



Ref. number: X-KR/06/236
Sarajevo, 6 November 2008

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, the Panel comprising Judge Staniša Gluhajić as the Presiding Judge, judges Merja Halme-Korhonen and Georges Reniers, as members of the Panel, in the criminal case against the accused Zdravko Božić et al. for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with sub-paragraphs (a), (d), (e) and (k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: CC of BiH), as read with Article 180(1) of the CC of BiH, all in conjunction with Article 29 of the CC of BiH, upon the Indictment of the Prosecutor's Office of BiH, Ref. number KT-RZ-132/06 dated 13 December 2006, which was confirmed on 21 December 2006 and amended at the main trial of 25 September 2008, having held an oral and public main trial with the public excluded from a part of the trial, in the presence of the accused, their Defense Counsel and the Prosecutor of the Prosecutor's Office of BiH, rendered and on 6 November 2008 publicly pronounced the following

VERDICT

ACCUSED: MLADEN BLAGOJEVIĆ, born on 22 March 1971 in Bratunac, son of Radisav and Milosava, nee Obaškić, married, father of one underage child, literate, of Serb ethnicity, originally from Repovac, BiH citizen, Personal Identification Number /JMB/ 2203971181376, served the army of SFRY in Belgrade 1990 to 1991, previous conviction for Immigration Fraud in violation of Title 18 United States Code Section 1546(a), United States District Court District of Arizona, CR 05-00674-001-PHX-DGC, dated 20 September 2006, sentenced to 12 months imprisonment, sentence suspended for deportation to BiH, arriving in BiH on 15 November 2006; held in custody pursuant to this Court's Decision

I

IS GUILTY

Of the following:

Between 11 and 18 July 1995, as part of a widespread and systematic attack by the military and the police of Republika Srpska targeting the Bosniak civilian population of the UN protected area – Srebrenica enclave, knowing of the attack, as a member of the Military Police Unit of the Bratunac Light Infantry Brigade, he persecuted Bosniak

civilian population on political, national, ethnic, cultural and religious grounds by committing other inhumane acts inasmuch as:

1. On the night of 13/14 July 1995, at Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, while there were several hundred civilian Bosniak men detained in the school, one of the Bosniak men appeared at the window of a room at the school, whereupon, he pointed a Browning machine gun, mounted on a Pintzgauer, at the window at which the Bosniak man appeared and opened fire from it targeting both this man and the other Bosniak men inside the same room, while the bullets hit the window and the wall around the window.

Therefore, in the context of a widespread and systematic attack directed against Bosniak civilian population, knowing of such an attack, he persecuted the civilian population on national, ethnic and religious grounds, committing other inhumane acts

Whereby,

he committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with sub-paragraph (k) of the Criminal Code of Bosnia and Herzegovina, as read with Article 180(1) of the Criminal Code of Bosnia and Herzegovina.

Therefore, pursuant to Article 285 of CPC BiH, applying Articles 39, 42, 48 and 49 of CC BiH, the Court hereby

S E N T E N C E S

him to IMPRISONMENT FOR A TERM OF 7 (SEVEN) YEARS

Pursuant to Article 56 of CC BiH, the time which the accused spent in custody under the decisions of this Court, starting from 17 November 2006 onwards shall be credited towards the pronounced sentence.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused is relieved of the duty to reimburse the costs of the criminal proceedings and fees so they shall be paid from the budget of the Court.

II

Pursuant to Article 284(1)(c) of CPC of BiH, the accused **Mladen Blagojević, whose**

personal details are given in the operative part herein, and the accused persons:

2. ZDRAVKO BOŽIĆ, born on 3 May 1964 in Lašva, Zenica Municipality, son of Trivo and Milica, nee Bencun, Serb by ethnicity, single, completed high school education, indigent, served the army in 1992, previous conviction for Immigration Fraud in violation of Title 18 United States Code Sections 1546(a) and 3238, and perjury in violation of Title 18 United States Code Section 1621(2) by United States District Court District of Arizona, CR 04-00430-00I-PHX-EHC, dated 30 March 2005, sentenced to twelve (12) months imprisonment for each conviction to be served concurrently, then deported from the United States and arrived in BiH on 30 June 2006, held in custody pursuant to this Court's Decision

3. ŽELJKO ZARIĆ, born on 3 October 1973 in Slapašnica, Municipality of Bratunac, son of Radojko and Milenija, nee Jokić, laborer, unemployed, citizen of BiH, Serb ethnicity, Personal Identification Number /JMB/ 0310973181377, ID card No. 06FTB1797, issued by RS MUP, Bratunac, residing at Svetog Save bb Street, Bratunac, previous convictions not known; held in custody pursuant to this Court's Decision, and

4. ZORAN ŽIVANOVIĆ, a.k.a. *Snajper*, born on 29 August 1972 in Ljubovija, son of Jevto and Milosava, nee Vuksić, car mechanic, unemployed, citizen of BiH, of Serb ethnicity, resident of Slapašnica, Bratunac Municipality, Personal Identification Number /JMB/: 2908172774536, ID card No. 05FTA9176, issued by RS MUP, Bratunac, previous convictions not known; held in custody pursuant to this Court's Decision

ARE ACQUITTED OF THE CHARGES

That,

Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović together:

1. On the night of 13/14 July 1995, at Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, guarded, controlled or otherwise provided security at the temporary detention facilities in and around the school using force and the threat of force to contain 2,000 to 3,000 unarmed civilian Bosniak men within the confines of the school and its buildings, the detainees having been captured from a column of Bosniak men that were fleeing from the attack against Srebrenica enclave or had been separated at Potočari from Bosniak women and children, and then had been transported to Bratunac; and, thereby prevented their freedom of movement and deprived them of liberty.

2. On the night of 13/14 July 1995, in and around Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac,

Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, in providing security in and around the school, participated in the mistreatment, beatings, cruel treatment and acts causing terror perpetrated by other VRS and RS MUP members of the Bosnian Serb forces that detained the 2,000 to 3,000 unarmed civilian Bosniak men inside the school and its surrounding area.

3. On 14 July 1995, at Vuk Karadžić Primary School (now known as Branko Radičević School) in Bratunac, Municipality of Bratunac, Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, participated in securing the school against escape by the unlawfully detained civilian Bosniak men by guarding the exterior of the building and the surrounding grounds, whereupon unidentified members of the RS MUP, with the intention to kill, fired at five (5) unidentified detained civilian Bosniak men who were attempting to escape from the confines of the school building with their pistols, thereby depriving them of their lives.

4. On 14 July 1995, at Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, participated in securing the school against escape by the unlawfully detained civilian Bosniak men by guarding the exterior of the building and the surrounding grounds whereupon unidentified members of the VRS, with the intention to kill, shot and unlawfully killed one unidentified detained civilian Bosniak man by automatic gunfire who was attempting to escape from the confines of the school building, thereby depriving him of his life.

5. On 14 July 1995, in Bratunac, Municipality of Bratunac, Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, provided security for the area around Vuk Karadžić Primary School (now know as the Branko Radičević School), while Bosniak men were being coerced out of the school building by members of the VRS and RS MUP personnel and Zoran Živanović, and onto awaiting transport knowing that the civilian Bosniak men were to be transported to other temporary detention facilities in or around the Municipality of Zvornik or otherwise away from Srebrenica enclave, and then they provided security escort for the transportation, and unloading at the destination detention facility, thereby participating in the forcible transfer of the detainees.

6. On 14 July 1995, at Grbavci School, in Orahovac, Municipality of Zvornik, Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, after providing security escort for the transportation of the Bosniak detainees from Bratunac, guarded, controlled, or otherwise provided security at the school gymnasium and the confines of the school playground that contained between 1,000 and 2,500 unarmed civilian Bosniak men that had been transferred there from temporary detention facilities and areas in Bratunac on or about 14 July 1995 and prevented their freedom of movement and deprived them of liberty.

7. On 14 July 1995, at Grbavci School, in Orahovac, Municipality of Zvornik, Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović participated in the

mistreatment, beatings, cruel treatment and acts causing terror perpetrated by other VRS and RS MUP members of the Bosnian Serb forces that detained the 1,000 to 2,500 unarmed civilian Bosniak men detained inside the school and its surrounding area.

Zdravko Božić, Željko Zarić and Zoran Živanović together:

8. On the night of 13/14 July 1995, at Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, while there were several hundred Bosniak men detained in that school, one of the Bosniak men appeared at the window of a first floor room, whereupon, with the intention to kill, Mladen Blagojević aimed a Browning machine gun, mounted on a Pintzgauer, at the window from which the Bosniak man appeared and opened fire from it targeting both this man and the Bosniak men inside the same room causing the rounds to enter the room through the window, while Željko Zarić had his rifle at the ready and pointed towards the same window, and Zdravko Božić and Zoran Živanović were armed with automatic rifles and were standing in the immediate vicinity of the Pintzgauer.

Zdravko Božić and Mladen Blagojević together:

9. On the night of 13/14 July 1995, at Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, unidentified VRS soldiers forcibly removed at least five (5) unarmed civilian Bosniak men from the interior of the interior of the school who were being detained there by members of the Bosnian Serb forces, and lined them up in row outside the school in an execution line-up, whereupon Zdravko Božić, Mladen Blagojević and six (6) other unidentified members of the VRS shot and killed these unidentified Bosniak men with automatic weapons, thereby depriving them of their lives.

Mladen Blagojević and Željko Zarić together:

10. On 14 July 1995, at Grbavci School, in Orahovac, Municipality of Zvornik, while Mladen Blagojević and Željko Zarić guarded, controlled, or otherwise provided security at the school gymnasium and the confines of the school playground that contained between 1,000 and 2,500 unarmed civilian Bosniak men that had been transferred there from temporary detention facilities and areas in Bratunac on or about 14 July 1995 and prevented their freedom of movement and deprived them of liberty, Željko Zarić and Mladen Blagojević used force to coerce the detainees to remain inside the school gymnasium whereupon during the use of force, a round was discharged from an automatic weapon carried by either Željko Zarić or Mladen Blagojević thereby injuring a bystander.

Željko Zarić and Zoran Živanović together:

11. On the night of 13/14 July 1995, at Vuk Karadžić Primary School (now known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, with between

2,000 and 3,000 men detained in and around the school, Željko Zarić and Zoran Živanović entered the school building where civilian Bosniak men were being detained and fired their automatic weapons at the detainees.

12. On 14 July 1995, at Grbavci School, in Orahovac, Municipality of Zvornik, Željko Zarić and Zoran Živanović separated three (3) unarmed, Bosniak men from other detainees in or around Grbavci School and forced them to walk to a separate area and then shot at the three (3) unidentified Bosniak men with their automatic weapons thereby depriving them of their lives.

Zoran Živanović, individually:

13. On 12 and 13 July 1995, in Potočari, Zoran Živanović participated in the organized, inhumane and aggressive process of separating Bosniak men from Bosniak women and children and then, by using force and the threat of force, loaded the Bosniak women and children on buses knowing that they would be transported out of Srebrenica enclave to territory held by Bosniak forces.

Whereby,

they would have committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(a), (d), (e) and (k) of the cited Article of the CC of BiH, all as read with Articles 21, 29 and 180(1) of the CC of BiH.

Pursuant to Article 189(1) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused persons are relieved of the duty to reimburse the costs of the criminal proceedings, and the costs shall therefore be paid from the budget of the Court.

R e a s o n i n g:

The Indictment of the Prosecutor's Office of Bosnia and Herzegovina, Ref. number: KT-RZ-132/06, dated 13 December 2006, confirmed on 21 December 2006, charged Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović, with having taken actions as detailed under counts 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 of the Indictment, whereby they committed the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with sub-paragraphs (a), (d), (e) and (k) of the CC of BiH, as read with Articles 21, 29 of the CC of BiH, all as read with Article 180(1) of the CC of BiH.

On 25 September 2008, the Prosecutor amended the Indictment at the main trial by replacing Count 8 of the confirmed Indictment with a new Count 8a, which read that the accused Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović together, on the night of 13/14 July 1995, at Vuk Karadžić Primary School (now

known as the Branko Radičević School) in Bratunac, Municipality of Bratunac, while there were many Bosniak men detained in that school, one of the Bosniak men appeared at the window of a first floor room at the school; whereupon, with the intention to kill: Mladen Blagojević aimed a Browning machine gun, mounted on a Pinzgauer at the window from which the Bosniak man appeared and opened fire from it targeting both this man and the Bosniak men inside the same room causing the rounds to enter the room through the window and to strike the wall immediately around the window, while Željko Zarić had his rifle at the ready and pointed towards the same window, while Zdravko Božić and Zoran Živanović were armed with automatic rifles and were standing in the immediate vicinity of the Pinzgauer; and deleting Count 13. The Court accepted the amended Indictment and found that it was not a new indictment and that therefore there was no need for the amended Indictment to be confirmed because neither subjective nor the objective identity of the Indictment had been changed and therefore such amendment was possible. The Prosecution maintained this Amended Indictment to the end of main trial.

On 24 January 2007, the Court held an Arraignment Hearing for the accused persons Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović. Since all accused persons had started a hunger strike in that period they did not appear at the hearing. The Court summoned the expert witnesses Senad Pešta and Marija Kaučić-Komšić, who presented their findings and opinion on the health condition of the accused. The Preliminary Hearing Judge noted that the Court had summoned the accused persons to the Arraignment Hearing several times and had warned them about the consequences of their failing to appear, the same having been done for the session held on 24 January 2007 as well. Given that the accused failed to respond to that court summons too, the Court held the hearing finding that the accused had been duly summoned, and that they had willfully waived their right to attend the Arraignment Hearing, which was why that was not the case of absence of the accused persons. Keeping in mind that no party to the proceedings can be allowed to block the work of the court, in the interest of justice and the efficiency of the proceedings, pursuant to Article 229 of the CPC of BiH, in the absence of the accused persons but in the presence of their Defense Counsel, the Court entered the plea of not guilty on behalf of the accused.

In the course of the main trial, the accused went on a hunger strike again and therefore failed to appear at the next session of the main trial which was held on 12 September 2007. The Court noted for the record that the Court Police had sent an Official Note explaining that the accused persons refused to appear at the scheduled session because they had gone on a hunger strike. The Court decided to adjourn the session, whereupon the Court informed all accused persons in writing that the next session would be held in their absence if, due to the hunger strike, they failed to appear at the scheduled session, but that the session would be attended by Defense Counsel and that the accused persons were free to appear at the main trial at any time. Due to the hunger strike, the accused persons failed to appear at the sessions of the main trial held on 19 September 2007, 27 September 2007 and 1 October 2007, and the Court decided that the sessions be held without the presence of the accused persons, who had been duly summoned, noting that the accused refused to appear at the scheduled sessions,

whereby they knowingly waived their right granted by the law. Throughout the entire time they were on the hunger strike, a team of experts was checking the health condition of the accused persons and filed with the Court reports stating that the accused persons were time and space-oriented and capable of following the trial.

Throughout the entire course of the proceedings, the Court was mindful of the protection of the identity of witnesses, in particular witnesses under protective measures PW-1, PW-2, PW-3 and PW-4, wherefore the Verdict does not state full names of these witnesses, but only their pseudonyms, while full personal details of these witnesses are contained in the case file, which is also under special protection. As regards the protective measures for those witnesses, at the session held on 23 August 2007, the Court partially granted the Defense Motion for Rescission of Protective Measures but only those related to voice distortion, so the voice remained undistorted, whereas with respect to all other protective measures, the Court ruled that those protective measures be kept in place as had been decided previously.

The public was excluded from a part of the session held on 9 November 2007 during the deliberation of the Motion to exclude of the public from part of the testimony of the Prosecution witness Muris Brkić. Namely, the Prosecution moved the Court to exclude the public from the part of the testimony during which photographs of the protected witness PW-1 would be shown, the reason for that being that in that way this witness's identity would be revealed. The Panel decided to exclude the public pursuant to Article 235 of the CPC of BiH, in order to protect the interest and identity of the protected witness PW-1, who had been previously granted a pseudonym, as well as other protective measures in accordance with the Law on Witness Protection.

Adduced Evidence

During the evidentiary proceedings, the Prosecution presented the following evidence:

Upon the proposal of the Prosecutor's Office of BiH, the following witnesses were heard: Mevludin Orić, Desimir Đukanović, Milan Gvozdenović, Milan Ilić, Ljubomir Beatović, Mile Janjić, Nikola Popović, Slobodan Mijatović, Milovan Đokić, Mile Babić and Muris Brkić, as well as witnesses under protective measures, under pseudonyms PW-1, PW-2, PW-3 and PW-4.

The Prosecution expert witness, Richard Butler, presented his findings and opinion at the main trial.

In addition to that, the Panel reviewed the following exhibits of the Prosecutor's Office of BiH: video clip compiled by Reuters and RTS accepted in an ICTY case and known under the title *Srebrenica* 10 and 11 July 1995. including the transcripts in local and English language, together with the letter of the ICTY Office of the Prosecutor; aerial photograph of the Bratunac town showing the locations of the elementary school, police station, the *Fontana* Hotel, and the signpost for Konjević Polje, Potočari and Ljubovija in Serbia; aerial photograph of the Bratunac town giving a clearer picture of

the town center and the *Branko Radičević* Elementary School; Letter of the ICTY Registry with a CD containing evidence from the Blagojević case, a CD containing UNPROFOR daily situation reports for July 1995 for Sector North-East; photo documentation No. 17-14/1-7-36/06 compiled by the State Investigations and Protection Agency, showing *Branko Radičević* Elementary School, town stadium, parking area, Bratunac PS, the *Fontana* Hotel and the Bratunac Secondary School Center, dated 31 October 2006; sketch of the scene made by the State Investigations and Protection Agency showing the *Ukrasna keramika* and the *Ciglane* premises, town stadium, *Branko Radičević* Elementary School, parking area, Bratunac PS, the *Fontana* Hotel and the Bratunac Secondary School Center, dated 31 October 2006; photo documentation No. 17-14/1-7-36-1/06 compiled by the State Investigations and Protection Agency showing premises owned by the *Ukrasna keramika* and *Ciglane* companies in Bratunac, dated 31 October 2006; sketch of the scene No. 17-14/1-7-36-1/06 made by the State Investigations and Protection Agency showing the premises of the companies *Ukrasna keramika* and *Ciglane* at the Bratunačkih brigada Street, dated 31 October 2006; photo documentation No. 17-14/1-7-36-2/06 compiled by the State Investigations and Protection Agency showing the *Žuti most* /Yellow Bridge/ and the premises in Potočari, dated 31 October 2006; sketch of the scene – number 1714/1-7-36-2/06, made by the State Investigations and Protection Agency showing the buildings and the area around the *Branko Radičević* Elementary School at the Dositej Obradović Street, dated 31 October 2006; Record of Witness Examination of Desimir Đukanović by the State Investigations and Protection Agency, No. 17-04/2-04-2-329/07 dated 20 March 2007, including the English translation; Record on showing the scenes from which the bodies of the killed were taken, written by the State Investigations and Protection Agency, No. 17-04/2-04-2-97/07 dated 21 March 2007, including the English translation; State Investigations and Protection Agency Report No. 17-04/2-04-2-646-64/06-BK dated 26 March 2007, including the English translation; Record of Witness Examination of Witness Desimir Đukanović by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 28 March 2007, including the English translation; a CD containing the Record of Witness Examination of Desimir Đukanović by the State Investigations and Protection Agency on the premises of Bratunac PS, No. KT-RZ-132/06 dated 28 March 2007; transcript on the examination of witness Desimir Đukanović, No. KT-RZ-132/06 dated 28 March 2007, including the English translation; Record of Witness Examination of Desimir Đukanović by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 23 March 2007, including the English translation; Record of Witness Examination of Milan Gvozdenović by the State Investigations and Protection Agency, No. 17-04/2-04-2-559/06 dated 25 September 2006, in English language, including the translation into Bosnian/Serbian/Croatian; Record of Witness Examination of Milan Gvozdenović by the State Investigations and Protection Agency, No. 17-04/2-04-2559/06 dated 25 September 2006; aerial photograph of Bratunac on which witness Milan Gvozdenović marked the *Branko Radičević* Elementary School and the street where the buses and trucks were parked; photograph of the right side of the *Branko Radičević* Elementary School recognized by the witness Milan Gvozdenović; photograph of the entrance and the left side of the *Branko Radičević* Elementary School; photograph of the road in front of the former UN base in Potočari; photograph of the former UN base in

Potočari; Record of Witness Examination of Milan Ilić by the State Investigations and Protection Agency, No. 17-04/2-04-2-188/06 dated 11 September 2006, including the English translation; Record of Witness Examination of Milan Ilić by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 12 February 2007, including the English translation; aerial photograph of the Bratunac town dated 12 February 2007, which was shown to witness Milan Ilić and on which the witness marked the *Branko Radičević* Elementary School, the street leading to the school where the buses and the trucks were parked, health care center and the bakery; photograph of the parking lot in front of the *Remontni zavod* Bratunac; photograph No. 0216-4885 on which witness Mile Janjić recognized one person; aerial photograph of Bratunac on which witness Mile Janjić recognized and marked the house he had lived in, the road he travelled on the critical night, the place where the buses were; photograph of the entrance to the *Branko Radičević* Elementary School which the witness Mile Janjić recognized and on which he marked the place where the Pinzgauer had been positioned; photograph of the road in front of the entrance to the *Branko Radičević* Elementary School; photograph of the entrance to the Orahovac school yard, which was recognized by the witness Nikola Popović; photograph of the school and gym in Orahovac which was recognized by the witness Nikola Popović; photograph of the gym and school in Orahovac, No. 0046-1633-0046-1633; photograph of the entrance to the gym of the Orahovac school; Record of Interview with Nikola Popović by the RS Ministry of Internal Affairs, No. 12-1-7/02-230-495/03 dated 28 August 2003; Record of Witness Examination of Slobodan Mijatović by the State Investigations and Protection Agency, No. 17-04/2-04-2-526/06 dated 8 September 2006; Record of Witness Examination of Slobodan Mijatović by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 29 November 2006; aerial photograph of the Bratunac town which was shown to witness Slobodan Mijatović with the marked locations of the *Branko Radičević* Elementary School and the street where the buses were; photograph of the *Branko Radičević* Elementary School which was shown to witness Slobodan Mijatović on which the witness marked the position of the Pinzgauer; photograph of the road in front of the entrance to the *Branko Radičević* Elementary School; photograph that was shown to witness Slobodan Mijatović with the marked location of the street leading to the playground through which the witness used to pass; a copy of the excerpt from the daily report by the Bratunac Brigade Military Police Duty Officer for 11 July 1995; Record of Witness Examination of Milovan Đokić by the State Investigations and Protection Agency, No. 17-15/3-1-04-188 dated 26 September 2006; Record of Witness Examination of Milovan Đokić by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 28 November 2006; photograph of the entrance and the left side of the *Branko Radičević* Elementary School; sketch of the *Branko Radičević* Elementary School and the school playground, 1:500 ratio; photograph of the road in front of the entrance to the *Branko Radičević* Elementary School; Decision No. KT-RZ/132/06 dated 29 August 2007 granting immunity to witness PW2, Immunity Agreement No. KT-RZ/132/06 dated 29 August 2007 with witness PW2; photograph of a street in Bratunac shown to the witness PW2; photograph of the entrance to the *Branko Radičević* Elementary School shown to the witness PW-2; photograph of the park in front of the *Branko Radičević* Elementary School; Record of Witness Examination of PW-2, No. 17-04/2-04-2-525/06 dated 8 September 2008; Decision No. KT-

RZ/132/06 granting immunity to witness PW-3; Decision No. KT-RZ/132/06 granting immunity to witness PW-1; photograph of the windows of the *Branko Radičević* Elementary School pointed by witness PW-3; photograph of the Orahovac school and gym shown to witness PW-1; photograph of the Orahovac gym shown to witness PW-1; photograph of the green area and a house o which the witness PW-1 pointed the mass grave; photograph of the road leading to the Budak mass grave recognized by witness PW-1; aerial photograph of Potočari with the clearly marked direction the buses were facing; photograph of two premises in Potočari where Bosniaks were held; photograph of a group of people behind the fence in Potočari; Record of Witness Examination of PW-4 dated 28 November 2006 by the State Investigations and Protection Agency; Record of Witness Examination of PW-4 by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 6 December 2006; Order on the application of the International Law of War in the Army of the Serbian Republic of Bosnia and Herzegovina, published in the *Official Gazette of the Serb People in BiH* No. 9 dated 13 June 1992, including the English translation; Guidelines on setting criteria for criminal prosecution issued by the Military Prosecutor's Office at the Main Staff of the Army of Republika Srpska, No. 00814377, including the English translation; regulations on the application of the rules of International Law of War in the SFRY armed forced, issued by the Federal Secretariat of National Defense, No. PrU-2, including the English translation; Order of the President of Republika Srpska, No. 01-1118/95 dated 16 June 1995, including the English translation; *Treatment of Prisoners of War*, a document issued by the Drina Corps HQ, No. Y 0002548, dated 15 July 1993; *How to Treat Prisoners of War*, instructions by the Bratunac Light Infantry Brigade HQ, No. 04-987-2/93 dated 17 July 1993, including the English translation; *Managing and Commanding Military Police*, a document issued by the Federal Secretariat of National Defense, Ub2/3, No. 02072092, including the English translation; *Instruction on Managing and Commanding of the VRS Security and Intelligence Authority*, issued by the VRS General Staff, No. 18/20-414/94 dated 24 October 1994, including the English translation; *Directive for the VRS Forthcoming Operations*, issued by the VRS main Staff, No. 02/5-210 dated 19 November 1992, including the English translation; *Basic Characteristics of the International Military and Political Situation*, document issued by the Supreme Command of the Republika Srpska Armed Forces, No. 2/2-11 dated 8 March 1995, including the English translation; *Directive for Further Operations* No. 7/1, issued by the VRS General Staff, No. 02/2-15 dated 31 March 1995, including the English translation; Order for Active Combat Operations No. 1 issued by the Drina Corps HQ, No. 04/156-2 dated 2 July 1995, including the English translation; Order for continuation of attack No. 04/95 issued by the Drina Corps, No. 6 July 1995, including the English translation; Order for Active Combat Operations No. 1, issued by the 1st Bratunac Light Infantry Brigade HQ, No. 439-2 dated 5 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-96 dated 6 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-97 dated 7 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-98 dated 8 July 1995, including the English translation; Order issued by the 1st Bratunac Light Infantry brigade HQ, No.

04/254-58 dated 10 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-99 dated 9 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-100 dated 10 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-101 dated 11 July 1995, including the English translation; Request by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-102-1 dated 12 July 1995, including the English translation; Order issued by the VRS Main Staff, No. 03/31/13-3/154 dated 12 July 1995; Request for the mobilization of buses issued by the Republika Srpska Ministry of Defense, Zvornik Secretariat, No. 02-21-3638/95 dated 12 July 1995; Request for the mobilization of buses issued by the Republika Srpska Ministry of Defense, Bijeljina Secretariat, No. 02-21-3640/95 dated 13 July 1995, including the English translation; Order issued by the Republika Srpska Ministry of Defense, Zvornik Department, No. 02-78/95/95 dated 12 July 1995, including the English translation; Order issued by the Republika Srpska Ministry of Defense, Zvornik Department, No. 02-79/95 dated 12 July 1995, including the English translation; Report on the mobilization of vehicles prepared by the Republika Srpska Ministry of Defense, Zvornik Secretariat of the Ministry of Defense, No. 79/95 dated 13 July 1995; Order issued by the Republika Srpska Ministry of Defense, Sarajevo Secretariat, No. 01-21-011-198/95 dated 13 July 1995; Order issued by the Republika Srpska Ministry of Defense, Zvornik Secretariat, No. 02-137/95 dated 20 July 1995; Order issued by the Drina Corps HQ, No. 22/226 dated 12 July 1995, including the English translation; Order issued by the Drina Corps HQ, No. 22/227 dated 12 July 1995, including the English translation; Approval prepared by the VRS Main Staff, No. 03/4/2341 dated 14 September 1995, including the English translation; photograph of the green area where the mass grave in Glogova was located; photograph of the road leading to the mass grave, which was shown to the witness Muris Brkić; photograph of the cemetery in the place called Budak; photograph of the Zeleni Jadar mass grave site; photograph of the Jasenova mass grave site; photograph of the Budak mass grave site; Official Note written by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 23 March 2007; Official Note written by the State Investigations and Protection Agency, No. 17-04/2-04-2-114/07 dated 2 April 2007; Record on the Crime Scene Investigation written by the State Investigations and Protection Agency, No. 17-04/2-04-2-113/07 dated 2 April 2007; Official Note written by the State Investigations and Protection Agency, No. 17-04/2-04-2-153/07 dated 2 April 2007; Transcripts of the General Krstić trial dated 22 March 2000 and 23 March 2003 and the audio recording dated 22 March 2003 on a CD; statement of witness Ćamila Omanović, given to ICTY, dated 5 September 1995, in English, including the translation into Bosnian/Serbian/ Croatian; T-126, Death Certificate for Ćamila Omanović, No. 10/13-1-1258/07 dated 24 August 2007; Reply to Dispatch, No. 277/95 dated 12 July 1995, including the English translation; Information on the Evacuation and Transportation of Civilians from Srebrenica prepared by the Zvornik PSC, No. 281/95, dated 12 July 1995, including the English translation; Report prepared by the RS Ministry of Internal Affairs Sarajevo State Security Department, No. 05-1998/95 dated 12 July 1995, including the English translation; document prepared by the Drina Corps HQ, No. 17/897 dated 12 July 1995, including the English translation; Regular Combat

Report, 1st Bratunac Light Infantry Brigade HQ, No. 03-253-102 dated 12 July 1995, including the English translation; document prepared by the 1st Bratunac Light Infantry brigade HQ, No. 632/95 dated 12 July 1995, including the English translation; Regular Combat report prepared by the 1st Zvornik Infantry Brigade HQ, No. 06/215 dated 12 July 1995, including the English translation; Information report prepared by the 1st Zvornik Infantry Brigade HQ, No. 19/39 dated 12 July 1995, including the English translation; document prepared by the Drina Corps HQ, No. 17/895 dated 12 July 1995, including the English translation; Report prepared by the VRS Main Staff, No. 03/3-193 dated 12 July 1995, including the English translation; Order issued by the Drina Corps HQ, No. 01/4-157-5 dated 13 July 1995, including the English translation; document prepared by the RS Ministry of Internal Affairs, No. 05-2000/95 dated 13 July 1995, including the English translation; document prepared by the Zvornik PSC, No. (?)38/95 dated 13 July 1995, including the English translation; document prepared by the Zvornik PSC, No. 282/95 dated 13 July 1995, including the English translation; Regular Combat Report prepared by the Drina Corps HQ, No. 03/2-214 dated 13 July 1995, including the English translation; document prepared by the Drina Corps Forward Command Post in Bratunac, No. 08-444-10 dated 13 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-103 dated 13 July 1995, including the English translation; Interim Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-103/1 dated 13 July 1995, including the English translation; Order issued by the 1st Bratunac Light Infantry Brigade HQ, No. 453/2 dated 14 July 1995, including the English translation; document prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 491-1 dated 14 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-104 dated 14 July 1995, including the English translation; Daily Report prepared by the Bratunac Brigade MP for 14/15 July 1995, including the English translation; Document prepared by the RS Ministry of Internal Affairs – State Security Department, No. 05-2038/95 dated 14 July 1995, including the English translation; Regular Combat Report prepared by the Drina Corps HQ, No. (illegible) 03/2-/?215 dated 14 July 1995, including the English translation; document prepared by the 1st Bratunac Light Infantry Brigade HQ, No. 03-253-103-2 dated 17 July 1995, including the English translation; aerial photograph of Potočari; Record of Witness Examination of Borivoje Jakovljević by the State Investigations and Protection Agency, No. 17-04/2-04-2-682/06 dated 27 November 2006, including the English translation; Record of Witness Examination of Borivoje Jakovljević by the Prosecutor's Office of BiH, No. KT-RZ-132/06 dated 6 February 2007, including the English translation; photograph of the Zvornik school and gym; Richard Butler's Curriculum Vitae and reports; excerpt from the e-mail correspondence between Nina Šahinpašić, Intern at the Prosecutor's Office of BiH, and attorney Miroslav Ristić, dated 12 March 2008; aerial photograph of Potočari on which the witness Joseph Kingori marked the location of the so called *White House*; CD with clips of video footage compiled by the Reuters and SRT; Report of the Secretary General Pursuant to General Assembly Resolution 53/35 (1998) – *Srebrenica Report* dated 15 November 1999, including the translation into Bosnian/Serbian/Croatian; UN Security Council Resolution No. S/RES/819 (1993) dated 16 April 1993, including the English translation; Information for the

Brigade Members prepared by the 1st Bratunac Light Infantry Brigade HQ, strictly confidential, No. 04-1738-1/94 dated 4 July 1994, including the English translation; open text prepared by the RS Army Main Staff, No. 06-20-133, dated 2 April 1995, including the English translation; open text prepared by the RS Army Main Staff, No. 06/20-202 dated 19 May 1995, including the English translation; open text prepared by the RS Army Main Staff, No. 06/20-212 dated 26 May 1995, including the English translation; *Stabilization of Defense around the Žepa and Srebrenica Enclaves and Creation of Conditions for the Liberation of the Enclaves* – order issued by the Drina Corps HQ, strictly confidential, No. 04/112-14 dated 15 May 1995, including the English translation; *Stabilization of Defense around the Žepa and Srebrenica Enclaves* – supplement to order issued by the Drina Corps HQ, strictly confidential, No. 04/112-15, dated 16 May 1995, including the English translation; reports from meetings of the 1st Bratunac Light Infantry Brigade in the period between 1 July and 16 July 1995, including the English translation; Regular Combat Report prepared by the 1st Bratunac Light Infantry Brigade HQ, strictly confidential, No. 03-253-94 dated 4 July 1995, including the English translation; Review of Combat readiness for the first half year of 1995 prepared by the Bratunac Light Infantry Brigade HQ, strictly confidential, No. 433-1 dated 4 July 1995, including the English translation; Report on the Material and Technical Equipment used in the period between 10 and 12 July 1995 prepared by the Bratunac Light Infantry Brigade HQ, No. 10-630/95 dated 12 July 1995 prepared by the Bratunac Light Infantry Brigade HQ, No. 10-630/95 dated 12 July 1995, including the English translation; *Treatment of Prisoners of War* – instruction prepared by the Bratunac Light Infantry Brigade HQ, strictly confidential, No. 04-987-2/93 dated 17 July 1993, including the English translation; fax sent by General Karremans on 12 July 1995 detailing the meetings he had had with Ratko Mladić on 11 and 12 July 1995, including the translation into Bosnian/Serbian/Croatian; statement of the President of the UN Security Council, No. S/PRST/1995/32 dated 14 July 1995, in Bosnian/Serbian/Croatian and in English language; Order No. 01/04-156-1 dated 2 July 1995 – warning order No. 1 prepared by the Drina Corps HQ, including the English translation; report on combat activities being carried out around Srebrenica prepared by the RS Army Main Staff, strictly confidential, No. 12/46-501/95 dated 9 July 1995, including the English translation; Interim Combat report prepared by the 1st Bratunac Light Infantry Brigade HQ, strictly confidential, No. 03/253-54-1 dated 25 May 1995, including the English translation; Statement of witness Miroslav Deronjić given before the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, dated 25 November 2003, in English and in Bosnian/Serbian/Croatian language; Death certificate for Miroslav Deronjić, No. 03-202/08 dated 18 August 2008, issued by the Bratunac Municipality; transcript of the open session held on 28 October 2003 in the case No. IT-02-60/1-S (Prosecutor vs. Momir Nikolić – sentencing procedure), before the International Criminal Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, including the translation into Bosnian/Serbian/Croatian; transcripts of open sessions held on 27 September 2006, 28 September 2006 and 29 September 2006, in the case No. IT-05-88-T (Prosecutor vs. Vujadin Popović et al – witnesses Pieter

Boering and Leendert Cornelis van Dujin), before the International Criminal tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, including the translation into Bosnian/Serbian/Croatian; aerial photograph of Bratunac with the marked house and the Praga; Letter by the Prosecutor of the Cantonal Prosecutor's Office in Tuzla Canton, No. Kta-RZ-38/07 and Kta-RZ-50/08 dated 4 September 2008; Record on Exhumation (PUS 02 SRE) written by the Cantonal Prosecutor's Office of Tuzla Canton, No. Kta-RZ-50/08 dated 7 July 2008; Record on Exhumation (BUD 02 SRE) written by the Cantonal Prosecutor's Office of Tuzla Canton, No. Kta-RZ-38/07 dated 2 July 2008; Summary Exhumation Report (Pusumlići 2) prepared by ICMP- International Commission on Missing Persons, dated 27 August 2008, versions in English and in Bosnian/Serbian/Croatian; Summary Exhumation Report (Budak 2), prepared by ICMP – International Commission on Missing Persons, dated 17 April 2008, versions in English and in Bosnian/Serbian/Croatian.

During the main trial the Defense presented the following evidence:

Following the joint proposal by the Defense, the following witnesses testified: Srbslav Davidović, Ljubisav Simić, Miodrag Josipović, Borivoje Jakovljević, Pero Andrić, Mirko Janković, Slobodan Mijatović, Mile Petrović, Tanasko Tanić, Rajko Ilić, Mile Janjić, Miroslav Obačkić, Miladin Gavrić and Nenad Đokić. In addition to that, following the joint proposal by the Defense, the Court admitted in the case file the following documentary evidence: Military Expert Analysis titled "The Position and Role of the Military Police Detachment of the Bratunac Brigade in the Krivaja 95 Operation" prepared by a military analyst, professor Radovan Radinović, Ph.D, in April 2008; Minutes of the session of the Assembly of Serb People in BiH held on 12 May 1992 in Banja Luka; Agreement on Demilitarization of Srebrenica concluded by Lieutenant-General Ratko Mladić and General Sefer Halilović on 8 May 1993, book by Sefer Halilović *Cunning Strategy*, on a CD marked as OZD-4, Letter by Sefer Halilović, Chief of Staff of the Supreme Command of RBiH Armed Forces, to the Srebrenica Defense Command, No. 02/699-2 dated 1 June 1993, Operational Report, RBiH Army, 28th Division HQ, No. 04-114/95 dated 30 June 1996, Information from the Session, Srebrenica Municipality – Municipal Presidency, No. 01- /95, dated 9 July 1995, Interim Combat Report, 1st Zvornik Infantry Brigade HQ, No. 06/217-1, dated 15 July 1995, copy of the MP Duty Officer's Log Book, from 30 June 1995 to 17 July 1995, Agreement on Demilitarization of Srebrenica, Staff of the Supreme Command of RBiH Armed Forces, No. 02/1594-320, dated 26 February 1994, Instruction on Arrest and Escort of POWs and other persons, Drina Corps HQ, Security Division, No. 17/450 dated 15 April 1995, Decision appointing a civilian commissioner for the Serb Srebrenica Municipality, President of Republika Srpska, No. 01-1350/95, dated 11 July 1995, Information for the President of Republika Srpska, VRS Main Staff, No. 12/46-501/95, dated 9 July 1995, Information on the results of negotiations on demilitarization of Srebrenica, Staff of the Supreme Command of RBiH Armed Forces, No. 02/520-2, dated 20 April 1993, Order on preparation for offensive combat operations, General Staff of RBiH Army, No. 1/825-84, dated 17 June 1995,

Information, Army of BiH, 28th Division HQ, Intelligence Department, No. 02-06/95, dated 29 June 1995, Operational Report, Army of BiH, 28th Division HQ, No. 04-114/95, dated 30 June 1995, Letter, 1st Bratunac Light Infantry Brigade HQ, No. 04-520-51/95, dated 13 July 1995, Statement of Ramiz Bećirović, Army of RBiH. 2nd Corps HQ, Military Security Service Department, No. __/95, dated 11 August 1995, Order, RS Ministry of Internal Affairs, Office of the Minister, No. 64/95, dated 10 July 1995, List of war criminals who committed crimes in the area of municipalities of Bratunac, Srebrenica, Milići and Skelani for whom there are indices showing they are in Srebrenica, 1st Light Infantry Brigade HQ, dated 12 July 1995.

Military expert, Professor Radovan Radinović, Ph.D, presented his findings and opinion at the main trial as expert witness for the Defense.

The Defense for the first accused presented evidence through the examination of witnesses Boško Nikolić, Radojko Jurošević and Vera Dačić, and also presented the following documentary evidence, which the Court accepted and admitted into the case file, Daily Report, No. 141/15 07 95, Application for confirmation of right to real estate (applicant Trivo Božić), No. 5322374, Certified copies of ID cards of Trivo Božić and Milica Božić issued in the state of Ohio, Decision on repossession of abandoned property including the Record, RS Ministry of Refugees and Displaced Persons, Bratunac Department, No. 05-050-06-264/99, dated 12 September 2001.

The Defense of the second accused presented the following documentary evidence, which the Court accepted and admitted into the case file, Record of Witness Examination of PW3, No. KT-RZ-132/06 dated 17 October 2006, by Prosecutor's Office of BiH, Transcript of witness examination of PW3, No. KT-RZ-132/06 dated 17 October 2006, tape No. 1, Record of Witness Examination of PW1, No. 17-04/2-04-2-530/06 dated 12 September 2006, by State Investigations and Protection Agency, Record of Witness Examination of PW1, No. 17-04/2-04-2-546/06 dated 18 September 2006, by State Investigations and Protection Agency, Transcript of witness examination of PW1, No. KT-RZ-132/06 and KT-RZ-133/06 dated 18 September 2008, tapes No. 1 and 2, Record of Witness Examination of PW1, No. KT-RZ-132/06 dated 16 October 2006, by Prosecutor's Office of BiH, Transcript of witness examination of PW-1, No. KT-RZ-132/06 and KZ-RZ-133/06 dated 16 October 2006, certified copy of marriage certificate for Mladen Blagojević and Dajana Krstić, issued by the Serb Municipality of Bratunac, No. 05-202-149/96 dated 22 August 1996, Certified copy of birth certificate for Stefan Blagojević, Loznica Municipality, No. 200-1/ dated 8 September 1997.

The Defense of the third accused presented the following documentary evidence, which the Court accepted and admitted into the case file: Record of Witness Examination of PW-3, No. 17-04/2-04-2-527/06 dated 11 September 2006, by State Investigations and Protection Agency, Photograph of the elementary school in Rovčevići or Zvornik, Copy of Certificate in the name of Miroslav Obačkić, issued by Medical Institution, No. 35158, Copy of certificate in the name of Miroslav Obačkić, Medical Institution, No. 35283.

Also the Defense of the fourth accused presented the following documentary evidence, which the Court accepted and admitted into the case file, Record of Witness Examination of Mevludin Orić, No. KT-RZ-158/05 dated 27 December 2005, by Prosecutor's Office of BiH, Transcript of video recording by the Reuters Agency, No. V000-3914, dated 10 and 11 July 1995, Sketch of Potočari, Sketch of the Bratunac town, Order issued by the Army of R BiH, Army General Staff, No. 1/852-84 dated 17 June 1995, Congratulations Note, Army of R BiH, 2nd Corps HQ, No. 02/1-670/4 dated 28 June 1995, Information issued by the Army of R BiH, 28th Division HQ, No. 02-06/95 dated 29 June 1995, Operational Report prepared by the Army of R BiH, 28th Division HQ, No. 04-114/95 dated 30 June 1995, Report prepared by the Army of R BiH, 28th Division HQ, No. 03-183-231 dated 1 July 1995, Information and Order by the Army of R BiH, 2nd Corps HQ, No. 02/1-604/123 dated 2 July 1995, Regular Combat Report prepared by the Drina Corps HQ, No. 03/2-206 dated 6 July 1995, Regular Combat Report by the Drina Corps HQ, No. 03/2-208 dated 7 July 1995, Information on Combat Results of the Army of R BiH Units, 2nd Corps HQ, No. 04/1-105-603 dated 8 July 1995, Information by the Srebrenica Municipality, R BiH, No. 01-/95 dated 9 July 1995, Letter of the 1st Podrinje Light Infantry Brigade HQ, No. 04-520-51/95 dated 13 July 1995, Order by the Drina Corps HQ, No. 03/156-11 dated 13 July 1995, Record by the Army of BiH General Staff, No. 1/1-941 dated 30 July 1996.

Procedural Decisions

In their Motion Ref. number KT-RZ-132/06, the Prosecutor's Office of BiH moved that portions of the statement by of Miroslav Deronjić given in the case No. IT-02-60/1-S, Prosecutor vs. Momir Nikolić, and portions of the statement of Van Duijn Leendert given in the case No. IT-05-88-T, Prosecutor vs. Vujadin Popović et al, together with the transcripts of testimonies before the ICTY be read out at the main trial and in that way be admitted and used as evidence in this case. The Prosecution also moved that the statement of witness Čamila Omanović, given before the ICTY investigators on 5 September 1995, be read out at the main trial and admitted into evidence. Prosecutor's Office of BiH finds the basis for their Motion in the provisions of Article 273(2) of CPC of BiH, in conjunction with Article 5(1) and Article 7 of the Law on the Transfer of Cases.

The Court granted the Prosecution Motion mentioned above, and pursuant to Article 273(2) of CPC of BiH admitted the earlier statements of witnesses Miroslav Deronjić, Van Duijn and Čamila Omanović, into the case file, given that their appearance before the Court was impossible. The Court established that Miroslav Deronjić had died based on the Death Certificate No. 03-202/08 dated 18 August 2008, issued by the Bratunac Municipality Registry Office. It was also established that Čamila Osmanović had died too, based on the Death Certificate for Čamila Omanović, No. 10/13-1-1258/07 dated 24 August 2007. Witness Van Duijn failed to appear before the Court due to his poor health as stated in the reply by the Investigative Judge of the Amsterdam District Court No. 08/2004 dated 7 August 2008. Therefore, the Court was satisfied that the legal requirements for the application of Article 273(2) of CPC of

BiH, which provide for the possibility of exception from the direct presentation of evidence, had been met. In addition, provisions of Article 3 of the Law on the Transfer of Cases prescribe that evidence collected in accordance with the ICTY Statute and Rules of Procedure and Evidence may be used in proceedings before the courts in BiH, while Article 7 of the cited law allows for the possibility that statements of witnesses given to the ICTY officials during investigation may be read out in the proceedings conducted in BiH.

In addition to that, at the hearing held on 4 December 2007, pursuant to Article 240 of CPC of BiH, the Panel decided to partially depart from the evidence presentation order at the main trial, due to special circumstances, and especially due to the fact that appearance of certain prosecution witnesses and their expert witness Butler was connected with numerous complications related to their arrival and the lifting of their immunity by the relevant UN authorities. Therefore the Court decided to allow the Defense to start with the presentation of their evidence before the Prosecution finished with their case.

Pursuant to Articles 12 and 13 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, on 11 December 2006, the Court decided to grant the protection of all personal details of certain witnesses and decided that they would testify under the following pseudonyms PW-1, PW-2, PW-3 and PW-4. In the course of the proceedings, following the Prosecution Motion seeking additional protective measures due to the fear that their personal safety and the safety of their families would be endangered if they testified in the proceedings, the Court allowed the protected witnesses PW-1, PW-2, PW-3 and PW-4 to testify from a separate room utilizing electronic device for distortion of the image of the witnesses, while their voices remained unchanged. The Court dismissed the Defense Motion for rescission of all protective measures granted to these witnesses and proceeded as described above, finding that those were witnesses under threat, and that there were valid reasons not to have the parties and the Defense Counsel in the same room with these witnesses during their testimony and that the granting of the sought measures would ensure the protection of the personal safety of these witnesses and the safety of their families.

In the course of the evidentiary proceedings, at the sessions held on 15 October 2007 and 25 September 2008, the Prosecution tendered into evidence Records of Suspect Examination of Mladen Blagojević, Željko Zarić and Zoran Živanović by the Prosecutor's Office of BiH taken during the investigation, more precisely: Record of Suspect Examination of Mladen Blagojević, No. KT-RZ-132/06 dated 15 November 2006; Record of Suspect Examination Željko Zarić, No. KT-RZ-132/06 dated 6 December 2006 and the Record of Suspect Examination of Zoran Živanović, No. KT-RZ-132/06 dated 9 December 2006. In the course of the main trial, all accused persons exercised their right to remain silent.

Pursuant to Article 263(2) of CPC of BiH, the Court rejected the presentation of these pieces of evidence.

When ruling on this matter, the Court was guided by the fact that the accused persons were not bound to present their defense or answer questions posed to them, as guaranteed by Article 6(3) of CPC of BiH; the accused persons exercised that right by not presenting their defense in the course of the main trial. The Court could not abandon the principle of direct presentation of evidence and accept the proffered statements because that would represent a violation of Article 273, specifically subparagraph 2, which explicitly prescribes the situations when statements given during the investigative phase may be read out, or more precisely, this Article lists exceptions from the direct presentation of evidence. The Court finds that the presentation of this evidence would have been possible only had the accused persons presented their defense, and even then it would be subject to the limitations set forth in Article 273(1) of CPC of BiH. According to the provisions of CPC of BiH, the exceptions from the direct presentation of evidence are provided only in Article 273(1) and (2) of the cited law. According to paragraph 1 of the cited Article, statements given during the investigative phase are admissible as evidence in the main trial and may be used in direct or cross-examination, and then tendered into evidence. Paragraph 2 of the cited Article stipulates that, notwithstanding paragraph 1, records on testimony given during the investigative phase, and if judge or the Panel of judges so decide, may be read or used as evidence at the main trial only if the persons who gave the statements are dead, affected by mental illness, cannot be found or their presence in Court is impossible or very difficult due to important reasons. The latest amendments introduced a new paragraph – paragraph 3 – to this Article of CPC of BiH, which reads that if the accused during the main trial exercises his right not to present his defense or not to answer questions he is asked, records of testimony given during the investigation may, upon decision of the judge, be read and used as evidence in the main trial, only if *the accused was, during his questioning in the investigation, instructed as provided for in Article 78(1)(c) of this Code*. The instructions given to the accused persons during the questioning in accordance with the old Article 78(2)(a) and (c) of CPC of BiH did not include the warning that their testimonies given during the investigation were admissible and might be read or used at the main trial. The Court finds that the warnings according to which the person is not bound to present their defense or answer questions, and according to which they may comment on the charges against them and present all facts and evidence in their favor in themselves do not allow the Prosecutor to tender into evidence their previously given statements at any time he wishes during the main trial without the consent of the accused persons, and even before the accused have stated whether they wished to present their defense or not. It should be noted that the legislator realized the vagueness of Article 78(2) of CPC BiH in terms of possibilities to use suspect statements given during the investigation at the main trial and therefore, in the Law on Amendments to the Criminal Procedure Code of Bosnia and Herzegovina (Official Gazette of BiH, No. 58/08), which entered into force in June 2008, amended paragraph (2)(c) of that Article and prescribed that the accused may comment on the charges against him and present all facts and evidence in his favor *and that, if he does so in the presence of the defense attorney, the statement made is admissible as evidence at the main trial and may, even without his consent, be read out and used at the main trial*. This amendment clearly prescribes the duty of the prosecutor or authorized officer to first warn the suspect that his statement given

during the investigation is admissible at the main trial and that, only after that, it may be read out and used at trial without his consent. By doing this, the legislator introduced clear rules of procedure under which such statements can be admitted into evidence, binding all interviewers to instruct the suspects on their rights. Also, Article 273(3) of CPC of BiH allows the judge or the presiding judge to admit into evidence such statement given by the accused person during the investigation if the accused was previously instructed as provided for in Article 78(2)(c) of CPC of BiH. Article 125 of the cited Law on Amendments to the Criminal Procedure Code of BiH prescribes that in cases in which indictment was confirmed before entry into force of this Law the proceedings shall continue in accordance with the provisions of the previous Criminal Procedure Code of BiH, unless the provisions of this Law are more favorable for the suspect or the accused person. Given that the amended Article 78(2)(c), as well as Article 273(3) of CPC of BiH, are more favorable for the accused persons, because they require as an imperative that the accused must first be warned that their statements given during the investigation might be used at the main trial, and that in that case the consent of the accused to read out and use at the main trial their statements given during the investigation is not required, the Court finds that even in accordance with the new provisions of CPC of BiH cited above, the requirements have not been met to grant the Prosecution motion to admit into evidence the statements of the accused persons given during the investigation, since they have not been previously warned about such a possibility.

At the hearing held on 21 November 2007, the Court issued a Decision dismissing the Prosecution Motion seeking that the report by Baraybara Jose Pablo, who participated in unearthing of the Glogova mass grave, be admitted into evidence which was used before the ICTY in the Blagojević Case, because the Defense did not contest the existence of the mass grave at the Glogova II site, and because this mass grave was not subject of the charges. At the hearing held on 29 November 2007, the Court also dismissed the Prosecution Motion seeking admission into evidence of the Report on ICTY Activities from 1999 by expert witness John Clark, which is related to the manner of death of the persons exhumed from the Glogovi II mass grave; also, the reports of exhumation at the Budak cemetery were not admitted because this is another site which is not included in the charges. At the hearing held on 11 September 2008, the Court also dismissed the Prosecution motion to examine the witness under pseudonym A 16, who testified and was granted protective measures in the ICTY case Prosecutor vs. Milorad Trbić, No. IT-05-88/1-PT dated 18 August 2006, which was transferred to BiH authorities in accordance with Rule 11 bis of the ICTY Rules of Procedure and Evidence, because, according to the Prosecutor, this witness had no information related to specific actions with which the accused persons were charged, nor did the witness in his testimony mention the accused persons in any context. The Court dismissed these Prosecution motions in accordance with Article 263 of CPC of BiH because the Court found they were unnecessary, or irrelevant to the case.

The Panel also dismissed the Motion by the Defense for the second accused seeking to admit into documentary evidence the criminal report that the defense of the second accused had filed against witness PW-1 who had been granted immunity by the

Prosecutor, and the report was for false testimony against their client in this case. The Panel found that, given that the Prosecutor's Office had not made any decision on this criminal report, this evidence was unnecessary, since it in itself did not prove a single relevant fact.

Closing statement

At the conclusion of the evidentiary proceedings the Prosecutor said in his closing statement that the Prosecution proved during the evidential proceedings beyond any reasonable doubt that the accused personally and with others, perpetrated criminal acts of unlawful killing of Bosniaks in Bratunac and Orahovac, causing terror, forcible transfer and inhumane treatment. The Prosecution argues that the Accused are responsible for the actual criminal acts they perpetrated themselves, but it also asserts that the Accused are individually responsible for those criminal acts perpetrated by others. In the opinion of the Prosecution, the Accused did not protect Bosniak male detainees from attacks by others, not because they were unable to do so, but because they wanted to allow others to do so, thereby sharing the intent of the others and participating in these attacks as co-perpetrators. While the attack on the Srebrenica enclave is not in itself one of the counts in the Indictment, it remains relevant to the crimes charged in the Indictment as the strategic, operational and tactical goals of the attack relate to the "background issues," or the *chapeau elements* of the offence that is qualified by the Prosecution as Crimes against Humanity – meaning that there was a widespread or systematic attack in furtherance of a state or organizational policy that was perpetrated against the civilian population. The forcible transfer, its scale, the complexity of the task, the numbers of soldier involved in maintaining security in Potočari, the creation and maintenance of inhumane conditions in Potočari, the separation and guarding of the Bosniak men that was itself an inhumane act constitute -- the Prosecution argues --convincing evidence that the Accused knew that there was an attack on the civilian population and that their acts were part of this attack.

The Prosecution says that the Accused did not protect Bosniak male detainees, not because they were unable to do so, but because they wanted to allow others to do so, thereby sharing the intent of the others and participating in these attacks as co-perpetrators. The Accused did not have to know of all parts of the attack. It was enough that the Accused were aware of their acts being part of the attack against the civilian population. In the opinion of the Prosecution the Accused knew they were playing their part in the forced transfer of the Bosniak population of Srebrenica enclave, they knew that there was an attack on the civilian population and that their acts were part of the attack. With this knowledge, the Accused remained in Bratunac, in the vicinity of the School and trucks and later participated in the transportation of the detained Bosniak men to Orahovac. The transportation process of moving the Bosniak men is itself a forcible transfer. The Accused guarded the Bratunac school, they did the same in Prahovac school. By doing so, they played their decisive role in securing the detainees in the vehicles and in the school, they patrolled, they displayed force, they held their automatic weapons at the ready and were prepared to use them when necessary. The Accused knew that they themselves and the other soldiers were

committing criminal acts; they wanted it to happen and to go on happening. It is during this period of the attack on the civilian population that the accused participated in and perpetrated the criminal acts alleged in the Indictment. The Prosecution holds this to be the basis of the accused's liability for Crimes against Humanity.

The Prosecution notes that witness testimonies are critical: they are the heart of the case. However, some witnesses attempted to retract important parts of their prior statements when testifying at the main trial. The Prosecution is convinced that the Court shall attach the necessary importance to the prior statements, the statements the witnesses themselves signed confirming they were true. The Prosecution elaborated on the reliability of testimonies of the Prosecution witnesses emphasizing the witnesses PW-1, PW-2 and PW-3 who were granted limited immunity for their testimony. Particular attention was paid to the credibility of the testimony of the witness PW-1, for whose testimony the Prosecution claims to be the most damaging to the Defence case. Commenting on the evidence tendered by the Defence, the Prosecution challenges in particular the attempts to provide an alibi for the accused. The Prosecution argues that the Defence witnesses are not credible: for lack of detail, lack of corroboration and for their obvious and cynical denial of indisputable facts. The Prosecution finds the report by the court expert Radinović unreliable and biased. The Prosecution analysed in detail the testimonies of all witnesses and the findings and the opinion of the defence expert witness Dr. Radovan Radinović, and it gave a clear explanation in relation to each count of the Indictment as to why and based on what evidence the Prosecution deems the charges legally and factually proven. Finally, the Prosecution moved the Court to find the defendants guilty and punish them according to the law. For the Accused Zdravko Božić, for the acts he allegedly committed, the Prosecution proposed imprisonment of 33 years; for the Accused Blagojević, for his leading role, the Prosecution proposed imprisonment of 40 years, while for the Accused Željko Zarić and Zoran Živanović it proposed imprisonment of 38 years each.

Attorney Dragica Glušac, representing Zdravko Božić, said in her closing statement that during the trial the Prosecution failed to prove that the Accused participated in the actions and events covered by the Indictment and that it did not prove the *mens rea*, intention and knowledge of the accused about the crime he is charged with. The Defence believes that the Court should apply the 1992 Criminal Code of the Republic of Bosnia and Herzegovina as a more lenient one. The defence goes on to argue that the combination of elements of joint criminal enterprise and of co-perpetration as described in the Indictment is unacceptable because these two defining concepts of crime cannot co-exist. The Defence believes that by granting immunity and requesting protective measures for the key witnesses in this trial the Prosecution put the Indictment on a shaky foundation. The Defence says that under Article 4(a) CC BiH the concept of the joint criminal enterprise does not fall under the jurisdiction of the Court of BiH. Here the Defence emphasises the counts 3, 4, 5, 6 and 7 relating to 14 July 1995 in Orahovac, where the defence offered as Božić's alibi the excerpts from the logbook of the duty officer of the Military Police Platoon in July 1995, specifically for 14/15 July 1995, showing that on that day the accused Zdravko Božić was on duty at the command of the Military Police in Bratunac. Therefore, the Defence argues that

the Prosecution failed to prove that Božić was guilty on any of the counts of the Indictment, and it moved the Court to acquit the accused of charges.

The Accused Zdravko Božić said in his closing statement that he fully agrees with what his counsel said in the closing statement. He denied all allegations in the Indictment because none of the witnesses confirmed that he had been detaining any people saying that the allegations were spurious and that they were not corroborated by any of the witnesses who testified before this Panel.

The Defence Counsel for Mladen Blagojević, Miroslav Ristić, said in his closing statement that the Indictment is incoherent, contradictory and lacking reliable and clear facts on the acts alleged. Joint criminal enterprise (JCE) as a type of responsibility is not foreseen or defined by any international act, and the concept of JCE as a form of participation in a crime was not stipulated in the CC SFRY nor was it stipulated in the CC BiH which is currently being applied. The Defence points out that the Prosecution failed to prove a nexus between the attack and the acts alleged to have been committed by the Accused. The Defence Counsel holds that the Accused Blagojević did not have any knowledge about the attack on the Srebrenica enclave, i.e. of an attack against the civilian population committed pursuant to or in furtherance of a state policy, and that the acts of the accused Blagojević were part of this attack, or that they were taken pursuant to or with the aim of committing such an attack. The Defence believes that the Prosecution failed to prove that the Accused committed the crimes as charged. The Defence also underlines the importance of the principle of legality and prohibition of retroactivity contained in Article 3 CC BiH. The rule to apply the law that was effective at the time of the perpetration of crime goes hand in hand with the rule of mandatory application of a more lenient law as prescribed by Article 4 (2) CC BiH. Having compared criminal codes that have been effective since the time of perpetration of crime to this date and their leniency for the perpetrator, the Defence concluded that the 1996 CC RS, as the most lenient one, must be applied on the Accused Mladen Blagojević. In addition, the Defence Counsel proposes that the accused Blagojević be acquitted of all charges since it was not proven that he committed the alleged crime.

The Accused Mladen Blagojević said that he fully agrees with what his Counsel said in the closing statement and that he is not guilty of the charged crime.

Attorney Dragan Gotovac, representing the Accused Željko Zarić, stated in his closing argument that he had thoroughly analysed the concept of “joint criminal enterprise” vis-à-vis the responsibility for co-perpetration, and found that the application of JCE in this case is inadequate. Furthermore, attorney Gotovac argues that the legal and factual bases of the Indictment against Željko Zarić are invalid, theoretically and practically not viable, and that there is no conclusive evidence which prove beyond reasonable doubt that any of the specific crimes were committed. Attorney Stanko Petrović said that it became clear at the end of the evidential proceedings that the Accused Zarić had never been in the Orahovac village, nor is there any evidence showing that this Accused undertook any actions at or around the primary school building in Bratunac,

or that he committed the crime alleged in the Indictment. In addition, attorney Petrović pointed to the inconsistencies in the testimonies of those witnesses who directly incriminate his client, and that the testimonies of a large number of witnesses were misinterpreted by the Prosecution. Both Defence attorneys move the Court to issue a decision acquitting the accused Zarić of all charges.

The Accused Zarić Željko said that he fully agreed with what his Defence said in the closing statement and that he was not guilty of the charged crime.

The counsel for the accused Zoran Živanović, Danilo Mrkaljević, said in the closing statement that despite the copious evidence adduced, the Prosecution did not prove that the criminal offence of persecution, alleged to have been committed by the Accused persons, or any other crime were committed. In the opinion of the Defences the Indictment is not citing specific acts and actions for each Accused and adequate evidentiary proceedings cannot be conducted in absence of concrete allegations. Many counts of the Indictment are too general or repetitive while relating to the same event. In relation to Potočari, the Defence said that Živanović, as a member of the Military Police was there during the boarding of women and children into the buses but he did not use force or threatened to use force. As for Bratunac and the night of 13/14 July 1995, the Defence argues that the Prosecution did not cite a single specific action taken by the accused Živanović save the one under Count 11 alleging that he was shooting at the prisoners in the school, which has not been proven either. In relation to Orahovac the Defence said that no other evidence but the witness PW-1 confirmed that the accused Živanović had been at Orahovac. The Defence deems the witness PW-1 to be a textbook example of an unreliable witness. The Defence also discussed the applicability of law saying that the only applicable law in this case was the one that was effective at the time the alleged crimes were committed i.e. the CC SFRY as adopted. In relation to the JCE the Defence holds that this form of responsibility was not a general principle of international law and it is therefore inapplicable by virtue of Article 4(a) CC BiH. In addition, in this case JCE was not proven by the Prosecutor even if the ICTY criteria were to be applied. In relation to *actus reus* the Defence proved during the trial that two out of three potential elements were missing, while *mens rea* of the accused persons was not proven at all. The Defence also denies that the Prosecution proved the existence of a widespread or systematic attack against civilian population and the perpetrator's knowledge and awareness that his actions were part of such an attack. In this regard the Defence elaborated on the broad context of events preceding the operation *Krivaja 95*, the situation and activities in the Srebrenica safe area before the operation was launched, the *Krivaja 95* operation itself, in particular the role of the police of the Bratunac Brigade in this operation. In relation to the pursuing of the 28 Division of the Army of BiH, the Defence deems this to be a legitimate military target, just as it was the separation of able-bodied men in Potočari to check if their names were on the list of war criminals. It was also legitimate to provide security for the primary school in Bratunac, prevent the flight of prisoners, escort of convoys with the prisoners, as well as disembarking of prisoners and accommodating them in some buildings. According to the Defence, the decision to move the civilian population out of Srebrenica was not made by the VRS organs but

rather it was the representatives of Bosniak civilians in Srebrenica who arrived at this idea, which was accepted by UNPROFOR. From the military perspective this operation cannot be qualified either as a forced transfer or persecution. Finally, the Defence moved the Court to acquit the accused Živanović of all charges due to the lack of evidence.

The Accused Živanović Zoran said that he fully agreed with what his counsel said in the closing statement and that he was not guilty of the charged crime.

Having evaluated all the evidence, both as a whole and each item of evidence considered individually, in relation to the of the verdict finding the defendant guilty, the Court determined properly and beyond doubt that at the relevant time the accused Mladen Blagojević as a member of the Military Police Unit, Bratunac Light Infantry Brigade, as part of the widespread and systematic attack of the Army of the Republika Srpska against the civilian Bosniak population in the UN “safe area” Srebrenica, knowing of such an attack and that his acts were part of the attack, persecuted civilian Bosniak population on national, ethnic and religious grounds, inasmuch as on the night of 13 / 14 July 1995, at *Vuk Karadžić* Primary School (now known as the Branko Radičević School) in Bratunac, while several hundred of civilian Bosniak men were inside the school, after one civilian Bosniak man appeared at a window of a room in the school, he pointed a Browning machine gun mounted on a Pinzgauer vehicle toward that window and fired from it at the same man as well as at the other men in the room and bullets hit the window and the wall around it, which resulted in the great suffering of the detained Bosniaks.

The Court established such state of fact on the basis of the following:

Under the amended Indictment the accused Mladen Blagojević, Zdravko Božić, Željko Zarić and Zoran Živanović are charged with Crimes against Humanity in breach of Article 172 (1) (h) in conjunction with items (a), (d), (e) and (k) CC BiH, and the burden to prove all major elements of this crime was on the Prosecutor's Office i.e. to prove the existence of a widespread and systematic attack against any civilian population, knowledge of the perpetrators of such an attack and that the acts of the perpetrators were part of such attack, or a nexus between the acts of the accused and the attack against the civilian population.

General Elements of the Criminal Offence

The following general elements of the criminal offence ensue from the legal qualification of the criminal offence of Crimes against Humanity under Article 172(1) of the BiH CC, in conjunction with the *actus reus* with which the Accused are charged, as stated in the operative part of the Verdict:

- Existence of the widespread or systematic attack,
- That the offence was committed as a part of such attack,
- That the attack is directed against the civilian population,

- That the Accused had knowledge of such attack.

The Prosecution presented the theory that at the time when the Accused committed the acts they are charged with the widespread and systematic attack of the Army and Police of Republika Srpska was under way against the Bosniak population in and outside the Srebrenica UN safe area.

In order to prove this essential element of the criminal offence of Crimes against Humanity, the Prosecution moved the Court to accept the facts established in the case *Prosecutor v. Krstić*, case No. IT-98-33-T, the ICTY Trial Judgment of 2 August 2001 (*Krstić*), which were confirmed by the Appeals Chamber in the same case No. IT-98-33-A of 19 April 2004; and in the case *Prosecutor v. Blagojević and Jokić*, the case No. IT-02-60, the Trial Judgment of 17 January 2005 (*Blagojević*) which were not contested or appealed in the same case (Appeals Judgment in the proceedings of 9 May 2007). The Prosecution moved that pursuant to Article 4 of the Law on Transfer of Cases from ICTY to the Prosecutor's Office of BiH and use of evidence obtained by ICTY in the proceedings before the BiH courts (the Law on Transfer), that the facts be accepted as established related to the existence of the widespread and systematic attack (the widespread and planned attack) against Bosniak civilians as established in the mentioned judgments and as specified in the Motion by the Prosecutor's Office of BiH of 29 March 2007.

Considering the mentioned Motion of the Prosecutor's Office of BiH, on 23 November 2007 the Court partially accepted the Motion pursuant to Article 4 of the Law of Transfer and accepted as relevant some facts established in the final judgment in the ICTY case *Prosecutor v. Krstić*, the case No. IT-98-33-T, the ICTY Trial Judgment of 2 August 2001 (*Krstić*), which were confirmed by the Appeals Chamber in the same case No. IT-98-33-A of 19 April 2004; and in the case the *Prosecutor v. Blagojević and Jokić*, the case No. IT-02-60, the Trial Judgment of 17 January 2005 (*Blagojević*), which were not contested or appealed in the same case (Appeals Judgment in the proceedings of 9 May 2007).

The following facts were accepted in the case in favor of the Prosecution:

1. It is not disputed that a state of armed conflict existed between BiH and its armed forces, on the one hand, and the Republika Srpska and its armed forces, on the other. (T1)
2. The Bratunac Brigade was formed on 14 November 1992, as a light infantry brigade within the RS Drina Corps.
3. The Bratunac Brigade had three infantry battalions. In July 1995, the Brigade also included one infantry battalion that was re-subordinated from the Zvornik Brigade. In addition, the following units formed a part of the Bratunac Brigade: a reconnaissance unit called Red Berets engineering platoon, mixed artillery group, rocket unit and the military police platoon.
4. The Military Police Platoon HQ was near the Bratunac Brigade Command.

5. In March 1995 Radovan Karadžić, the President of Republika Srpska (RS), issued a Directive to VRS regarding the long-term VRS strategy in the enclave. This directive, known as *Direktiva 7*, specifies that the VRS was to: complete the physical separation of Srebrenica from Žepa, preventing even communication between individuals in the two enclaves. By daily planned and well-thought out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants Srebrenica.
6. The VRS Main Staff issued on 31 March 1995 *Direktiva 7.1*, signed by General Mladić. *Direktiva 7.1* was issued "on the basis of *Direktiva 7*" and directed the Drina Corps to, *inter alia*, conduct "active combat operations...around the enclaves".
7. The then Commander of the Drina Corps, General Major Milenko Živanović, signed on 2 July 1995 two orders, laying out the plans for the attack on the enclave and ordering various units of the Drina Corps units to ready themselves for combat. The operation was coded *Krivaja 95*.
8. The VRS offensive on Srebrenica started on 6 July 1995.
9. On 9 July 1995, President Karadžić issued a new order authorizing the VRS Drina Corps to capture the town of Srebrenica.
10. On 11 July 1995 General Mladić, accompanied by General Živanović (the then Commander of the Drina Corps), General Krstić (at the time the Deputy Commander and the Chief of Staff of the Drina Corps) and other officers of the VRS, took a triumphant walk through the empty streets of Srebrenica.
11. In July 1995 following the takeover of Srebrenica, the Bosnian Serb forces executed several thousands of Bosnian Muslim men.
12. Faced with the fact that Srebrenica had fallen under control of Bosnian Serb forces, thousands of Bosnian Muslim inhabitants of Srebrenica fled to Potočari, seeking protection within the UN compound.
13. Women, children and elderly people were loaded on the buses on 12 and 13 July 1995 and under VRS control driven from Potočari to the Bosnian Muslim-controlled territory near Kladanj.
14. The transportation of Bosnian Muslim civilians from Potočari was completed by the evening of 13 July 1995 by 20:00 hours.
15. In the morning of 12 July the Bosnian Serb forces started separating men from other refugees in Potočari and held them in various locations.
16. Bosnian Muslim men who were separated from women, children and elderly in Potočari were transported to Bratunac.
17. As the situation in Potočari escalated into a crisis on 11 July 1995, the word spread through the Bosnian Muslim community that able-bodied men should take to the woods, form a column together with members of the 28th Division of ABiH and attempt a breakthrough towards the Bosnian Muslim-held territory in the north.
18. In the evening of 11 July 1995 "the division command" together with the Bosnian Muslim municipal authorities of Srebrenica made a decision to form the column.

19. Around midnight of 11 July 1995 the column started moving along the axis Konjević Polje-Bratunac.
20. On 12 July 1995 the Bosnian Serb forces launched an artillery attack against the column which was crossing the asphalt road in the area of Konjević Polje and Nova Kasaba route to Tuzla.
21. Only about one third of the men successfully made it across the asphalt road and the column was split in two parts.
22. The largest group of Bosnian Muslim men from the column were captured on 13 July 1995.
23. Most of the Bosnian Muslim men separated at Potočari and captured from the woods were held in Bratunac for one to three days, before being transferred to other detention and execution sites.
24. The town of Bratunac was in the zone of responsibility of the Bratunac Brigade of the Drina Corps.
25. Identification papers and personal belongings were taken away from Bosnian Muslim men in Potočari, piled up and eventually burned.
26. Thousands of Bosnian Muslim men arrived in Bratunac on 12 and 13 July and were detained there.
27. They were placed in the provisional detention facilities, such as the *Vuk Karadžić* School, Bratunac football stadium, as well as the busses parked in the streets of Bratunac town.
28. The school in Grbavci served as a provisional detention center for the men who were executed later on.
29. Aerial photos show that the ground in Orahovac was disturbed... two primary mass graves were uncovered in the area and were named *Lažeta 1* and *Lažeta 2* by the investigators.
30. The *Lažeta 1* gravesite was exhumed. All of 130 individuals uncovered for whom the sex could be determined were males. One hundred and thirty eight blindfolds were found in the grave.
31. All 243 victims from *Lažeta 2* were male and the experts determined that the vast majority died of gunshot injuries. In addition, 147 blindfolds were located.

Article 4 of the Law on Transfer of Cases stipulates that at the request of a party or *proprio motu*, the court, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY. As the Law on Transfer of Cases and the CPC BiH do not set the criteria based on which a fact would be considered adjudicated, the Panel, considering the facts relevant to the judgment in this legal matter, bearing in mind the obligation to respect the right to a fair trial guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR), and by the BiH CPC, applied the same criteria which the ICTY set in this regard in the Decision of 28 February 2003 in the case *Prosecutor v. Momčilo Krajišnik*. The Panel points out that the Rule 94 (b) (taking of formal judicial notice) of the ICTY Rules of Procedure and Evidence and Article 4 of the Law on Transfer of Cases are not identical and that the court is not bound by the ICTY decisions. However, it is evident that some issues which the Tribunal and this Court

face are similar when the adjudicated facts are considered, and therefore the opinion of this Panel will be similar, too. Accordingly, the Court had in mind the following criteria while deciding on the acceptance of the established facts:

1. The fact must be sufficiently distinct, concrete and identifiable. For the fact to be sufficiently distinct, concrete and identifiable it has to be taken from the specific paragraphs of judgments of a trial or appellate chamber.¹ Moreover if it was taken out of the context the fact has to be comprehensible and have the same or at least similar form to the one that was adjudicated by the judgments of the trial or appeals chamber judgment from which it was taken.

2. The fact must be restricted to factual findings and should not include legal characterizations. The legal characterizations are usually evaluated in each individual case and are interpreted restrictively.² While The Hague jurisprudence tends to rule out each fact containing legal formulations and primarily legal conclusions³, the Court of BiH took the position that even those facts which contain indirect elements of the criminal offence may be accepted as established⁴. The Panel had a conservative approach and ruled out all those proposed facts that contain any legal conclusions or legal qualifications related to the manner of commission of the criminal offence, because the specific act of commission is thus put in a broader war context.

3-4. A fact must clearly not be subject to a pending appeal or review. The formal judicial notice may be taken only of those facts from the final decisions⁵, more specifically, the Court may not take the judicial notice of adjudicated facts if they are contested by the appeal. On the other hand if the facts are adjudicated during the proceedings, without being contested by the appeal, they remain unchanged and may be formally taken judicial notice of even if the final decision has not been rendered. The fact that a judgment is contested by an appeal itself is not a sufficient ground to reject all the facts adjudicated in that judgment.

5. The fact may not refer to actions, behavior or mental state of the accused. The Court may take formal judicial notice of the fact related to the liability of the accused in the case when those facts do not relate to the actions, behavior or the mental state of the

¹ *Prosecutor v. Prlić*, IT-04-74-T, of 7 September 2006.

² ICTY Decision on Established Facts in the case against *Momčilo Krajišnik*, case No. IT-00-39-T, of 24 March 2005;

³ ICTY Decision on Established facts in the case against *Željko Mejačić et al.*, case No. IT-02-65-PT, of 1 April 2004, page 6, ruling out the facts on the existence „policy of perpetration of the inhumane acts against civilian population“, and „offences committed based on the widespread and systematic attack. ”

⁴ See decisions on the established facts in the cases against *Radovan Stanković*, case No. X-KR-05/70, of 13 July 2006; *Gojko Jankovića*, case No. X-KR-05/161, of 4 August 2006; *Momčilo Mandić*, case No. X-KR-05/58, of 5 February 2007; *Krešo Lučić*, case No. X-KR-06/298, of 27 March 2007;

Also see the decisions of the Court of BiH in the verdicts of the Trial Panel in the case against *Nedo Samardžić*, case No. X-KR-05/49, of 7 April 2006; the First Instance verdict in the case against *Dragoje Paunović*, case No. X-KR-05/16, of 26 May 2006; the First Instance Verdict in the case against *Boban Šimšić*, case No. X-KR-05/04, of 11 July 2006, para. 49; the First Instance verdict in the case against *Marko Samardžija*, case No. X-KR-05/07, of 3 November 2006; the First Instance Verdict in the case against *Radislav Ljubinać*, case No. X-KR-05/154, of 8 March 2007.

⁵ *Prosecutor v. Ljubičić*, IT-00-41-PT, Decision of 23 January 2003.

accused.⁶ The aforementioned refers to the facts related to the behavior other persons (apart from the accused) who participated in the joint criminal enterprise mentioned in the indictment, or to the facts related to the actions or behavior of the persons subordinate to the accused.

6. The fact is not a subject of a (reasonable) dispute between the parties in the present case. The judicial notice may be formally taken of only those facts which are not the subject of a (reasonable) dispute between the parties to the current proceedings.

7. The fact may not be based on the plea agreements in the previous cases. The fact may be accepted as established if it has been adjudicated and is not based on the agreement of the parties in the previous cases, such as the facts supporting the plea agreement.⁷ The facts that have been truly adjudicated are those facts which have been taken from the cases where the appeals panel decided on the merits or where the appeal was not filed.⁸

8. The fact may not affect the right of the accused to a fair trial. The unreasonably generalized, unclear, tendentious and leading facts violate the principle of judicial economy.⁹ In the final analysis of the facts, the panel reserves the discretion to reject even those facts which satisfy the mentioned requirements if those facts, taken as a whole, violate the right of the accused to a fair trial.

While deciding on the Motion by the Prosecutor's Office of BiH to accept the established facts the Court found that the aforementioned facts fully satisfy the criteria, which is why it accepted them. In doing so the Court did not accept all facts the Prosecutor's Office requested in its Motion. The Court accepted the objection by the Defense that some facts proposed by the Prosecution were irrelevant to this case, that some facts contain legal conclusions and characterizations, that some facts are not sufficiently distinct, and some of them indirectly charge the Accused.

In addition to the Motion to accept the established facts from the ICTY judgments, the Prosecution presented a number of pieces of evidence to prove the existence of the widespread and systematic attack directed against the civilians, as a general element of the criminal offence of Crimes against Humanity. In this regard, among others, the Prosecution presented the following evidence: Statement of the President of the UN Security Council of 14 July 1995; Resolution of the UN Security Council of 16 April 1993; Decision on the Strategic Goals of the Serb People of 12 May 1992, which states that the Drina River must not be a border any longer, the Operations Directive of the VRS Main Staff of 11 November 1992 where the Drina Corps was ordered to defend Zvornik, to exhaust the enemy in the area of Podrinje in order to force them to abandon the areas of Birač, Žepa and Goražde, together with the Muslim population; Report of the Commander of the Bratunac Brigade, Colonel Ostojić of 4 July 1994

⁶ *Tužilac protiv Prlića*, IT-04-74-T, od 07.09.2006. godine

⁷ *Tužilac protiv Slobodana Miloševića*, IT-02-54-T, od 05.06.2002. godine, str.3

⁸ *Ibid*, 5.

⁹ MKSJ Odluka o presuđenim činjenicama u predmetu *Vujadin Popović i drugi*, predmet br. IT-05-88-T, od 26.09.2006. godine, pasus 16.

stating that the task was to – expel Muslims from the Srebrenica enclave...“*to leave the enclave en mass as soon as possible, having realized that they could not stay there any longer*“; Directive No. 7 issued by the Commander in Chief of the RS Armed Forces, President Radovan Karadžić, of 8 March 1995, stating that by the daily planned and thought-out combat activities create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants in Srebrenica; Directive regarding further operations No 7/1 issued by General Ratko Mladić of 31 March 1995, stating the tasks to the Drina Corps; Order to the Drina Corps to stabilize the defense around the Žepa and Srebrenica enclaves and to create conditions for the liberation of the enclaves of 15 May 1995, with amendments of 16 July 1995; Order of the Drina Corps of 16 May 1995; Order of the President of RS of 16 June 1995 about the direct war threat, which includes also the general mobilization; Order to conduct active combat activities of the Main Staff of the Drina Corps of 2 July 1995 named *Krivaja 95* containing specific orders to the Drina Corps units, including the Bratunac Brigade; Order to conduct active combat activities issued by the Command of the 1st Bratunac Light Infantry Brigade of 5 July 1995; regular combat reports made by the Command of the 1st Bratunac Light Infantry Brigade of 4, 6, 7, 8, 9, 10, 11, 12 and 13 and 14 July 1995, reports of the meetings of the 1st Bratunac Light Infantry Brigade held from 1 to 16 July 1995; video recordings of the VRS entering Srebrenica, transport of civilians from Potočari, UNPROFOR Observers Reports made in July 1995, the requests for the mobilization of buses issued by the RS Ministry of Defense on 12 July and 13 July 1995, the report on the mobilization of vehicles made by the RS Ministry of Defense of 13 July 1995, Notice on Evacuation and Transport of Civilians from Srebrenica, made by the Zvornik PSC /*Public Security Center*/ of 12 July 1995, facsimile sent by General Kerremans on 12 July 1995 of meetings with General Mladić on 11 and 12 July 1995; records on exhumations of the mass graves in the locations Pusojlčići and Budak, the photos of the mass graves in the locations of Glogova, Zeleni Jadar, Jasenovo, Budak, the hearing of the expert witness Rick Butler, witnesses Kingori, Van Duijn, Mevludin Orić, Muris Brkić, adduced into the court case file the testimonies of the witnesses Van Duijn, Čamila Omanović and Miroslav Deretić.

Having reviewed the Resolution of the UN Security Council No. 819 of 16 April 1993 the Panel established that the town of Srebrenica and its surroundings was declared to be a UN safe area which must not be exposed to any hostilities. This fact was not contested by any party to the proceedings.

The Court also accepted as a previously established fact that in March 1995 Radovan Karadžić, the President of Republika Srpska (RS), issued a directive to the VRS regarding the long-term strategy of the VRS forces in the enclave. This directive, known as *Direktiva 7*, specifies that VRS should: totally physically separate Srebrenica and Žepa, and thereby also prevent individual communication between these enclaves. By the daily planned and thought-out combat operations create an unbearable situation of total insecurity with no hope of further survival or life for the inhabitants in Srebrenica.

Subsequently, the VRS Main Staff issued Directive 7.1. on 31 March 1995 signed by General Mladić. Direktiva 7.1 was issued "on the basis of Directive 7" and directed the Drina Corps to conduct, among other things "*active combat operations...around the enclaves*".

The then Commander of the Drina Corps, General-Major Milenko Živanović, signed on 2 July 1995 two orders, presenting an attack plan on the enclave and issuing to various units of the Drina Corps an order to put themselves in the state of combat alert. The operation was code-named *Krivaja 95*. The order regarding the active combat activities was passed on, among other units, also to the Bratunac Brigade. All these established facts were not put in question by the evidence for the Defense.

The VRS offensive on Srebrenica started on 6 July 1995. This established fact was stated by the expert witness for the Defense Dr. Radinović in his report which reads that the Srebrenica operation was conducted by the VRS Drina Corps from 6 – 11 July 1995. Having reviewed the Order on activities issued by the Main Staff of the Drina Corps on 2 July 1995, the Court established that the following units took part in this attack: the 1st Zvornik Brigade, the 1st Birač Brigade, the 2nd Romanija Motorized Brigade, the 1st Bratunac Light Infantry Brigade, the 1st Milići Light Infantry Brigade and the 5th Mixed Artillery Regiment. Based on the UNMO BiH HQ Report, the Sector North-East, delivered to the UN Main Staff in BiH, the Court established that on the first day of this attack the VRS used tanks, artillery, mortars, rockets and heavy machine guns, and the targets were the Dutch Battalion HQ, observation posts, residential areas in Srebrenica and Potočari, and on the first day the UN observers counted 450 detonations and 35 outgoing firings. The witness Kingori in his testimony stated that in early July 1995 he had a meeting with Colonel Vuković who requested from him to pass the message onto the Muslims in Srebrenica to leave Srebrenica immediately and if they failed to do so that he would sweep the enclave clean, which meant that nobody would stay in the enclave. The same witness stated that on 6 July 1995 the shelling of the enclave started, and on that day the shells landed on the Srebrenica town center where the civilians were. Some landed near the PTT building and some near the hospital in Srebrenica. The following day 7 July 1995, the shelling was fierce and directed against civilians who were the target and over 250 shells were fired on the enclave on that day. On 8 July 1995 the shelling of Srebrenica was the most intensive and the targets were the areas with civilians. The witness stated that on that day Muslims requested from the Dutch Battalion to give them the weapons. The following day 9 July 1995 the shelling continued, which caused panic among the civilians as well as the feeling of insecurity. For his personal safety he moved out of the PTT building in Srebrenica together with his colleague and came to the Dutch Battalion base. The next day he went to Potočari where he saw the results of the heavy shelling. The witness Kingori said that all he stated in his testimony may be found in the UN observers' reports delivered to the UNPROFOR HQ. The Court admitted the testimony of the witness Kingori as objective and credible, as he was a UN observer during the relevant time whose team of observers made reports about the situation in Srebrenica. The review of the UN Military Observers' Report on 7 July 1995 shows that the VRS continued using mortars, rockets, artillery and tanks and that the shells

landed in the town of Srebrenica, and that according to the assessment of the observers the offensive was directed against civilian targets in the town. The UN Observers' Report of 8 July 1995 states that the shelling of the villages of Srebrenica started early in the morning and that the densely populated areas of Srebrenica and Potočari were shelled. Apart from that, the Bosnian Serb Army fired also 10 tank shells and the main target was the power plant. Also, the part of the UN Report about the food supplies in Srebrenica states that the Srebrenica enclave had 42,000 inhabitants of whom 85% were refugees, and the food supplies were almost exhausted and that the water was not drinkable, except the water from the mountain springs, the medical supplies were limited and the power supply was cut off.

The Court accepted the established fact that on 9 July 1995 the President of RS Radovan Karadžić issued a new order, giving a green light to the VRS Drina Corps to take over the town of Srebrenica. This is an established fact from a judgment of the Hague Tribunal and it is stated also in the expert evaluation report for the Defense, Dr. Radinović, who states that based on the approval of the President of the Republic, the VRS Main Staff made the decision that the Drina Corps units enter Srebrenica. This fact ensues from the Notice of the VRS Main Staff which was sent to the Drina Corps Command of 9 July 1995.

The UN Report of 9 July 1995 reads that the Military Observer Team heard 7 explosions in the Srebrenica proper, most of them in the very town center, while the military observers counted additional 113 detonations in Srebrenica and in Potočari. On that day the infantry attack of the VRS from the south of the enclave was launched and the UN observers saw many people coming to Srebrenica from the village of Slapovići and the surrounding villages.

The UN Observers' Report of 10 October 1995 stated that the fierce shelling of Srebrenica and Potočari was still ongoing and that the observers noted over 100 detonations, and that the number of the dead and wounded was rapidly increasing. Two big shells, most probably artillery ones, hit the immediate vicinity of the Srebrenica hospital.

The Official Letter of the Command of the 1st Bratunac Light Infantry Brigade sent to the Drina Corps Command about the consumption of materiel and technical equipment of this Brigade from 10 to 12 July 1995 indicates that during those two days only the Bratunac Brigade used over 43,000 bullets for the infantry weapons of various calibers, over 100 impact rifle grenades, a great number of artillery, tank and howitzer shells and 380 mines.

The Court accepted the established facts that on 11 July 1995 General Mladić, accompanied by General Živanović (the then Commander of the Drina Corps), General Krstić (at the time the Deputy Commander and the Chief of Staff of the Drina Corps) and other VRS officers, triumphantly walked the empty streets of Srebrenica, and that, faced with the fact that Srebrenica had fallen under the control of Bosnian

Serbs, thousands of the Bosnian Muslim inhabitants of Srebrenica had fled to Potočari to seek protection in the UN base.

The UN Observers' Report of 11 July 1995 states that it was impossible for them to count the refugees and the wounded who were coming in columns to the Dutch Battalion base and that based on their assessment by 16:00 hours around 20,000 refugees had arrived, with their number constantly growing. The shelling of the town continued and the town was taken over by the Bosnian Serb army. The number of the severely wounded had risen to fifty, while the number of lightly wounded could not have been established. From 18:45 to 20:51 the UN military observer teams counted 45 shells flying over the Dutch Battalion base in Potočari causing panic among the refugees.

The witness Kingori testified that the refugees were in and outside the Dutch base compound. Those were mostly women, children and elderly men. During the day 11 July 1995 he saw VRS forces in various uniforms freely moving across the enclave.

The witness Čamila Omanović testified that at the relevant time she was in Srebrenica and that around 9 July 1995 the locals of the surrounding villages started coming to Srebrenica, because of the firing which could be heard. The firing was coming from the infantry and artillery weapons. The Bosnian Serb forces were firing and in the afternoon the shelling started which forced the people toward the town. Some people started toward the forest and some toward Potočari. The same witness said that she was heading to Potočari with her children and they were still under fire. People were throwing their belongings on the road in panic, and some of them were wounded. Then she heard the shelling of the Muslim villages on the hill slopes. Together with her family she arrived at the factory in Potočari where according to her assessment, there were around 35,000 people, while 10,000 – 15,000 had gone to the woods.

The witness Mevludin Orić testified that he had been living in Srebrenica and that in early July the attack on Srebrenica was launched by the Serb forces, with all weapons available, including the artillery, and that the shells landed every second. On 11 July 1995 the Serb forces took over Srebrenica and then he went to the village of Šušnjare. The men who did not dare go to Potočari were there. Later on during the night they formed the column which headed to Tuzla. The men with rifles and the deminers were ahead and the front part of the column was armed. The witness was in the back of the column where practically nobody was armed. The Court accepted the testimonies of the witness Mevludin Orić and Čamila Omanović as true and credible as these testimonies are consistent and complementary, both mutually and with the testimony of the Witness Kingori, Van Duijn, expert witness Butler and with the documentary evidence presented and, in particular, with the UN reports.

The UN Observers' Report of 12 July 1995 states that there were around 30,000 people in and around the compound of the base in Potočari, and that a group of around 7-8 thousand of people were trying to arrive in Potočari from Gornji Potočari. The same Report states that the Deputy Commander of the Dutch Battalion stated that in the case

of evacuation UNPROFOR would provide 20 buses and drive several times. There were no armed BiH soldiers in the base. The Bosnian Serb Army agreed to provide food and water supplies. The evacuation started around 12:15 by the fleet composed of buses and trucks, which were provided by the Bosnian Serb Army. The transport of refugees was stopped due to the dark to be continued the following day. The same Report of 13 July 1995 states that the departure of the refugees started again at 7:00 hours. All refugees left the base. The patrol noticed that the entire town was abandoned.

The Court also accepted the following established facts:

On 12 and 13 July 1995 women, children and elderly people were loaded on buses and under control of the VRS forces driven from Potočari to the Bosnian Muslim-controlled territory near Kladanj.

The transport of Bosnian Muslim civilians from Potočari was finished in the evening on 13 July 1995 by 20:00 hours.

In the morning on 12 July the Bosnian Serb forces started separating men from other refugees in Potočari and held them in separate locations. The personal documents and belongings were seized from Bosnian Muslim men in Potočari, put on a pile and burned. Bosnian Muslim men who had been separated from women, children and the elderly men were transported to Bratunac.

As the situation in Potočari on 11 July 1995 was deteriorating, the word spread among the Bosnian Muslims that the able-bodied men should move to the woods, form a column and together with the members of 28th ABiH Division attempt a breakthrough toward the territory in the north, under control of Bosnian Muslims. In the evening on 11 July 1995 *"the division command"* together with the Bosnian Muslim municipal authorities in Srebrenica made the decision to form a column. Around midnight 11 July 1995 the column started moving along the axis Konjević Polje - Bratunac. On 12 July 1995 the Bosnian Serb forces launched an artillery attack on the column which was crossing the asphalt road in the area of Konjević Polje and Nova Kasaba toward Tuzla. Only one third of the men successfully crossed the asphalt road and the column was split in two parts. The largest groups of Bosnian Muslims from the column were captured on 13 July 1995. Thousands of Bosnian Muslims came to Bratunac on 12 and 13 July and were imprisoned there. They were detained in provisional detention facilities, for example the Vuk Karadžić School..., the football stadium in Bratunac, and in the buses parked in the streets of Bratunac. The town of Bratunac was in the area of responsibility of the Bratunac Brigade of the Drina Corps.

Most of the Bosnian Muslims separated in Potočari and captured in the surrounding woods were held in Bratunac and then taken to other detention and execution sites.

The school in Grbavci served as a provisional detention center for the men who were executed later on. Aerial photos show that the ground in Orahovac was disturbed. Two

primary mass graves were uncovered in the area, and were named *Lažete-1* and *Lažete-2* by investigators. The *Lažete-1* gravesite was exhumed. All of the 130 individuals uncovered, for whom sex could be determined, were male. A total of 138 blindfolds were uncovered in the grave. All of the 243 victims associated with *Lažete-2* were male and the experts determined that the vast majority died of gunshot injuries. In addition, 147 blindfolds were located.

All these facts were not contested during the proceedings by the Defense, and they were supported by the testimonies of the witness Mevludin Orić, Čamila Omanović, witness Kingori, Van Duijn, the expert witness Butler, as well as other physical evidence, in particular the UN Observers' Report, which the Panel accepted as true, reliable and credible.

According to the testimony of the witness Muris Brkić, the witness Mevludin Orić, the witness PW-1, the Military Narrative made by the expert witness Butler, as well as the record on exhumations and the exhumation summary reports in Pusumlići and Budak, Official Notices and the SIPA crime scene records and the photos of the mass graves in the locations of Glogova, Zeleni Jadar, Jasenovo, Budak, which were accepted by the Panel as objective and credible, as they are mutually consistent and complementary, it was established beyond doubt that within the operation of the VRS and RS MUP forces on the enclave of Srebrenica mass executions of the Bosniaks were conducted who were then buried and subsequently reburied in other secondary graves. The witness Orić in his testimony stated that he was blindfolded prior to being taken out of the sports hall of the Primary School in Orahovac and then he was thrown on a truck and after a short drive the truck stopped on a meadow where the prisoners got out, and then the VRS soldiers opened fire in rapid successions on them. The witness stated that he fell on the ground and his cousin Haris fell over him and as he was not wounded he pretended to be dead. After that he heard other trucks coming with captured Bosniak men, who got off the trucks and were then killed in the same way. Then he heard the order to check if there was anybody alive among the prisoners and if so, to shoot each of them in the head. This order was carried out. During the night the witness Orić stated that he heard construction machines, loader and excavator digging and the front lights of these machines were used for checking if there was anybody alive among Bosniaks.

The witness Desimir Đukanović stated in his testimony that he had knowledge that the bodies of Bosniak men were collected in Bratunac and taken to Glogova where they were buried. The witness PW-1 in his testimony said that he secured the Glogova primary grave when the bodies were taken out and moved to the secondary grave. On that occasion the same witness saw the excavator loading the bodies from the Glogova burial site on the trucks which transported them to the secondary graves. The witness PW-1 took the investigators of the Prosecutor's Office of BiH to the primary grave site in Glogova and he also showed the investigators six locations he claimed to be the secondary graves. The statement of the witness Muris Brkić entails that based on this information the SIPA investigators went to the field and conducted the checks. Based on the exhumation reports in the locations of Budak and Pusmolići, exhumation

records from these locations, official notices and SIPA crime scene records of 2 April 2007, as well as the attached photos of the mass primary and secondary graves, which were admitted into the file, it ensues that there was a primary mass grave in the location of Glogova, and in the locations showed by the witness PW-1 four secondary graves were found in the locations of Budak, Jasenovo, Pusmolići and Zeleni Jadar.

Having reviewed paragraph 370 of the Srebrenica Report made by the UN Secretary General of 15 November 1999, the Panel established that the people executed between 14 and 17 July were buried within 24-48 hours into the mass graves near the execution sites and later on the bodies were reburied into 33 different secondary mass graves. Each secondary mass grave is believed to have between 80 and 180 bodies of Bosniaks. The exact number of the Bosniak men executed by the VRS in July 1995 was not established during the proceedings. However, the aforementioned Report of the Secretary General on Srebrenica shows that by the information available this number was between 4,000 and 7,000 men.

Also, the Military Narrative about Srebrenica, made by the expert witness Butler, indicates that all mass executions were completed by 17 July 1995, including the most burial activities.

While evaluating the presented evidence, that is, while establishing and evaluating the decisive facts the Court started from Article 14 of the BiH CPC related to the principle of equality of arms, as it considered and established with equal attention the inculpatory and exculpatory facts.

During the proceedings the Defense contested the existence of the widespread and systematic attack by the VRS on Srebrenica, and that the attack was directed against the civilians. In this regard the Defense presented the evidence through the testimony of the witness, military analyst Dr. Radovan Radinović, and tendered into the file the written expertise of this expert witness, and it also tendered into the court file several pieces of physical evidence.

The expert witness Dr. Radinović in the first part of his findings analyzed the military operation against Srebrenica *Krivaja 95* where he stated his opinion about the circumstances that led to the operation *Krivaja 95*, the plan, course and the outcome of the operation, as well as the events that followed the operation. In the end of this part, the expert witness Radinović concluded that it was forced out, untimely planned and quick operation of limited nature whose aim was to narrow the territory of the Srebrenica enclave in order to establish control of the area between Žepa and Srebrenica to prevent Muslim forces to use that area for their military operations. The expert witness considers that the losses on both sides were minimum, the operation momentum was of small depth and scale and the town and its surroundings suffered only low-scale destruction and damage, while the civilian losses were also low. The advancing of the 28th Division and its breakthrough toward Tuzla could not have been predicted, nor the mass departure of the civilians from Srebrenica to Potočari, and the subsequent move of the civilians to the Muslim army-controlled territory. In the

opinion of the expert witness Radinović, since the VRS did not expect such consequences it was not prepared for them, therefore in this regard it did not expect the mass capturing of the war prisoners, while the accommodation for such a great number of prisoners was not decided by the Commander of the 1st Bratunac Light Infantry Brigade but his superiors, bearing in mind that none among the VRS staff including the Main Staff Commander and his closest associates had a plan on the execution of war prisoners before 13 July 1995. The fact who was behind that crazy decision to execute the war prisoners, in the opinion of the expert witness Radinović, remained unexplained and unknown for now. The VRS entered Srebrenica on 11 July 1995, after it was entirely abandoned by soldiers and civilians. The BiH Army withdrew to the area of Jaglići – Šušnjari, where it started breaking through toward Tuzla, while the civilians came to the area of Potočari, from where on 12 and 13 July 1995 under the UNPROFOR control and with consent and initiative of their own political representatives they were transferred to the area of Kladanj, more specifically to the territory under control of the Muslim army and political authorities. The expert witness further concludes that the post operation period from 13 to 20 July 1995 at the time when the column of the 28th Infantry Division was breaking through to Tuzla, when the VRS conducted the search of the terrain, clearing up of the theatre and capturing of the members of the 28th Infantry Division and able-bodied men who were also breaking through along with that column. UNPROFOR and the entire UN mechanism was extremely irresponsible toward the Srebrenica enclave in terms of making it a demilitarized zone without any military activities, and when the VRS activities did happen, it did not take any actions to regain control over the protected zone.

In addition to the aforementioned, the Defense contested that a demilitarization of the Srebrenica Safe Area was conducted, thus in this regard it tendered into the file the Agreement on the Demilitarization of Srebrenica of 26 February 1994; the report about the results of negotiations on the demilitarization of Srebrenica, made by the Supreme Command of the R BiH Armed Forces of 20 April 1993; the Agreement on the Demilitarization of Srebrenica of 8 May 1993, the book titled *Lukava Strategija* by the author General Sefer Halilović, page 108, which reads that he issued the order to Srebrenica and Žepa that not a single usable piece of weapon should be surrendered and not a single bullet, and other physical evidence in the form of reports made by the 28th ABiH Division indicating their existence and activities. Based on this evidence and the testimony of the expert witness Butler, which the Court accepted as objective and credible, it is undisputable that the demilitarization process of the Srebrenica enclave was not fully implemented. The expert witness Butler stated that it was a well-known fact that the UN never managed to completely disarm the 28th Division in Srebrenica. The witness Kingori averred in his testimony that the weapons were taken from the members of the 28th Division and kept in a safe place, which he personally saw, bearing in mind that he also stated that he saw Muslim soldiers in Srebrenica carrying side arms, but their arms was beyond comparison to the arms available to the VRS. The witness Mevludin Orić stated in his testimony that he was a sergeant in the unit and in the position where he was, there were several rifles and two hand grenades, and that he did not have side arms. Taking into account the testimonies of the said witnesses to which the Court gave credence as they are consistent and complementary

and the Order of the Chief of Staff of the 2nd Corps of the BiH Army to the Command of the 28th Division of the ground forces for active combat activities of 17 June 1995, including the Report on staffing the units of the 28th Division of 1 July 1995 from which it ensues that the 28th Division was staffed, it is beyond doubt that the Srebrenica enclave was not completely demobilized during the VRS attack. However, the fact that the Srebrenica enclave was not fully demobilized and that all the time the 28th Infantry Division of A BiH existed there, does not affect the conclusion of the Panel about the existence of the widespread and systematic attack against the Bosniak civilians in the protected zone which happened during the relevant time.

Furthermore, the Defense was proving during the proceedings that members of the 28th Division conducted combat activities immediately before the attack of the Serb forces on the Srebrenica enclave. In this regard the Defense tendered into the case file the following evidence: the Order of the Chief of Staff of the 2nd Corps of the A BiH to the Command of the 28th Division of the ground forces to conduct combat activities of 17 June 1995, the report on staffing the units of the 28th Division of 1 July 1995 indicating that the 28th Division was staffed, the Official Letter of the Chief of Staff of the Supreme Command of the R BiH Armed Forces sent to the Command of the Defense of Srebrenica on 1 June 1993; the Statement of Ramiz Bečirević of 11 August 1995, a Greeting Letter and Report of the Command of the 2nd Corps of the A BiH of 28 June 1995; Report and Order of the Command of the 2nd Corps of the BiH Army of 2 July 1995, the Report on the combat results of the units made by the Command of the 2nd Corps of the A BiH on 8 July 1995; the Minutes of the General Staff of A BiH of 30 July 1996, and the Operations report of the Command of the 28th Division of 30 June 1995 addressed to the Command of the 2nd Corps of the A BiH in Tuzla indicating that this unit performed offensive activities aimed at distracting the Serb forces from the Sarajevo front, and that those attacks were conducted in succession, and in this regard the forces of the 28th Division on 23 June 1995 launched an attack in the village of Osmače and Bijelo Stijenje near Koprivna and on 26 June 1995 deep in the territory 20-40 km in the area of the municipality of Han Pijesak and Vlasenica in the Crna Rijeka and Vran Kamen region, and in the settlement of Višnjica. Also the witness Van Duijn said in his testimony that he had the knowledge that the Muslim forces went outside the enclave and that he found out from the stories of the Muslim soldiers that the Muslim forces went out of the enclave and on those occasions conducted sabotages and planted mines. The Report of the expert witness Butler states that Bosniaks occasionally performed combat activities from the safe area and this forced the Bosnian Serbs to maintain front lines toward the enclave.

The mentioned evidence which the Court admitted as credible indicates that the units of the 28th ABiH Division had conducted combat activities prior to the referenced attack. However, it follows from the physical evidence mentioned above that those attacks took place before July 1995, and were aimed at distracting the Serb forces from the Sarajevo front, and that the targets were the VRS military formations. The Court opines that it is not disputable that both sides had strategy plans about Srebrenica. However, the attacks of the units of the 28th ABiH Division and the attack launched by the Drina Corps on the Srebrenica Enclave are separate attacks conducted at different

times and of different nature, aims and consequences. This is why the Court considers that each of these attacks from the criminal and legal point of view should be observed separately, thus if there exists criminal liability of the persons who participated in any of these attacks they should be prosecuted individually.

The Court did not accept the findings and opinion of the expert witness for the Defense Dr. Radinović that the attack of the Drina Corps on the Srebrenica enclave was a forced, untimely planned and quick operation of a limited nature whose aim was to narrow the territory of the Srebrenica enclave in order to establish control over the area between Žepa and Srebrenica to prevent Muslim forces to use that space for their military activities. Also, the Court did not accept the opinion of the expert witness Radinović that the losses on both sides were minor, the momentum of the operation of a small depth and scale and that the scale of destruction and damage in the town and its surroundings was very small, while the civilian losses were also minor. Such opinion of the expert witness was in contravention of the findings and opinion of the expert witness Butler, which the Court accepted as objective, professional and reliable, as well as the testimonies of the witnesses Van Duijn, Kingori, Čamila Omanović, Mevludin Orić, Muris Brkić and other numerous pieces of physical evidence tendered into the case file, in particular the UN Observers' Report of July 1995, the UN Secretary General Report on Srebrenica from 1999, written reports of the expert witness Butler, the Exhumation Records which were accepted by the Court as being true and objective, as they are mutually consistent and complementary.

More specifically, while assessing the nature of the attack on the Srebrenica enclave, the Court had in mind not only the developments in the territory of the enclave itself before the takeover of Srebrenica, but also all other developments that happened after the takeover of Srebrenica. It is stated in the explanation that the VRS forces were not satisfied with the limited nature of the operation, and that already on 9 July 1995 with the approval of the President of the RS, Radovan Karadžić, the Main Staff of VRS decided to take over the entire Srebrenica enclave. It is clear from the written UN observers' reports which were filed as evidence, which the Court accepted as objective and credible, that the civilians in the Srebrenica enclave were the targets, as well as the observation posts manned by the Dutch Battalion soldiers. It also follows from these reports and testimonies of the witness Kingori, Mevludin Orić and Čamila Omanović that the attack was conducted by shelling these targets, without any open conflict with the members of the 28th ABiH Division, which indicates that there were no major infantry battles prior to the takeover of the entire enclave. The established facts and testimonies of Mevludin Orić and Čamila Omanović clearly indicate that tens of thousands of Bosniak civilians sought protection in Potočari where the Dutch Battalion base was located, while thousands of men attempted to save themselves by heading to the A R BiH-controlled territory. It clearly follows from the UN observers' reports and the testimonies of the witnesses Kongori and Van Duijn, and the order of the Drina Corps about the attack on the enclave and the report of the Bratunac Brigade on the used ammunition that the number of Serb military and police units, the types of weapons used in the attack and the intensity of the shelling against the population of

Srebrenica were not proportionate to the military threat which the population possibly posed in the safe area.

During the proceedings the Defense particularly contested that Bosniak men who were separated in Potočari and transported to Bratunac, and all men who surrendered or were captured by the Bosnian Serbs in the breakthrough toward Tuzla were civilians. In this regard the Defense filed into the court case file the list of the war criminals from the area of Bratunac, Srebrenica, Skelani and Milići made by the Command of the 1st Light Infantry Brigade of 12 July 1995, with the names of 387 Muslims suspected of having committed the crimes, Instruction to capture and escort war prisoners and other persons issued by the Command of the Drina Corps on 15 April 1995, the Statement of Ramiz Bećirević given to the Security Service Department on 11 August 1995 stating that there were between 10,000-15,000 men in the column, including around 6,000 soldiers, not taking into account the soldiers from Žepa; Decision appointing a civil commissioner for the Municipality of Serb Srebrenica, made by the President of RS of 11 July 1995 stating that the citizens of Srebrenica who had participated in the fighting should be treated as prisoners of war. On 12 July 1995 MUP RS forwarded the same order with additional instructions on the establishment of the Public Security Station in Srebrenica. The Court accepted the presented evidence as authentic and infers that there were members of the 28th Division of the Army of BiH in Srebrenica during the attack. Nevertheless, in the opinion of the Court, the presence of the Bosniak soldiers among the civilians in Potočari, was not established based on the presented evidence. The witness Van Duijn said in his testimony that the VRS officer by the name of Mane had told him that they had a list of Muslim war criminals and that he would check if those persons were among the men separated. The expert witness Butler, too, said that General Mladić revealed his intention to separate men from women and children. However, apart from the separation of the able-bodied men from women, children and elderly, which the Court finds incontestable, no other action by the VRS and RS MUP members suggested that the checks were made whether any of those men were on the list of war criminals. On the contrary, the Court accepted as incontestable the fact that the personal documents and belongings were seized from the Bosnian Muslim men in Potočari.... piled up and burned. This fact was confirmed in his testimony by the witness Kingori, witness Van Duijn and the expert witness Butler, while the Court was able to see for itself by watching the video recording of Potočari on 13 July 1995 that items were seized from the separated men and that they were on a pile in front of the white house where the Bosniak men were taken to. In the opinion of the Court, this act clearly shows the absence of intention to check if there were any war criminals among the men. After the seizure and the burning of personal documents it was impossible to check if there were persons from the mentioned list of war criminals among the men. In addition, and later during the transport of the prisoners to Bratunac, and then to Orahovac and other places near Zvornik, the Serb forces did not show any intention to do the check. The consistent testimonies of the witnesses Ćamila Omanović, Kingori, expert witness Butler, as well as all other witnesses heard who were members of the Military Police Platoon show that there were no ethnic Bosniak men who carried arms in Potočari during the relevant time. That fact was clearly stated in the UN Observers'

Report of 13 July 1995. Also, all witnesses who were in Potočari at the relevant time averred that men in Potočari were of old age and that they were wearing civilian clothes. As for the definition of the term “civilian” and civilian population, the Court refers to the Trial Judgment of ICTY in the *Akayesu* case, where the explanation states that “members of the civilian population are persons who do not have any active role in the hostilities, including the members of the armed forces who laid down their arms and those persons who were placed *hors de combat* due to the illness, wounds, imprisonment or any other cause. If among the civilians there are persons who do not fall under the definition of a civilian, this does not deprive the population of its civilian character. Similarly, the reasoning of the ICTY Trial Judgment in the *Blaškić* case states that the criminal offence of Crimes against Humanity includes also the crimes committed against the persons who belong to a resistance movement or those who were soldiers, regardless of whether they were wearing uniforms or not, if at the moment when the crimes were committed they did not participate in the hostilities either because they abandoned the army, because they do not carry the guns any longer or because they were placed *hors de combat*. In the *Vukovar* case the patients in hospital who had been a part of the resistance movement and who laid down their arms were the victims of the crimes against humanity. In the case at hand there is no evidence that anybody among the Bosniak civilians in Potočari was carrying arms or at that moment participated in the hostilities and thereby fell under the category of the soldier or the resistance movement member. Also the persons who surrendered later on to the Bosnian Serb forces, as well as those who were captured, at the moment when the crime against them was committed, did not participate in the hostilities, they did not carry arms and were placed *hors de combat*. Accordingly, in the opinion of the Court all these persons could be victims of the criminal offence of crimes against humanity, with which the accused are charged.

From the aforementioned evidence, and the previously established facts, the Court established that in the material time the VRS attack was launched on the safe area of Srebrenica where there were over 40,000 inhabitants, and that the attack was directed against civilians. In the opinion of the Court the nature of this attack ensues from the fact that the units of the Drina Corps started the shelling of Srebrenica on 6 July 1995 which lasted until 11 July 1995, which was planned to intimidate the Muslim population and force them out of the town and the entire area of the enclave. The military takeover of Srebrenica resulted in the fleeing of civilians from that area to the UN base in Potočari. The presented evidence suggests that a direct consequence of the military attack was the flight of around 25 – 30,000 women, children and elderly to the UN base in Potočari, while around 10 - 15,000 persons (mainly men) started running through the woods to reach the AR BIH controlled territory. All these people were the subject of the attack: women, children and elderly through the forcible transfer, and the fleeing men through ambushes, shelling and execution. The statement of the President of the UN Security Council which was tendered into the file as the evidence states that the Security Council was seriously concerned because of the forcible transfer of thousands of civilians from the Srebrenica safe area conducted by Bosnian Serbs.

Also one of the consequences of such attack was the execution of several thousands of Bosniak men who had been captured and executed on several locations in the area of Srebrenica, Bratunac and Zvornik, and the eradication of the entire Bosniak population from the Srebrenica safe area. All the aforementioned suggests that in the material time, that is, from 11 to 18 July 1995 the attack was widespread as it was a large-scale attack, and that the subject of this attack were a great number of people, that is, the entire population of the enclave.

In addition, the attack in the UN safe area was also systematic by nature. According to the ICTY jurisprudence an attack is systematic if it is organized and represents a regular repetition of the similar punishable behavior which is not accidental. The presented evidence suggests that the military operation of taking over Srebrenica was previously thought out, well-planned and organized. It is clear that in March 1995, upon the Directive 7 issued by the RS President Radovan Karadžić, a plan existed of combat activities around the Srebrenica enclave to create a situation of total insecurity with no hope of further survival or life for the inhabitants in Srebrenica, that in late March the VRS Main Staff issued the Directive No. 7.1 putting this task under the jurisdiction of the Drina Corps, and that in mid June 1995 they were on the high level of combat readiness and also general mobilization was ordered, and that on 2 July 1995 the Drina Corps issued two orders where the enclave attack plan was presented, which started on 6 July 1995. After the successful military takeover, the civilians were treated in the identical manner. Women, children and elderly were transported outside the enclave by buses and trucks, which is the established fact that was not contested. Men were captured or they surrendered hoping that they would be exchanged, but in reality they were killed in an organized manner, similarly, by shooting and large scale executions. The murders were conducted according to the plan by systematic mass executions. In support of this there is a fact that several thousand persons were killed in the same manner, with the fire arms, after being brought in and detained in the facilities for temporary mass detention, such as schools and other similar buildings.

Having in mind that exclusively Bosniak people were living in the Srebrenica enclave by July 1995 and that the executions were done during the material time period, the Panel finds that during the time period from 11 July to 18 July 1995 the widespread and systematic attack existed and was directed against the Bosniak civilians, not only in the Srebrenica safe area, but also outside the enclave, since the target of the attack was also the population that fled from the safe area. The widespread and systematic attack on the civilians was a direct consequence of the military attack on Srebrenica and its takeover. The VRS military forces took part in it as well as the RS MUP units engaged in that area at the relevant time.

The Court accepted as incontestable the facts that the Bratunac Brigade was formed on 14 November 1992 as a light infantry brigade within the Drina Corps of the VRS. The Bratunac Brigade was composed of three infantry battalions. In July 1995 another infantry battalion joined the Brigade which was re-subordinated there from the Zvornik Brigade forces. The following units were parts of the Bratunac Brigade: Red Berets reconnaissance unit, engineering platoon, combined artillery group, rocket unit

and military police platoon. The Military Police HQ was near the Bratunac Brigade Command. The foregoing established facts were not contested by the Defense during the proceedings.

The Court also accepted as incontestable the fact that Mirko Janković was the Commander of the Military Police Platoon in 1995, while the Assistant Commander for Security and Intelligence of the Bratunac Brigade was Momir Nikolić. These facts were confirmed during the proceedings through the testimonies of the witnesses-military police officers, and based on the findings of the expert witness Butler and Dr. Radinović.

Among other essential elements of the criminal offence it was incontestably established during the proceedings, based on the consistent testimonies of the witnesses who were members of the Bratunac Brigade Military Police Platoon and based on the daily log of the duty military police officer of this Brigade, that during the relevant time the accused Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović were members of the Military Police Platoon which was part of the Bratunac Light Infantry Brigade, and this Platoon had 25 to 30 men. This fact was not contested by any of the Accused or their defense counsels.

Having in mind the aforementioned, the Court established that the accused were part of a military-police formation engaged in the attack on the Srebrenica enclave in July 1995, and this attack was widespread and systematic.

The existence of nexus between the offence of the Accused Mladen Blagojević and the attack on the civilian population, that is, that the actions taken by the Accused Mladen Blagojević were directly connected with the attack, the Panel established on the basis of the following facts and circumstances.

More specifically, as a member of the Bratunac Brigade Military Police performing regular police tasks, the accused Blagojević, in the Panel's opinion, could not help having knowledge of the daily events because of the massive character of the attack and widespread activities of the Serb forces in the territory under their control.

The Panel established that something was happening prior to the attack based on the testimonies of a number of witnesses heard. In this regard the witness Srblav Davidović who was the President of the Executive Board of the Bratunac Municipal Assembly at the relevant time testified that in early July the number of the VRS soldiers increased noticeably in the area of Bratunac. The witness Borivoje Jakovljević also stated in his testimony that the military police officers might have predicted what was going to happen based on the movement of the troops. The witness Milan Babić in his testimony said that a few days before the attack he secured the road Sase-Pribičevac with around a dozen military police members and that they secured the passage of the convoy of military trucks, personnel carriers and jeeps which was not a normal occurrence. The witness Milan Gvozdenović said that during that time period the presence of high-ranking VRS officers was noticed, including General Mladić,

based on which the military police officers knew that something was happening, and they discussed it among themselves. The same witness also stated that after the onset of the attack on Srebrenica the military police units had a check point in the location of Žuti Most to control the passage of the persons and vehicles to and from Srebrenica. The Panel accepted the statements of the said witnesses as reliable and authentic as they are mutually consistent and complementary.

Based on the Order regarding the active combat activities No. 439-2, issued by the Main Staff of the Bratunac Light Infantry Brigade on 5 July 1995, the unit of the military police obtained the specific knowledge on the planned attack, and upon the same order, the military police was placed in reserve, and they were requested to be in the state of combat readiness for the Operation *Krivaja 95* and to be engaged if necessary.

Based on the statements of a number of the witnesses heard, the Panel established that on the very day when Srebrenica was taken over (11 July 1995) members of the military police participated in the securing of the road section from Sase to Pribičevac for the passage of General Mladić and other high-ranking VRS officers. In this regard the witnesses Pero Andrić, Mile Babić, Nenad Đokić, Milan Gvozdrenović, Mile Janjić, as well as the witnesses PW-1, PW-2, PW-3 and PW-4 consistently stated that on the same day they personally participated in the securing of the road Sase–Pribičevac. The witness PW-2 said that among the security guards he saw the accused Mladen Blagojević and Zoran Živanović. The same witness said that they knew that Srebrenica had fallen as General Mladić passed along the road with other officers carrying the Srebrenica town sign post. In his testimony on the main trial the witness Milan Gvozdrenović stated that all members of the military police took part in the Srebrenica operation, each of them in his own way, and that during the operation they secured the Command of the Bratunac Brigade, Žuti Most, Hotel *Fontana* and Dom *Zdravlja /health center/*. The military police unit was also present in Potočari on 12 and 13 July 1995, when the transport of civilians was organized outside of the Srebrenica enclave. The witness PW-2 in his testimony stated that on 12 July 1995, all military police officers were present when the Commander Mirko Janković told them to go to Potočari and that on that day around 15 military police officers went to Potočari. The witness Mile Janjić stated that on that day there were a great number of military police officers in Potočari, and that among his colleagues he also saw the accused Zoran Živanović. On that occasion they all helped the people to get on the buses. The presence of the military police officers in Potočari on 12 July 1995 was mentioned also in the testimony of the witness Slobodan Mijatović who went to Potočari with 5-6 military police colleagues, and when he arrived in Potočari he found 7-8 other military police officers there, including the accused Zoran Živanović. The witness Mijatović stated that together with Živanović he was positioned on the buses while Bosniaks were getting aboard. The witness Nikola Popović in his testimony stated that around 10 military police officers were tasked to secure the buses and make sure that Bosniak women and children get on the buses, and that they were standing by the buses, and that the accused Mladen Blagojević was securing the buses together with him. The same witness stated that also men got on the buses later on and that two

or three military police officers escorted those buses which left for Bratunac. The Panel accepted as true and reliable the testimonies of the foregoing witnesses, in the part related to the referred allegations, as they are mutually consistent.

The witness Slobodan Mijatović testified that on 13 July 1995, together with 11 other military police officers including the accused Mladen Blagojević, he was tasked to drive the Pinzgauer to Potočari and to follow General Mladić as his close protection. Apart from this witness, witnesses Pero Andrić, Borivoje Jakovljević, witnesses PW-1, PW-3 and PW-4 also testified that on that day they were in the group of military police officers who escorted General Mladić. The witness P-3 stated that the accused Mladen Blagojević was also in the escort, manning the Browning */machine gun/*. The witness P-1 also stated that the accused Mladen Blagojević was with him apart from other military police officers in the escort of General Mladić. The Court accepted the testimonies of these witnesses about the escort of General Mladić on the relevant day, because the testimonies of all witnesses mentioned above are consistent and complementary. It follows from the consistent testimonies of witnesses Slobodan Mijatović, Borivoje Jakovljević and the witnesses mentioned above that on that occasion they followed Mladić from Potočari to the Orthodox Church in Srebrenica, and then they returned to Potočari and from that place they headed to Bratunac. On their way they stopped several times, firstly in the place called Sandići where General Mladić addressed a group of captured Bosniaks from Srebrenica who were on a meadow, and then they stopped in Nova Kasaba near the football stadium which was packed with middle-aged Bosniak men from Srebrenica, who were wearing civilian clothes and who were guarded by the VRS soldiers. The Court accepted as reliable the testimonies of all the above mentioned witnesses regarding these facts as they are mutually consistent and are not contested by other evidence. In the opinion of the Court, while they were in Potočari, and while escorting General Mladić, the military police officers, including the accused Mladen Blagojević were in the position to gain better knowledge of the situation, that is, they could make sure that an attack had been launched against Srebrenica by the VRS and MUP-a RS, and that the enclave had been taken, and that the transfer of women, children and elderly people outside the enclave was underway, that men were separated in Potočari, and that many men surrendered along the axis Potočari - Bratunac, in particular in the places Sandići and Nova Kasaba. All witnesses-military police officers stated that the accused Blagojević carried arms and wore a uniform during the relevant time period.

Accordingly, the fact that during the relevant time the accused Mladen Blagojević was a member of the Bratunac Brigade Military Police, and that he moved all the time in the area of the Srebrenica enclave, and around the enclave, and that he had knowledge of the entire situation on the ground, clearly indicates that the accused at the relevant time undoubtedly knew of the attack on the Bosniak civilians, while based on the manner of commission of the offence, the Court infers that the accused was not only aware of this attack and agreed for his actions to be part of this attack, but he exactly wanted these actions to be just that. In other words, the Court established that the accused Blagojević knew of the widespread and systematic attack directed against the

Bosniak civilians, and his actions were part of that attack, whereby the essential elements were met of the criminal offence of Crimes against Humanity.

Individual counts of the indictment

Under Count 8a of the amended Indictment the Prosecution alleged that the accused Mladen Blagojević, Zdravko Božić, Željko Zarić and Zoran Živanović, on the night of 13/14 July 1995, at the Vuk Karadžić primary school in Bratunac, while there were many civilian Bosniak men detained in that school, when one of the Bosniak man appeared at the window of a room at the school, with the intention to kill him, Mladen Blagojević aimed a Browning machine gun, mounted on a Pinzgauer, at the window from which the Bosniak man appeared and opened fire from it targeting both this man and the Bosniak men inside the same room, causing the rounds to enter the room through the window; while Željko Zarić had his rifle at the ready and pointed towards the same window, and Zdravko Božić and Zoran Živanović were armed with automatic rifles and were standing in the immediate vicinity of the Pinzgauer.

As for the actual acts which constitute the elements of the criminal offence, the Panel concluded on the basis of the following evidence that the accused Mladen Blagojević committed the criminal offence as described in the operative part of this Judgment.

The Court accepted as proven the fact that thousands of Bosnian Muslims arrived in Bratunac on 13 July 1995 and were detained there, and that the Vuk Karadžić primary school in Bratunac was one of the temporary detention/accommodation facilities. The defense did not contest this indisputable fact and the same facts also ensued from the consistent testimonies of all prosecution and defense witnesses who testified about the events related to Bratunac at that time. The Bratunac town was within the area of responsibility of the Bratunac Brigade – another established fact which was not challenged during trial. Reviewing the photo of the Vuk Karadžić school in Bratunac, it was determined that this school has a ground floor, and the first and the second floors.

In relation to the fact that Bosniak men were present at the Vuk Karadžić School in Bratunac, the witness Slobodan Mijatović testified that there was a large group of men on the first floor of the school. In his prior statement the witness Milovan Gvozdenović said that the Bosniaks were detained on the first and the second floor of the school. The witness Mile Babić said that he himself saw the Bosniak men at the school windows on the third (last) floor, and that they occupied the entire floor. The witness PW-2 testified that the Bosniak men were inside the school and he thinks he saw them on the second floor of the school. The witness Mile Janjić stated that the school was packed with Muslims. The witness Milovan Đokić testified that he heard Muslims on the first and the second floors of the school when he arrived there. The witness Ljubomir Beatović testified that on the relevant day he went inside the school as a paramedic and that he saw men in a classroom sitting on the floor: “around 100 people packed in the classroom, there were quite many of them“. The witness P-4 also stated in his testimony that he went inside the school that evening, climbed upstairs

and went into a classroom with around 100 men inside who were unarmed and wearing civilian clothes and sitting on the parquet floor. That same witness stressed that he had seen VRS soldiers in different uniforms at the school, on the school stairway and upstairs, but that he had not seen any of the members of the Bratunac Brigade Military Police there. The Court finds the testimonies of these witnesses reliable and credible with respect to the presence of the Bosniak men in the school at the relevant time because they are consistent and complementary, and they indicate that the detained Bosniak men were held on the first and the second floor of the Primary School in classrooms, in large numbers.

The Court established the presence of the accused Mladen Blagojević in front of the Vuk Karadžić Primary School in Bratunac, by the Pinzgauer, on the relevant day, on the basis of the testimonies of the witnesses PW-3, Slobodan Mijatović, Milovan Đokić, Mile Babić, Milan Gvozdenović and Mile Janjić. More specifically, the witness P-3 testified that following the escorting of General Mladić he was ordered to go to in front of the school and that he arrived there in a Pinzgauer with the accused Mladen Blagojević on top of it. The witness Slobodan Mijatović also testified that after the escort of General Mladić in which the accused Blagojević participated, they arrived in front of the Bratunac school in the Pinzgauer. The witness Mile Babić testified that he arrived in front of the school in the Pinzgauer that evening with the group that had been escorting General Mladić, and that almost all members of the Military Police were present there and guarded the area around the school as well as the buses. The witness Milovan Đokić said that he arrived that night in front of the Vuk Karadžić Primary School where he saw many military police personnel including the accused Zarić and Živanović who stood at the entrance of the school, as well as the accused Mladen Blagojević who stood by the Pinzgauer parked in front of the school. The witness Mile Babić also testified that he saw all four accused guarding the area around the school on the relevant night. The witness Milovan Gvozdenović testified that he saw the accused Mladen Blagojević and the witness P-3 by the Pinzgauer at the time the Bosniaks were in the school. The witness P-1 said both in the Court and in his prior statements that the accused Blagojević was by the Pinzgauer when the relevant event took place. Considering the consistent testimonies of these witnesses about this circumstance the Panel is satisfied that Blagojević's presence next to the Pinzgauer in the relevant period is an indisputable fact.

As for the location of the Pinzgauer that night, based on the consistent statements of the witnesses Milan Gvozdenović, Mile Janjić, Mile Babić, Slobodan Mijatović, witnesses P-1 and P-3 who described the position of the Pinzgauer and marked it on the photographs – the statements the Court found credible in this part -- the Court determined that the Pinzgauer was parked in front of the school, on the right hand side, looking towards the main entrance to the school.

The witness P-3 described the accused Blagojević's Browning firing at the school; this witness testified that he was sleeping in the Pinzgauer and that the Browning fire woke him up. He then saw the accused Blagojević firing the Browning, and when asked why he was firing, he answered that he was doing it because they were cursing our mothers.

The witness Milovan Đokić also confirmed this fact and he said during the investigation that it was the accused Blagojević himself who was firing the Browning at the school wall near a window. At the main trial the witness Milovan Đokić retracted part of his testimony and said that he fell asleep by the *Hogar* coffee shop and that he woke up when he heard some shooting, apparently from the Browning, and that the accused Blagojević, the witness P-3 and a military policeman Stanko, who went by the nickname of Krezo, were standing by the Browning. In both statements the witness said that he saw Blagojević by the Browning at the material time, however the Court finds the prior statement given during the investigation credible because the witness read and signed it. The Court is of the opinion that the partial retraction of the statement was a result of the witness' desire to play down the responsibility of the accused because he was on good terms with the accused Blagojević and he said that they knew each other very well back when he was seven. The witness Mile Babić said that he saw the Browning firing, that the third (last) floor of the school was targeted and that one could see "the windows cracking." This witness said that he saw the muzzle flash and he later saw the broken window panes and the bullet holes on the school wall. The witness Slobodan Mijatović also testified that he heard the 60-90 seconds long Browning fire on the relevant night and that he identified the Browning by its characteristic sound. This witness said that on the relevant day, while escorting General Mladić to Han Pijesak and back, the accused Blagojević himself was manning the Browning and that he was the only one among that group of soldiers who knew how to use it. The witness P-4 also testified that he heard that Blagojević had been firing the Browning at a Bosniak who was at the school window cursing his Chetnik mother. The witness P-2 also said that on the critical night while he was guarding a truck he heard that Mladen Blagojević had been firing the Browning because he was provoked by a Muslim man who was upstairs and cursing a Serb or Chetnik mother. The Court finds the testimonies of these witnesses about the aforementioned circumstance credible and reliable because they are consistent and complementary. The witness P-1 testified at the trial that the accused Blagojević was standing by the Pinzgauer at the relevant time and that, at one point, Blagojević asked if there was anyone there from Glogova cursing their *balija* mothers, when a man appeared at the window on the first floor of the school and said, "There's me, you Chetnik motherfuckers". After this the accused Blagojević fired a burst from the Browning, the man at the window fell down but he rose again to repeat the same sentence, upon which the accused Blagojević fired the Browning in a rapid succession once again and the man at the window fell again not to rise again. On this occasion he saw that Blagojević was firing in the direction of the man at the school window, that the bullets were hitting the school wall 10-20 centimeters from the window, and that some of the bullets passed through the windows and ended up inside the school. The witness P-1 said that on this occasion he did not go inside the school and that he did not see the man on the school window after his second fall so he assumes that the man was hit. However, witness P-1 gave three prior statements during the investigation where he said he had heard one of the Srebrenica men curse Chetnik mother, and after that, the accused Željko Zarić had fired the Browning mounted on the Pinzgauer in one rapid succession. The witness P-1 stated that after the firing ceased the same man stood up at the window again and repeated the same words, and that Željko Zarić fired the

Browning again while at the same time the accused Mladen Blagojević, who was standing next to him, behind the Pinzgauer, fired the automatic rifle. The Court assessed the differing accounts given by the witness P-1 as to who of the accused persons fired the Browning and it found his account given at the main trial, which he maintained with regard to the accused Mladen Blagojević, consistent with the accounts given by the other mentioned witnesses, which is why the Panel accepted it in that part. The witness P-1 also said at the main trial that after the Browning had been fired the witness P-3 had asked the accused Blagojević what he was doing and that he had said he did not know, and the fact that the dialog between the accused Blagojević and the witness P-3 had taken place immediately after the shooting from the Browning was confirmed by the witness PW-3 in his testimony.

Considering these pieces of evidence the Court found beyond any reasonable doubt that, on the critical night, the accused Mladen Blagojević, in his capacity as a member of the Bratunac Brigade Military Police, was in front of the Vuk Karadžić Primary School, while several hundred civilian Bosniak men were in the school, and that, at the moment when a detained Bosniak man appeared at the school window, he fired the Browning mounted on the Pinzgauer targeting this window while other Bosniak men were also in that room and that the bullets hit the window and the wall around the school window.

On the other hand, it was only the witness P-1 who testified that the accused Božić, Zarić and Živanović were on the spot when this incident occurred. This witness testified at trial that Mladen Blagojević fired the Browning while Zdravko Božić, Zoran Živanović and Željko Zarić were standing by the Pinzgauer armed with the automatic rifles. The witness said that the accused Željko Zarić was standing there with his rifle at the ready while the accused Božić and Živanović were just standing and not firing. It was only Browning that fired. During the cross-examination the defense confronted the witness P-1 with his prior statements given to the SIPA investigators during the investigation: once in the office and the second time on the spot, as well as the statement given to the BiH Prosecutor's Office, where the witness claimed on all three occasions that the accused Željko Zarić fired the Browning twice at the man who was on the school window, and that the accused Mladen Blagojević at that time stood behind the Pinzgauer and fired an automatic rifle at the same man. In these statements the witness P-1 said that the accused Zdravko Božić was near them and that he held his rifle at the ready, pointed at the school. Explaining the differences between his statements, the witness P-1 said that he was stressed out during the investigation interviews, that he later remembered things, and that he stands by the account he gave at the main trial.

The witness PW-3, who was said to be near the spot, did not confirm in his testimony the allegations made by the witness P-1 that the accused were next to the Pinzgauer at the relevant time. The same witness alleged that he was woken up by a short, rapid succession of Browning fire and that the accused Blagojević was manning the Browning at that time, and that he did not remember anybody else being near the Pinzgauer. The witness P-3 said that he asked Blagojević not to fire any more, after

which he stopped firing. In the cross-examination the witness P-3 pointed out that the accused Blagojević and Boro Jakovljević were together with him near the Browning and that he did not know about the others.

The witness Milovan Đokić also testified that he was woken up by the Browning fire and that he then saw the accused Blagojević, the witness P-3 and a military policeman Stanko alias Krezo by the Pinzgauer. The witness Milovan Đokić also said in his prior statements during the investigation that these persons were by the Pinzgauer at the relevant time.

In his testimony, witness Borivoje Jakovljević stated that on the relevant evening, he saw a Pinzgauer parked on the right-hand side of the school, and that there was no one in it at the time when he saw it. This same witness stated that there were detainees in the school, on the first and second floor, and that a man from inside the school was cursing “Serb mother, Chetnik mother”. He heard that someone in the school fired a bullet or two, but he did not know who that was.

The witness Mile Babić testified to seeing the Browning firing at the primary school building, however this witness was unable to specify which members of the Military Police were by the Pinzgauer. This witness asserted that he saw many soldiers other than the members of the Military Police as there was no fixed order as to who will be where and with whom.

The witness Mile Janjić testified that he heard some firing near the school on that night, but this witness did not say explicitly that this was the Browning fire.

The witness Slobodan Mijatović also testified to have heard the Browning firing but neither this witness could name the persons who were by the Pinzgauer at that time.

An analysis of the testimonies of the above-mentioned witnesses, who had some knowledge about the Browning firing at the school in which the Bosniak men were held, reveals that the witness P-1 was the only one who saw the accused Božić, Zarić and Živanović by the Pinzgauer with the Browning mounted on top of it, which the accused Blagojević fired. No other witnesses testified to seeing other accused at that place at the time the Browning was fired. The Court finds that the testimony of the witness P-1 in relation to the accused Božić, Zarić and Živanović, whom he alleged to have been by the Pinzgauer, and in relation to the actions they took during the Browning firing, is not reliable enough to find all defendants guilty as charged only on the basis of the testimony of this witness. This is particularly true because during the investigation the witness P-1 gave on three occasions three completely different accounts differing, in turn, from the one he gave at the main trial and which he stood by. More precisely, the witness P-1 said to the SIPA, on the spot and at the BiH Prosecutor's Office that it was the accused Zarić who fired the Browning twice targeting the school windows, however in the main trial he retracted his statement and asserted that Mladen Blagojević was at the Browning while the accused Zarić stood by him with his rifle at the ready. The Court notes that even at the main trial the witness

P-1 did not say that the accused Zarić held his rifle at the ready and pointed at the school window at which the detained Bosniak appeared, as described in the factual description of the Indictment. During the investigation the witness P-1 claimed that the accused Zdravko Božić held his rifle at the ready at the time the Browning was fired while at the trial he said that the accused Božić only stood by the Pinzgauer at the time the Browning fired and that he himself did not fire. Also in relation to the accused Živanović the witness P-1 gave completely different accounts. While during the investigation he did not at all mention the accused Živanović as a person who was near the Pinzgauer, at the trial he said that Živanović stood by the Pinzgauer and did not fire. So it was only at the trial that the accused Živanović was mentioned as a person who was on the site when the Browning was fired. On the other hand, the testimony of the witness P-3 entails that of the accused persons he only saw the accused Blagojević near the Browning and he told him then to stop firing, upon which the latter did not fire again. Considering a major difference between what the witness P-1 said during the investigation and at the trial both and the fact that witness P-1 changed his testimony concerning important facts and specific details both in relation to the persons who were present during the incident and the actions they were taking on that occasion, the Court could not arrive at an unequivocal conclusion only on the basis of the witness P-1's testimony that the accused Božić, Zarić and Živanović were present when this incident occurred, and that the accused Zarić was at that time holding his rifle at the ready and pointed to the window, and that the accused Božić and Zdravković (sic!) were armed with automatic rifles and standing in the immediate vicinity of the Pinzgauer.

Since the Court could not establish beyond a reasonable doubt the participation of the accused Božić, Zarić and Živanović in the relevant event on the basis of the P-1's testimony only, in the absence of other clear and corroborating evidence, it could neither determine the responsibility of the accused for the acts described in this Count of the Indictment, and it therefore cleared them of this charge.

Under the amended Indictment, the accused Mladen Blagojević as well as the accused Božić, Zarić and Živanović are charged with murder in violation of Article 172(1)(a) CC BiH. However, the Court is of the opinion that in order to find the accused guilty of murder, a death of the victim should have clearly been proven as a result of the accused's act or failure to act, as well as the intention of the accused to kill the victim or cause him/her serious bodily injuries, wherein he could reasonably know that the assault would result in death. During the evidential proceedings the prosecution did not prove that the accused deprived the person on the school window of life nor was it proven that the Browning firing at the school caused serious bodily injuries or the consequences leading to the death of any Bosniak person who was in the school. Due to the absence of a consequence leading to death, the Court did not accept the prosecution's qualification that this was a murder or deprivation of life of another; instead, the Court qualified the acts of the accused Blagojević as other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body as stipulated by Article 172(1)(k) CC BiH. Since the Browning is a weapon of great destructive force, the Court notes that by firing it at the school window and walls at the

time when a Bosniak person was there and when other detainees were in the same room, the accused intended to cause great suffering to those people as well as serious bodily injuries.

The Court notes that the accused Mladen Blagojević committed the criminal offence of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph (k) CC BiH. The Panel determined that the accused Mladen Blagojević committed the criminal offence different from the one alleged in the Indictment, that is, he is guilty of other inhumane acts enumerated in Article 172(1)(k) CC BiH. The following elements of inhumane acts in Article 172(1)(k), on top of those enumerated in paragraph (1) of Article 172, have to be satisfied:

1. the act is an inhumane one
2. the act is not otherwise enumerated under Article 172
3. the act is of a similar character to those defined in Article 172
4. the act is committed with the intention to cause
 - a) great sufferings
 - b) serious injury to body or to physical or mental health,
5. that such act caused to the victims
 - a) great sufferings or
 - b) serious injury to body or to physical or mental health.

The provision of Article 172(1) CC BiH corresponds to the ICTY Statute and the ICTY interpretations which are applicable in the case at hand. The ICTY elaborates in *Prosecutor v. Kupreškić et. al* (Trial Judgment, 14 January 2000, par. 563) on the equivalent provision in the ICTY Statute: “The phrase ‘other inhumane acts’ was deliberately designed as a residual category, as it was felt to be undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities to evade the letter of the prohibition.” The required *mens rea* is met where the offender had the intention to inflict serious physical or mental suffering or to jeopardize health of the victim, or where he knew that his act or omission was likely to cause one of the stated consequences and was reckless as to whether such consequences would ensue or not. (Krnjelac, Mr 15 202, par. 132)

There is conclusive evidence that, when in front of the school, the accused Mladen Blagojević fired the Browning mounted on the Pinzgauer at the school windows at the time when a Bosniak detainee was at the window and when a large number of Bosniak men were detained in that room. The act of firing in the direction of the windows of the school with the detained Bosniaks at the window and inside the school is hideous and constitutes an inhumane act. The prosecution witnesses confirmed that the Browning-fired rounds hit the school window and wall immediately around the window frame, leaving the wall significantly damaged, and that they also heard the crashing of window panes as a consequence of this firing. The accused Blagojević knew at the time of firing the Browning that he was causing great suffering to the people in the school and that he could cause serious bodily injuries. The Panel notes that the detained Bosniaks’ anxiety and fear from a possible severe injuries and death

as a result of the accused's firing Browning at the school specifically caused great suffering to the Bosniak detainees. The Panel notes that the criminal offence referred to in subparagraph (k) of the quoted Article was committed if the perpetrator acted with the intention to cause great suffering and serious injury to body or to physical or mental health, or serious deterioration of health. Given that the accused Blagojević fired the Browning -- a weapon of large caliber and destructive force -- and that the rounds hit the window of the school where a Bosniak person was located, as well as the wall in the immediate vicinity of the windows of the school in which a number of Bosniak detainees were held at that time, the Panel finds that by doing so the accused Blagojević jeopardized the lives of the detainees in the school, and caused major anxiety and fear because he was likely to cause serious bodily injuries and even death by his firing. Everything said here certainly speaks of the intention of the accused to cause great sufferings and serious bodily injuries to the detained Bosniaks.

The Panel finds that the accused committed this criminal offense as part of persecution, and according to the legal definition this type of crime was committed if there was a deliberate and flagrant denial of fundamental rights in breach of international law to any group of people or collectivity on political, racial, national, ethnic, cultural, religious, gender or any other basis, in conjunction with any offence under paragraph (1) of this Article, any act outlawed by this law or any other criminal offence falling under the jurisdiction of the Court of BiH.

An analysis of the ICTY case law dealing with this matter reveals several elements of this type of criminal offence. The ICTY case-law developed a number of criteria through the analysis of this act. Some of the examples are consistent with persecution as defined in the CC BiH, which deals with the offense in detail, and are listed in the Trial Judgment in *Prosecutor v. Naletić and Martinović*, 31 March 2003, par. 634:

- (a) The perpetrator commits a discriminatory act or omission;
- (b) The act or omission denies or infringes upon a fundamental right laid down in international customary or treaty law;
- (c) The perpetrator carries out the act or omission with the intent to discriminate on racial, religious or political grounds;
- (d) The general requirements for a crime against humanity are met.

Consequently, the main element to be determined in the case at hand is whether the accused had a discriminatory intention towards the detained Bosniak people who were in the Bratunac primary school. The VRS attack on the Srebrenica safe area in July 1995 was the one on the Bosniak population who lived in the enclave as an ethnic, national and religious group. The overall events at the relevant time, including the shelling of the Srebrenica enclave with the Bosniak population, forced transfer of women, children and the elderly to the Army of RBiH-controlled territory, the capturing of Bosniak men, their placement in temporary detention facilities, including the *Vuk Karadžić* primary school in Bratunac, and subsequent mass killing of the captured men, demonstrate that the Bosniak ethnic group was exceptionally vulnerable. The fact is that the men captured and held in the primary school in Bratunac were Bosniaks only, and that Bratunac was at the time populated by Serbs,

and that these prisoners were under the control of the VRS and the RS MUP. The accused Mladen Blagojević, being a member of the Bratunac Brigade Military Police, knew that Bosniak men were detained on the school premises and that they were defenseless, that some of them sought shelter at the Dutch battalion camp in Potočari out of fear of shelling, while some of them surrendered during their attempt to reach the Army of RBiH-controlled territory. Before he committed the crime the accused called out the people from Glogova who were inside the school, cursing their *balija* mother, and after he heard Chetnik mother being cursed back to him, without any serious reasons, he committed the crime by firing the Browning at these powerless detained Bosniak men. It is therefore clear that this act of the accused is a discriminatory one against the people of different ethnic background.

The second criterion is that such discriminatory act denies or infringes upon any fundamental right defined by international customary or treaty law. The act committed by the accused Mladen Blagojević, as determined on the basis of the evidence under this count of the Indictment, infringes upon the fundamental and generally recognized human rights. This is an inhumane act perpetrated with the intention to cause great suffering and serious bodily injuries, where the right to bodily integrity and protection from violence are the rights guaranteed by all international treaties on human rights, such as the Universal Declaration on Human Rights, as well as by the international customary law.

In addition, Article 3(1) as read with Article 4 of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War sets forth the following:

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

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

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Outrages upon personal dignity, in particular humiliating and degrading treatment.

As it was said here, violence to persons, including their bringing into the situations in which their bodily integrity is at risk, as well as violations of personal integrity, are strictly prohibited by international law. The action taken by the accused Blagojević directly breaches these prohibitions stemming from the international customary and treaty law, as well as Geneva Conventions. The same acts have been specifically outlawed by Article 172 (1) and other provisions of the CC BiH.

Thus the aim of the act committed by the accused was to flagrantly deny the international-law guaranteed fundamental rights, such as the right to bodily and personal integrity, for belonging to a particular group of people, on ethnic, national and religious grounds.

Finally, the Panel shall not repeat the arguments that have been elaborated on above: that the general criteria for the Crimes against Humanity related to the existence of a widespread and systematic attack on the Bosniak population and that the act of the accused was part of this attack.

The Panel qualified the acts of the accused Mladen Blagojević as Crimes against Humanity – persecution from subparagraph (h) in conjunction with (k) of paragraph (1) of Article 172 CC BiH. The ICTY case law (*Kupreškić et al.* Trial Judgment, 14 January 2000, par. 622) indicates that, *inter alia*, the acts of persecution may not be viewed isolated but rather in their context, by considering their cumulative effect. Also in *Prosecutor v. Vasiljević* (ICTY Trial Judgment, 29 November 2002, par. 246) says that “The act or omission constituting the crime of persecution may assume various forms, and there is no comprehensive list of what acts can amount to persecution. (...) The persecutory act or omission may encompass physical or mental harm or infringements upon individual freedom.”

In relation to Count 1 of the Indictment, on the night of 13/14 July 1995, at the *Vuk Karadžić* School in Bratunac, the accused Zdravko Božić, Mladen Blagojević, Željko Zarić, and Zoran Živanović, guarded, controlled, or otherwise provided security at the temporary detention facilities in and around the School using force and the threat of force to contain the civilian Bosniak men, and thereby prevented their freedom of movement and deprived them of liberty, the Panel notes that it was not proven at the trial that the accused participated in detaining, depriving of liberty or any other severe form of deprivation of physical freedom of the people who were temporarily held in Bratunac. Namely, no piece of evidence indicates that the accused took any action in terms of detaining the Bosniak people who were temporarily detained in Bratunac. The International Law Commission (ILC) defined in its 1996 ILC Report (page 101 (p. 49 in English)) that the term “imprisonment” encompasses deprivation of liberty of the individual. Article 172(1)(e) CC BiH cites imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law, which is identical to Article 7(1)(e) of the ICTY Statute. Not a single witness or documentary evidence linked the accused with the acts of imprisonment, that is, deprivation of liberty of Bosniak people who were brought to Bratunac. Namely, the Court does not find it disputable that thousands of Bosnian Muslims arrived in Bratunac on 12 and 13 July and detained there. They were placed in the temporary detention facilities such as the *Vuk Karadžić* school, the football stadium in Bratunac, as well as on the buses parked in Bratunac streets. These are the facts that the Court accepted as proven by the ICTY and the defense did not try to contest them with its evidence. The Court also found indisputable the fact that the accused were guarding the area around the school and the streets where the buses and trucks were parked on the relevant night. This is inferred from the consistent statements of a number of witnesses, both for prosecution

and defense. It can be concluded from the testimony of the witness Mile Babić that, on the relevant day, he and 15 to 20 other militarily police personnel were given the assignment at the Military Police command to secure the buses and prevent the detained Bosniaks from escaping, and that he saw all four accused providing security. At that time it was not decided who will be with whom and there was no command. This witness saw a number of members of other units and the Corps police in front of the school and in the street by the buses and trucks. This witness emphasized that he was seeing the accused Željko Zarić around the buses for the most part of the day and night. The witness Nenad Đokić testified that he saw Zdravko Božić at the relevant time providing security in the school street, and that he was half way between the school and the *Caesar* coffee bar, some 70-80 meters away from the school. The witness P-2 said that his colleague Mile Janjić told him that the military police personnel were supposed to provide security for the Bosniaks detained in buses and trucks parked down the school street, and he and the accused Zoran Živanović together provided security for the truck parked in that street. According to this witness, there were also other soldiers and civilian police personnel from Bratunac and elsewhere present. The witness Mile Janjić testified that when he arrived in front of the primary school in Bratunac, he saw Zoran Živanović standing together opposite to the entrance to the school, and that he then saw the accused Živanović and Zarić in the bakery near the school. Later on this witness saw the accused Živanović, Zarić and Blagojević and other military police personnel near the coffee bar directly opposite to the school. This witness said that besides the Military Police colleagues he also saw a number of members of the Bratunac civilian police in that area. The witness Slobodan Mijatović said that all policemen who had been providing security for General Ratko Mladić, upon their return to Bratunac, were given the assignment to provide security around the school, for which reason they parked the Pinzgauer in the street in front of the school, and then they deployed themselves in the streets so that each of them could provide security for several vehicles. On this occasion he saw members of other units who had already been deployed to provide security around the vehicles and the school. They were armed, in blue and green camouflage uniforms. The witness Mijatović testified that it was then that he saw the accused Zarić standing at the corner opposite to the school. The witness P-3 testified that he arrived in front of the school in Bratunac in the Pinzgauer together with Mladen Blagojević, and he also emphasized that he saw Zdravko Božić that night positioned in the street near the school. Their task was to be there to prevent the Bosniaks from escaping. The witness P-4 saw that night the accused Zarić by the school, and apart from the members of the Military Police he also saw the soldiers from the Bratunac Brigade. The witness Milovan Đokić testified that the platoon commander told him to go to the school, where the Muslims were in the buses, since they could rise against them. When he arrived in front of the Vuk Karadžić school in Bratunac he saw quite a few Military Police personnel including the accused Zarić, Živanović and Blagojević; Zarić and Živanović were standing at the school entrance, and Blagojević was standing by the Pinzgauer parked in front of the school. He also said that apart from them security was also provided by the troops and members of the police wearing various uniforms, as well as by some armed civilians including some minors. The Court accepted the statements of these witnesses as credible because they are consistent with each other and given by the

people who themselves participated in securing the area in front of the school and the school street, and a number of witnesses pointed in the photographs shown the exact positions where they saw the accused, which added to the court's finding that their testimonies are truthful. It can be concluded from the testimonies of these witnesses that the Military Police personnel was positioned in front of the school and around the buses and trucks parked in the street going to the school and that they were ordered to secure the area around the school and the buses and trucks with the Bosniak men inside. In addition, the testimonies of these witnesses show that the order to provide security was verbal and that it was given by the command of the Military Police. The Panel notes that the verbal order received by the members of the MP from their immediate superior officers to secure the area around the school, buses and trucks with the Bosniaks inside also included the task to prevent those people from running away, and thus to limit their freedom of movement. The execution of such an assignment by the accused as Military Police personnel – the assignment they received by their immediate superiors – is not illegitimate in itself, and this Panel does not consider that the accused committed a crime by the mere execution of this assignment. This is particularly so because almost all members of the Military Police platoon as well as a number of other units of the VRS and the RS MUP. The Prosecutor's Office does not at all specify in Count 1 of the Indictment who detained the Bosniak men on the primary school premises, nor does it specify who captured these people from the column of men that were fleeing from the attack on the Srebrenica enclave. Here the Court observes and notes that the prosecution alleged in Count 2 of the Indictment that other members of the VRS and the RS MUP detained civilians, Bosniak men who were inside the school and the surrounding area. During the trial the prosecution did not prove that the accused members of the Military Police, as members of the Military Police, detained, that is, deprived these people of liberty. The mere securing of the area around the temporary detention facility, that is, holding in detention the already captured people does not mean, in the Court's opinion, a severe deprivation of liberty in violation of international law. The allegations in the Indictment that the accused used force or the threat of force to contain in detention the Bosniak civilians is given in general terms, with the use of legal terminology, without specifying the acts committed by each defendant, in particular when it comes to the mode of using force or threat, which is necessary in order to determine whether they are responsible for the charged crime. For the above reasons the Court notes that, during the proceedings, the Prosecution did not prove beyond any reasonable doubt that the accused committed the crime under Count 1 of the Indictment, and it therefore cleared them of this charge.

Count 2 of the Indictment alleges that on the night of 13/14 July 1995, at the Vuk Karadžić primary school in Bratunac, the accused, while providing security in and around the school, participated in the mistreatment, beatings, cruel treatment and acts causing terror perpetrated by other VRS and RS MUP members who detained unarmed civilian Bosniak men inside the School and its surrounding area. The Court notes that legal terminology is being exclusively used in this Count as well, without specifying the acts from which they stem for each accused individually. Under this Count the accused are charged with committing the crime as members of the joint criminal enterprise (hereinafter: JCE), together with other members of the VRS and the RS

MUP. The Panel notes that in the case at hand the prosecution did not unequivocally prove the elements of the responsibility of the accused on the basis of JCE and the accused therefore cannot be held responsible for the crimes committed by other people where the evidence did not show that they had an agreement with those people to commit crimes. In this Count the prosecution alleges that the accused are responsible for the acts committed by the members of the VRS and the RS MUP, in and around the school in Bratunac, but the prosecution did nothing to prove the specific link between the unidentified members of these formations and the accused. *Actus reus* on the part of the accused the way the prosecution alleged in the factual description of this act would be the act of securing the school and the area around it as well as the participation in the acts of the others. *Mens rea* as a subjective element of the JCE which must exist on the part of the accused if they are to be found responsible i.e. a subjective nexus between the accused and the acts undertaken by others, was not specified or in any way proven in this specific case. In addition, the factual description of this act does not precisely describe the acts and behavior of other members of the VRS and the RS MUP in and around the school in Bratunac. The Indictment contains general terms: mistreatment, beatings, cruel treatment and acts causing terror. Lacking a specification of these acts the Court was not able to determine the responsibility of the accused either on the basis of traditional forms of responsibility stipulated by the CC BiH or the JCE as a form of liability with which the respective Count charged the accused.

Since in the several counts of the Indictment the prosecution charged the accused with the acts committed by others, that is, the accused are charged with the joint criminal enterprise as a form of criminal responsibility or mode of perpetration, the Court will now elaborate on the application of the joint criminal enterprise in the case at hand.

Joint Criminal Enterprise

The Trial Panel has concluded that the Accused are not guilty of the criminal offence of Crimes against Humanity as members of a joint criminal enterprise as it is stated in the Indictment.

The Trial Panel rejects the application of JCE theory in this case. Before it explains its decision, the Trial Panel considers it is necessary to outline the basic tenets of the JCE doctrine under current international law.

Overview of JCE Liability: Scope and Limits

The concept of joint criminal enterprise encompasses three distinct categories of collective criminality.¹⁰ Since it was not clear to the Trial Panel which form of JCE was pleaded by the Prosecutor, the Trial Panel will discuss all forms of the joint criminal enterprise liability and their applicability to the case at hand.

¹⁰ See in particular *Prosecutor v. Duško Tadić*, IT-94-1-A, paras 195-226 (*Tadić*). See also *Prosecutor v. Milorad Krnojelac*, IT-97-25-A, paras 83-84 (*Krnojelac*).

The first category is the “basic” form of joint criminal enterprise. It is represented by cases where all co-perpetrators, acting pursuant to a common purpose, possess the same criminal intention.¹¹ An example is a plan formulated by the participants in the joint criminal enterprise to kill where, although each of the participants may carry out a different role, each of them has the intent to kill.

The second category is the “systemic” form of joint criminal enterprise. It is a variation of the basic form characterized by the existence of an organized system of ill-treatment.¹² An example is extermination or concentration camps, in which the prisoners are killed or mistreated pursuant to the joint criminal enterprise.

The third category is the “extended” form of joint criminal enterprise. It concerns cases involving a common purpose to commit a crime where one of the perpetrators commits an act which, while outside the common purpose, is nevertheless a natural and foreseeable consequence of the effecting of that common purpose.¹³

The *actus reus* of the participants in a joint criminal enterprise is common to each of the three above categories and comprises the following three elements. First, a plurality of persons is required though they need not be organized in a military, political or administrative structure.¹⁴ Second, the existence of a common purpose which amounts to or involves the commission of a crime is required. Third, the participation of the accused in the common purpose is required, which involves the perpetration of one of the crimes punishable under the law. This participation need not involve the commission of a specific crime under one of the provisions (for example murder, extermination, torture or rape), but may take the form of assistance in, or contribution to the execution of the common purpose.

The *mens rea*, however, differs according to the category of joint criminal enterprise under consideration. The basic form of joint criminal enterprise requires proof that the accused shared the intent of the principal offenders of the crime.¹⁵ The systemic form of joint criminal enterprise requires personal knowledge of the system of ill-treatment (whether proved by express testimony or a reasonable inference from the accused’s position of authority), as well as the intent to further this system of ill-treatment.¹⁶ As for the extended form of joint criminal enterprise, the Prosecutor must prove the *intention* of the Accused to participate in and further the common criminal purpose of a group and to contribute to the joint criminal enterprise or in any event to the commission of a crime by the group.

¹¹ *Krnojelac* Appeals Judgment, para 84, providing that, “apart from the specific case of the extended form of joint criminal enterprise, the very concept of joint criminal enterprise presupposes that its participants, other than the principal perpetrator(s) of the crimes committed, share the perpetrators’ joint criminal intent.”

¹² *Tadić* Appeals Judgment, paras. 202-203

¹³ *Tadić* Appeals Judgment, para. 204.

¹⁴ *Ibid*, paragraph 277, quote from the *Essen Lynching Case* and *Kurt Goebell case*.

¹⁵ *Krnojelac* Appeals Judgment, para. 97.

¹⁶ *Tadić* Appeals Judgment, paras 202, 220 and 228.

In addition, responsibility for a crime other than the one which was part of the common design arises “only if, under the circumstances of the case, 1) it was *foreseeable* that such a crime might be perpetrated by one or other members of the group and 2) the accused *willingly took that risk*”.¹⁷ In other words, a member of the joint criminal enterprise who did not physically perpetrate the crimes is nevertheless criminally responsible for the crime which went beyond the agreed object of that enterprise, if (i) the crime was a natural and foreseeable consequence of the execution of that enterprise, and (ii) the accused was aware that such a crime was a possible consequence of the execution of that enterprise, and, with that awareness, he nonetheless participated in that enterprise.

For individual criminal liability to arise under any form of a joint criminal enterprise, the Prosecutor must establish 1) the existence of a joint criminal enterprise and 2) the participation of the Accused in that enterprise.¹⁸

The Prosecutor must establish the existence of an arrangement or understanding amounting to an agreement between two or more persons that a particular crime will be committed. The arrangement or understanding need not be express, and it may be inferred from all the circumstances. The fact that two or more persons are participating together in the commission of a particular crime may itself establish an unspoken understanding or arrangement amounting to an agreement formed between them then and there to commit that particular criminal act.¹⁹

The Prosecutor must also establish the Accused’s participation in the JCE. A person participates in a joint criminal enterprise either 1) by personally committing the agreed crime as a principal offender, or 2) by intentionally assisting the principal offender in committing the agreed crime as a co-perpetrator, i.e. by undertaking acts that facilitate the commission of the offence by the principal offender,²⁰ or 3) by acting in furtherance of a particular system in which the crime is committed by reason of the accused’s position of authority or function, and with knowledge of the nature of that system and intent to further that system.²¹

If the agreed crime is committed by one or other of the participants in a joint criminal enterprise, all of the participants in that enterprise are equally guilty of the crime regardless of the part played by each in its commission.

JCE and Criminal Code of BiH

The Accused are charged with participating in the Joint Criminal Enterprise. This averment suggests an unuttered assumption of the Prosecution that all modes of responsibility subsumed under Joint Criminal Enterprise are included in the relevant CC of BiH provisions.

¹⁷ *Ibid*, para. 228. See also paras 204 and 220.

¹⁸ *Tadić* Appeal Judgment, par 227, *Krnojelac* Appeal Judgment, para. 234.

¹⁹ *Prosecutor v Furundžija*, IT-95-17/1-A, para. 119.

²⁰ *Krnojelac* Trial Judgment, para. 77.

²¹ *Krnojelac* Trial Judgment, para 81.

This Court has previously addressed, albeit on a limited basis, the issue of the applicability of JCE theory, as a mode of criminal liability, under the CC of BiH. The Trial Panel notes that Article 180(1) of the CC of BiH, which sets out certain forms of individual criminal responsibility for the crimes within the Court's jurisdiction, does not make explicit reference to the joint criminal enterprise. The Court, however, has recognized that Article 180(1) of the CC of BiH contains the basis to charge individuals with participation in a joint criminal enterprise and that this form of liability existed in customary international law at the time when the crimes were committed.²² While the *Rašević* and *Todović* Panels confined their conclusions only to the systemic form of JCE (i.e. the second category), the *Kravica* Panel discussed the basic (i.e. first category) form of JCE, in a hypothetical setting, explicitly abstaining from a conclusion that the basic form of JCE is a legally applicable mode of liability for crimes within the jurisdiction of this Court.

Grounds for Rejecting the JCE Doctrine in this specific case

The Trial Panel rejected the application of the JCE theory because the Prosecutor proposed an overly broad and an overly-inclusive joint criminal enterprise theory which has no legal foundation. Neither the international nor national jurisprudence nor the legal literature supports this broad application of joint criminal enterprise liability.

The Prosecutor alleged that the accused were criminally responsible for the acts and omissions as *knowing* participants of a joint criminal enterprise (JCE).

According to the Prosecutor, the common purpose of the alleged JCE was "the death of 8,000 Bosniak civilian men by summary execution and opportunistic killings and the forcible transfer of up to 40,000 Bosniak civilians from the Srebrenica enclave".²³ The Prosecutor alleged that the members of this JCE, in addition to the Accused, were members of the Army (VRS) and Police (MUP) of the Republika Srpska (RS). The Prosecutor further alleged that the Accused were members of this JCE and that they were, as members of this JCE, individually responsible for their own acts and omissions as well as the acts of others, including those that were natural and foreseeable consequences of the common purpose or plan and operation.

It follows from the Prosecutor's argument that all VRS and MUP personnel, from the highest ranking officers to the lowest foot soldiers in a hierarchy, deployed to the Srebrenica area during the Indictment period, were members of an all-encompassing criminal scheme, i.e. capture, detention and forcible transfer of the Bosniak population from the Srebrenica enclave. The Prosecutor seems to also suggest that the Accused, being members of the military police and by virtue of their deployment to the

²² *Rašević and Todović*, X-KR-06/275(Ct. of BiH), First Instance Verdict, 28 February 2008; *Miloš Stupar et al. (Kravica)*, X-KR-05/24 (Ct. of BiH), First Instance Verdict, 29 July 2008. *Željko Mejakić*, X-KR-06/200(Ct. of BiH), First Instance Verdict, 30 May 2008.

²³ Indictment, p. 2. See also Amended Indictment, p. 2.

Srebrenica area, were members of and participated in this joint criminal plan, and are thus individually responsible for all crimes that followed the fall of Srebrenica.²⁴

The Trial Panel finds this to be an incredibly broad standard, which encompasses every person, from the highest ranking officer to the lowest foot soldier within the military structure, who happened to be in the Srebrenica area between 11 and 18 July 1995. By alleging that these units and persons were members of a single JCE the purpose of which was to ethnically cleanse the entire Srebrenica enclave, the Prosecutor implicitly alleged that they were all responsible for *all* criminal acts committed pursuant to the common purpose of that JCE during the relevant time and thus carry the same level of criminal responsibility.

If the Trial Panel accepted these allegations, the Accused would then become criminally liable for all crimes committed pursuant to the common purpose (including those that were outside JCE scope but naturally foreseeable) from July 11 through July 18, 1995. The fact that the Prosecutor did not charge the Accused with all the crimes perpetrated during that period is not relevant. While the Trial Panel cannot enter a conviction on the basis of acts not charged by the Prosecutor, the Trial Panel would necessarily have to conclude that the accused were responsible for those crimes. A finding that the Accused were members of a single, comprehensive JCE to ethnically cleanse the Srebrenica enclave would require the Trial Panel to conclude that the Accused, as members of that JCE, are criminally responsible for all those crimes.

The Trial Panel finds this broad application and extension of JCE liability to the Accused extremely problematic. The law is clear: the guilty intent and criminal conduct of others to which the Accused did not substantially contribute simply cannot be the basis for the guilt of the Accused. The JCE theory does not modify this fundamental principle in any way. Those who conceived the criminal plan and implemented it after the fall of Srebrenica are criminally responsible for all the consequent crimes. The common soldiers, such as the Accused in the case at hand, are responsible only for the crimes they perpetrated directly. To conclude otherwise would mean to assign collective responsibility to all soldiers for the crimes of their superiors, which would be in complete violation of fundamental principles of criminal law.

Even if the Trial Panel were to find, *arguendo*, that the JCE doctrine applies in the case at hand, it is still not satisfied that the Prosecutor has established the existence of the JCE and that the Accused were members of the alleged joint criminal enterprise and that they should thus be held responsible for the crimes committed pursuant to that common criminal plan.

The existence of the JCE cannot be simply assumed but must be proven beyond any reasonable doubt. The Prosecutor must demonstrate that the crimes in question form a part of the common criminal purpose and that each accused charged under a joint criminal enterprise theory participated in that common criminal scheme. With respect

²⁴ Indictment, p. 2. See also Amended Indictment, p. 2.

to the latter, the Trial Panel emphasizes that the accused must make a *substantial* contribution to the execution of the common objective of the criminal enterprise in order to be responsible.

Also, when analyzing an individual's alleged membership in a JCE, a distinction must be made between persons acting according to a common purpose and persons acting independently with the same criminal intent. This is because a common objective alone is not always sufficient to determine a group, as different and independent groups may happen to share identical objectives.²⁵ Rather, it is the interaction or cooperation among persons – their joint action – in addition to their common objective, that makes those persons a group. The persons in a criminal enterprise must be shown to act together or in concert together, in the implementation of a common objective, if they are to share responsibility for the crimes committed through the JCE..²⁶

The Trial Panel finds that the Prosecutor failed to clearly demonstrate how the general evidence pertaining to the alleged JCE is linked to and leads to a conclusion that the Accused were members of the single comprehensive JCE identified by the Prosecutor. Specifically, the Prosecutor failed to prove that the Accused shared the alleged common criminal purpose, i.e. that the Accused forged links with other members of the JCE in pursuit of the common objective and that those persons relied on each other's contributions to achieve criminal objectives on a scale which they could not have attained alone.

The Trial Panel finds that the Accused, in relation to the acts they were acquitted of, which rely on the JCE, merely acted pursuant to the military orders they received from their superiors, which as a matter of law does not entail the JCE responsibility.

In addition, the Prosecutor failed to prove, with respect to the forcible transfer, that the Accused had the necessary criminal intent to commit that crime. It appears that the Prosecutor simply assumed that there was a JCE and that the Accused were a part of that JCE by virtue of their presence in the area given the scale and the gravity of the Srebrenica events during the Indictment period. In the absence of other evidence to demonstrate indirectly that the Accused intended to commit the alleged crimes, the Trial Panel cannot conclude that the Accused were members of a JCE to commit that crime.

The Trial Panel wishes to address the Prosecutor's consistent reference to the Accused's "*knowing participation*" in the joint criminal enterprise.²⁷ It appears that the Prosecutor argued that the Accused's knowing participation in the criminal plan establishes that they shared the common purpose of the alleged JCE and were members of that JCE. Accordingly, the Accused, as *knowing* participants, are liable for

²⁵ *Prosecutor v. Momčilo Krajišnik*, IT-00-39-T, para. 884

²⁶ *Id.*

²⁷ Indictment, page 2.

all acts of forcible transfer, killings and ill-treatment of the Bosniak civilians as co-perpetrators in the JCE.²⁸

The Trial Panel categorically rejects this submission. The elements of JCE liability stated above and the case law clearly demonstrate that *knowing* participation is not an element either of the basic or the extended form of JCE, although it may be relevant evidence in establishing the guilt or the innocence of the Accused. To emphasize its finding, the Trial Panel notes that even the “*knowing perpetration*”, a much stricter variation of this standard, does not establish the Accused’s membership in the JCE.²⁹

The Trial Panel concludes that the mere knowledge of the common purpose does not establish membership in the JCE even when the individual acts in furtherance of that plan, and does not trigger the Accused’s criminal responsibility as members of the alleged JCE.

Failure to plead a specific form of JCE

Finally, the Trial Panel wishes to address the Prosecutor’s failure to clearly specify which form of JCE liability was alleged in the Indictment. Although the Indictment alleges that the Accused were members of a JCE, and identifies, in general terms, the common purpose and membership of the alleged JCE, it appears to inconsistently incorporate and refer to the legal elements of different forms of JCE liability without specifying clearly which form of liability is being alleged.

The Trial Panel notes that this issue, i.e. the precision with which the Indictment must set out the forms of joint criminal enterprise, is important not only to the case at hand but also has a general importance for the development of this Court’s case-law. Accordingly, the Prosecutor should clearly identify in the Indictment which form of JCE liability is being alleged, and not simply rely on his factual allegations to somehow demonstrate all that. The various forms of JCE simply differ too substantially for the Prosecutor to merely rely on a general JCE allegation.

Furthermore, Article 227(1)(c) of the BiH CPC clearly requires that the indictment contains a description of the criminal offense, object and means with which the crime was committed and any other circumstances necessary for the criminal offense “*to be defined as precisely as possible*”. The Prosecutor’s obligation to set out a concise statement of the facts of the case must be interpreted in the light of Articles 5(1), 6(1) and 7(3) of the CPC of BiH, which provide that, in the determination of charges against him, the accused shall be entitled to a fair hearing, and more specifically, to be informed of the nature and cause of the charges against him and to have adequate representation (defense attorney) and time to prepare his defense.

²⁸ Prosecutor’s Closing Argument, pp. 51-53

²⁹ *Brđanin* Appeal Judgment, para. 410; *Kravica Case*.

Finally, the law clearly requires a strict definition of common purpose when using the concept of joint criminal enterprise to define an individual's responsibility for crimes physically committed by others. The principal perpetrators of the crimes, which constitute the common purpose or a foreseeable consequence of it, should also be identified as precisely as possible.³⁰

To loosen these legal requirements and allow the Trial Panel to identify a form of JCE liability on its own in order to establish the guilt of the Accused would contravene the rights of the accused, especially when the Prosecution has not stated the category or categories it considered most likely to establish the accused's responsibility. Accordingly, the Trial Panel considers this imperfection to be one of the grounds for rejecting the application of the JCE theory in this case.

Conclusion

JCE is a rather new concept in BiH law, at least in application if not in origin. The Trial Panel emphasizes the importance of using this concept judiciously and very carefully. JCE cannot be treated simply as a mere addendum, a default or a back-up plan in the Indictments. When JCE is alleged, the allegation must be thoroughly attended to and followed through to the end. To treat JCE as anything less than the grave allegation would be a great disservice to this Court and to the public.

Bearing in mind everything described above, the Court finds that, in the course of the evidentiary proceedings, the Prosecution failed to prove beyond any reasonable doubt that the accused persons committed the criminal offense with which they are charged under Count 2 of the Amended Indictment and has therefore acquitted the accused of criminal liability for that offense.

Under Count 3 of the Indictment, the Prosecution charges the Accused with participating in securing the *Vuk Karadžić* primary school in Bratunac on 14 July 1995, against escape by the unlawfully detained civilian Bosniak men by guarding the exterior of the building and the surrounding grounds whereupon unidentified members of the RS MUP fired at five unidentified detained civilian Bosniak men who were attempting to escape from the confines of the school building with their pistols, thereby depriving them of their lives. This incident was described by witness P-1 in his testimony. He arrived in front of the *Vuk Karadžić* primary school in Bratunac around 7 a.m. the relevant day and saw members of the civilian and military police, including the four Accused, standing in front of the school, where a Pinzgauer was parked. Immediately after that he went behind the school, where the transformer station was, and he stayed there until the last Bosniak was taken out of the school. He stayed at that spot all the time and saw people jumping out of the side window. Witness P-1 then saw four or five Bosniaks who attempted to escape by jumping one by one out of the school window. Those Bosniaks were from Srebrenica. He saw three to four civilian policemen firing from their pistols the moment people appeared at the window,

³⁰ *Krnojelac* Appeal Judgment, para. 116.

without issuing any prior warning to them to go back. Bullets hit their bodies and they fell down on the asphalt, where they stayed, motionless. During his testimony, witness P-1 marked window number 14 on the first floor on the photograph of the school, as the window from which the captured Bosniaks jumped out. Witness P-1 was not specific about the time the incident took place, he arrived in front of the school in the morning hours and soon afterwards went behind the school building, where the transformer station was, and stayed there until 1 or 2 p.m. According to witness P-1, he stayed all the time at that spot from which he saw people jumping out of the side school windows, holding on to the metal window sill and he saw members of the civilian police firing and killing them. When witness P-1 was examined about the incident at the Prosecutor's Office of BiH on 16 October 2006, he stated that military policeman Babić and himself were behind the school and he did not know what was going on in front of the school, or how many people were there in front of the school – „because, you know, it is a school and there is a hallway, or something like that inside, so what happened, we were on this side, probably it was also on the other side, here is the entrance ...“ In his testimony, witness Mile Babić could not remember the precise date when he saw 5-6 men jumping out of the window from the third floor and falling down. Several minutes prior to their jumping, shots were heard. The witness went around the school and saw men jumping out on the other side, behind the school. The people who jumped out, fell on school desks and chairs. Whoever jumped, died on the spot. He saw that those people had wounds, broken arms, cracked heads, stomachs torn open, as a consequence of falling on metal desks legs. On the ground, he saw 15-20 dead men in total and he assumed that the other people also jumped out of the school windows before. They remained there until the following morning, when people from the utility company came to collect the bodies. Witness Babić could not recollect who was there with him then, or if anyone was with him. There were a couple of other VRS members on that side of the school, walking around the building. Therefore, witness Mile Babić confirmed only that some men jumped out of the windows of the *Vuk Karadžić* primary school in Bratunac and got killed, while he did not corroborate the allegations made by witness P-1 about unidentified members of the RS MUP firing from their pistols and killing those people. As regards the presence and role the Accused had in this incident, witness P-1 stated that when he came in front of the school in the morning, he saw a number of military policemen of the Bratunac Brigade in front of the school and of all the military policemen, he named only the Accused who were standing by the Pinzgauer in front of the school. None of other witnesses heard during the evidentiary procedure, stated that the four Accused were standing the relevant morning by the Pinzgauer that was parked in front of the school. Other military policemen, who confirmed in their testimonies that they were in front of the school in Bratunac in the morning hours of 14 July 1995, when Bosniaks started to be taken out of the school, did not substantiate what witness P-1 said about the killing of these Bosniaks by unidentified RS MUP members. Having examined the photographs of the school and its immediate vicinity, which were admitted into evidence, the Court noticed that the window witness P-1 pointed to was on the right hand side of the school building, looking from the direction of the entrance door, while the transformer station where the witness went and from where he was watching the incident as he said was on the left hand side of the school, meaning on the completely

opposite side. The Court concludes that it follows from the presented evidence and particularly from the consistent testimonies of several witnesses, who described and marked the position of the Pinzgauer on the photographs, that the Pinzgauer was in front of the school, looking from the direction of the entrance door. Consequently, based on the testimony of witness P-1 the Court could not conclude beyond any reasonable doubt that the incident developed as it was described in the Indictment, or that the Accused secured the school during the relevant period, by guarding the building outside and its surroundings, or that the accused actually saw the incident itself, or that they were present when it occurred.

The Prosecution alleges that the Accused are responsible for the incident on the ground of Joint Criminal Enterprise and charges them with the offences committed by members of other units, since they shared the same intention with unidentified members of the RS MUP - to kill Bosniaks who would attempt to escape from the school building. However, the Prosecution failed to present a single evidence to prove that the Accused were in any collusion with the 3-4 members of the civilian police who shot at Bosniaks when they tried to flee from the school. The Prosecution did not prove whatsoever that the Accused, as members of the Bratunac Brigade Military Police, were ordered to kill the detained Bosniaks should they possibly attempt to flee. None of the heard witnesses, members of the Military Police, mentioned any such order. The Prosecution did not investigate into orders given to other members of the Serb forces who safeguarded the school from inside and outside. The Prosecution also failed to prove that various units acted in correlation when executing their orders to secure the school and its surroundings. The Court finds that the fact that the accused were members of the Military Police and that they were securing the school does not mean that they automatically had a superior or special position in comparison to the members of civil police, or in comparison to other members of various units of the Army of Republika Srpska who were also at the same time securing the provisional detention facilities holding Bosniak men. The Court acquitted the Accused of this criminal offence under Count 3 of the Indictment having in mind everything that has been said in the Reasoning of the Verdict under Section 2 about Joint Criminal Enterprise and on the ground of the fact that the Prosecution failed to prove beyond any reasonable doubt that the incident took place and that the Accused in any way participated in this specific incident, and even that they were present when the incident occurred.

Under Count 4 of the Indictment, the Prosecution charges all the Accused with participating in securing the *Vuk Karadžić* school in Bratunac on 14 July 1995, against escape by the unlawfully detained civilian Bosniak men by guarding the exterior of the building and the surrounding grounds, whereupon unidentified members of the VRS, shot and unlawfully killed one unidentified detained civilian Bosniak man by automatic gunfire who was attempting to escape from the confines of the school building. Witness Milovan Đokić was the only one who described the incident in his testimony. He stated at the main trial that he could not remember the precise time the incident took place, whether it was before or after the shooting from a Browning. At one moment, he saw that one of the Bosniak men detained in the *Vuk Karadžić* primary school opened the window and jumped out from the third floor of the school

and fell hard on the ground. When he attempted to get up, a civilian approached him and killed him. Witness Milovan Đokić testified about the incident during the investigation. When he was examined by SIPA investigators on 26 September 2006, he stated that after the shooting from a Browning, he saw one of the detainees climbing on the window and jumping down from the second floor of the School onto the grass, then he got up and started to run. Then, one of the soldiers in a camouflage uniform, whom he did not know, fired at the person who was fleeing and killed him by a burst of fire, as the witness thought. He did not approach the killed person. Mladen (Blagojević), Krezo (Sreten Stanković) and possibly witness P-3 might have seen this. When the witness was presented his statement earlier given on the SIPA premises, Milovan Đokić confirmed that the previously given statement was correct and he maintained that the referenced murder might have been committed by a civilian. The same witness explained numerous discrepancies between his testimony at the main trial and his earlier statements by saying that he was threatened by prison when he was in SIPA and that he was so afraid that he did not know what to say. Also, when he was at the Prosecutor's Office, he had to say something just to be released and he confirmed his earlier statements because he did not want to leave the impression that he changed his testimony. Witness P-3 did not state that he had been present during the relevant incident, therefore he did not corroborate the allegations made by witness Đokić about his possible presence during the incident, while Sreten Stanković (a.k.a. Krezo) was not proposed to testify about this event by the Prosecution. According to witness Đokić, Mladen Blagojević was the only one among the Accused who could have seen this incident. The same witness also claimed that there were several individuals in the vicinity at that time, both VRS members and armed civilians. However, in addition to the fact that the Prosecution questioned only one witness - Milovan Đokić - about this particular incident, they also failed to present any other physical evidence to suggest that the incident actually happened the way it was described by witness Đokić. The Court also noted that witness Milovan Đokić stated at the main trial that he was under the influence of alcohol that night, and that he was generally prone to drinking, that he drank some brandy upon arriving in front of the school and that he fell asleep on the stairs by the café *Hogar*. The Prosecution maintained their charges that the detained Bosniak who jumped out of the window was killed by an unknown VRS member, although at the main trial witness Đokić cast doubt on this previous testimony of his by claiming that it could have been a civilian as well. The Prosecution charges all the Accused in this case with being responsible for actions of other VRS members, therefore they are charged on the ground of Joint Criminal Enterprise. The Prosecutor again failed to specifically plead in this Count of the Indictment which form of JCE the Accused are charged with, nor did he prove in the proceedings the connection between the unidentified individual who committed the murder and the Accused. The Accused are charged in the Indictment with the participation in securing the School against escape. There is no doubt that the relevant evening almost all members of the Bratunac Brigade Military Police were securing the area surrounding the School, however, the Prosecution did not prove beyond any reasonable doubt that the incident described in this Count of the Indictment indeed took place and that all the Accused were present during the incident. Furthermore, the Prosecution failed to prove the connection between the actions taken by the Accused

and the possible perpetration of the relevant criminal offence. Milovan Đokić was the only witness who testified about the incident, he changed his testimony during the proceedings, he named only Mladen Blagojević among the Accused as the person who could have seen the incident, and according to him other VRS members and civilians were also present. In addition to all this, his testimony was not substantiated by other presented evidence, so that the Court could not establish the criminal liability of the Accused beyond any reasonable doubt only on the grounds of testimony given by this witness. Besides, the position of the Court is that the Prosecution also failed to prove that the Accused were liable under this Count of the Indictment which charges them exclusively on the ground of JCE, so that the Court acquitted the Accused of this criminal offence due to all the stated reasons.

Under Count 5 of the Indictment, the Accused are charged with providing security on 14 July 1995 for the area around the *Vuk Karadžić* primary school in Bratunac while Bosniak men were being coerced out of the School building by members of the VRS and RS MUP personnel, knowing that the civilian Bosniak men were to be transported to other temporary detention facilities in or around the Municipality of Zvornik or otherwise away from the Srebrenica enclave, then they provided security escort for the transportation and unloading at the destination detention facility, thereby participating in the forcible transfer of the detainees. The Prosecution expressly mentioned the accused Zoran Živanović in this Count of the Indictment by stating that he was awaiting transport knowing that the civilian Bosniak men were to be transported to other temporary detention facilities, however, no specific charges against him were pleaded. It was alleged in the account of facts under this Count of the Indictment that the Accused were securing the area around the School at that time, while Bosniak men were being coerced out of the School building by members of the VRS and RS MUP. In the evidentiary procedure, the Prosecution presented ample evidence to prove that the military policemen escorted the buses which transported detained Bosniaks from Bratunac to Zvornik. To that end, witness P-4 stated that he personally, like other soldiers of the Bratunac Brigade, military policemen and other people in uniforms, secured the buses. Witness Slobodan Mijatović stated that one military policeman was to escort each vehicle and that he himself was assigned that task. Witnesses Mile Janjić and Milovan Đokić confirmed to have escorted the buses. Đokić testified to have entered a bus parked by the *Vuk Karadžić* school in Bratunac, as escort. Witness Milan Gvozdenović said that he saw military policemen from his Brigade on the buses, providing escort while they were leaving Bratunac. The Court concludes that it follows from the almost identical testimonies given by the mentioned witnesses, which were accepted as truthful and credible in this part, that a number of the Bratunac Brigade military policemen escorted the buses on 14 July 1995 going from Bratunac to Zvornik. According to witness P-1, he also participated in escorting the buses which carried the captured Bosniaks from Bratunac to Orahovac in the Zvornik Municipality. The witness stated that he drove to Orahovac in a Pinzgauer behind the last bus and that there were several military policemen with him. In his statement given to SIPA investigators on 12 September 2006, witness P-1 could not recall the policemen who were with him in the Pinzgauer. He repeated this in his statement given to SIPA on 18 September 2006, but he added that Mirko Janković drove the APC that headed the column and that witness P-3, Mile Petrović, witness P-4 and others were supposed to

be with him. At the main trial hearing held on 19 September 2007, witness P-1 said that he escorted the buses riding in a Pinzgauer the relevant day and that all the Accused were with him at that time. However, when cross-examined by the Defense, witness P-1 changed his statement by saying that he was not sure whether Zoran Živanović was with him in the Pinzgauer at the time, and was also not sure about Željko Zarić and the other two Accused, and after that he stated that he did not know other people in the Pinzgauer, he knew only that there were some soldiers and policemen. Such allegations made by witness P-1 could not convince the Court that the Accused escorted the transport of detained Bosniaks the relevant day from Bratunac to Orahovac. Furthermore, none of the other heard witnesses corroborated the testimony of witness P-1. Witness Mile Janjić said that he went to Ročevići in a Pinzgauer the relevant day and that Mladen Blagojević and Željko Zarić were with him, while witness P-3 stated that he was in Ročevići that same day, together with Mladen Blagojević and that he returned to Bratunac with him. In his testimony, witness P-4 said that he escorted the bus which came to Ročevići that day and that he thought that the accused Željko Zarić was there as well.

None among the heard witnesses mentioned that the accused Zdravko Božić and Zoran Živanović escorted the buses as security. In the course of the trial, the Defense of the accused Zdravko Božić argued that, on 14 July 1995, he was a Duty Officer and that he stayed on the Military Police premises in Bratunac, so that he had no other duties that day. In support of that, the Defense tendered into evidence Military Police Duty Officer's Log Book for July 1995, which shows that according to the Daily Report for 14/15 July 1995, Zdravko Božić was the Duty Officer and he also signed the Daily Report. In the course of the trial, based on testimonies of witnesses – military police officers, it was established that the duty officers' shift lasted 24 hours and that it covered the period from 7 a.m. to 7 a.m. the next day. With respect to the aforementioned Log Book, the Prosecution questioned the accuracy of the entries, alleging that it was clear that the daily reports had not been prepared on a daily basis and that, therefore, it was unclear on what date exactly was the accused Božić on duty as the duty officer, that the daily reports contained some illogical corrections, that those reports contained information on the assignments of military police officers, which, in some cases, turned out to be inaccurate. The review of the MP Duty Officer's Log Book for July 1995, shows that the accused Božić was the duty officer on 14/15 July 1995 and that he signed the Daily Report. The Daily Report for that day states that the Military Police was involved in the escort of Muslim refugees, and lists the names of seven military police officers including Mile Babić, Nikola Popović and witness PW-2 as the ones on duty at the reception. However, in the course of the trial, most of the persons listed as being on duty at the reception on that day did not confirm the accuracy of this report. Witness Mile Babić stated that, on the relevant day, he was in front of the Bratunac elementary school and that, upon the departure of the detained Bosniaks, he went home. Witness Nikola Popović stated that he travelled to Orahovac by a personnel carrier that day, while witness PW-2 stated that he went to the HQ that day and then went back home. The Court also notes that none of the heard witnesses – military police officers mentioned in their testimonies that the accused Zdravko Božić was at the Military Police HQ as a duty officer on the relevant day. Based on the

foregoing, the Court was unable to admit the Daily Report for 14/15 July 1995 from the MP Duty Officer's Log Book as fully reliable.

With respect to the presence of the Bratunac Brigade military police officers in Orahovac at the relevant time, witnesses Mirko Janković and Mile Petrović confirmed that they were in the UN APC that headed the column the relevant day, that they arrived in Orahovac in that vehicle. They pointed out that they did not notice any other members of the Bratunac Brigade Military Police in Orahovac. This was supported by witness Nikola Popović, who was in the same APC with Mirko Janković. The assertion made by witness P-1 that he saw all the four Accused in Orahovac the same day was not corroborated by any other witness heard. In the account of facts pertaining to this offence, the Prosecution did not explain how each of the Accused escorted the transport of Bosniaks, what kind of vehicles they used for that purpose, or the precise location of their temporary detention. It is only generally alleged in the Indictment that the Accused escorted the transportation and unloaded the people at the location designated for detention, however no reference is made in the Indictment to the name of the location of detention or where exactly it was located. The Court notes that the Prosecution charges the Accused under other Counts of the Indictment with having committed the offences in the place called Orahovac the very same day when the detained Bosniaks were being transported, but the Prosecution nevertheless failed to specifically state the location the Accused should have known to be the place of detention.

The Panel has found that the Prosecution did not prove during the proceedings that the Accused were aware that the men were to be transported to a location designated for detention, more precisely that the Accused knew the purpose and destination of the transport. The majority of the heard witnesses stated to have personally participated in escorting the detained Bosniaks from Bratunac, but none of the heard witnesses said that he knew the final destination or what was going to happen to the detainees. Witness P-1 even said that they were told to sit in the vehicle and follow them and that he thought that the Bosniaks would be taken to their territory. According to witness Nikola Popović, he went to Orahovac with Commander Mirko Janković in an UN APC, and that he did not know where he was going or why. Upon arriving in Orahovac, he saw soldiers in front of the School standing in two rows and the Bosniaks had to pass through the rows of soldiers to get to the School. Witness Slobodan Mijatović stated that Momir Nikolić told him that people were being transported and that vehicles were leaving, but he did not know who was issuing orders to drivers where to go. He also stated that at the time he escorted the people on the buses he did not know anything about what would happen to them. Witness Mile Babić said that a commander, who was not his superior, ordered him to enter a bus the relevant day, but he refused to do so. Witness P-3 stated that he did not know why the Bosniak men were taken away and that they, as military policemen, did not have any specific assignment other than to escort the buses. According to witness P-4, he did not know why he escorted the buses, he received the order from Mirko Janković, but no other instruction. He did not know on that day when they started to escort the buses what would happen to the civilians and he thought that they would be exchanged. He

also said that there were 20 buses in a column that left Bratunac, but they separated on the way, so that around 10 buses arrived in Ročevići. The Prosecution charges the Accused under this Count of the Indictment with the criminal offence of Crimes against Humanity in violation of Article 172/1/d/ of the CC of BiH, specifically with the deportation or forcible transfer of population. Article 172/2/d/ provides that *Deportation or forcible transfer of population* means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law.

There is no doubt and it follows from the consistent testimonies of all mentioned witnesses, that the detained Bosniaks were further transported and that they were in the Srebrenica enclave prior to their detention. Then they were brought to Bratunac and a number of them detained in the *Vuk Karadžić* primary school in Bratunac, while some were kept in buses and trucks. Since Bratunac definitely did not belong to the Srebrenica Enclave, that means that these people were already detained at another location at the relevant period – 14 July 1995 – other than the place where they previously lawfully stayed. The Accused are not charged in the Indictment with Transfer of Population, but with Forcible Transfer of Detainees. Dr. Radovan Radinović, expert witness for the Defense, stated in his report that from the military point of view, people who have the status of prisoners have no freedom of movement or any movement and their transfer from one place to another falls within the competence of those in charge of such a transfer, which is not *a priori* considered to be an unlawful military-security action. Army members are bound by the Law on Military Discipline and the Law on Military Service and Principles of Command to unconditionally execute orders issued by their superiors, unless they amount to a criminal offence. There is no doubt that the Accused in this specific case were plain military policemen and that members of the Military Police were ordered by their superior officers to escort the transport and secure the buses carrying the captured Bosniaks. The fact that the Prosecution charges the Accused with Forcible Transfer of Detainees from one place to another and not with Forcible Transfer of Population from their place of residence to another location, suggests that the essential elements of the criminal offence were not satisfied. The Court holds that the situation in which the detained people were already in the place other than the area where they previously lawfully stayed and further transported to other locations, may not be considered as Forcible Transfer of Population, as it is defined by the law.

Bearing in mind everything described under this Count of the Indictment, and in particular the lack of credible evidence proving that the Accused secured the vehicles with the detained Bosniaks, or that they knew that those people would be transported to other places of detention, as well as the fact that in this particular case the very actions of the military police officers securing the transport, do not contain the essential elements of the criminal offence under Article 172(1)(d) of the CC of BiH, or any other criminal offence of War Crimes, the Court decided to acquit the accused of this charge.

Under Count 6 of the Indictment, the Prosecution charges the Accused with providing security escort for the transportation of the Bosniak detainees from Bratunac on 14 July 1995, with guarding, controlling, or otherwise providing security at the Grbavci school gymnasium and the confines of the school playground in Orahovac that contained between 1,000 to 2,500 unarmed civilian Bosniak men who had been transferred there from temporary detention facilities and areas in Bratunac, as well as with preventing their freedom of movement and depriving them of liberty. It stems from the account of facts under this Count of the Indictment that the Accused provided security escort to transporting the Bosniaks from Bratunac to Orahovac the relevant day. However, it was mentioned nowhere in the previous Count of the Indictment that charges the Accused with Forcible Transfer of Detainees that they secured the transport to the place called Orahovac. As for the circumstances surrounding the arrival of the Accused in Orahovac, when reasoning Count 5 of the Indictment, the Panel already stated that the testimony of witness P-1 did not prove beyond any reasonable doubt that the Accused were among those who escorted the convoy to Orahovac, since no other heard witness corroborated that theory. Even the testimony of witness P-1 was **insufficiently reliable** with respect to this fact, since several times he changed his statement **about** the individuals who came to Orahovac with him. He once stated that all the Accused were among those people, but before **that, during the investigation**, as well as at the end of **his testimony at the main hearing**, he said that he did not remember who were the people who came to Orahovac in the Pinzgauer with him. Other witnesses who stated in their testimony that, on the relevant day, they were in Orahovac, and those witnesses are Nikola Popović, Mirko Janković and Mile Petrović, were consistent when they stated that in Orahovac they did not see any other military police members from their Brigade, thus he did not see the accused, either. On the other hand, In addition, no other piece of adduced evidence suggested that the members of the Bratunac Brigade Military Police, including the accused, were tasked with standing guard, controlling and securing the school gym upon their arrival to Orahovac. According to witness Mevludin Orić, he was in the convoy of buses that was headed by a UN APC, transporting captured Bosniaks from Bratunac. When they arrived in Orahovac, they were forced to go through two rows of soldiers all the way thought the school gymnasium. This witness also stated to have seen military policemen leaving the buses when the column of vehicles started from Bratunac and soldiers taking their places. Witness Nikola Popović confirmed this in his testimony and said that there were soldiers in front of the school in Orahovac, that they formed two rows and that Bosniaks had to pass through on the way to school. The fact that soldiers, not members of the Bratunac Brigade Military Police, were bringing Bosniaks into the school and school gymnasium in Orahovac arises also from the testimony of witness Mile Petrović, who claimed that armed VRS members were telling the captured Bosniaks in Orahovac to leave the buses and trucks covered by tarpaulin and that soldiers formed the two rows through which Bosniaks had to run to reach the entrance of the school.

When asked by the Prosecutor about the duties military policemen had with respect to the people of Srebrenica in front of the school, witness P-1 answered that they were not told what to do, that they were simply providing escort. When asked again by the

Prosecutor, the same witness replied that they never received any instructions as to how to treat and handle the prisoners. Furthermore, there was no other single physical piece of evidence to suggest that the Accused stood guard the relevant day in front of the school in Orahovac, as it was alleged by the Prosecution in the account of facts under this Count of the Indictment, thereby preventing the freedom of movement of the mentioned people and depriving them of liberty. The Court notes at this point that the Accused are charged under Count 1 as well with undertaking the same actions in Bratunac and preventing the freedom of movement of the same Bosniaks and depriving them of liberty. Therefore, the Accused were charged for the second time with the same offence committed against the same people, but this time in Orahovac.

Given that it stems from the account of facts of the Indictment that the Bosniaks were brought to Orahovac from the detention facilities in Bratunac, already as detainees, there is no doubt that those people had already been detained and deprived of liberty. Thus, Orahovac was not the place where those people were deprived of liberty and their movement restricted, but that happened before, in the places from where these people were brought to Bratunac.

The Court has found that the Prosecution did not prove beyond any reasonable doubt during the proceedings that the Accused committed the criminal offence they are charged with under this Count, since the testimony given by witness P-1 was not substantiated by testimonies of other witnesses, by other physical evidence or was reliable to the extent that the Court could establish the criminal responsibility of the Accused for the offence they are charged with solely on the grounds of the testimony given by this witness. The Court has also concluded that the essential elements of the criminal offence of Crimes against Humanity under Article 172/1/e/ have not been satisfied, as the Bosniaks were imprisoned and deprived of liberty at the place and time other than the time and place specified under this Count of the Indictment. Therefore, the Accused could not have perpetrated the criminal offence they are charged with under this Count of the Indictment. In view of all the stated reasons, the Court has decided to acquit the Accused of this criminal offence.

Under Count 7 of the Indictment, the Accused are charged with participating on 14 July 1995 at the Grbavci school in Orahovac in the mistreatment, beatings, cruel treatment and acts causing terror, that were perpetrated by other VRS and MUP members, who had detained between 1,000 and 2,500 unarmed civilian Bosniak men in and around the school. The account of facts under this Count of the Indictment very much resembles Count 2 of the Indictment, the only difference being the place of perpetration. Under this Count of the Indictment, the Accused are charged with the offence committed by others, but in which they participated. First of all, the Panel would like to reiterate its position that has already been reasoned, according to which the Prosecution failed to prove beyond any reasonable doubt that the accused were in Orahovac on the relevant day. The lack of clear and specific proof of that fact renders any further explanation of the reasons why the Court was unable to establish the criminal liability of the accused for the offense with which they are charged under this count of the Indictment almost redundant, because that means that the actions they are

charged with having committed in that place were not proved either. In all counts related to the place of Orahovac, the Prosecution bases its allegations solely on the statement of witness PW-1, who is the only one who stated that the accused persons were in Orahovac and that he was the eyewitness of the relevant incidents. In the process of weighing the evidence, the Panel analyzed the testimony of witness PW-1 in detail and inferred that the testimony of this witness with respect to those facts is insufficiently reliable, that certain parts of it are contradictory, and that its significant parts that incriminate the accused persons were not confirmed by any other witness who was heard. Namely, except for witness P-1, no other witness stated that the accused were in Orahovac on the relevant occasion, which is clear from the statements of all witnesses mentioned under Section 5 of this reasoning, who talked about this circumstance. Contrary to that, numerous witnesses stated the opposite, and so witness PW-3 stated that he was in Ročević on that day together with Mladen Blagojević; witness PW-4 stated that he was in Ročević on the relevant day where he thinks he saw the accused Zarić, while witness Mile Janjić stated that, at that time, he was in Ročević together with the accused Blagojević and Zarić. In addition to that, witnesses Mirko Janković, Mile Petrović and Nikola Popović too, who were in Orahovac on the relevant day, consistently stated that they did not even notice other MP members in that place. Witness PW-1 himself, as has already been mentioned in this reasoning, first stated that he did not know which military police officers came to Orahovac with him, only to say after that that all four accused persons arrived to Orahovac in a Pinzgauer with him, and in cross-examination, the same witness again said that he did not know the persons who arrived in Orahovac with him. Given such differing statements by witness PW-1, as well as the evidence presented in the course of the proceedings pertaining to these circumstances which did not corroborate the testimony of witness P-1 the Court was unable, based solely on the testimony of witness PW-1, to establish beyond any reasonable doubt the presence of the accused in Orahovac and their criminal liability for the actions with which they are charged under this count of the Indictment.

On the other hand, the account of facts in the relevant count of the Indictment itself does not provide a clear picture as to whether the Accused participated in the commission of the criminal offence as co-perpetrators, as accomplices, or as participants in the first category of JCE. In the case of co-perpetration, the Prosecution should have proved that the Accused, together with other perpetrators of this criminal offence, undertook certain specific actions that decisively contributed to the commission of the criminal offence. Another form of participation of the Accused could be by aiding and abetting others to perpetrate the criminal offence, however it is not reflected in the account of facts that the Prosecution charges the Accused with such a form of complicity. Assuming that the Prosecution here charges the Accused with participating in the commission of the criminal offence under the JCE, the Panel has concluded that the Accused may not be held responsible for the criminal offence perpetrated by other individuals, when the account of facts neither expressly states any specific actions committed by the Accused, nor is there the *mens rea* – agreement with other people to commit the relevant criminal offence. The Prosecution completely failed to prove under this Count of the Indictment such specific connection among the

unknown members of the Serbian formations with the Accused. The *actus reus*, as presented by the Prosecution in this specific case in the account of facts, is reflected in the Accused's participating in the mistreatment, beatings, cruel treatment and acts causing terror, that were committed by other members of the VRS and RS MUP. The *actus reus* under this Count of the Indictment contains only legal notions with no specific charges against each of the Accused as to how and under which circumstances they participated in the mistreatment, beatings, cruel treatment and acts causing terror. The *mens rea*, as a subjective element of JCE, has to be proved if the Accused are to be held criminally liable. However, the subjective connection between the Accused and the actions undertaken by others was neither mentioned nor proved. Moreover, the account of facts surrounding this criminal offence provides no precise description of actions and behavior of other VRS and RS MUP members. In the absence of specifically outlined *actus reus* of both the Accused and the VRS and RS MUP members, it is impossible to establish any responsibility of the Accused, either under the standard forms of liability foreseen in the CC of BiH, or under the Joint Criminal Enterprise liability. Therefore, based on everything stated above, the Court could not establish that the Accused are criminally responsible as charged under Count 7 of the Indictment and has therefore acquitted them of these charges.

The Prosecution charges the accused Zdravko Božić and Mladen Blagojević in Count 9 of the Indictment with shooting and killing, together with 6 other unidentified VRS soldiers, five unarmed civilian Bosniak men in front of the *Vuk Karadžić* primary school in Bratunac on the night of 13/14 July 1995. The killed Bosniaks were previously forcibly taken out from the school building, lined up in a row outside the School in an execution line-up and deprived of their lives. The incident was described in the testimony of witness P-2, who eye-witnessed the incident as a member of the Military Police platoon. He heard some noise on the relevant occasion, there was some turmoil, so that he started towards the school to see what was going on and saw 5-6 Bosniak men in civilian clothes who were forced out of the school by three armed men in uniforms who were unfamiliar to him. Those three men forced the Bosniaks out by grabbing them by their lapels, throwing them down on the ground, then picking them up and throwing them down again. The captured Bosniaks were brought to the yard in front of the school, on the right-hand side, more precisely to the grassy area between the fence pole and the school. P-2 heard one shot and saw that one of the men who was taken out fell down. The killing spot was about three to five meters far from the fence, towards the school. He saw the accused Mladen Blagojević and Zdravko Božić on the spot, standing close to each other, having rifles at ready in their hands, at their hip level and facing this group of people. He saw the accused Božić and Blagojević only very briefly, for a split second, they were 5-6 meters far from the men who were forced out of the school. He noted that all those who were present during the incident faced the men who had been taken out, since whenever something happens, everyone turns to see what is going and this was why he too was turned so as to face them. He himself was around 10 meters far from the accused and he saw only their silhouettes. Soon after the first shot, he did not know exactly how long after, he heard some shooting again, but did not see who fired, since after the first shot he turned his head and returned to his original place. After the second shot, he heard cries for help, swearing and noise, but he did not recognize the voices. The witness explained that

everyone, including himself, had rifles at ready in their hands. He did not hear anyone among those present trying to put a stop to the killing of Bosniaks. When cross-examined by the Defense Counsel for Božić, witness P-2 stated that the incident took place at dusk, about 10 p.m., that all of them had their rifles at ready, that he saw the accused Božić and Blagojević only for a split second, for a moment, so that he could not be certain that they kept their rifles at the same position all the time. The soldiers who forced the Bosniaks out of the school stood a step or two closer to them, they were closer to the captured Bosniaks than the accused Božić and Blagojević. During the cross-examination by the accused Božić, P-2 said that he did not see military policemen shooting at the Bosniaks. He repeated that he saw the accused Božić and Blagojević only for a split second, only their silhouettes, so that he did not see any physical activity on their part. When asked by the Defense for Blagojević, witness P-2 clarified that he considered any holding of the rifle as holding it at ready, which was different from aiming. He also stated that Božić and Blagojević had their back both to the soldiers and the persons who were forced out. He saw one man falling down, but he did not see who shot at him. In addition to the Accused and the persons forced out of the school, there were 5-6 soldiers from other units too. When asked by the Court, the witness repeated that there were other soldiers there, that there were 5-6 soldiers in the vicinity, that the Accused were outside of the grassy area, close to the fence and that the Accused did not get out of the school and force out the Bosniaks. The witness also explained that he approached the school out of curiosity, because whenever something happens, his instinct triggers his interest into the events. He said that he did not have any bad intentions when he approached, but also that he could not do anything to protect the forced-out Bosniaks. "People were so aggressive that no one dared to protect anyone. He clarified that holding the rifle at the ready at that moment was a reaction, since one never knew what could happen, and that was why he held his rifle at his hip level, same as the Accused did. The fence around the school yard was partially damaged, one or two panels between the fence poles were broken and twisted.

Witnesses Desimir Đukanović and PW-4 also testified that dead bodies of the killed Bosniaks were in front of the school, on the right-hand side. In his statement, witness Desimir Đukanović stated he was on his work obligation duty at the Public Utilities Company and that he was tasked with collecting dead bodies in the Bratunac town, which were to be buried in the Glogova village. That same witness stated that, in front of the school, on the right-hand side, he saw dead bodies of Bosniaks, the total of six bodies, on places where later on shrubs were planted. Witness PW-4 stated that, when he arrived in front of the school, he saw dead bodies in front of the school, both on the right-hand side and the left-hand side. The Court has found the testimony of PW-2 honest, reliable and credible, since it was convincing, detailed and it was corroborated by witnesses Desimir Đukanović and witness PW-4, who consistently testified to have been at the place the witness PW-2 marked as the place of the killing of Bosniaks who had been taken out, where they saw the bodies of the killed Bosniaks. It follows from the testimony of PW-2 that the killed Bosniak men were previously locked up in the primary school building and that they were forced out of there by three armed soldiers unfamiliar to the witness. Witness Ljubomir Beatović, who entered the school, stated that the captured Bosniak men were guarded by VRS soldiers, which was confirmed

also by witness P-4, who too entered the school and stated that the Bosniaks were guarded inside the school building by VRS soldiers. According to all the heard witnesses, members of the Bratunac Brigade Military Police Platoon, they were not assigned to guard the Bosniaks inside the school the relevant day, instead, they were told to be in front of the school to secure the area in front of the school and other streets in the vicinity, where there were several dozens of buses and trucks with captured Bosniaks. The accused Zdravko Božić and Mladen Blagojević are charged in the account of facts in the Indictment with shooting and killing, together with other six VRS soldiers, unarmed Bosniak civilians, who were previously lined up outside the School in an execution line-up. It stems from the testimony of witness P-2 that that witness, who was the only one to describe this incident, said nothing about the Bosniaks being lined up for execution prior to the shooting, nor could it be concluded from the testimony of this witness that the accused Božić and Blagojević shot and killed the Bosniaks that had been forced out of the building. On the contrary, in his testimony the witness stated several times that he did not see the Accused firing, or who fired the first bullet. In view of this averment of the single eye-witness, the Court could not establish beyond any reasonable doubt that the Accused fired and killed the Bosniaks, as they are charged in the Indictment. The conclusion reached by the Court is also based on the allegations of witness P-2 according to which he saw the Accused only for a moment at the time of the killing, that he did not notice any activity by the Accused, that the Accused were 5-6 meters far from the forced out Bosniaks, that there were other 5-6 soldiers between the Accused and the Bosniaks, all of them with rifles in their hands pointed at the Bosniaks whose backs were turned to them, the murder took place at the grassy area in front of the school, three to five meters far from the school fence, while the Accused were in front of the fence on the concrete, and that after the first shot witness P-2 no longer watched the incident, so that it was impossible to determine the further development of this incident in terms of the circumstances under which it happened and the persons who perpetrated the act, based on his testimony. The assertion made by the witness that the Accused had rifles in their hands, at the ready, at their hip level and that they faced the soldiers and the persons forced out of the school, does not necessarily lead the Court to conclude that they actually shot at and killed the detained Bosniaks, or otherwise participated in the commission of the offence, even more so because the circumstances surrounding the incident suggest that all those present, including witness P-2, held their rifles at the ready at that moment and were all facing those persons. The witness himself explained to the Court that he was intrigued by the noise and turmoil in front of the school, so that he went there and that he held the rifle in his hands as a reaction to possible developments, since one never knew what could happen. He also stated that he did not have any bad intentions when he approached, but also that he could not do anything to protect the Bosniaks that had been forced out of the building. The Court was unable to establish beyond doubt the participation of the accused Božić and Blagojević in the commission of the relevant offense, or their subjective nexus to this particular offense solely on the basis of the statement of witness P-1 according to which the accused were present during the relevant incident at the time of the killing of the person who was singled out first. In the absence of other pieces of evidence to suggest some specific behavior of the accused Božić and Blagojević during the relevant incident, the

Court has found that the Prosecution failed to prove beyond any reasonable doubt that the Accused committed the criminal offence of murder as they are charged with in the account of facts under this Count of the Indictment, which is why it decided to acquit them of the charges under this Count of the Indictment.

Count 10 of the Indictment specifies that on 14 July 1995, at the *Grbavci* School in Orahovac, while the accused Mladen Blagojević and Željko Zarić guarded, controlled, or otherwise provided security at the school gymnasium and the confines of the school playground that contained a number of unarmed civilian Bosniak men that were transferred there from Bratunac, they prevented their freedom of movement and deprived them of liberty by using force to coerce the detainees to remain inside the school gymnasium, whereupon a shot was fired from an automatic weapon carried by either Zarić or Blagojević, thereby injuring a bystander. The incident was described only by witness P-1 in his testimony during the main trial, when he stated that the detained Bosniaks, who were calm at the beginning, suddenly panicked, that there was some turmoil and that they wanted to leave the Primary School building. Some of them succeeded, but the members of the Military Police who were in the school vicinity attempted to stop them. One of the men grabbed a military policeman by his rifle, he did not know which one, so that the rifle fired, and he heard that a villager was wounded on that occasion. When cross examined by the Defense for Zarić, witness P-1 said that he did not know who was wounded, he did not see the wounding itself, he heard about it from the policemen, he did not know whether it was a man, a woman, or a child who was wounded and he did not know how far from the school was the person who was wounded. According to him, the person was wounded behind the school in the direction of houses and he did not know to which family the wounded person belonged to.

The Panel would like to reiterate again its opinion that, in the course of the evidentiary proceedings, the Prosecution failed to prove beyond any reasonable doubt that the accused Mladen Blagojević and Željko Zarić were in Orahovac on the relevant day. In addition to that, the evidence of witness P-1 given at the main hearing does not indicate the identity of the military policemen who prevented the captured Bosniaks from fleeing, or the identity of the military policeman whose rifle was grabbed by one of the captured Bosniaks; nor was the witness shown previous statements about this action. The Prosecution again charges the accused Blagojević and Zarić under this Count of the Indictment with committing the offence of Deprivation of Liberty or other Severe Deprivation of Physical Liberty in violation of fundamental rules of international law. There is no doubt that in this specific case the men brought from the temporary detention in Bratunac and imprisoned at the *Grbavci* School in Orahovac were Bosniaks. The Court finds that one may not be charged with the offence of Imprisonment, or deprivation of liberty, if the people were already imprisoned, namely deprived of liberty, given that those people were deprived of freedom of movement at the moment when they were imprisoned, so that those same people could not be deprived of liberty when they already had the status of detainees or prisoners. In his testimony at the main trial, witness P-1 did not name any of the military policemen involved in this incident, and stated that he did not know who among the military policeman was grabbed by one of the captured Bosniaks by his rifle, which fired and

wounded someone in the village. No other witness heard during the proceedings confirmed the allegations made by witness P-1 about the involvement of the military policemen in this incident, nor did any other presented piece of evidence suggest that the incident happened in Orahovac the relevant day, that it involved the military policemen, or that a villager was wounded in the village. The Court has found that all of this shows beyond any reasonable doubt that the Prosecution failed to prove during the proceedings that the accused Blagojević and Zarić committed the offence they are charged with under this Count of the Indictment. Therefore, given the absence of irrefutable evidence on the involvement of the accused in the commission of the offense and the lack of essential elements of the referenced criminal offence, the Court has decided to acquit the accused Blagojević and Zarić of the charges under this Count of the Indictment.

Under Count 11, the accused Željko Zarić and Zoran Živanović are charged with entering the *Vuk Karadžić* primary school in Bratunac on the night of 13/14 July 1995, where civilian Bosniak men were detained, and where they fired their automatic weapons at the detainees. In the evidentiary proceedings, the Prosecution heard a number of witnesses who testified about this incident.

Witness PW-4 was questioned by SIPA on 28 November 2006 for the first time, which is when he stated that when the relevant incident took place the majority of members of the Bratunac Brigade Military Police were entering the School, including Nenad Đokić, commander Mirko Janković, Witness P-1, Radenko Zarić and the accused Željko Zarić and Zoran Živanović. The witness alleged that he too was entering the school and that at around 9 p.m. he heard single-shot fire coming from the first floor while he was standing at the entrance in front of the School. According to him, a military policeman came down and said that Zoran Živanović was killing people and that was how he knew that it was him. When questioned by authorized SIPA officers, witness P-4 said that he had heard that the accused Živanović had fired 5-6 bullets on that occasion within 3-4 minutes. He did not know how many people he killed, since he did not go upstairs to see what he was doing. During the investigation by the Prosecutor's Office of BiH, witness P-4 maintained that the accused Živanović and Zarić were entering the school, but he was not sure about other members of the Military Police. He thought that it was Nenad Đukić who told him that the accused Zoran Živanović was killing people, and that he said that because Živanović went upstairs to the first floor. Witness P-4 abandoned his earlier statement at the main trial and claimed to have heard the shooting the relevant evening, it was coming from the direction of the school, he was 15-20 meters far from the school and did not know who was shooting. When witness P-4 was confronted with his earlier statement, he maintained his allegations given at the main trial, by claiming that he was scared during the questioning under the investigation, that he could not remember the names of individuals who were entering the school and he did not know if the accused Zoran Živanović was shooting inside the school. During the cross examination, P-4 said that he briefly saw the accused Željko Zarić in the evening hours in front of the school and that he did not see him again that night. He saw armed soldiers in the school building that night, both on the first and second floors. He said that he was scared while he was

giving his earlier statements and that back then he was saying both things he knew and he did not know about.

In his testimony, witness PW-1 stated to have heard noise in the school, made by the people who most probably wanted to get out. He saw the accused Zoran Živanović and Željko Zarić running into the school and there was a soldier of the Bratunac Brigade with them. Bursts of fire could be heard and then things calmed down. The moment they climbed upstairs, bursts of fire started. He did not see any traces of shooting that lasted for about 15 minutes, in short bursts of fire. He heard the shooting coming from the first floor of the school. When he was questioned on 12 September 2006 by SIPA investigators under the investigation, P-1 claimed to have heard the shooting a couple of minutes after they entered the school. In the cross examination, P-1 said that in addition to the accused Živanović and Zarić, there were other soldiers who ran into the school, maybe three of them, but that he was not present there all the time and he allowed the possibility that there were even more soldiers who entered the school at that point. The same witness also said that he can merely assume that the accused Zarić and Živanović had climbed upstairs, since he had not actually seen them on the upper floor, and that he had not entered the school building on that occasion.

Witness Mirko Janković stated that he did not approach the school that night.

According to witness Nenad Đokić, he was assigned to secure the broader perimeter of the school the relevant night, he personally secured the buses and trucks, he entered the school once, when he brought some water to the people and he did not see that anyone was killed inside or outside the school, or that anyone was beaten up or ill-treated. Among the Accused, he saw Zdravko Božić who secured the buses along the street leading towards the school, he saw witness P-4 and other colleagues in front of the school, but could not remember all those who were there.

In his testimony, witness PW-3 stated that he was in his Pinzgauer that was parked in front of the school the relevant night. He stayed there almost all the evening and that he did not see the accused Zarić and Živanović coming in and out of the school.

Witness PW-2 testified that he was together with the accused Zoran Živanović and military police officer Mile Janjić, securing the buses and trucks in the street leading towards the school. According to him, the accused Živanović was bringing bread and water to the people kept in those vehicles. The accused Živanović was farther from the school and closer to the truck they guarded. He did not notice Živanović approaching the school or going inside the school.

In his testimony, witness Mile Janjić confirmed that he secured the buses and trucks together with witness P-2 and the accused Zoran Živanović the relevant night. The accused Živanović stayed with him most of the evening. At one moment, he heard screams coming from the school, then bursts of fire shot from infantry weapons. While this was going on, witness P-2 was with him, whereas the accused Živanović was close to the school. He saw the accused Živanović standing at that spot throughout the shooting. Prior to the shooting in the school building, he saw his colleagues – military

police officers at the stairs of the *Hogar* café, including the accused Željko Zarić. He did not see anyone by the school entrance. He also stated that the accused Živanović repeatedly went to the bakery that night to fetch bread and he then distributed it to the people in the buses.

Witness Ljubomir Beatović, who entered the school that same night said that he saw VRS members inside the school, securing the premises.

According to witness Desimir Đukanović, the following day he found a number of dead bodies of Bosniak men, which were in different classrooms on the first and second floor. The bodies were then taken away and buried.

It follows from the presented evidence that two witnesses, P-4 during the investigation and P-1 stated that they saw the accused Zarić and Živanović entering the school on 13-14 July 1995 where the detained Bosniak men were kept when the shooting occurred. However, none of the mentioned witnesses personally saw the accused shooting from their fire arms at the detainees, nor did any of these witnesses see the consequences of their possible shooting. During the investigation, witness P-4 claimed to have heard a military policeman mentioning only the accused Živanović to be doing the killing, and he stated afterwards that the military policeman in question could be Nenad Đokić. As for the accused Zarić, this witness stated during the investigation only that he was going inside the school, but he did not mention him shooting or killing anyone. This statement given by witness P-4, about hearing from a policeman that Živanović was doing the killing, was not supported by any other heard witnesses, members of the Military Police. None among the heard witnesses, military policemen, testified during the proceedings to have heard from others or personally seen Živanović shooting on the first floor of the school, or to have informed witness P-4 about the incident. Witness Nenad Đokić, who was mentioned by witness P-4 as the person who might have given him such information, did not confirm the allegations of this witness. Also, the allegations made by witness P-4 during the investigation, that a number of military policemen, including Mirko Janković and witness P-1, were entering the school on the relevant occasion, were not confirmed by the mentioned witnesses. Witness Mirko Janković stated that he did not approach the school at all, while witness P-1 said that he did not come to the school at all the relevant evening. Only witness Nenad Đokić confirmed that he entered the school on the relevant evening, but his statement does not indicate that there was shooting in the school on that occasion, or that the accused Zarić and Živanović were inside the school on that occasion.

Witness P-1 did not have any direct information about the incidents that took place inside the school. It stems from the testimony of this witness that he did not enter the school, did not see any traces of shooting, did not see the Accused on the first floor of the school during the shooting and he only assumed that the accused Zarić and Živanović fired from automatic weapons on the first floor of the school. The same witness asserted that in addition to the Accused, there were three other soldiers who entered the school prior to the shooting; however, he left the possibility that, besides

these three soldiers, there were other soldiers who could have also entered the school at that time. The Court has noted that witnesses P-4 and Ljubomir Beatović were consistent in their statements claiming that when they were inside the school there were other VRS members there as well, securing the building.

The Prosecution did not include the *mens rea* in the account of facts surrounding this offence, so that there is no subjective element to show how the Accused felt about the offence and the consequences thereof (category of the *mens rea*). In the account of facts under this Count of the Indictment, the Prosecutor also failed to specifically state the consequences that occurred after shooting from their automatic weapons at the detainees. The Court notes that it is impossible to provide legal qualification of the offense without these essential elements required for any criminal offense, since the consequence of the offense and the subjective element were omitted. Therefore, the Court has concluded that this Count of the Indictment is deficient, given that it does not contain the essential elements of the referenced criminal offence the Accused is charged with. The Court also finds that, in the course of the proceedings, the Prosecution failed to prove beyond doubt that the accused Željko Žarić and Zoran Živanović fired from automatic weapons at the detainees in the school at the relevant time, since none of the witnesses saw that action. Therefore, bearing in mind everything stated above concerning the deficiency of the factual description of the offense, as well as insufficient evidence to clearly prove that the accused committed the offense, in this particular case the Court was unable to establish beyond any reasonable doubt the criminal liability of the accused for the offense with which they are charged and has, therefore, acquitted them of the charges under this count of the Indictment.

Under Count 12 of the Indictment, the accused Zarić and Živanović are accused of separating three unarmed, civilian Bosniak men on 14 July 1995 in Orahovac from other detainees at the *Grbavci* school and forcing them to walk to a separate area, then shooting at the three civilians from their automatic weapons thereby depriving them of their lives. Only witness P-1 described this incident in his testimony given to SIPA investigators on 12 September 2006, when he said that he saw one of the military policemen of his unit stabbing the bayonet on his automatic rifle into the stomach of the prisoner who grabbed him by his rifle barrel. The same witness also stated that he saw two other prisoners taking the wounded man from Srebrenica out of the gymnasium, followed by two military policemen - Željko Zarić and Zoran Živanović. Soon afterwards, a burst of fire was heard. Then the policemen came back without the three detainees that had been taken away. Witness P-1 stated that he assumed that these detainees were killed because he did not go to the back of the gym, to the scene. When he was questioned during the investigation at the crime scene in Orahovac on 18 September 2006, witness P-1 described the incident and said that after one of the prisoners grabbed one of the soldiers by his rifle, he was stabbed by a bayonet and as far as he could remember, the accused Željko Zarić and Mladen Blagojević took away the three prisoners, then a burst of fire was heard and the two Accused returned without the captives. During the investigation, when witness P-1 was questioned by the Prosecutor on 16 October 2006, which is when he stated that he did not know who

among the military policemen with a bayonet on his rifle stabbed one of the prisoners in his stomach and that there were at least around 15 Bratunac Brigade military policemen in front of the school at that moment. The same witness stated that the accused Željko Zarić and Zoran Živanović told two of the detained Bosniaks to take away the Bosniak detainee who was stabbed by a bayonet, that they followed the two detainees going two steps behind them and that immediately after they were taken away he heard bursts of fire from behind the gymnasium and the two policemen returned without the three captives. They said nothing upon their return, nor did anyone else say anything about the incident. Later on, he did not discuss the incident with anybody. At the main trial hearing held on 19 September 2007, witness P-1 stated to have seen one of the detained Bosniaks grabbing one military policeman by his rifle, he did not know which policeman it was. The rifle fired and he saw one of the VRS soldiers stabbing this prisoner by a bayonet in his stomach. After that, the two policemen who had their backs turned to him ordered the two detained Bosniaks to take the stabbed person behind the school. In his opinion, telling by their silhouettes, those two policemen were Željko Zarić and Zoran Živanović. The witness further stated that he was ten to fifteen meters far from the spot where the Bosniak detainee was stabbed by a bayonet and he recognized the accused Zarić and Živanović by their faces. During the cross examinations, witness P-1 stated that he could not hear or see the faces of the people who went behind the school and that he allowed the possibility that, at the moment of taking away, some other soldiers had already been behind the school, he did not know who shot the burst of fire, and that he did not know what had happened behind the school, or if the three taken away Bosniaks were killed. When cross examined, witness P-1 explained that when giving his statement during the investigation, he was not sure which two military policemen took away those three Bosniak men behind the school, one of them was Željko Zarić, while the other one was Živanović or Blagojević, but since he was fairly short, he thought that it was Zoran Živanović. He also said that at certain moments he was not sure who stayed and who took away those people behind the school. He repeated that the incident happened during the day and when he said silhouettes, he was referring to familiar face features. He also said that when the Accused were taking away the people, they were positioned so that he could see their profiles. When he was questioned under the investigation for the last time, he was sure that those two individuals were Zarić and Živanović.

Witness PW-1 claimed that in addition to the accused Zarić, Živanović, Blagojević and Božić, he also saw Mirko Janković, witness P-3, Milan Gvozdrenović, Sreten Stanković and Jakovljević around the school in Orahovac at the relevant time. During the evidentiary proceedings, none of the mentioned people, heard as witnesses, confirmed the incident, nor did any other adduced piece of evidence suggest that the incident actually happened. Furthermore, none of the mentioned witnesses stated to have seen the Accused in Orahovac at the relevant time. Also, witnesses P-3, Milan Gvozdrenović and Borivoje Jakovljević did not confirm the allegations of witness P-1 that they had been in Orahovac at the relevant time.

With regard to that, witness Milan Gvozdrenović, who as a military police officer drove a TAM truck in July, stated that he was not present when the Bosniak detainees were taken from Bratunac in the direction of Zvornik and that he himself did not travel to

the territory of Zvornik municipality with a TAM truck, because the vehicle was not in good order for a long trip.

Witness PW-3 stated that, on the relevant day, he went to Ročević as part of the escort for buses, and that the accused Blagojević was with him in Ročević and that they returned to Bratunac together on the same day.

Witness Borivoje Jakovljević stated that at the relevant time, he saw convoys of buses with Bosniak men on them leaving Bratunac and driving off in the direction of Kravica, that the buses were escorted by one or two soldiers, and that he did not leave Bratunac at all that day.

With regard to the events that took place in Orahovac on the relevant day, witness Tanasko Tanić testified that he was in Orahovac on the relevant day and that he saw two dead bodies within the perimeter of the school playground, closer to the fence and the road. This witness also stated that he arrived in Orahovac after he heard in Karakaj that prisoners were fleeing and that it took him 20 minutes to get there in a van. All Bosniak men were in the gymnasium. He did not notice any vehicles in front of the school that were used to bring the prisoners there, or any trucks or buses. Apart from members of the Zvornik Brigade, he did not see any other soldiers in Orahovac. He had no information that soldiers from Bratunac were there.

Having analyzed the given statements about the circumstances mentioned above, the Court finds that the testimony of witness P-1 is not credible to such an extent so as to enable the Court to establish beyond any reasonable doubt the responsibility of the Accused for the relevant criminal offence solely on the grounds of this testimony. It has already been said in the Reasoning of this Verdict that, in the course of the trial, the Prosecution failed to prove as an indisputable fact that the accused Zarić and Živanović were in Orahovac at the relevant time. In absence of a convincing proof for this fact, the Court was unable to find the accused guilty of the relevant offense. On the other hand, witness P-1 also changed his statement about the persons who perpetrated the offence. The same witness said that he was not sure who took the three Bosniaks behind the school in Orahovac and he became sure of that only after he gave his last statement under the investigation. When evaluating the credibility of this witness' testimony, the Court took into account that the relevant incident took place in July 1995 and that witness P-1 testified in the investigation in November 2006, more than 11 years after that the event. The fact that the witness himself was not sure about the identity of the perpetrators of the relevant offence suggested to the Court that he was not completely reliable. When testifying about this, witness P-1 repeatedly used the expression "I think" and he was imprecise when explaining how he identified the Accused. One time he said that he referred to face features when he mentioned silhouettes, but another time he said that the military policemen who took the Bosniaks away had their backs turned to him. Then he said that he saw their profiles and he once said that he concluded that it was Zoran Živanović by the height. Also, the location witness P-1 pointed to as the place where the three Bosniak men were taken to – behind the school, does not at all correspond to the place which the witness Tanasko Tanić described as the spot where he saw two dead bodies of the captured Bosniaks.

Witness Tanić stated that the dead bodies were close to the fence and to the road on the school playground, whereas the examination of photographs of the exterior of the school showed that the playground and the road are in front of the school, where according to him witness P-1 was standing, which is a completely different spot from the one mentioned by witness P-1 as the place where the three detained Bosniaks were taken. The Prosecutor alleges in the account of facts that the Bosniaks were taken to “a separate area”, but he fails to give the precise location, notwithstanding that witness P-1 stated that they were taken behind the school. The account of facts under this Count of the Indictment is based on Witness P-1’s testimony.

Given that the other witnesses, who, according to witness PW-1, were in Orahovac, did not corroborate his testimony either with regard to the incident itself or the presence of the Accused Zarić and Živanović in Orahovac and their involvement in the relevant incident, and also given that some of the witnesses claimed otherwise, or more precisely that they saw the Accused Zarić in Ročević that day, as stated in the reasoning, the Court could not establish beyond any reasonable doubt the responsibility of the Accused for the relevant offense merely on the grounds of testimony of witness PW-1, which is why it acquitted the accused Zarić and Živanović of the charges for the commission of the criminal offence with which they are charged under this Count of the Indictment.

The accused Zoran Živanović is charged under Count 13 of the Indictment with participating in the process of separating Bosniak men from Bosniak women and children on 12 and 13 July 1995 in Potočari and then, by using force and the threat of force, loading the Bosniak women and children on buses knowing that they would be transported out of the Srebrenica enclave to the territory held by Bosniak forces.

During the evidentiary proceedings, the Defense did not deny the fact that the accused Zoran Živanović was in Potočari at the relevant time as a member of the Bratunac Brigade Military Police, which was stated by the Defense Counsel for the accused in the Closing Arguments. The Court has, therefore, accepted these facts as irrefutable and does not need to establish or reason them into detail. The facts that inhabitants of the Srebrenica enclave came to Potočari the relevant days, that Bosniak men were separated from women and children, that the women and children were then transported out of the enclave, have been accepted by the Court when it admitted the facts established under the ICTY judgments. The Court thus accepted the fact that thousands of Bosniak-Muslim inhabitants of Srebrenica fled to Potočari seeking protection at the UN base, after Srebrenica had fallen under the control of Bosnian Serbs. Women, children and old people were loaded on buses on 12 and 13 July 1995 and under the control of VRS transported from Potočari to the territory held by Bosnian Muslim forces near Kladanj. The transportation of the Bosniak-Muslim civilians from Potočari was completed by 8 p.m. on 13 July 1995. Bosnian Serb forces started separating men from other refugees in Potočari in the morning hours of 12 July and kept them at separate locations. These facts established during the proceedings were substantiated by ample evidence presented before the Court, particularly by the expert report drafted by expert witness Butler and testimonies of witnesses Van Duin

and Kingori, who provided identical accounts of these facts, which were also substantiated by the documentary evidence that was admitted into the case file, particularly by video records of the events in Srebrenica of 12 and 13 July 1995.

Witness PW-4 testified before the Court specifically about the participation of the accused Zoran Živanović in separating and forcible transfer of population. He stated at the main trial to have been in Potočari the relevant day and to have seen Bosniak civilians from Srebrenica. He also saw VRS and UNPROFOR soldiers in Potočari. General Mladić addressed the civilians and told them that they would be evacuated to Kladanj and Olovo, that women and children were to go first, and men after them. The people were evacuated by VRS soldiers who lead the column and let people go to buses, while members of the Bratunac Brigade Military Police escorted the column to buses, to avoid commotion. VRS soldiers who stood in front of the Srebrenica people belonged to the Protection Regiment. Men were separated and kept in the distribution room, those being mainly elderly men, and the witness saw from the road that there were around 50-80 men in that building. While he was in front of the buses, he saw 10-15 colleagues, military policemen, but he could not recollect their names. In the cross examination, the Prosecutor confronted witness P-4 with his earlier statement given to SIPA on 28 November 2006, when he claimed that Commander Mirko Janković told them to separate military aged men and let women and children pass, which is what they did. Nenad Đokić, Sreten Stanković, witness P-2, Milan Ilić, Mile Janjić, Pero Andrić and Zoran Živanović were among them. Witness P-4 stated that General Mladić said that men were to be separated from women and children, but he could not remember who among the military policemen was present. When cross examined, witness P-4 said that he was scared when he was giving his earlier statement and he only repeated his previous statement before the Prosecutor, since there was the same SIPA investigator sitting there at the Prosecutor's Office. He confirmed that General Mladić told the civilians that there was going to be an evacuation and that men were being separated so that women and children could leave sooner because they were weaker. He was under the impression that he was helping those civilians to be evacuated. He did not see any military policemen pushed anyone inside the bus, ill-treated or beat anyone.

Witness Mile Janjić confirmed in his testimony that he was in Potočari and that he was ordered by certain Colonel Janković to count the people who were being evacuated and entered buses. At the beginning, he entered the buses and counted the people, while his colleagues stood by the buses to prevent possible incidents. He saw men being separated from women and children, but he did not know the names of those who were doing it. He saw the accused Zoran Živanović among the colleagues. They were standing by the bus, assisting and controlling, they were not assigned specific tasks. When cross examined, witness Mile Janjić stated that he did not see Zoran Živanović the relevant day separating men from women and children, that it was done by the VRS Special Police.

Witness Slobodan Mijatović testified to have gone to Potočari on 12 July 1995 to assist in organizing the transport of civilians. He heard General Mladić addressing the

people by saying that women, children and old people were to go first because there were not enough vehicles for all of them to be transported at the same time. Momir Nikolić ordered them to help the women and children to board the buses. Among the military policemen, he saw the accused Živanović, standing in his immediate proximity. Bosnian Serb forces were doing the separation, but he did not know which unit it was. He returned to Potočari that same day with the accused Živanović. During the cross examination, witness Slobodan Mijatović stated to have seen the accused Živanović in front of the buses, that women and children entered the buses voluntarily and that the accused Živanović did not force them to do so. He also stated that none of the Bratunac Brigade Military Police members participated in separating men from women.

In his testimony, witness PW-2 said that he was in Potočari both days of the evacuation as a member of the Military Police and they were told that they were going there as security. According to him, many members of the Military Police were in Potočari the first day. He saw men being separated from women and children by the access gate, where the officers were. Members of the Military Police were outside of the UNPROFOR base, by the road. He could not remember seeing any of the Accused. He was not personally present at the point of separation. The following day, men were transported on buses from Potočari to Bratunac and the transport was secured by various soldiers.

Witness Nikola Popović, a member of the Military Police, testified to have been in Potočari, they were deployed by the buses at the time when people boarded them. Men were being separated from women at the spot above them, where the officers and other soldiers were. There were another 10 or so members of the Military Police in Potočari, including the accused Blagojević, as he thought. According to him, Bosniak civilians boarded the buses voluntarily, no one coerced them or ill-treated them, that all of them boarded normally.

In his testimony, witness Nenad Đokić stated that, as a military policeman, he was in Potočari together with the colleagues of his platoon, they distributed bread to the women and children that day. While he was in Potočari, he saw women and children entering buses and trucks. He did not see anyone forcing those people on the trucks, on the contrary, they rushed to get on. No one ill-treated those people in his presence. When cross examined by the Prosecutor, the witness said that he saw men being separated from women and children in Potočari, because they were given preference and General Mladić told the men that they should not push their way because all of them would be transported. He did not know who separated the men, there were people there from all units and some of the soldiers were tasked to separate men from women.

Witness Joseph Kingori, a UN Colonel and Military Observer in the Srebrenica enclave, testified that members of the Military Police wearing berets were among the soldiers who were near the white house and he knew it because the Military Police had different uniforms from others. The witness also said that soldiers also forced the men

to get on the buses brought there for them. During the cross examination, witness Kingori could not remember the color of the berets worn by the military policemen, or other details about their uniforms, but he was told that they were military policemen.

The Court could not establish beyond any reasonable doubt that it followed from the statements by the mentioned witnesses that the accused Zoran Živanović participated in the organized, inhumane and aggressive process of separating Bosniak men from Bosniak women and children and that by using force, or the threat of force, he forced the Bosniak women and children onto buses to be transported out of the enclave. The statement given by witness P-4 during the investigation, when he claimed that the Military Police for some time participated in separating men from women and that the accused Živković was also one of the many military police officers who were there, was not subsequently corroborated by any other witness heard. Even witness P-4 himself denied his statement at the main trial and stated that he was scared when he was originally giving it. In his first statement, witness P-4 named all the individuals he saw separating the men: Nenad Đokić, Sreten Stanković, witness P-2, Milan Ilić, Mile Janjić, Pero Andrić and Zoran Živanović, but none of the mentioned persons stated that the Military Police were assigned to separate men from women and children, or that they personally participated in it. Also, none of the other witnesses who testified about this event stated to have seen the accused Živanović in Potočari separating men from women and children. Witnesses Mile Janjić and Slobodan Mijatović who testified to have seen the accused Živanović in Potočari at the relevant time, stated that Živanović stayed all the time near the buses, that he was not at the locations of separation. According to witness Kingori, there were members of the Military Police near the white house; however that did not suffice to establish the responsibility of the accused Živanović, notably because the witness could not provide any other information about the police uniforms. It cannot be concluded with certainty only according to the berets that those were members of the Bratunac Brigade Military Police, particularly if it stems from the testimony of the heard witnesses that VRS Special Police and members of various VRS units in different uniforms also participated in the incidents in Potočari. The Court could not establish beyond any reasonable doubt the criminal responsibility of the accused Živanović for this offence only on the grounds of the testimony given by Witness P-4, who stated only during the investigation that the accused Živanović participated in separating the men and denied it afterwards.

The accused Živanović is charged in the Indictment with using force and the threat of force in Potočari to force the Bosniak women and children onto the buses to be transported to territory held by Bosniak forces. Nevertheless, the Court could not conclude that the Accused behaved as described under this Count based on the testimony of the witnesses heard. The Court notes that the Prosecution again failed to specifically state how the accused Živanović applied force, since force as a legal term can be used in numerous ways. The Prosecution also failed to expressly specify how the Accused applied the threat of force. Thus, the Court has found this Count of the Indictment deficient as well, given that the Prosecution only uses legal terms and provides no explicit actions taken by the accused Živković. Throughout the evidentiary proceedings, none of the heard witnesses – military police officers mentioned a single

member of the Military Police who used force or threatened by force to coerce the women and children into the bus. On the contrary, all the heard witnesses who testified about this episode denied any force or threat and stated that the women and children got on the buses with no force applied. Also, none of the heard witnesses stated to have seen the accused Živanović threatening by force or forcing the women and children onto the buses. Witness Kigori said he had seen soldiers applying force while boarding men onto the buses, with which the accused Živanović is charged. However, the witness Kingori did not state precisely which soldiers were doing that and which unit they belonged to, which makes his statement insufficient to establish individual criminal responsibility of the accused. In view of all the presented evidence in relation to this Count of the Indictment, based on that the Court could not establish beyond any reasonable doubt the criminal responsibility of the accused Zoran Živanović for this specific offence and consequently acquitted him of charges under this count of the Indictment.

When evaluating the evidence, the Court also took into account the other evidence adduced at the main trial. However, no particular weight was attributed to that evidence, nor was a more detailed analysis needed, since it did not significantly affect the finally established account of facts and the conclusions reached by the Court on the grounds of the evaluated evidence.

Application of Substantive Law:

In terms of substantive law to be applied given the time of perpetration of the criminal offense, the Court has accepted the legal qualification from the charges and sentenced the accused Mladen Blagojević for the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with sub-paragraph (k) of CC of BiH.

Given the time of perpetration of criminal offense and the substantive law in effect at that time, the Court finds two legal principles relevant: principle of legality and principle of time constraints regarding applicability of the criminal code:

Article 3 of the Criminal Code of BiH prescribes the principle of legality according to which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which punishment has not been prescribed by law. Article 4 of the Criminal Code of BiH (Time Constraints Regarding Applicability) prescribes that the law that was in effect at the time when the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense, and if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law more lenient to the perpetrator shall apply.

The principle of legality is prescribed under Article 7(1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: ECHR), which has priority over all other law in BiH (Article II(2) of BiH Constitution). According to the cited ECHR Article, *“No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense 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 offense was committed". Thus, it prohibits the imposing of a heavier penalty than the one that was applicable at the time the criminal offense was committed. This provision, therefore, prescribes a ban on imposing a heavier penalty with respect to the punishment applicable at the time when the criminal offense was committed, without establishing the obligation to apply a more lenient law. Article 7(2) of the ECHR prescribes that *"this Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations"*.

Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter: ICCPR) prescribes: "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, 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 offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby".

Article 15(2) of the ICCPR prescribes that, "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".

Finally, Article 4(a) of CC of BiH, which is harmonized with Article 7(2) of the European Convention, prescribes that Articles (3) and (4) of CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law. This Article allowed exceptions from the principles under Articles (3) and (4) of CC of BiH in cases of criminal offenses according to the international law. The present case against the accused persons falls under Article 4(a), since this is an incrimination including serious violation of the rules of international law. This position was taken in the Verdict of Section I of the Court of BiH Appellate Division handed down against Abduladhim Maktouf, No. KPŽ 32/05 dated 4 April 2006.

Article 172 of CC of BiH prescribes the criminal offense of Crimes against Humanity, as also prescribed by Article (5) of the ICTY Statute (Article (5) of the ICTY Statute defines the Crime against Humanity as specific crimes "when committed in armed conflict, whether international or internal in character, and directed against any civilian population"). At the critical time, crimes against humanity were not explicitly prescribed by the criminal codes in Bosnia and Herzegovina.

The customary status of punishability of crimes against humanity and assignment of individual criminal responsibility for its commission in 1992 has been confirmed by the UN Secretary General UN³¹, International Law Commission³², as well as in the

³¹ UN Secretary General Report on paragraph 2 of the Security Council Resolution 808, 3 May 1993, paragraphs 34-35 and 47-48.

case law of the ICTY and International Criminal Tribunal for Rwanda (ICTR)³³. These institutions established that the punishability of crimes against humanity represents an imperative standard of international law or *jus cogens*³⁴, therefore it appears indisputable that in 1992 crimes against humanity were part of international customary law.

Article 4(a) of CPC BiH refers to “general principles of international law”. Since neither the international law nor the ECHR recognize such concept, this term actually represents a combination of, on one hand, “principles of international law” as recognized by the UN General Assembly and the International Law Commission and on the other hand “general principles of law recognized by the community of nations” as recognized by the Statute of the International Court of Justice and Article 7(2) of the ECHR.

Principles of International Law as recognized by the General Assembly Resolution 95(1) (1946) and the International Law Commission (1950) apply to the “Charter of the Nuremberg Tribunal and Judgment of the Tribunal” and thus also to the crimes against humanity. “Principles of the International Law recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal” adopted by the International Law Commission in 1950 and submitted to the General Assembly, Principle VI.c. stipulates Crimes against Humanity as a crime punishable under international law. Principle I stipulates that: “Any person who commits an act which constitutes a crime under international law is responsible therefore liable to punishment.” Principle II stipulates that: “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 case law of the European Court of Human Rights stresses the applicability of the provision of the provision of paragraph 2 of Article 7, rather than of paragraph 1 of Article 7 of the European Convention in several similar cases³⁵ was exactly the existence and punishability of Crimes against Humanity as a criminal offense. Moreover, in *Kolk and Kislyiy v. Estonia* the European Court “recalls that the interpretation and application of domestic law falls in principle within the jurisdiction of national courts....”³⁶ This is also applied when the domestic law is related to the rules of the general international law or international treaties.

³² International Law Commission, Commentary on the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 18.

³³ ICTY, Appeals Chamber, *Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 141; ICTY, Trial Chamber, *Tadić* Judgment, 7 May 1997, paragraphs 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, paragraphs 563-577.

³⁴ International Law Commission, Commentary to Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

³⁵ See e.g. ECtHR Judgment in *Naletilić vs. Croatia*, 51891/99 and Judgment

³⁶ See *Papon vs. France* No. 54210/00, ECtHR 2001-XII and *Touvier vs. France*, No. 29420/95, Commission Decision dated 13 January 1997.

Therefore, the criminal offense of Crimes against Humanity can definitely be included under “general rules of international law” referred to in Article 4(a) of CC of BiH. Thus, regardless of whether it is viewed from the aspect of the customary international law or the aspect of the “principles of international law”, it is beyond doubt that the Crimes against Humanity represented a criminal offense in the critical period, or in other words that the principle of legality has been met.

The fact that the criminal acts listed under Article 172 of CC of BiH can also be found in the law that was in effect in the relevant time period – at the time when the offense was committed, more specifically in Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155 and 186 of CC of SFRY, or in other words that the actions subject of the charges were punishable also according to the criminal law then in effect, also additionally supports the inference of the Court about the principle of legality. Finally, as regards Article 7(1) of the ECHR, the Court notes that the application of Article 4(a) is additionally justified by the fact that the imposed sentence is by all means more lenient than the death sentence which was applicable at the time when the offense was committed, which also meets the application of the principle of time constraints regarding applicability or the application of the “law that is more lenient to the perpetrator”.

The accused Mladen Blagojević committed the relevant criminal offense under Count 8a of the Amended Indictment with direct intent, and the evidence presented in the course of the proceedings shows that, at the moment of the commission of the criminal offense, the accused was aware that, by his actions, he was violating the rules of international law and obviously that, by his actions, he wanted to cause prohibited consequences. Although the accused committed the crime of persecution in conjunction with another inhumane act, the Court is satisfied that in this particular case there is one single criminal offense, Crimes against Humanity under Article 172(1)(h) – persecution of CC of BiH, because this is a single criminal offense regardless of the number of actions committed. In this particular case, the criminal offense of persecution subsumes elements of the criminal offense of inhumane acts (Article 172(1)(k). This interpretation was also accepted by the ICTY, according to whose case law when the offense of persecution is committed in conjunction with the offense of other inhumane acts, the offense of other inhumane acts is subsumed within the offense of persecution (ICTY Appeals Chamber Judgment in the *Krstić case*, paragraphs 231-232).

Bearing in mind the established facts of the case for Count 8a of the Amended Indictment and the consequences which followed, as well as the causal link between the two, the Court found the accused Mladen Blagojević guilty of the criminal offense of Crimes against Humanity in violation of Article 172(1)(h) in conjunction with subparagraph (k) of the Criminal Code of Bosnia and Herzegovina, and sentenced him for that offense to 7 (seven) years imprisonment. In ruling on the length of the sentence, the Court took into consideration all the circumstances that have impact on it as set forth under Article 48 of CC of BiH, in particular the degree of criminal liability of the

accused, motives for the commission of the criminal offense, the seriousness of the threat to or violation of the protected value, as well as circumstances surrounding the commission of the criminal offense. In addition to that, when ruling on the length of the sentence, the Court also took into consideration the earlier life of the accused, his personal and family situation and his conduct during the trial. Therefore, the Court has taken into consideration both aggravating and extenuating circumstances on the part of the accused.

When meting out the type and length of punishment of the accused Mladen Blagojević the Court considered as extenuating circumstances the fact that at the time of the commission of the offense he was young, that he is a family man, father of one underage child, that he is unemployed, with no prior convictions, that his conduct in court was good, that he was found guilty of a single forbidden action which resulted in a forbidden consequence. The behavior of the accused, except for the situation described above, did not indicate his persistence in the perpetration of the criminal offense, although he had full freedom to access the detainees. As aggravating circumstances the Court considered the fact that the accused Blagojević had been punished for immigration fraud by the US judiciary because he had given false information on his immigration to the USA.

Given the number and quality of extenuating circumstances in favor of the accused, the Court found that, in their totality, the circumstances could be considered highly extenuating, and therefore, through the application of Article 49(1)(b) of CC of BiH, set the punishment below the limit prescribed by the law satisfied that the purpose of punishment could be attained by a lesser punishment.

The Court finds that the type and length of punishment as meted out in this case is proportional to the gravity of the offense, degree of social risk, the degree of injury to the protected object, and the involvement and the role of the accused person, and that by this sentence the purpose of punishment set out in Article 39 of CC of BiH will be achieved in terms of special and general prevention, in other words that it will raise the awareness of the accused and all other individuals about the unlawfulness, punishability and social condemnation of crime and deter them from commission of crimes in the future.

As regards the other counts of the Amended Indictment in relation to all Accused persons, as well as Count 8a) of the Amended Indictment in relation to the Accused Božić, Zarić and Živanović, the Court finds that the presented evidence failed to convince the Court beyond any reasonable doubt that in this particular case the criminal offense of Crimes against Humanity was committed in violation of Article 172(1)(h) in conjunction with sub-paragraphs (a), (d), (e) and (k) of the cited article of CC of BiH, all as read with Articles 21, 29 and 180(1) of CC of BiH, with which the accused persons are charged. Based on the results of the evidentiary proceedings, the Court finds that the decisive facts with regard to the involvement of the Accused persons in the commission of these acts, as described by the Prosecution in the Amended Indictment, have not been proven with full certainty, therefore, in the

absence of conclusive evidence, and applying the *in dubio pro reo* principle, the Court acquitted the Accused Zdravko Božić, Mladen Blagojević, Željko Zarić and Zoran Živanović of charges for the offense with which they are charged under these counts of the Indictment pursuant to Article 284(1)(c) of CPC of BiH.

Pursuant to Article 56 of CC of BiH, the time the Accused Mladen Blagojević spent in custody ordered by this Court's Decision Ref. number X-KR-07/405 dated 17 November 2007, from 15 November 2006 onwards shall be credited towards his imprisonment sentence.

Pursuant to Article 188(4) of CPC of BiH, the Accused Mladen Blagojević shall be entirely relieved of the duty to pay the costs of the criminal proceedings since he is unemployed, indigent, a family man, father of an underage child, therefore, his obligation to pay the trial costs would jeopardize the subsistence of the Accused and the persons he must support. In addition to that, the Court was also mindful of the fact that the Accused was acquitted of charges for a number of acts with which he was charged within the charge of the Crimes against Humanity, and the Court believes that the costs for those cannot be separated.

Pursuant to Article 189(1) of CPC of BiH, the accused Zoran Božić, Željko Zarić and Zoran Živanović, shall be relieved of the duty to pay any costs of the proceedings, and the costs shall be paid from the Court budget.

In the course of the main hearing, the Court has not received any claims under property law and therefore has not ruled on the matter. In any case, persons authorized to file claims under property law can file civil suits to pursue those claims.

MINUTES-TAKER
Šaćir Hadžić

PRESIDING JUDGE
Staniša Gluhajić

INSTRUCTION ON LEGAL REMEDY : An appeal against the Verdict may be filed with the Appellate Panel of the Court of BiH within 15 /fifteen/ days as of the receipt of the written Verdict.