of Human Rights has emphasised the application of the provision of paragraph 2 of Article 7 with reference to the application of paragraph 1 of Article 7 of the ECHR in several similar cases¹³ where the very existence and punishability of Crimes against Humanity as a criminal offence was under discussion. In the *Kolk and Kislyiy versus Estonia* case, European Court “recalls that the interpretation and application of the domestic law is in principle within the jurisdiction of the domestic court...¹⁴, which is applicable also when domestic laws refer to the rules of general international law or treaties.

Therefore, the criminal offence of Crimes against Humanity may in any case be subsumed under the “general principles of international law” referred to in

¹³ See e.g. ECHR Judgment in the *Naletilić v. Hrvatska* case, 51891/99 and Judgment

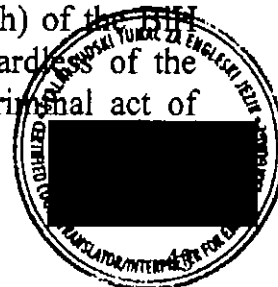
¹⁴ See: *Papon versus France* no. 54210/00, ECRH 2001-XII and *Touvier versus France*, no. 29420/95, decision of the Commission dated 13 January 1997.

Article 4(a) of the BiH CC. Hence, regardless of the point of view; that of the international customary law or that of the "principles of international law", it is indisputable that Crimes against Humanity did qualify as a criminal offence in the critical period, that is, that the principle of legality has been met. One should bear in mind, however, the facts that the criminal actions listed under Article 172 of the BiH CC may also be found in the code that was in force in the relevant time period (at the time of perpetration of the offence), specifically in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of the SFRY CC, i.e. that the charges were punishable under the then applicable criminal code. Finally, with regard to Article 7, paragraph 1 of the ECHR, the Court notes that the application of Article 4(a) is additionally justified by the fact that the punishment imposed is in any case more lenient than death penalty, which was applicable at the time of perpetration of the criminal offence, which satisfies the application of the principle of time applicability of the criminal code, that is, the application of "the law that is more lenient for the perpetrator."

The Court has found proven that the accused's criminal acts contain the elements necessary for the existence of the criminal offence of **persecution** as crimes against humanity:

1. that the perpetrator committed a discriminatory act or omission;
2. that the act or omission deprived or infringed on a basic right defined by international customary or treaty law;
3. that the perpetrator committed the act or omission intending to discriminate on racial, religious, or political grounds;
4. that the general requirements have been met for the Crimes against Humanity in violation of Article 172 of the BiH CC.

The accused committed the aforementioned criminal offence with direct intent, as it arises from the evidence presented in the proceedings that, at the time of perpetration of the criminal offence, the accused was aware that his acts violated the principles of international law and he obviously wanted to bring about a prohibited consequence with his acts. Therefore, regardless of the fact that the accused committed several different acts (murder, imprisonment, torture, persecution, and other inhumane acts similar in their nature), as well as several identical acts (murder, imprisonment, torture, persecution of several persons at different time periods and on several occasions), the Court has found that this particular case is a matter of a single criminal offence, Crimes against Humanity - persecution in violation of Article 172 (1)(h) of the BiH CC. In fact, this is a matter of a single criminal offence regardless of the number and diversity of the criminal acts perpetrated. The criminal act of



persecution contains all the elements of the criminal acts of murder, imprisonment, torture, and other inhumane acts (Article 172 (1) items (a), (e), (f) and (k)). Such is the interpretation of ICTY too. According to ICTY jurisprudence, in the case of perpetration of the criminal act of persecution in connection with the act of murder and other inhumane acts, the elements of the criminal act of murder and other inhumane acts are contained in the criminal act of persecution. The ICTY Appeals Chamber concluded that the offence of persecution is more specific than the offences of murder and inhumane acts as crimes against humanity because, in addition to the facts necessary to prove murder and inhumane acts, persecution requires the proof of a materially distinct element of a discriminatory intent in the commission of the act. The same result was reached by the Appeals Chamber in *Krnjelac*, which concluded that "the crime of persecution in the form of inhumane acts subsumes the crime against humanity of inhumane acts..." The prosecution presented numerous arguments stating that the criminal offence of persecution may be committed in many other ways, not only through murder and inhumane acts. This objection is true; however, completely irrelevant. When persecution charges are based on murder and inhumane acts and such charges are proven, the prosecution need not prove any additional facts to achieve the conviction for murder or inhumane acts. The existence of evidence that the accused committed persecution through murder and inhumane acts implies by definition that the perpetration of murder and inhumane acts has been proved under Article 5 (ICTY Statute). The crime of persecution then subsumes those crimes"¹⁵.

In view of the proved facts and the consequence brought about, as well as the causal connection among them, the Court has found the accused guilty of the criminal offence of Crimes against Humanity in violation of Article 172 (1)(h) in conjunction with item (a), (e), (f) and (k) of the Criminal Code of Bosnia and Herzegovina, as read with Article 180 (1) of the same code, and sentenced him to imprisonment for a term of 12 /twelve/ years for the aforementioned criminal act, deeming that this type of criminal sanction is appropriate to the degree of the threat that the crime posed to the society, to the gravity of the crime, to the accused as its perpetrator and that the sanction will achieve the general purpose of the criminal sanctions and the purpose of punishment in terms of the provision of Article 39 of the BiH CC.

When meeting out the punishment, the Court took into account as mitigating circumstances the facts that, at the time of perpetration of the offence, the accused was relatively young, he did not enjoy any command or any other

¹⁵ See Judgment of the ICTY Appeals Chamber in the *Krstić case*, paragraph 231-232

important role in the chain of responsibility, he behaved well in court, he is a family man and particularly he turned in to the judicial authorities of Bosnia and Herzegovina voluntarily. The Court took into account as an aggravating circumstance the fact that several different acts were committed on several occasions, whereby he displayed certain persistence in committing the crimes.

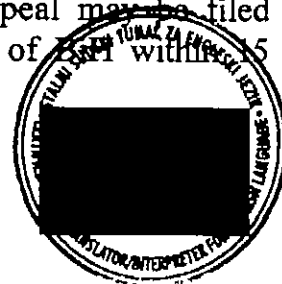
Pursuant to Article 56 of the BiH CC, the time spent in prison as of 10 October 2005 onwards will be calculated into the sentence imposed on him and, pursuant to Article 188 (4) of the BiH CPC, the accused is exempted from the duty to pay for the costs of the criminal proceedings, as he is currently in custody and unemployed too. Therefore, the Court is of the opinion that the accused has no means to settle for the above costs.

Deciding on the property claims of the injured parties, pursuant to the provision of Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the Court referred the injured parties Hasan Osmančević and Sadmira Alibegović (who requested property claims) and Suad Šabić, Zikrija Bahtić, Adil Draganović, Ismet Kolaković, Redžep Zukić, Rufad Zukić, Nijaz Halilović, Mehmed Mujagić, Redžo Kurbegović, Zikret Zukić, Adem Seferović, Sakib Muhić, Mirzet Karabeg, Nihad Ključanin, Enis Šabanović, Ejub Dedić, Senad Šupuka and Osman Talić (who might wish to file property claims), to take civil action, given that the establishment of facts in terms of the amount of the property claim would require considerable time, which would prolong the proceedings. Therefore, the Court referred the above persons to take civil action.

**RECORD TAKER
JUDGE
Elvira Begović**

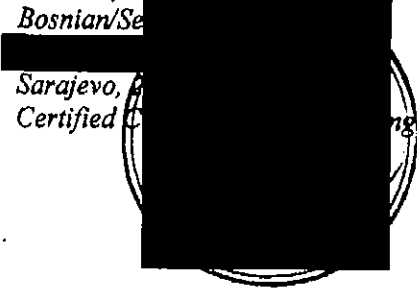
**PRESIDING
Davorin Jukić**

INSTRUCTION ON LEGAL REMEDY: An appeal may be filed against this Verdict to the Appellate Panel of the Court of BiH within 15 /fifteen/ days of the day of receiving the Verdict in writing.



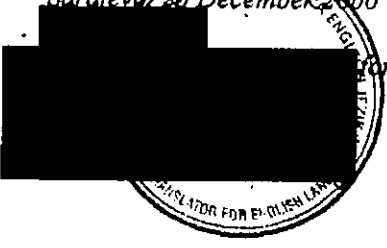
I hereby confirm that this document is a true translation of the original written in
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Sarajevo, 19 December 2006
Certified Court Interpreter for English



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