

SUD BOSNE I HERCEGOVINE

Number: X-KR-05/51

Sarajevo, 15 December 2006



05-03-2007

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Sud BiH / Суд БиХ	
Krivično odjeljenje / Апелационо одјелјење	Одјел I / Одјел II
Одељак за судску управу / Одељак за судску управу	
X. KR/05/51	

P. 26300 000. 411

IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the panel of judges presided by Judge Hilmo Vučinić, and the panel members, judges Paul M. Brilman and Shireen Avis Fisher, with the participation of Legal Officer Dženana Deljić as a record-keeper, in the criminal case against the accused Dragan Damjanović for the criminal offence of Crimes against Humanity in violation of Article 172, paragraph 1, items a), f), g), h) and i) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH), upon the Indictment of the Prosecutor's Office of BiH number KT-RZ-39/05, of 22 March 2006 and confirmed on 29 March 2006, following the public and main trial whereat the public was excluded during one of its parts, in the presence of the accused himself Dragan Damjanović, his Defence Counsel Dragoslav Perić, attorney from Bijeljina, and the Prosecutor of the Prosecutor's Office of BiH, Vaso Marinković, on 15 December 2006, rendered and publicly announced the following

VERDICT

THE ACCUSED:

Dragan Damjanović, son of Boro and mother Nada, née Ristović, born on 23 November 1961, in Sarajevo, residence in Bijeljina, at 27. marta St. 47, Serb by ethnicity, national of Bosnia and Herzegovina, PIN 2311961174360, no previous convictions, father of three, skilled driver by occupation, self-employed, no other criminal proceedings pending against him,

IS GUILTY

I. of the following Counts:

In the period from July 1992 to the end of January 1993, within a widespread systematic attack by the Army of Republika Srpska directed against the Bosniak civilian population of Vogošća Municipality and its surrounding villages, with knowledge of such an attack, he committed murder, tortures, rape, enforced disappearance of persons, and other inhumane acts,

intentionally perpetrated so as to cause great suffering, that is serious injury to body and health, insofar as

- 1. During the month of July 1992, after around 20 Bosniak civilians, previously detained at the camp "Bunker" in Vogošća Municipality, were taken to the Reljevo site, near the Žuč hill for forced labour so as to perform heavy physical labour comprising road construction for members of the Serb Army, he separated the following five persons from the group: Nezir Muharemović, Hasan Muharemović, Ismet Pandžić, Asim Pandžić and Nasuf Šabanović, and took them by truck to the front line at Žuč.*
- 2. During the month of July 1992, together with a person known as Mićo Četnik, he came to a building in Skendera Kulenovića St. 73, Vogošća Municipality, took Bekir Salihović out of the building, hand tied him with wire, and forcibly seated him in the vehicle and drove him in an unknown direction, only to return shortly afterwards to the building and take in the exact same manner Muharem Bajramović in an unknown direction, as of which moment they have been unaccounted for,*
- 4. On 30 August 1992, in Ravne, Vogošća Municipality, where prisoners from the camp "Planjina kuća" were assigned forced labour tasks, he approached prisoners Mujo Abaz, Atif Šuvalija and Halko Suljević, insulting them by naming them "Balijs" (translator's note: a derogative name for Muslims) and after food was distributed to prisoners, he ordered prisoner Abaz Mujo to sit in front of him, pulling a knife from the sheath and cutting Mujo Abaz's face, engraving a cross in the form of a cut across his nose and above eyebrows, with blood from the cuts running down Mujo's face, and then ordering Mujo Abaz to place a food plate in front so that the blood would run down into the food plate and forcing him to eat the blood-soaked food,*
- 5. In the first half of September 1992, jointly with Žiko Crnogorac and Zoran Berović, in the evening hours, he came armed in front of the house of Taib Kodžaga, located in the Stara željeznička stanica St. 18 in Semizovac, Vogošća Municipality, first broke in through the window on the ground floor and came upstairs where they found Taib Kodžaga and his wife Nafila Kodžaga, and then abused, beat them with kicks, punches and with various objects all over their bodies, as a result of which Taib was covered in blood and collapsed more than once, in addition to extorting the money and gold which the two were forced to give in, after which the accused Dragan Damjanović forcibly took Nafila Kodžaga into another*

room, where he ordered her to prepare the bed and undress, after which he forced her into a sexual intercourse under coercion,

6. In the period from August 1992 to February 1993, on several occasions, he came to the camp "Planjina kuća" (translator's note: Planjo's house) in Semizovac, Vogošća Municipality, where prisoners were Bosniak civilians from the areas of Vogošća, Nahorevo, Hadžići, Ilijaš, Sokolac and other places, whom he abused and beat together with other camp guards, and particularly abused the prisoners Zahid Baručija and Eset Muračević, took prisoners to perform forced labour at the front line by digging trenches for Serb soldiers, carrying ammunition, chopping up and carrying wood, as well as other works, while insulting them by calling them "Balija", swearing their Balijs mother, physically abusing and beating them with kicks and punches all over their bodies, with rifle butts and wooden clubs, taking prisoners to be used as "human shield", as a result of which a rather large number of prisoners were wounded, and some were killed at the front line or died of wounds.
7. On an undetermined day in January 1993, from the camp "Planjina kuća", Vogošća Municipality, he took out the prisoner Professor Zahid Baručija, who was beaten up and in a very serious condition due to physical abuse in the camp by camp guards and Serb soldiers, and together with some other prisoners including Hurem Murtić and Hašim Džanko, took him to perform forced labour in Jeftići near the house of Rajko Bunjevac, and abused Baručija by having him lie on the snow while in such serious condition and engraving a cross on his forehead by a bayonet, due to which blood was running down Baručija's face, after which he was, together with other prisoners, brought to the house of Rajko Bunjevac, where Damjanović separated him and took him not too far from the house where he deprived him of his life. Baručija was found dead the following day, in the nearby bushes with a perforating wound at his temple.

Whereby, in the actions described in Counts 1, 2, 4, 5, 6 and 7 of the Indictment, he committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) of the Criminal Code of Bosnia and Herzegovina as follows:

- item k) pertaining to Count 1) of the Indictment,
- item i) pertaining to Count 2) of the Indictment,
- item f) pertaining to Count 4) of the Indictment,

- items f) and g) pertaining to Count 5) of the Indictment,
- item h) pertaining to Count 6) of the Indictment.
- items a) and f) pertaining to Count 7) of the Indictment.

Wherefore, based on the above mentioned provision in application of Articles 42 and 48 of the CC of BiH, the Panel of the Court of BiH hereby

SENTENCES HIM TO 20-YEAR IMPRISONMENT

Pursuant to Article 56 of the CC of BiH, the period of time that the accused spent in custody starting on 6 December 2005 until the beginning of serving the sentence shall be included in the pronounced sentence of imprisonment.

Pursuant to Article 188 (4) of the CPC of BiH the accused shall be relieved of the obligation to reimburse the costs of the criminal proceedings and the costs shall be borne by the Court of BiH.

Pursuant to Article 198 (2) of the CPC of BiH the injured party, Nafila Kodžaga and her verbal property claim shall be referred to a civil action.

II. Contrary to that, pursuant to Article 284 (1) (c) of the CPC of BiH, the accused

SHALL BE ACQUITTED OF CHARGES

That,

3. *On an undetermined date in the month of July 1992, armed, he came to Svake, Vogošća Municipality, in front of the Hamid Šišić's house at Podgaj St. 45, ill-treating and beating him and forcing him to dance in front of him and repeat the words "Alija-balijs", putting a knife under his throat and threatening him that he was not allowed to go anywhere as he would come the following day at the same time, and indeed he did return to his house the following day, stopped for a moment and continued some 50 or 60 meters further to the house of Muharem Hodžić aka "Sefer", in front of which he met him and his wife Mejra Hodžić and ordered them to go inside the house, which they obeyed by moving to the entrance door, only to fire at them in one rapid succession from an automatic rifle inflicting upon them perforating wounds to which they succumbed on the spot,*

By which actions he would have committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) (a) and (f) of the Criminal Code of Bosnia and Herzegovina.

Reasoning

I. Course of the proceedings

By the Indictment of the Prosecutor's Office No. KT-RZ-39/05, dated 22 March 2006 which was confirmed on 29 March 2006, the accused has been charged with having committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) of the Criminal Code of Bosnia and Herzegovina,

- 1. item a) pertaining to Count 1) of the Indictment,*
- 2. item i) pertaining to Count 2) of the Indictment,*
- 3. items a) and f) pertaining to Counts 3) and 7) of the Indictment,*
- 4. item f) pertaining to Count 4) of the Indictment,*
- 5. items f) and g) pertaining to Count 5) of the Indictment,*
- 6. items h) and f) pertaining to Count 6) of the Indictment.*

At the hearing before the Preliminary Hearing Judge, the accused pleaded not guilty to the stated criminal offence.


The Prosecutor's Office introduced evidence by examining witnesses and presenting material evidence. The witnesses examined in the course of the main trial are as follows: Eset Muračević, Ahmed Hido, Fikret Išerić, Mensur Pandžić, Abid Pandžić, Zejnil Muharemović, Nijaz Salkić, Muhamed Ruhotina, Zijad Šabanović, Derviš Pandžić, Salko Kolar, Jovo Kuburić, Ramiza Kolar, Mujo Abaz, Nafila Kodžaga, Taib Kodžaga, Ismet Isenaj, Bego Selimović, Izet (son of Huso) Šehić, Izet (son of Hasan) Šehić, Midhat Borčak, Refik Bešlija, Safet Borčak, Esad Šehić, Omer Čerimagić, Enver Durmo, Fikret Sirčo, Suad Masnopita, Mustafa Handžić, Safet Čelik, Zahid Šehić, Hurem Murtić, Hašim Džanko, Taib Đogo, Bego Mulavdić and Safet Mulavdić. At the main trial, the Court also heard Dr Hamza Žujo and Dr Ilijas Dobrača, in the capacity of medical expert witnesses.

The Court inspected the following material evidence of the Prosecutors' Office of BiH: Record on examination of witness Eset Muračević No. KT-RZ-39/05 of 14 December 2005 – exhibit 1.1; Record on examination of witness Eset Muračević No. 14-04/2-40/05 of 5 December 2005 – exhibit 1.2; Record on

examination of witness Ahmed Hido No. KT-RZ-14/05 of 21 July 2005 – exhibit 2.1; Record on examination of witness Ahmed Hido No. 14-04/2-44/05 of 6 December 2005 – exhibit 2.2; Record on examination of witness Fikret Išerić No. KT-RZ-39/05 of 25 January 2006 – exhibit 3; Record on examination of witness Mensur Pandžić No. KT-RZ-39/05 of 25 July 2005 – exhibit 4; Record on examination of witness Mensur Pandžić No. 14-04/2-60/05 of 9 December 2005 – exhibit 4a; Record on examination of witness Abid Pandžić No. KT-RZ-39/05 of 28 July 2005 – exhibit 5a; Record on examination of witness Abid Pandžić No. 14-04/2-62/05 of 13 December 2005 – exhibit 5b; Record on examination of witness Zejnil Muharemović No. KT-RZ-39/05 of 25 January 2006 – exhibit 6a; Record on examination of witness Zejnil Muharemović No. 14-04/2-41/05 of 5 December 2005 – exhibit 6b; Record on examination of witness Nijaz Salkić No. KT-RZ-39/05 of 15 June 2006 – exhibit 7; Record on examination of witness Muhamed Ruhotina No. 17-04/2-12/06 of 21 February 2006 – exhibit 8; Record on examination of witness Zijad Šabanović No. KT-RZ-39/05 of 13 February 2006 – exhibit 9; Record on examination of witness Derviš Pandžić No. 14-04/2-43/05 of 5 December 2005 – exhibit 10; Record on examination of witness Salko Kolar No. KT-RZ-39/05 of 17 January 2006 – exhibit 11; Record on examination of witness Jovo Kuburić No. KT-RZ-39/05 of 26 January 2006 – exhibit 12; Record on examination of witness Ramiza Kolar No. KT-RZ-39/05 of 17 January 2006 – exhibit 13; Record on examination of witness Mujo Abaz No. KT-RZ-39/05 of 16 January 2006 – exhibit 14; Record on examination of witness Mujo Abaz No. 14-04/2-48/05 of 7 December 2006 – exhibit 14a; Record on examination of witness Nafila Kofžaga No. KT-RZ-39/05 of 16 December 2005 – exhibit 15; Record on examination of witness Taib Kodžaga No. KT-RZ-39/05 of 16 December 2005 – exhibit 16; Record on examination of witness Ismet Isenaj No. 14-04/2-56/05 of 12 December 2005 – exhibit 17; Record on examination of witness Bego Selimović No. KT-RZ-39/05 of 23 January 2006 – exhibit 18; Record on examination of witness Izet (son of Huso) Šehić No. KT-RZ-39/05 of 25 January 2006 – exhibit 19; Record on examination of witness Izet (son of Hasan) Šehić No. KT-RZ-39/05 of 3 February 2006 – exhibit 20; Record on examination of witness Midhat Borčak No. KT-RZ-39/05 of 27 January 2006 – exhibit 21; Record on examination of witness Refik Bešlija No. 14-04/2/05 of 13 December 2005 – exhibit 22; Record on examination of witness Safet Borčak No. Kt-RZ-39/05 of 10 February 2006 – exhibit 23; Record on examination of witness Esad Šehić No. KT-RZ-39/05 of 26 January 2006 – exhibit 24; Record on examination of witness Omer Čerimagić No. KT-RZ-39/05 of 9 December 2005 – exhibit 25; Record on examination of witness Enver Durma No. KT-RZ-39/05 of 26 January 2006 – exhibit 26; Record on examination of witness Fikret Sirčo No.

KT-RZ-39/05 of 15 February 2006 – exhibit 27; Record on examination of witness Suad Masnopita No. KT-RZ-39/05 of 1 August 2005 – exhibit 28; Record on examination of witness Mustafa Handžić No. 17-04/2-30/06 of 7 February 2006 – exhibit 29; Record on examination of witness Safet Čelik No. 14-04/2-52/05 of 8 December 2006 – 30; Record on examination of witness Zahid Šehić No. KT-RZ-39/05 of 26 January 2006 – exhibit 31; Record on examination of witness Hurem Murtić No. 17-04/2-33/06 of 14 February 2006 – exhibit 32; Record on examination of witness Hašim Džanko No. 14-04/2-49/05 of 7 December 2006 – exhibit 33; Record on examination of witness Taib Đogo No. KT-RZ-39/05 of 22 December 2006 – exhibit 34; Record on examination of witness Bego Mulavdić No. KT-RZ-39/05 of 26 April 2006 – exhibit 35a; Record on examination of witness Bego Mulavdić No. 17-04/2-04-2229/06 of 18 April 2006 – exhibit 35b; Record on examination of witness Safet Mulavdić No. 17-04/2-2227/06 of 18 April 2006 – exhibit 36; Death certificate for Hamid Šišić of 12 September 2006 – exhibit 37; Record on examination of witness Hamid Šišić No. KT-RZ-39/05 of 15 December 2006 – exhibit 38; Expert findings by Hamza Žujo of 27 February 2006 – exhibit 39; Record on examination of expert witness Ilijas Dobrača of 9 July 1996 – exhibit 40; Letter of the Federal Commission for Missing Persons No. 01-41-74/2006 of 16 January 2006 – exhibit 41a; Report on the exchange by the State Commission for Exchange of War Prisoners No. 02/153-630/93 of 23 February 1993 – exhibit 41b; Letter of the Federal Commission for Missing Persons No. 01-41-941/2006 of 14 March 2006 – exhibit 42; Excerpt from the Criminal Record for the suspect Dragan Damjanović No. 13/02/2-203/05 of 29 December 2005 – exhibit 43; The ID card record for Dragan Damjanović No. 8910/96 of 20 July 1999 – exhibit 44; Official Report of the State Investigation and Protection Agency No. 14-04/2-477-16/05 of 7 December 2005 – exhibit 45; Official Note of the State Investigation and Protection Agency No. 14-04/2-477-16/05 of 19 December 2005 – exhibit 46; Record on transfer of the person deprived of liberty No. 14-04/2-477-10/05 of 6 December 2005 – exhibit 47; Certificate on the subsequent entry into Register of Deaths of 7 May 1994 – exhibit 48; Death certificate for Zahid Baručija of 29 May 2006 – exhibit 49; Death certificate for Muharem Hodžić of 15 November 2006 – exhibit 50; Death certificate for Mejra Hodžić of 15 November 2005 – exhibit 51; Excerpt from the Register of Conscripts – list of RS soldiers – exhibit 52; VoB OSA VRS – 8 – exhibit 53 and 54.

In the course of the main trial on 16 October 2006, upon the motion of the Prosecution, to which the defense objected, and pursuant to Article 273 (1) of the CPC BiH, the statement of witness Hamid Šišić taken during the investigative phase was read out. This statement was read out as it was



established based on the copy of the death certificate issued by the Vogošća Municipality, dated 12 September 2006, that the witness died on 18 August 2006.

The Defence presented evidence by examining witnesses Ognjen Sikiraš and Branislav Kutlača. The Court also inspected the evidence filed by the Defence for the accused, that is, the statement of witness Ognjen Sikiraš taken before attorney Miodrag Stojanović on 1 June 2006, and the statement of witness Branislav Kutlača taken before attorney Miodrag Stojanović on 1 June 2006.

On 20 November 2006, the Panel inspected the crime scene at the sites of the hill of Žuč, and camps Bunker, Planjina kuća and Rajko Bunjevac's house.

On the motion of the prosecutor, to which the accused and his counsel had no objection, on 18 and 24 July 2006 the Panel excluded the public from a part of the main trial during which witnesses Nafila Kodžaba and Taib Kodžaba gave accounts of the rape of Nafila Kodžaga and other humiliating acts of which they were victims. In accordance with Article 235 the CPC BiH, the Panel may exclude the public for a part of the main trial so as to protect the personal and intimate life of the injured. Considering that the witnesses testified in the courtroom on delicate and sensitive issues, which created a risk for the private and personal life of the witnesses-victims, the Panel found it to be justified to issue such a decision in order to protect the personal and intimate life of the injured, specifically to protect the interest of the witnesses. The witnesses showed both by their testimony and their affect that they continue to suffer emotional and physical consequences of their victimization which would have been exacerbated by subjecting them to public recitation of their ordeal. The parties, their counsel, the Panel and the OSCE were permitted to remain in the courtroom.

In its closing arguments, the Prosecution stated that an important element of the criminal offence of Crime against Humanity is the existence of a widespread or systematic attack, directed against civilian population, the knowledge, that is, the awareness of the perpetrator of the existence of such an attack, while the presented evidence has shown that Dragan Damjanović had knowledge of such an attack and that he by his actions committed this very criminal offence. The accused knew that the population in this specific case is a non-Serb one and that his intention was targeted to commit the act against that population. The Prosecutor's Office deems the attack as widespread and systematic by its nature, as is evident in the fact that witnesses confirmed in a consistent manner that they were detained in a number of camps and facilities

established for this particular purpose, after which they were deported to the Planjina kuća camp, which is a direct consequence of the attack against civilian population. Moreover, the Prosecution underlines that these allegations are confirmed by the facts established in the final ICTY Judgement in the case Prosecutor vs. Stanislav Galić, number IT-98-29, as well as the stand taken in the case against Duško Tomić.

Witnesses Abid Pandžić, Mensur Pandžić, Fikret Išerić, Zejnil Muharemović, Muhamed Ruhotina and Zijad Šabanović confirmed that the accused separated five men from a group of civilians taken for forced labour who have been unaccounted for since. Likewise, the defence witnesses also gave identical accounts that Dragan Damjanović brought five detainees to the hill of Žuč who were supposed to a dead horse. Furthermore, witness Ramiza Kolar, who has known the accused from before, was an eyewitness to the incident when the accused together with another person had taken away Bekir Salihović and Muharem Bajramović in an unknown direction. Her account was confirmed by testimonies of her husband Salko Kolar and Jovo Kuburić. Also, the Prosecutor believes that based on the statement of Hamid Šišić given to the Prosecutor's Office, as well as findings of the expert witnesses Dr Hamza Žujo and Dr Ilijas Dobrača and death certificates for Muharem Hodžić and Mejra Hodžić, and statements by witnesses Eset Muračević and Ahmed Hido, it can be proven that the accused deprived of life Muharem and Mejra Hodžić, and that he abused Hamid Šišić. Witness Mujo Abaz at the main trial gave a clear and convincing account wherein he described the abuse by the accused, and also on the occasion of which he identified the accused as the perpetrator. Witnesses Nafila Kodžaga and Taib Kodžaga in a concurrent and clear manner described the incident from 1992, when the accused forced the witness to sexual intercourse, while other two soldiers were beating her husband. Furthermore, Eset Muračević, Ismet Isenaj, Bego Selimović, Izet (son of Huso) Šehić, Izet (son of Hasan) Šehić, Mithat Borčak, Safet Borčak, Refik Bešlija, Omer Čerimagić, Esad Šehić and other witnesses all confirmed that Dragan Damjanović would come to the Planjina kuća camp almost every day, where he would abuse and beat the prisoners, especially Zahid Baručija and Eset Muračević, that he would take the prisoners for forced labour, as well as human shield, and most witnesses identified the accused in the courtroom. Moreover, the Prosecutor's Office deems that it can be concluded from the statement of witness Abid Pandžić that Dragan Damjanović deprived of life a certain Hošić aka "Hoša" from Bioča. Finally, witnesses Bego Selimović, Hurem Murtić, Hašim Džanko, Taib Đogo and Zahid Šehić, confirmed that in the course of June 1993, the accused took a group of prisoners from the Planjina kuća camp to perform forced labour and ordered them to carry Zahid

Baručija out from the house, who was almost unable to move at all due to daily abuse. The statement of the witness clearly illustrates the abuse of Zahid Baručija by the accused. Witnesses confirmed that on one evening, Damjanović singled out Zahid Baručija from other prisoners, and after a few days, while performing the forced labour, they found the body of Zahid Baručija in the nearby shrubs.

Finally, in relation to the evidence presented at the main trial by the Defence, the Prosecutor's Office finds the statements of the defence witnesses to be contradictory and that these cannot be a ground on which the Court could base its decision, and stresses that all examined witnesses of the Prosecution identified the accused as the perpetrator of the offences he is charged with, and accordingly moves the Panel to find the accused guilty and sentence him to long-term imprisonment.

In his closing arguments, the Defence Counsel for the accused Dragoslav Perić stated that a nexus between the actions of the accused and the attack has not been proven, so the Crime against Humanity cannot be proven.

As to Count 1, the Defence argued that Ahmed Pandžić provided conflicting testimony. He regarded his statement as invalid. Contrary to other witnesses, Pandžić claimed there were 7 men taken away, and that it was rainy and foggy the day of the charged incident.

According to the Defence, Count 2 of the Indictment has been improperly charged as the crime of apartheid under Article 172 (2) (i) of the CC, and he believes that elements of apartheid do not exist in either the Indictment or evidence.

As for Count 3 of the Indictment only one witness, the expert, testified at the main trial. There is no direct evidence about the alleged incident. The Defence also stated that the expert raised questions about the reliability of the written statement that was read out at the main trial because of the position of the entry and exit wounds and the implications of that testimony for establishing the location from which the bullets were shot, and the position of the victims at the time of shooting.

In regard to Count 4 of the Indictment, the Defence pointed out that when the prisoners were used on the front lines they were given the same food as the soldiers, and he argued that the living conditions were not so bad.

The Defence argued that in Count 5, the Indictment improperly charged 'false pregnancy' by reference to an incorrect section of the Code. As there was no forced pregnancy in this case, the Defence Counsel was of the opinion that Article 172 (2) (f) should have been used instead. The Defence finds it odd that the victim of rape never spoke about it until recently. He also points out that the Association she spoke to first about the events is the association that tutored a witness in a different rape case, and that other witness was found to have been untruthful when she testified that she was raped.

In view of Count 6, the Defence listed all the names of the witnesses who stated that they were not taken by Dragan Damjanović to be used as human shield or to perform forced labour. He says that Eset Muračević was instrumental in the accusations against Dragan Damjanović under this Count, but that he was never taken by Damjanović to do any of the aforementioned. The Defence also states that none of the witnesses saw Dragan Damjanović actually kill the person Hošić. It is even stated by one witness, Ismet Isenaj, that Hošić is still alive.

In regard to Count 7 of the Indictment, the Defence states that no witness claims to have been present when Professor Baručija was killed, and that some of the witnesses, who testified that they saw the dead body of Baručija, did not see the cross-shaped cut on his forehead.

Finally, the Defence pointed out that several witnesses stated that another Dragan Damjanovic was present at the alleged time at the critical site, and that he resembled the accused, and was part of the Serb forces too. Due to all the afore mentioned, the Defence moves the Panel to acquit the accused Damjanović.

II. Evidence and evaluation of evidence in the context of elements of the criminal offence at issue

Upon reviewing all the evidence presented, individually and collectively, the Panel decided as in the operative part on the following grounds:

Based on the Indictment of the Prosecutor's Office, the accused is charged with the criminal offence of Crimes against Humanity in violation of Article 172 (1) of the CC BiH, that is, murder under item a) with respect to Count 1) of the Indictment, enforced disappearance of persons under item i) with respect to Count 2) of the Indictment, murder and torture under items a) and f) with respect to Counts 3) and 7) of the Indictment, torture under item f) with

respect to Count 4) of the Indictment, torture and rape under items f) and g) in reference to Count 5) of the Indictment, and persecutions and items h) and f) in reference to Count 6) of the Indictment.

A. General elements of the criminal offence

Pursuant to the cited provision: "Whoever, as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack, perpetrates, among other, the acts of murder, torture, rape, persecution, enforced disappearance of persons and other inhumane acts of a similar character, shall be punished by imprisonment for a term not less than ten years or long-term imprisonment." The accused is charged with this criminal offence in conjunction with the enlisted acts of commission.

The following general elements of the criminal offence derive from the legal definition of the criminal offence of Crimes against Humanity:

- the existence of a widespread or systematic attack;*
- the act was committed as a part of such an attack;*
- the attack was directed against civilian population;*
- the accused had knowledge of such an attack.*

In reviewing the evidence, the Court has established that the territory of the municipality of Vogošća, Nahorevo, Ilijaš, Sokolac, as well as the settlements of these municipalities namely Nahorevo, Semizovac, Gornja Bioča, Svrake, Podlugovi, were subjected to an armed attack by local Serbs from predominantly Serb surrounding settlements, supported by the paramilitary formations so-called "Šešeljevci" from Serbia and military resources of the Yugoslav People's Army. The attack was launched in the period between May and June 1992. Specifically, the Panel was convinced of this by having heard witnesses Eset Muračević and Ahmed Hido, former residents of the Vogošća settlement of Svrake, and witnesses Fikret Išćerić, Ramiza Kolar and Mujo Abaz.

Witness Eset Muračević and Ahmet Hido stated that the armed attack was launched in May 1992 against the municipalities of Vogošća, Sokolac, Ilijaš, that is, against settlements on the territory of the respective municipalities, including the settlements of Nahorevo, Gornja Bioča, Svrake, Semizovac and other predominantly Bosniak populated areas. Having taken control of the area, specifically of Vogošća, all civilian population was either expelled or detained in camps.

Witness Eset Muračević states, among other things, that he was living in the settlement of Svrake, Vogošća Municipality up until the attack and was the Secretary of the Local Community MZ Svrake at the time. He claims that the attack was launched on 2 May 1992 by Serbs, with the support of resources of the Yugoslav People's Army (JNA) from the area of the Local Community MZ Semizovac, where the JNA barracks was located. The attack continued from the surrounding hills around the villages of Svrake, Paljevo, Ravne, Krivoglav and the neighbouring villages. The armed attack was made with infantry weapons and artillery. The settlement was shelled by tanks, and on few instances even bombed by aircraft. Generally, there were no military formations in the village at the time, other than members of the local Police Station. All the others were civilians. In the attack itself against the village which lasted until 4 May, one person was killed and four were wounded. Furthermore, the attack was preceded by months-long activities in terms of various announcements, ultimatum directed at the non-Serb population hence the population was in fear, mainly staying in shelter in their houses or basements. So on 4 May, the call was made via megaphone upon the population to leave the village. A part of the population got out towards Tuzla, but another part did not manage to leave. According to the witness's account, those who did not manage to get out, including himself, were detained in the barracks of the Yugoslav People's Army in Semizovac by Serb people who had been their long-standing neighbours. Several hundreds of citizens were placed there in a semi-open hangar from where the deportations to camps started. The witness states that he was initially brought in the camp Bunker, from where he was transferred to the Planjina kuća camp. The witness described that there were many people, mainly men, in the camps in which he was detained. According to him, there were as many as 200 persons in the Planjina kuća at one point. The conditions in which they were staying were very poor, food was insufficient, hygiene was poor, and on a daily basis they would be taken for forced labour or taken to be used as human shield during the fighting between the Serb forces and the Army of BiH.

Witness Ahmet Hido is also a resident of the Vogošća settlement of Svrake. Pre-war he had worked in the Car Factory Sarajevo, abbrev. TAS, on the car assembly line. He states that In April 1992, as he was a member of the Council of the Local Community MZ Svrake, he noticed that Serbs started gathering together and that a hostile atmosphere between Bosniaks and Serbs in the area was developing. Furthermore, the witness also claims that on one instance Nebojša Špirić, who was the Deputy Warden of the camp Bunker, passed through the village calling the citizens via megaphone to surrender their

weapons as some had hunting rifles and others some remaining weapons which they had retained from their duties in the reserve police forces. The witness also stated that all of the Bosniak population had surrendered. A part of that population was transferred by buses to the territory under control of the Army of BiH, mainly women and children, while men were detained in the JNA barracks in Semizovac.

Witness Fikret Iščerić states that the entire Sarajevo was blocked at the time and that it was impossible for anyone to get out or into the town. Witness Ramiza Kolar also states that in the period between May and June 1992 all Muslims were removed from their jobs at the TAS Company, where she was also employed at the time.

Witness Mujo Abaz in his testimony at the main trial stated that in October 1992, the newspaper "Srpski glas" was disseminated among detainees, and it read that the President of Republika Srpska Dr Radovan Karadžić was ordering that all Muslims who wish to leave the Serb state can do so if they were to voluntarily hand all the property in their possession over to Republika Srpska.

The evidence clearly indicates that this attack covered the areas of a number of predominantly Bosniak Muslim populated municipalities around Sarajevo, and that the attack was carried out by weapons of the JNA, as suggested in the testimony of witness Muračević. The fact that all the Bosniak population was called upon to surrender their weapons supports the conclusion that the attack was not targeting specific individuals but rather a specific ethnic group, which was thereby prevented from offering resistance to the forthcoming attack. By this very fact, the attack becomes of a widespread one, as it was directed against the territory of a number of municipalities, rather than smaller individual sites. Furthermore, heavy artillery and attack aircrafts, striking from all directions, were used in the attack. The Bosniak civilian population located there surrendered and was transferred to the then JNA barracks in Semizovac, from where they were further sent to camps Planjina kuća, Bunker and other. Such a strategy was evidently not a plan devised by an individual, but instead a political design of the then government – a conclusion which is also based on the clear message by the then President of Republika Srpska. The use of all available means by political and military structures, such as first the firing of Bosniaks from their jobs, their disarmament, direct or indirect persecutions, creation of unbearable living conditions, all clearly indicate to the Panel that the attack was systematic, as well. Based on the testimonies of all examined prosecution witnesses, it is clear to the Panel that the living

conditions for Bosniaks who were on the Serb controlled territory at the time were difficult and almost unbearable, and many lost their lives at the time or their physical and mental health was severely damaged.

Based on the accounts of witnesses Muračević and Hido who testified that the population was called to surrender weapons, as some of them had either hunting rifles or some weapons remaining from the reserve police forces, the Panel concluded without doubt that the attack did not target Bosniak military formations whatsoever, but was instead directed solely against the civilian population, as the term 'civilian' is defined under Article 3 (1) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, which is applied in BiH based on Annex 6 of the Dayton Peace Accord for BiH, and which according to the ICTY case law is regarded as being a part of customary international law (Kunarac, Kovač and Vuković - Appeals Chamber, Judgement of 12 June 2002, para. 68). Article 3(1) defines persons who are protected under the Convention, as persons not taking part in hostilities, including members of the armed forces who have laid down their weapons and/or are placed 'hors de combat' (ICTY, Blagojević and Jokić - Trial Chamber, January 17, 2005, para. 544), including those persons who are no longer able to fight.

The Panel concludes, based on the evidence before it, that there existed a widespread and systematic attack on the civilian population from April 1992 and continuing through all times operative to these charges. That attack was widespread, in that it covered areas of municipalities of Vogošća, Nahorevo, Ilijaš, Sokolac, as well as the settlements of these municipalities namely Nahorevo, Semizovac, Gornja Bioča, Svrake, Podlugovi settlements. It was also systematic in that it consisted of a series of repetitive activities designed to encourage the non-Serb minority to abandon the area, and was pursued by the Army of RS through artillery and air bombardment of areas inhabited by non-Serbs, verbal threats and orders to leave the areas, confiscation of personal property of non-Serb population, and threats against those who remained, backed up by imprisonment and inhumane treatment of some, expelling others against their will, and a public campaign of terror against those who attempted to continue to live in their homes.

At the material time period covered by the Indictment of the Prosecutor's Office, the accused Damjanović was a member of the Army of Republika Srpska, as evidenced by the Certificate of VOP 8 – OSA Army of Republika Srpska that establishes that the accused at the critical period was a member of

the Army of Republika Srpska. The foregoing was also evident from the account of witness Ognjen Sikiraš who stated that the accused Damjanović was a regular member of Serb forces, and also that VOB 8 were records which were kept by the Army of Republika Srpska on the presence of soldiers drafted in the Army of Republika Srpska. Therefore, it is an incontestable fact that the accused was a part of a dominating army formation which carried out the attack. All witnesses are unanimous in stating that the accused was in uniform and armed and was present in areas under direct control of Serb forces. He moved freely around the area, and operated in towns and villages, as well as in and around camps, primarily camp Bunker and the Planjina kuća.

Further, there is a nexus between the acts of the accused and the attack on the civilian population, because the acts and commissions by the accused were directly connected to the attack, as the Panel concluded on several grounds. The accused was a member of the Serb Army and he could not but have knowledge of the ongoing events due to the massive scale of the attack and comprehensiveness of the operations by Serb forces in the territory under their control. Furthermore, the accused most surely due to all the circumstances that developed at the time, knew that the population detained in camps were Bosniaks. The acts of the accused described under all Counts of the Indictment for which he was found guilty of, except for Count 2) and 5) of the Indictment, are a part of the overall events in the area and the conduct on the part of the accused was indisputably a part of that attack, given that the final outcome of the attack was detaining civilians in the stated camps, and it was specifically against these civilians that the accused committed the crimes as charged. The fact is that the accused had access to places wherein civilians were detained, as well as that he actually took advantage of their presence in the camps where they found themselves as a result of the attack.

When it comes to the nexus between the acts of the accused described under Count 2) and 5) of the Indictment and the attack, given that the civilians in the events under these Counts were not detained, but persons who were at their homes at the critical time, the Panel deems that also in this case the acts of the accused are connected to the attack, hence the act of taking away persons under Count 2), and torture of Taib Kodžaga and rape of his wife Nafila described under Count 5) of the Indictment constitute a part of the attack by Serb forces at those territories. The fact is that persons who were taken away, namely Bekir Salihović and Muharem Bajramović, as well as Nafila and Taib Kodžaga, were all members of the ethnic minority on the territory under attack. Although these persons at the time of the commission of the described acts were not detained in camps, and given the very fact that the accused had

free and unrestricted access to their homes and due to the fact that they were members of the ethnic minority who did not leave the Serb Army controlled territory, the accused indisputably knew their position at the time and used it by abusing his domination.

The evidence relevant to each count set out below, establishes that Dragan Damjanović participated in the terrorizing the non-Serb population in the villages and the camps in the relevant area at the relevant times. He was present to see the military attack on Bosniak villages and towns, the conditions of the camps, the looting of homes of non-Serbs and threats to and physical abuse of non-Serbs both in the camps and in the villages. He was not only present during these activities but he also participated in them himself, and must have had knowledge of the attack. He knowingly targeted Bosniaks Muslims as his victims, as evidenced by his verbal attacks and characterisations, using derogatory terminology which was unmistakably identified as directed against Bosniaks Muslims. Each of the acts for which the Panel has found the accused guilty, based on the evidence and findings described below, were perpetrated by the accused while he was in the Army of Republika Srpska. Each was perpetrated against civilians as that term is defined under law. Each of these acts furthered the widespread and systematic effort to terrorize and abuse the non-Serb civilians in the area, and deprive them of liberty and property, so that through expulsion, escape, confinement or death they would no longer be able to carry on their lives in those localities.

It is based on all the foregoing that the Panel concludes with certainty that the incriminating acts took place at the time of the widespread and systematic attack by the Army of Republika Srpska against civilian population, and that the accused by performing his actions within such attack, knew that his acts were a part of such attack. The Panel concludes that Dragan Damjanović committed the acts alleged in the Indictment in the scope as determined by this Panel and explained in detail below, and that his commission of those acts fulfilled the general elements of the criminal offence of Crimes against Humanity in violation of Article 172 (1) of the CPC BiH; specifically, the existence of a widespread/systematic attack upon civilians, and the accused's knowing participation in that attack through the perpetration of the acts set out in the Indictment.


B. Individual Counts of the Indictment

As for particular actions which include each of the elements of this criminal offence, the Panel finds that the accused did commit the criminal offences as stated in the operative part of the verdict, based on the evidence as follows.

That the accused is criminally liable for Count 1) of the Indictment, which refers to separation of the following five persons: Nezir Muharemović, Hasan Muharemović, Ismet Pandžić, Asim Pandžić and Nasuf Šabanović from a group of a number of other men, and taking them towards the front lines at the hill of Žuč in July 1992, is evident from the eyewitness accounts of prosecution witnesses Mensur Pandžić, Fikret Išerić, Zejnil Muharemović, Muhamed Ruhotina, Zijad Šabanović, who were among some 20 to 30 men transported by truck to the Reljevo site in the vicinity of the hill of Žuč so as to perform forced and heavy physical labour comprising road construction for members of the Serb Army. Their accounts do not agree as to the number of men who headed to the forced labour on that morning, yet they all agree that the accused Damjanović had singled out five persons and returned them to the truck, driving off with them towards the Golo Brdo site.. According to witness Muhamed Ruhotina, that morning, on 23 June 1992, he and other detainees in the Bunker camp were separated into a group of some 20 men, singled out by Brano Vlačo, the then Commander of the camp Bunker. They were given picks and shovels and headed on a truck towards the hill of Žuč in order to fix the road. Before reaching the hill, they were intercepted by unknown uniformed persons and they were all ordered to get off the truck and line up. The last five, closest to the truck were ordered to go back on the truck, and the witness clearly stated that the order that they be returned onto the truck was given by Dragan Damjanović, whom this witness recognised in the courtroom and stated that he had known him from before the war, and had known Dragon Damjanovic's mother as well. Furthermore, the witness stated that Damjanović returned those five men to the truck telling them to go and bury, quote "a horse killed by a shell". The truck drove towards the front line at the hill of Žuč, or more specifically to the part named Golo Brdo, disappearing from sight around a curve. As they lost sight of the truck, after some 5 to 10 minutes, two short bursts of fire were heard, according to the witness. The truck that took the men returned when it was already dark, yet none of the five taken persons returned. He heard later on that one of them, Hasan Pandžić, was most surely dead, but he does not know about the others. The same account is confirmed by witness Zijad Šabanović who stated that after these five persons were forced back on the truck, Dragan Damjanović sat next to the driver and they left. Witness Šabanović also stated surnames of the five taken men: two of the Pandžićs, two Muharemovićs and his brother Nasuf Šabanović. Three other witnesses, Mensur Pandžić, Fikret Išerić, Zejnil

Muharemović, also give identical accounts of the same incident, to which they were also eyewitnesses. Witness Zejnil Muharemović describes the accused Damjanović as being very angry and furious, for a reason unknown to the witness, at the time when this group of some 30 men was brought to a site on the hill of Žuč. He was wearing a blue flak jacket, long beard and a "šajkača" (translator's note: Serb military cap) with a cockade on it, and he carried a machine-gun. After the group had arrived and they got off the truck, the witness stated that he had immediately recognised Damjanović who was already standing there saluting the Commander of the Guard Peđa Jovanović. The witness knows the accused Damjanović very well from before the war as they served in the army together in Ljubljana. The witness stated that on that day, Damjanović singled out and took five persons: his brother Hasan Muharemović, Nasuf Šabanović, Nezir Muharemović, Ismet Pandžić and Hasan Pandžić. Witness Muharemović claims that after these five men did not return, he and others started asking what had happened to them. At first they were told that the missing men were in Rajlovac, then that they were exchanged, and the like. However, these people were never found again. Concurring with the accounts of these witnesses, witness Fikret Išćerić describes the incident in an identical manner, adding that he did not know the accused at the time, but he positively identified him in the courtroom as the person who took those five men. Therefore, having examined the above witnesses, the Panel has no doubt that the accused Dragan Damjanović was at the critical site at the hill of Žuč at the critical time, that he singled out the named five persons from a group of detainees, and that on that occasion he took them by the same truck on which this group had arrived, toward the front lines in order that the five should bury a horse, as was confirmed by all the witnesses listed above.

In addition, it is necessary to resolve the location to which these persons were taken and the intent with which they were taken there. Defence witnesses Branislav Kutlača and Ognjen Sikiraš testified in regard to the circumstances under this Count of the Indictment. Both of the witnesses were drafted into the RS Army in early June. They were soldiers at the time of the events mentioned in the Indictment. They were stationed on the Žuč hill, in trenches on the Serb side of the front line. Both of these witnesses are in agreement that on one occasion while they were at the front line, a horse having strayed into a minefield that separated two enemy lines was killed by a landmine. After a few days the body of the horse started to decay, emitting an unpleasant smell. The witnesses claim that the Commander Boro Radić ordered that the horse be buried. However, these two witnesses do not agree on the critical point as to who brought these persons into the minefield.



Witness Kutlača states that sometimes in mid June a horse stepped on a mine close to the Serb lines at Žuč hill. The mine exploded and killed the animal about 30 meters away from the witness and 30 meters in front of the trenches. Boro Radić, the commander of that part of the frontline, said that the horse would be buried. Later, the witness saw 4-5 men with Boro. He saw them burying the horse, but he did not know who they were. He later heard they went missing. According to witness Kutlača, Commander Radić brought the 4-5 men, who came on foot. According to this witness, Dragan Damjanović was not with Boro, nor with the five men. The witness did not see him. The witness does not know when it was, either around noon, or before. The men were not armed, and Boro was next to the trenches at that moment. It was about 30 meters to the left of the witness. The witness thinks that when the horse was being buried, Dragan Damjanović was in the trench somewhere to the left side of the witness.

Witness Ognjen Sikiraš mentions that he was in a small team of soldiers occupying that part of the trench. There were four soldiers in the team – Dragan Damjanović was one of them. Contrary to the account of witness Kutlača, witness Sikiraš states that he saw the Commander send the accused Damjanović to bring a few prisoners to bury the horse. The witness states that the Commander had issued this order at around noon. Furthermore, he states that he saw the accused bringing in those men and handing them over to the Commander. The witness states that he was watching that while standing at the edge of the trench, while the accused Damjanović was 5 meters away from the witness.

In the accounts of both witnesses, one fact is consistent with the accounts of the prosecution witnesses who gave evidence regarding these circumstances, namely that these five persons were taken towards the front lines at the hill of Žuč. The two defence witnesses confirm that the horse was killed in the minefield separating enemy lines at the hill of Žuč. The accounts of the witnesses are consistent in stating that the group of five unarmed persons was brought to the minefield in order to bury a dead horse. The accounts are also consistent with that of the prosecution witness Muhamed Ruhotina, subsequently confirmed by the defence witnesses, namely that these five people were singled out and brought with the task to bury the dead horse.

Another indisputably proven fact is that the accused Damjanović was at the front line at Žuč along with these two defense witnesses, as they both saw him in the critical period. However, these two witnesses gave contradictory

statements in regard to an important issue, which is whether the accused Damjanović was seen bringing these men. In this regard, the Panel finds that the statement of witness Sikiraš who said that he had seen that the Commander had sent the accused Damjanović to bring some prisoners to bury a horse, and that he had seen the accused bringing the men and handing them over to the Commander, is more convincing than the one by Kutlača who denied having seen the accused bringing the group of five men to the front line. The discrepancy might be a result of the vantage points each witness had. Kutlača's failure to see Dragan Damjanović may have been a result of his becoming aware of the event only after Dragan Damjanović had handed the men over to the Commander. In any event, the Panel finds that the statement of witness Sikiraš is supported by all the other evidence from other witnesses and that his account more credible than that of Kutlača. The fact that Sikiraš confirms that the accused went to bring prisoners to bury the horse, is consistent also with the allegations of the Prosecution that it was the accused who took a group of men to the front lines at the hill of Žuč for the same task.

The defence witnesses gave uncertain and contradictory accounts. They attempted to substantiate the defence argument that there were two Dragan Damjanovićs and that the person standing trial was not the one who committed the charged offences. They identified the accused Dragan Damjanović as the person with whom they were in the trenches and they gave contradictory accounts of the length of time they were serving together and the free time available to commit the acts charged. However, their testimony was not consistent as to the amount of time that Dragan Damjanović might have been away from the trenches and Sikiraš testimony that the Dragan Damjanović who was in the courtroom was the same Dragan Damjanović that brought prisoners to bury the horse confirms the testimony of witnesses from the camp who saw the same Dragan Damjanović take the prisoners to bury the horse. Also the identity of the accused was overwhelmingly supported by the many prosecution witnesses, some of whom had known him from before the war, and others who had not known him from before, but nevertheless identified him in the courtroom.

The Indictment also charges Damjanović with murder of the five taken persons. However, contrary to the allegations of the Indictment pertaining to this Count, the Panel could not conclude, based on the evidence that the accused was responsible for the death of the five persons that allegedly took place after they were taken away. The prosecution witness Ahmed Hido claims that he overheard a conversation between the person guarding him while he was cutting grass at a certain Duško Jovandžić's place and the mentioned

Jovandžić's son-in-law (translator's note: the word 'zet' in BCS may denote either son-in-law or brother-in-law). In that conversation it was stated that the five had been killed by the accused. The prosecution witness Abid Pandžić also gave evidence in relation to these circumstances, but was unsure during his testimony as to the number of the taken persons, as well as the manner in which they were taken. The witness also said that the accused forced the separated persons to run while he was firing above their heads. However, considering that the account of this witness is contradictory in its crucial part, and was not confirmed by other witnesses, the Panel could not accept it in its entirety as a reliable account nor could it base its decision on it. Likewise, from the accounts of other prosecution witnesses concerning this Count it is clear that all their knowledge of the events stem from indirect information, specifically that they heard from other people that the accused had killed the five persons. All these statements constitute indirect evidence on which the sentence cannot be based without other direct and corroborating evidence, and therefore the Panel concluded that the Prosecution failed to present sufficient evidence to the Court that the accused was directly responsible for the death of these persons. Therefore, given that the evidence presented does not confirm in a reliable manner that the accused committed the act of depriving these persons of life as charged in the Indictment, the Panel, in this part, adapted the factual allegations of the Indictment to the presented evidence and decided as in the operative part.

The fact that is however proven beyond doubt is that the accused was seen to have separated the persons from a group of men, returned them onto the truck and drove them off to a minefield at the front lines at the hill of Žuč in order to bury a dead horse. As in accordance with Article 280 (2) of the CPC BiH, the Court is not bound by the Prosecutor's legal qualification of the criminal offence. Criminal responsibility of the accused was established beyond doubt for bringing these five persons to the front lines at the hill of Žuč, where a minefield was established to be, which is itself an inhumane act of a nature resembling the other offences under Article 172 (1) of the CC BiH. The Panel is convinced by the credible evidence that Dragan Damjanović took the five prisoners to a minefield on Žuč hill where they were expected to bury a dead horse. The prisoners were taken by Dragan Damjanović to perform labour against their will in a place that was life-threatening. Both because it was a minefield and because it was on the front line, the lethality of the circumstances was obvious both to the prisoners who were forced to endure it and to Dragan Damjanović in whose control they were. By forcing the prisoners into a minefield at the front line, which by its nature, is a dangerous and unpredictable environment, because exposure to such an environment is

very likely to cause severe bodily injuries and even death, and, where the remains of the horse in fact manifest the deadly effects of the location, Dragan Damjanović subjected the prisoners to fear and terror and put the prisoners in a life threatening situation. Hence the accused Damjanović, with the intent to cause great suffering to victims by taking them for the task consisting of entering the minefield and interment of the dead animal, acted out of direct intent, being aware that he was causing great suffering to the victims by his actions, and desiring the commission of the act, and it is therefore beyond doubt that he committed the criminal offence of Crimes against Humanity – taking into minefield under item k), paragraph 1, Article 172 of the CC BiH pertaining to the commission of other inhumane acts.

In that regard, it is noteworthy as to why the Panel decided to qualify such actions as acts under other inhumane acts according to the cited provision. The Panel established that Dragan Damjanović committed the criminal offence different to the one in the Indictment, and that he is guilty of having committed other inhumane acts set forth under Article 172 (1) k) of the CC BiH. The elements for the commission of the crime of inhumane acts under item k, paragraph 1, Article 172, in addition to those under paragraph 1 of Article 172, are as follows:

1. that there is an inhumane act
2. the act is not otherwise specified by Article 172
3. the act is of similar character as those which are specified in Article 172
4. the act was committed with the intention to cause
 - a) great suffering, or
 - b) serious injury to body or to physical or mental health
5. the commission of the act caused the victims
 - a) great suffering, or
 - b) serious injury to body or to physical or mental health.

It is no accident that all offences under Article 172, paragraph 1 of the CC BiH were not enumerated. The cited provision of the CC is identical to its counterpart under the ICTY Statute and the reasoning pronounced by the ICTY for it is applicable here. The ICTY explained in Kupreskic (Kupreškić et al. – Trial Chamber, Judgement of 14 January 2000, para. 563) in interpretation of the identical provision of the ICTY Statute which reads “The notion of “other inhumane acts” was intentionally 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 for evasion of the letter of the prohibition.” The ICTY has found ‘inhumane acts’ similar in character to the specific crimes against humanity to include, for example,

degrading treatment, forcible displacement, and forced prostitution (Kvočka et al. 2 November 2001, para. 208), and use as human shield (Kordić and Čerkez, 25 February 2001, para. 256). The consequences of the commission of the inhumane act must be serious, but do not need to be long-lasting (Krnojelac, 15 March 2002, para. 131). The required mental state of the perpetrator must be the intent to cause great suffering or serious injury to body, health or mind; or knowledge that the act was likely to cause one of those consequences combined with advertent recklessness as to whether such a consequence would occur or not (Krnojelac at para 132).

The credible evidence shows that Dragan Damjanović took those five men, already prisoners and completely subject to his control, to the front line at Žuč hill with the intention to force them to engage in the dangerous and offensive task of entering a minefield and digging a grave and collecting and depositing into the grave the putrefied remains of a horse that had been blown up in that minefield a few days before. The act of forcing prisoners to the front lines for the purpose of performing forced labour, the nature of which was inherently disgusting, and in a minefield, is an inhumane act. The witnesses testified that Dragan Damjanović told them the reason why he was taking the five men at the time he selected them, and defence witnesses recalled that the five men arrived at the front line, and these witnesses confirmed that they were there to bury the rotting remains of the horse blown up days earlier in the minefield. The horse had been left to rot in the minefield, only meters away from the trenches, because the soldiers all knew that the task of burying it was too dangerous and disgusting for anyone in the army to do. The accused Damjanović intended to cause these five prisoners great suffering by placing them in that place at that time for that task. The Panel concluded that the anxiety, fear and terror generated by contemplation of the task and its actual performance caused the five prisoners great suffering. Due to the foregoing, the Panel concluded Dragan Damjanović committed the criminal offence of Crimes against Humanity – other inhumane acts as under Article 172 (1) (k) of the CC of BiH.

As for Count 2) of the Indictment, evidence on which the Court based its decision and the existence of criminal responsibility of the accused for this Count of the Indictment includes the statements of eyewitnesses – spouses Ramiza and Salko Kolar, as well as the statement of witness Jovo Kuburić who corroborated their narration based on his own observations. Witness Ramiza Kolar witnessed the incident described in Count 2 of the Indictment, as she was present while it was taking place, when from her immediate vicinity she saw the accused Damjanović, together with the person named Mićo Četnik,

taking away those two persons. The witness, a pre-war resident of Vogošća Municipality, with residence in the Skendera Kulenovića 72 st., states that she had known the accused by sight from before the war while she was working at a certain Ferid Orhan's, and Dragan Damjanović was a hauler at the time. According to the witness, the accused Damjanović came on a July day with Mićo from Serbia who went by the name Četnik, to the Skendera Kulenovića Street, in a yellow "stojadin" vehicle and from the building next to the one she was residing in, she saw the two of them taking out Bekir Salihović and seating him in the car. She was watching all that from her window, the scene was taking place in front of the building at some 15 to 20 meters as the crow flies. At that point, she also saw Bekir's daughter Elma, who ran out in front of the building, shouting "bring me my Daddy back", to which one of them turned and said "Get inside, go back, we are taking them to examination". Shortly after, they returned for another neighbour from their building Muharem Bajramović, and gave the same reason - they were taking him for examination. The witness claims that by that time she was in front of the building together with her Serb neighbours and she saw when they took him out, hands tied and down the stairs. After that they returned once again, this time, she assumes, to get her husband, as according to her he was the only Muslim left in the building. At that point, the witness states, her husband Salko Kolar was at the apartment of their neighbour Jovo Kuburić. The two men who were taken away were never again found. The account of witness Salko Kolar concurs with that of witness Ramiza Kolar stating that the accused Damjanović came on that day together with Mićo in a yellow "stojadin". The witness stated that he saw Bekir Salihović being taken out from his apartment, while Salko was looking from behind his window curtain. Salihović was taken away by Damjanović, whom he had known by sight from before the war, and Mićo aka Četnik. He heard the cries of Salihović's daughter and he saw that Salihović was tied. He also saw Muharem Bajramović being taken away and saw when he was brought in front of the building and taken towards the "stojadin". He saw them both, Damjanović and the person with him, whom the truth is he did not know, yet he assumed that it was Mićo Četnik, because he had heard earlier, that the two of them, Damjanović and Mićo Četnik, were inseparable in taking people away. Witness Kolar then went to his neighbour Jovo Kuburić so that he would not be taken also. Witness Jovo Kuburić states that he did not see the taking away of these persons, yet he confirms that Salko Kolar came on one occasion to his place, frightened, telling him that they came for him; among other things, he said "Here, Mićo Četnik came and is looking for me". Witness Kuburić stated that he did not know the accused. He heard of him and heard that he was taking Bosniaks to perform forced labour, and that together with Mićo Četnik he was perpetrating "maleficence" around Vogošća.

Therefore, based on the testimony of Salko and Ramiza Kolar, which in a coherent and consistent manner confirm the key facts regarding the acts charged in this count, it is beyond any doubt that the Panel concludes that the accused on an undetermined date in June or July came to the Skendera Kulenovića Street, Vogošća, entered the building at number 73, where witnesses Kolar and Jovo Kuburić resided, and from this building, together with a person known as Mićo Četnik, he took out Bekir Salihović whose hands were tied and forced him to get inside the yellow vehicle type "stojadin" and drove off with no explanation of where he was taking him other than that he was going to an "examination". At the time, Dragan Damjanović was armed and in the uniform recognisable as that of a soldier of the RS Army. Shortly after, he again returned together with Mićo and took away Muharem Bajramović in an identical manner. These persons have been neither accounted for nor found since. There was an additional consistent testimony of witness Kuburić who confirms that Salko Kolar took shelter at his place on that instance and who told the Court about the notorious reputation of the accused known for taking away people. The Panel does not ground its decision for this Count specifically on the indirect evidence presented by Jovo Kuburić, however, if this evidence is taken into consideration jointly with statements of eyewitnesses, it supports the conclusion that the accused did not hesitate to commit such acts, as is confirmed by the missing of these men who were last seen when he took them away. It is evident that by these and similar acts, he was developing a reputation as a soldier of the RS Army whose activities included terrorising the local non-Serb population. His presence and this reputation contributed to the systematic attack on the civilian population. It is true beyond doubt that the person about whom this testimony was given is the very same person standing trial before this Court, as specifically the Kolars couple both knew Damjanović before the war, and they identified him in the courtroom. The Panel has no doubt as to the identity of the person responsible for this particular act charged.

The relevant elements for the commission of the crime of 'enforced disappearance of persons', as charged here, under Article 172 (1) (i), in addition to those set out in 172 (1), are as follows:

1. an act constituting abduction/arrest of persons,
2. it was done so with the acquiescence and support of a State or political organisation,
3. the perpetrator refused to give information on the fate or whereabouts of persons taken away,

4. *with the intent to remove them from the protection of the law for a prolonged period of time.*

Therefore, it was established that the accused acted as a member of the VRS. It is evident that the accused arrested these people without legal grounds, and without giving them any information as to their fate, saying only that they were going "for examination", without informing them of where he was taking them, and knowing the capacity in which he acted, and with the intent to remove them from under law's wing, which protected them to at least a certain extent while they were staying in Vogošća as civilians and members of a minority ethnicity. The accused acted out of direct intent, that is, he was aware of the commission at the time of the act, and also wanted the said commission, by which described actions he undoubtedly perpetrated the criminal offence of Crimes against Humanity – enforced disappearance as under Article 172 (1) (i) of the CC of BiH.

Criminal liability of the accused for the offences alleged under Count 4) of the Indictment is proven beyond any doubt. Mujo Abaz, direct victim of the offence charged, testified of the offences charged. In a reliable and honest manner, witness Abaz describes the manner of the commission of the offence and identified the accused as the perpetrator. The statement of this witness was corroborated by expert witness in medicine Dr Hamza Žujo who established that the scar on his face, precisely on the nose and above the eyebrow, was inflicted by a sharp mechanical object and that the scar was not of recent date. Having had a direct look at the scar on the witnesses face during the examination of witness Abaz, the Panel was convinced of the existence of the injury described in this Count of the Indictment. Witness Mujo Abaz stated that he was brought to the Planjina kuća on 18 August 1992, from where he was assigned to perform various tasks such as carrying ammunition and digging trenches for the army on the front lines. He has known the accused Damjanović from before the war. On 30 August 1992, he was assigned to soldier Milovan Musić to dig trenches. On that day, the witness was brought to perform the task together with Avdo Tirić, Halko Suljić and Atif Šuvalija. After they arrived, food was distributed to them. At that point in time, the witness stated that he was approached by the accused Damjanović who ordered him to sit down, and asked "What did I do to you?", to which the witness responded that he had done nothing. On that occasion, he had a black uniform, a beard, "šajkača" and a cockade, and also a waist belt with three bayonets and a pistol. He then pulled out one of the three knives and cut the witness's nose three times with its edge. As blood started running down his face, Dragan Damjanović ordered him to place the food plate below his face

so that the blood would run down into it, and then Damjanović forced him to eat his own blood with a spoon. After that Damjanović said "I'm going now to your home to slaughter your wife and cut your children's throats, and bring the heads back here so that we play a little". After that, soldier Musić gave him first aid and told him not to work any more. The witness states that he felt no physical pain on the occasion as he feared that Damjanović could actually realise his threat, however that same evening, as he was returning from forced labour, the witness saw his family while passing by his house and saw that his family was well. The witness got out from Vogošća on 5 November 1992, after he was issued a receipt that he had voluntarily handed over all his possessions to Republika Srpska.

The findings and opinion about the bodily injury of witness Abaz were given by expert witnesses in medicine Dr Ilija Dobrača and Dr Hamza Žujo, who presented his expert opinion at the main trial on 13 November 2006. It was established by expert evaluation that the injury of witness Abaz is on the skin, and is classified as a light bodily injury. Furthermore, it was established that the injury was inflicted by a sharp mechanical object and that the injury is several-year's old. In addition to the above corroborating evidence, during the testimony of witness Abaz, the Panel inspected the described injury and noted scars on the face of the witness in the forehead region and near the root of the nose in the shape of a cross.

Therefore, in reviewing each piece of evidence in regard to this Count of the Indictment, the Panel finds that the account of witness-victim Mujo Abaz is sincere and credible to a decisive degree, and that the witness in a logical sequence describes the actual infliction of the injury and the subsequent events. Expert evaluation of the injury carried out by expert witnesses in medicine and their conclusion that the injury was inflicted by a sharp object corroborates the other evidence as it is consistent with the allegations of the witness that the injury was inflicted upon him with edge of the bayonet. The Panel was also in a position to be convinced of authenticity of the witness's account by inspecting in person his scar on the face. That the accused is responsible for this incriminating act, the Panel concluded from the testimony of the witness who at the beginning of his testimony stated that he had known the accused from before the war.

The Panel concludes from the nature of the inflicted physical injury, as well as the accused's order to Mujo Abaz to consume his own blood, combined with the threats with death against his family, that the accused committed the criminal offence as charged in the Indictment.

The relevant elements for the commission of the crime of torture, as charged here, under Article 172 (1) (f) of the CC BiH are as follows:

- 1. that the act was perpetrated against a person under his control,*
- 2. that the act inflicted severe physical or mental pain or suffering on the victim,*
- 3. that the act was intentional,*
- 4. the act was unrelated to the impositions of a lawful sanction.*

The treatment of victim Mujo Abaz by the accused fulfils all legal elements of the charged crime. The very nature of the act of cutting one's face with a sharp object inflicts not only physical pain upon a person, but also inflicts long-lasting mental pain, given that by such injury and humiliation the person is marked for life by the scar that is an inevitable reminder of the trauma sustained. Mujo Abaz was at the time in a subservient position in relation to the accused because he was a member of an ethnic minority forced to serve the ethnic majority by performing physical labour. As a prisoner, the victim was entirely left to the whim and will of the captors under whose control he was. The suffering caused to the victim by this arbitrary act of violence against him was compounded by the mental suffering imposed at the same time by Dragan Damjanović when Damjanović forced him to consume his own blood and threatened to brutally kill the victim's family. The threat was made all the more real by the obvious capacity Dragan Damjanović had shown for particular cruelty. The fact that the victim felt no physical pain at the time of the injury is a remarkable sign of the severity of the psychological pain and anxiety caused by the threat against the victim's wife and children. The fact that the scar is still visible more than 13 years after it was inflicted and the reaction of the soldier who gave the victim first aid and spared him from further physical work, is sufficient for the Panel to conclude that it was an injury which was accompanied by strong mental pain. It is also clear that the accused was aware of the act he was committing and desired the commission of the act. Therefore, the Panel found that the accused in relation to witness Mujo Abaz committed the offence as charged out of direct intent, and hence is beyond doubt guilty of the commission of the criminal offence of Crimes against Humanity – torture, referred to in Article 172 (1) (f) of the CC of BiH).

As for Count 5) of the Indictment, the Panel concluded that it was proven beyond any doubt by the testimony of spouses Taib and Nafila Kodžaga, victims of this act, that the accused committed the criminal offence as charged. In a consistent way, the witnesses spoke about the manner of perpetration of this criminal offence and described the incident which is still traumatic for

them. In his account, witness Taib Kodžaga states that the beginning of the war had found him in his house in Semizovac, at the address of Stara željeznička stanica 18. On 6 May 1992, he was taken to the camp Bunker where he spent several months. It was difficult for him to endure his stay in the Bunker, because he was subjected to constant maltreatment and poor living conditions. He was released from the Bunker in August 1992 to his home where he was living with his wife Nafila. He was in extremely poor physical condition after the release. Five days after his return, the accused Damjanović started passing by his house; he had known him from before the war as a young man, and he identified him in the courtroom during the main trial. At the times when he would come, the accused would be armed with pistols and knives. He had a long beard. In the beginning while passing by his house in a red "Golf", he would be say "come out Baliža". After the witness would come out, he would order him to bend down (lower his head) and Dragan Damjanović would hit his face with a rubber hammer and slap his face. This happened on three or four occasions. On the critical evening, Dragan Damjanović came together with another two men: Žiko Crnogorac and Zoran Berović. They fired a burst of fire and started yelling; and as they did not manage to open the door, they broke the wood on the ground-floor window and climbed to the upper floor where the witness and his wife had been sleeping. They saw the witness first and asked where his wife was, and pulled her out of the closet where they found her hiding and first forced her to prepare them coffee twice which the accused would spill. They beat the witnesses while doing so. The witness states that he was beaten only by the accused Damjanović and Žika Crnogorac; along with other weapons, the accused beat him the most with a pistol until the witness, all in blood due to the blows, lost consciousness several times. The witness claims that a large towel that he was holding was covered in blood, and there was blood splattered on the walls. Shortly after, the accused addressed his wife by saying "And you Muslim woman are going to the room there with me. I'm going to rape you now, and then we can talk more". Then he took her into the room, while the witness stayed in the kitchen. Having returned from the room, the accused told the witness he would take his wife with him, and the witness begged him not to take her away or at least to take him as well. Then they pushed both of them away with their feet and the accused threatened them that they must not say a word to anyone about this, and that they would come in the morning for them. After they left, the witness escaped the house together with his wife, and his wife told him then that she was raped by Dragan Damjanović. She was badly shaken and wanted to commit suicide.

Consistently with the account of Taib Kodžaga, testimony was given by his wife Nafila, also an eyewitness and direct victim. The witness states that she was at home in Semizovac with her husband when the war broke out. She did not know the accused from before the war, up until one occasion when he came near their house, while she was sitting with her other neighbours. Then her female neighbours told her who he was; at the time he had a beard, a black scarf tied around his head, he had pistols, knives, and he was tall and dark. It was the same man she later saw harass and beat her husband on several occasions and then enter her home and abuse her and her husband. The witness identified the accused in the courtroom as the perpetrator and the person whom she was told was named Dragan Damjanović. The witness claims that after her husband returned from the camp in August 1992, the accused Damjanović kept coming to their house. Prior to the incriminating event, on one occasion in September, he came inside the house together with Žika Crnogorac and Zoran Berović. On that occasion, he beat up her husband, threatening them both that they must not leave the house. On another occasion when he came, he hit her husband so hard with a hammer that the blood was running from his forehead. Each night they slept mainly on the ground floor of the house, however on a September evening, they went to sleep on the upper floor, as they were feeling unsafe due to frequent visits by the accused. The first thing they heard that evening was a car running, by which the accused arrived together with Žika Crnogorac and Zoran Berović, and then they heard a single burst of fire being shot. Shortly after, they heard shouting, windows breaking and shooting as the perpetrators were prevented from coming inside through the entrance door. She and her husband were on the upper floor of the house that had a separate staircase. Since they did not find the couple on the ground floor, they climbed upstairs. Her husband met them, and they asked him where his wife was. She was hiding in the closet. At that point, her husband called her and she came out, after which they started beating them both, with rifles and pistols. Then they forced her to make them coffee two times, which they would then throw all over the walls. Then the accused sat down and started asking the witness where she was from and how old she was, after which he took her to another room. He put out a cigarette which he was smoking on the carpet, and then asked her "Muslim woman, are those Muslim woman's trousers" (translator's note: "Jesu li ti to bula dimije?" in BCS), and continued by saying: "Have you ever slept with a Cethnik", and when she said no, he responded "Well now you will", forcing her then to unfold the couch. After that, he went out from the room and hit her husband only to return again, and she begged him not to kill her husband, to which he said: "We won't, I'm a military leader (translator's note: vojvoda in BCS), we would only cut off his ears and you would eat them." Throughout that whole time, all three of them were

armed. In those moments, she very much feared for herself and her husband, as she assumed that they would kill them both eventually. Having returned to the room, he ordered her to take her clothes off and he raped her. Then, he ordered her to put her clothes on and give them all their money and gold, which she did by handing personally the money and gold that she had over to the accused. That evening, the witness testified that they wanted to take her away with them, but her husband begged them not to do it. The accused kicked him in the stomach threatening them that they must not say a word to anyone. Both of them were in an extremely poor physical condition at the time, and the witness states that she wanted to jump into the Bosna River, as she could not face any more the ordeals that they were going through in those days. They were exchanged soon after and crossed over to the territory under the control of the Army of BiH. The witness claims that the incident caused them permanent physical and mental consequences, and they did not return to their house in Semizovac to date.

Having heard the testimony of these witnesses, the Panel finds their statements to be credible and consistent. The manner by which the actions of the accused Dragan Damjanović were described, realistically reflect the incident that they endured in its entirety. During the testimony, the Panel was shown the impact of the offence on the witnesses who were visibly shaken while describing what they had been through that night, even today after 13 years. The Panel is convinced of the truthfulness and the accuracy of the testimony and concludes that it is proven beyond doubt that the accused is guilty of committing the act charged at the critical time in a manner as described under this Count of the Indictment. The witnesses also, beyond any doubt, identified the accused Damjanović as the perpetrator, both of them having identified him in the courtroom. Witness Taib knew him from before the war, and witness Nafila saw him for the first time prior to the critical night and learned of his identity at that point. She saw him repeatedly during the weeks that preceded his breaking into their home in September.

Dragan Damjanović has been charged with the Crimes against Humanity of torture and rape.

The relevant elements for the commission of the crime of torture have been elaborated above. Therefore, having in mind that the accused Damjanović was hitting witness Taib Kodžaga with his pistol to the point where he would lose consciousness, and that he was all covered in blood as were the walls of the room where the act was taking place, all this shows to the Panel the intensity of the inflicted bodily injury to the person under control of the accused and

persons with him. Therefore, it is beyond any doubt that the accused, while aware of his actions against Taib Kodžaga and wanting the act to be committed in the manner as described, committed this offence with direct intent, and is thus criminally responsible for the offence of Crimes against Humanity - torture, referred to in Article 172 (1) (f) of the CC of BiH in relation to Taib Kodžaga.

Likewise, in relation to Nafila Kodžaga, the Panel finds the accused criminally responsible for the criminal offence of Crimes against Humanity - rape, referred to in item (g) of Article 172 (1) of the CC of BiH, as in accordance with the definition of this offence, the relevant elements for the commission of the crime of rape, as charged here, under Article Article 172 (1) (g), in addition to those set out in Article 172 (1) of the CC of BiH, are as follows:

1. the person committed the sexual act of rape on another person,
2. by coercion accomplished by:
 - threat of immediate attack upon life or limb of:
 - a) the victim, or
 - b) a person close to the victim.

It is evident from the manner in which the accused committed this criminal offence at the critical time, which include forcible and noisy entry into the house of the witness, use of firearms to intimidate, beating of the victims after having found them on the second floor of the house, and cruel and harsh treatment of them while searching their house, all resulted in the witness's understandably being afraid for own life and the life of her partner. Prior to the act of rape, the accused threatened the witness that he was going to harm her husband in a cruel manner, which caused great fear in her that he could actually realise his threat, given that Damjanović and this other soldier were beating him during all that time. Therefore, it can be concluded that the accused was aware of his actions and desired the commission of the act, and in the manner as described, the accused committed this offence with direct intent. Therefore, in relation to Nafila Kodžaga, the Panel finds the accused criminally responsible for the criminal offence of Crimes against Humanity - rape, referred to in item (g) of Article 172 (1) of the CC of BiH.

The witnesses who spoke in regard to Count 6) of the Indictment are Eset Muračević, Ismet Isenaj, Bego Selimović, Izet (son of Huso) Šehić, Izet (son of Hasan) Šehić, Safet Borčak, Omer Čerimagić, Refik Bešlija, Firket Sirčo, Suad Masnopita, Safet Čelik, Mustafa Handžić, Zahid Šehić, Safet Mulavdić, Bego Mulavdić. The above witnesses were prisoners in the Planjina kuća in the

period from August 1992 to February 1993. They state that during this period, the accused would come to the Planjina kuća camp in Semizovac. The witnesses further stated that the accused was primarily taking detainees to forced labour at the confrontation lines in the area of the hill of Žuč and Ravno, and the forced labour was mainly digging the connecting trenches and trenches at the front lines, cutting and loading firewood, carrying weapons and ammunition for the army, loading gravel and other similar activities. Witnesses stated that not only would Dragan Damjanović take them to forced labour, but while doing that, he would also beat them, insult them and humiliate them by forcing them to sing Serb nationalist songs. Witnesses describe numerous instances of their maltreatment and sadistic abuse by the accused. In addition to the above, the witnesses confirmed in their accounts that he would take them on several occasions as "human shield" due to which some of them were killed, wounded or succumbed to wounds. Witnesses, who were also his direct victims were Eset Muračević, Bego Selimović, Izet (son of Huso) Šehić, Midhat Borčak, Safet Borčak, Omer Čerimagić, Esad Šehić, Fikret Sirčo, Bego Mulavdić, Fikret Mulavdić, Suad Masnopita, Izet (son of Hasan) Šehić, and detainee Zahid Baručija.

Witness Eset Muračević was first imprisoned in the camp Bunker, from where he was subsequently transferred to the Planjina kuća, and further explains that the house known as the "Planjina kuća" was a house of a certain Miralem Planjo, located in Svrake, Semizovac Municipality. It was a newly-built one and the conditions were to a degree better than those in the Bunker. When he was brought to the Planjina kuća, there were not too many other prisoners. However, a new group of people was brought to the Planjina kuća, from the settlements of Nahorevo, Sokolac, Ilijaš, Visoko, Bioča and other places around Sarajevo, so that there were around 200 men at one point in this facility. The prisoners would be taken to forced labour from there. The witness did not know the accused Damjanović from before the war, but he knows that he resided in the area of Vogošća Municipality and that he was in the haulage business. The accused had a notorious reputation during the stay of the witness in the Bunker, and very often his name was mentioned in a negative context by prisoners who would return from forced labour. The prisoners would say that whoever was taken away by Dragan Damjanović, would not come back alive. In general, the prisoners would be often taken to forced labour. There were instances when not all of them would return. The witness recalls one occasion when around 20 men were taken to set a rout, but five from the group did not return, including the two of the Pandžićs and the Muharemovićs from the village of Nahorevo, and Nasuf Šabanović from Vogošća. Those who did return said that these five were singled out from the

group by the accused Damjanović and taken to the front lines to perform some kind of a task, however they learned later on from the prison guards that they were liquidated by the accused.

The witness identified the accused in the courtroom, after having previously described him as a dark, tall and large-built man, with beard, who mainly wore parts of the JNA uniform, and sometimes a camouflage uniform and a hat with a cockade. He usually had a rifle on him and a big knife. The accused did not abuse the witness while he was in the Bunker. However, his maltreatment by the accused started after witness Muračević had been transferred to the facility Planjina kuća, where he stayed up until 15 December 1992 when he was taken to the hill of Žuč as human shield and succeeded in escaping to the side under control of the Army of BiH. The first time that the witness saw the accused was when the accused came to the Planjina kuća with a group of soldiers and took out the witness and Professor Baručija. As stated by the witness, on the occasion the accused was "play acting" as some kind of investigator, and he forced one of the prisoners, Pinjo from Nahorevo who was mentally unsound to "take care" of them with a baton he gave him when they would not answer the questions that the accused asked them. On this occasion, he was leaning a "kubura" (translator's note: old-fashioned pistol) against his forehead while threatening him and questioning him about his party membership and similar matters. The witness adds that he never got an official document in writing as to why was he imprisoned.

The witness testified that he was taken to forced labour on several instances from this facility, mainly to Rajlovac, the hills of Žuč and Ravne. The accused Damjanović would come to the Planjina kuća, and according to the witness, he would bring brandy with him and offer it to prisoners, whom he would then beat if they drank it just as he would if they refused to drink. From there, the prisoners were also taken to human shield. A number of them never returned again, while some returned badly wounded. The detainees were first used as human shield to recover the body of Boro Radić, Special Unit Commander who was killed sometimes in June. The prisoners were tied together with wire and forced between the lines to recover the body. At that time, the witness was still in the Bunker camp. However, a rather large-scale campaign of taking the prisoners to human shield started sometime in September 1992, on the 15th or thereabout, until 23rd. The witness was not taken away with that group.

According to witness Muračević, Zahid Baručija, a teacher in the Primary School, was together with him. Both of them were transferred from the Bunker Camp to the Planjina kuća on the same day. The witness states that Professor

Baručija was exposed to various types of torture by guards who were there and who would beat him and bring others to beat him as well. The accused Damjanović took the lead in this, as Baručija himself told the witness.

Witness Ahmet Hido was also initially detained in the camp Bunker, and then transferred to the Planjina kuća camp. It was a bit bigger house, they had military bunk beds placed in the basements. Inhabitants of Liješevo, Bioča, Vogošća, Nahorevo, Tihovići, Hadžići, Ahatovići and other settlements were there. From there, men used to be taken as human shield or for forced labour. The witness states that he did not see the accused in the Planjina kuća, however he did see him in Semizovac. He claims that other prisoners complained about the accused and his cruel treatment and feared him. The witness knew the accused Damjanović from before the war as he used to work in the TAS. When he saw him at that particular time he had a "Šajkača" on his head, a beard, he was dark, tall, skinnier and had more hair than he has now. He would carry bombs with him and had some kind of hand-made gun "kubura" (translator's note: old-fashioned gun). The witness recalls that Eset Muračević and Zahid Baručija were particularly subjected to ill-treatment, which they suffered every day "like regular rations". Whoever would come to the house would beat them, but they would particularly beat Zahid Baručija.

Witness Midhat Borčak did not know Dragan Damjanović from before the war, but he did recognise him in the courtroom as the person who took him and used him as a human shield. The witness states that he used to be taken from the Planjina kuća to perform forced labour and as a human shield, but it was exclusively Damjanović who would take him to be used as a human shield. He took him for forced labour only on one occasion, when the accused Damjanović took him to Žuč and ordered him to dig a trench within half an hour. When the witness told him he could not do that, the accused kicked him in the head. Also, witness Borčak stated that Damjanović had taken him to human shield three or four times and he personally used him on two occasions as a human shield by placing him in front of himself while they were at the combat line. It was the usual practice of the accused when taking prisoners to act as human shields to say that he needed 20 to 30 persons, and then take them in a military truck towards the lines where he would hand over two or three men to dig trenches to each of the soldiers; while using them as human shield soldiers on the lines would place them in front of themselves while heading towards the enemy lines. The captives would go first, and they were not allowed to bend down, but only walk forward. Serbs would follow hiding behind them, while Damjanović was among those Serb soldiers. The witness stated that there would be many killed and wounded, and the Serb soldiers

would "finish them off" saying: "Why should he suffer, it is better we kill him".

Witness Safet Borčak also gave evidence in regard to these circumstances. He was brought to the Planjina kuća in September 1992. He did not know the accused from before that, so the first time that he saw him was when he came to the Planjina kuća for a first line-up. On that occasion he saw him when he punched Zahid Baručija. The witness states that the accused Damjanović punched him once and did not beat him after that. The witness knows another Dragan Damjanović who was a guard in the Planjina kuća. However, he explains that it is not that Damjanović in this case, but in fact the accused himself whom he identifies in the courtroom.

Witness Izet (son of Huso) Šehić, also a prisoner in the Planjina kuća, states that the accused would come regularly to the Planjina kuća and take them to labour. The witness also states that the accused Damjanović whom he recognised in the courtroom is the person who was taking them away. The witness claims that the first time when he was taken to human shield was by the accused to the settlement of Ugorsko when a Serb Army tank wandered into the territory of the Army of BiH. On that occasion, the accused brought seven prisoners to the tank, after which the Army of BiH opened fire at them. The witness states that on other days the accused would take them to forced labour while beating and insulting them at the same time. The first time that he was taken for forced labour, he was in a group together with Taib Đogo, Bego Selimović and others. On one occasion, while they were at labour above Vogošća, over dinner, the accused asked them if they had dinner. When one of the witnesses answered that he had none, the accused addressed him by saying "eat Balija and hurry", whereupon he took a baton similar to the police one and hit his head.

Witness Bego Selimović, also a former prisoner of the Planjina kuća camp, states that he did not know the accused Damjanović until one time when Damjanović came to the hill of Ravne, while the witness was digging a trench together with others. On that occasion, they sat down for lunch and the accused came by and started cursing "their Balija mother because they were sitting and resting". Dragan Damjanović then took a piece of wood and hit Midhat Borčak three or four times. The witness was told that this person was indeed Dragan Damjanović by other detainees who were at labour with him, specifically by: Zahid Šehić, Ismet Šehić and Šerif Šehić. This witness states that he was beaten by the accused on four occasions; he was kicked and punched, and hit with a rifle and with wood. The witness also states that the

accused would order them to sing Serb nationalist songs, and he refused on one occasion, and according to him, after that, members of the special forces who were there hit him with a piece of wood on the head, due to which he lost consciousness. The witness emphasized that the accused particularly engaged in sadistic abuse and maltreatment of Professor Zahid Baručija, because, in his words, he was a teacher to the accused and he would give him poor grades and note these down in green pen. According to the witnesses, maltreatment of Baručija occurred almost daily, and included beatings, and on one occasion torture and at the end even murder of the Professor Baručija, for which the witness attributes sole responsibility to the accused.

Witness Izet (son of Hasan) Šehić, also detained in the Planjina kuća in the critical period, testified that the first time that he met the accused was when he was at labour distributing food along the front lines. He met the accused on that day and the accused offered him money saying "Have this money so that you'd return it to me the first time we meet next". Then he called him and said "come back here", "stand still", "where's the money?", and according to the witness, while he was cursing his "Balijska mother" on the occasion, he said "so you would take that money to Alija", and slapped him in the face. The witness identified the accused in the courtroom.

Witness Esad Šehić, yet another prisoner from the Planjina kuća, testified that he had known the accused from before the war. On one occasion in Vogošća, the accused selected a few prisoners and took them to forced labour. On that occasion they were loading gravel into buckets that weighed around 20 kilos, and the accused forced them to carry these while running and pour the gravel into connecting trenches. The witness says that everyone feared Damjanović so much that they did not even dare to look at him.

Witness Omer Ćerimagić was first detained in the camp Bunker, and transferred after two months to the Planjina kuća. At the time he was transferred he found there Zahid Baručija, Eset Muračević, Esad Skenderagić, Ahmed Hido, Ekrem Pikić and others. The witness testified that the living conditions in that house were extremely poor. He did not know the accused Damjanović, but from the stories of other prisoners he learned that Damjanović was "the most dangerous and the worst one" as he stated. During his testimony, he identified the accused in the courtroom. The first time he saw the accused, he recalls him as dark and with a beard, wearing a cap with a cockade and he had a "kubura" (translator's note: old-fashioned gun). The second time he saw him, the witness and others were on a truck, being driven towards the hill of Vranjak, while Dragan Damjanović was driving behind it in a black

"Golf" vehicle with a black skull flag. On one occasion in December during the fighting at the Golo brdo site at the hill of Žuč, the witness stated that the accused brought him to a group of soldiers and said "here, have this Balija, just kill him if he doesn't work". The witness also states that he saw the accused punch Edhem Muharemović who fell down into the mud as a result of the blow. Muharemović was 63 at the time.

Witness Taib Đogo, also a detainee from the Planjina kuća, testified that the accused Damjanović was the one who would beat him the most. He did not know the accused before the war, but he identified him in the courtroom. The witness describes him at the time as a tall dark man, always armed with different kinds of weapons and batons with which he would beat the prisoners. The witness states that, along with others, he was taken for forced labour by the accused on 7 or 8 occasions during which times the accused would beat him and the others severely. The labour included carrying wood along the frontlines, chopping wood, carrying planks, and digging trenches. The witness stated that on one occasion, under the hill of Paljevo, the accused had made him chop a bag of wood and carry it, on which occasion he abused him to a great extent. According to the witness, the accused also took them as a human shield. It was in early 1993 that he took them away from the house of Rajko Bunjevac to the hill of Žuč, ordering him and Bego Selimović to go and do reconnaissance towards the trenches and to signal with a stick if there was any fighting going on somewhere.

Witness Zahid Šehić was a prisoner detained in the Planjina kuća during the critical period. He knew the accused from before the war and describes him as a tall dark man, with a beard. The witness testified that he was taken for forced labour by the accused, who also was assigning tasks to be done. Sometimes in December at the hill of Žuč, he took them to dig trenches and connecting trenches. The witness states that the accused at one point hit him with a rifle while he was carrying food. One of the Serb soldiers gave five loafs of bread to the witness while he was digging trenches and told him to distribute it. When, while carrying bread loafs, he arrived to the trench in which Damjanović was as well, Enver Durmo addressed him asking for some tea. Damjanović then turned and said: "What tea, motherfucker, who gave you that?" whereupon he hit witness Šehić on his left shoulder with a rifle, causing him to fall down.

Witness Bego Mulavdić, also a detainee in the Planjina kuća since November 1992, testified that the accused Damjanović took them to perform forced labour, and that he ill-treated them while at labour. They performed various

heavy physical tasks, while those prisoners who did not have the physical strength for heavy labour would be beaten by Dragan and forced to work. The witness stated that the accused while taking them for labour would kick them, punch them and similarly abuse them almost daily. The tasks included carrying thick boards and cutting wood. According to the witness, on one occasion he was taken by the accused to cut the wood with a chainsaw. However, because the chainsaw was broken, Damjanović took him in his vehicle in the trunk to a repairman and said "We will go to the repairman now to see what you did to it, I'll cut your throat with it". The witness also described an incident when the accused beat him up. He states that he was carrying water for soldiers in rucksacks on that day near the Bunjevac house. However, because there was fighting going on he found shelter. When Damjanović saw him, he told him "Come on up", and started beating him and when he fell down he kicked him while he was lying on the road. He first hit him with rifle, and then kicked him, all over his body.

Witness Ismet Isenaj testified that he did not know the accused from before the war, and when he saw him the first time, he remembers him as a tall, dark, bearded man with deep voice. He was armed with a pistol and an automatic rifle, and he occasionally had a sawn-off gun. The witness would often go in a group with others to forced labour with Damjanović. The witness stated that Damjanović would abuse, beat them and engage in sadistic abuse of them while performing forced labour. On one occasion, according to the witness, Damjanović came to Žuč and told him "Come here Albanian to hear from me how the cake is made", and then beat him with a 150 cm long stick, and on another occasion he beat him with a police baton. Also, the witness stated that he beat them if they could not carry a heavier load. The witness stated that Damjanović referred to all of them as "Balijs". The witness added that Damjanović brought the detainees to the front lines and handed them over to soldiers to use them as human shield. Specifically on 23 September 1992, the accused Damjanović brought around 50 men to Žuč and handed them over to Serb soldiers who used them as human shield. Each soldier would take two prisoners, give them sticks and order them to go 10 meters in front of the soldiers. Their task was to go towards the enemy lines and if they were to see an enemy soldier they would have to throw away the stick. On that day, there were many prisoners injured, and two prisoners were killed, namely Rizvo Hamid and Nisvet Selimović. Furthermore, the witness stated that the accused Damjanović personally brought other Serb soldiers into the Planjina kuća and these soldiers would also physically abuse the prisoners.

Witness Fikret Sirčo stated that he did not know the accused from before the war, but he met him in December at which time Damjanović came to the Planjina kuća and passed by the witness who had been wounded. After recovery, the witness was taken by Damjanović to perform forced labour at Žuč, digging trenches. The witness states that Damjanović abused them, by kicking and hitting them while they tried to perform their tasks. During the line-up, the accused approached the witness and hit him with the pistol grip for no reason at all. The witness stated that when he began to bleed Damjanović ordered him to lie on the ground so that the blood would stop flowing. Having lain on the ground, Damjanović came up to him and said: "You mother fucker, you can't stop the blood like that", and pressed his feet against the wound and turned the injured part towards the ground and into mud. At that occasion, he ordered the others to sing nationalists songs "Come back Vojvoda" and the like. According to the witness, Damjanović kicked him then and ordered him to go back to the line. The witness also corroborates the statement of witness Bego Mulavdić who testified that the accused had beaten him up while he was cutting wood with a chainsaw, only because the chainsaw broke down. According to him, after having learned that the chainsaw was broken, the accused came up to Bego and said to him "You Balija mother fucker, what is it, did you break that?", and started beating him, pulled him down to the ground and kicked him. This event occurred between January 5th and 21st 1993.

Witness Mustafa Handžić did not know the accused from before the war, but he recognised him in the courtroom. Damjanović would often drive them to forced labour, specifically the witness states that he went with him on 7 or 8 instances. The labour consisted of carrying thick boards with which they covered the trenches. The boards were four meters long and 8 centimetres thick, weighing up to 200 kg. Two or three men would carry these for up to a kilometre in distance. Among other, on one specific day, 8 November 1992, according to the witness, Damjanović took a group of 30 or 40 prisoners. On that day, the witness lost his brother at labour. In general, while at labour, the witness claims that Damjanović would beat, insult and intimidate them. He particularly abused Professor Zahid Baručija, and the witness claims that Damjanović personally took away Professor Baručija who never returned since. He later heard that Damjanović had killed Baručija, but the witness did not see that.

Witness Suad Masnopita did not know the accused from before the war. The first time he met him was when a group of prisoners was sent to bring water from the camp to the bridge. Ferid, one of detainees, was carrying a bucket

and he tried to enter the army kitchen. He was stopped at the stairs by Damjanović, a dark bearded man, in uniform, armed with an automatic rifle, a pistol and a short, sawn-off rifle. He had a "šajkača" on his head with a cockade on it. Having intercepted him, the witness alleges that Damjanović started beating Ferid, who fell on the ground. At that point the witness did not know him, but he had heard from other prisoners that Damjanović would beat prisoners wherever he would meet one. The witness also describes that on one occasion he was in a group of prisoners returning from the front lines where they were digging trenches, and passed through Semizovac. Damjanović stopped them there together with another person on the opposite side of the column and was beating them with a baton. The witness states that he attempted to escape, but the other person slapped him, and Damjanović then hit his back with the baton, and then started running after them and was shooting while yelling and cursing. The witness states that he would often refer to them as "Turks" while cursing. On another instance also, the witness was at labour in the village of Krioblaci working near the kitchen. Damjanović came carrying a tespih

(transl. note: prayer beads) and saying: "Merhaba (hello) Turks, would you like some coffee now?", and went towards them while cursing their mothers, but he was stopped by women who ran out from the kitchen. The witness also states that Damjanović beat Mustafa Fazlić, first demanding his wallet that he then threw away, and then asked him if he had any children. When Fazlić said that he did have children, he told him: "Those children of yours will never see you again, nor you'll see them." Then he slapped him and kicked him.

Witness Hašim Džanko states that he did not know the accused from before the war. The witness saw him for the first time in the Planjina kuća when he came and forced the prisoners outside. The witness states that Damjanović kicked him on that occasion, and when the witness asked him why he was kicking him, Damjanović responded "Because you are a Balija". Witness Džanko also confirms the allegations that Damjanović would often come to the Planjina kuća to take prisoners for forced labour. At such times, the prisoners lined up and Damjanović selected those who were to go with him that day. In addition, the witness testified on the conduct of the accused during his stay at the house of Rajko Bunjevac. In the morning of 27 January 1993, Damjanović came early in the morning and forced them all outside saying: "Get out, you Balija will remember when the Saint Savo's day is!" He forced them to an area of Jezero and lined them up there. There, the witness was approached by a soldier who offered him a cigarette. At that point, Damjanović also came up to the witness, pulled off the hat that the witness was wearing and said, while cursing his mother, "Look at him, the spitting image of Alija Izetbegović!",

and then hit him in the head with a piece of wood, and also hit his arm when he tried to defend himself. Then, Damjanović asked him "Where's your Muslim woman?", the witness responded that she was at home, to which he said: "I'll cut her throat tonight!" The witness says that he was terrified. On that day, Damjanović took them to act as human shields, during which time he was behind them, carrying a hand-held rocket launcher Zolja.

Witness Enver Durmo testified that he was taken for forced labour almost daily while he was at the Planjina kuća. He did not know the accused from before the war, but he met him on one occasion while returning from forced labour, and the accused was standing at the Ilijaš- Srednje junction. He was a tall dark man, had a sawn-off gun and a "STOP" traffic paddle. The column of returning prisoners was forced to run by Damjanović and he tried to beat them all with a baton, and he struck the witness in the back. On another occasion, the witness stated that he was in a group which had been taken to Zuč for forced labour, it was wintertime and Damjanović forced them to lie on the ground. They lay there for half an hour on the frozen ground, after which he lined them up. This witness also heard from other prisoners that Damjanović took away prisoner Zahid Baručija and killed him.

Witness Safet Čelik states that he did not know the accused from before the war. The witness states that he was first staying in the facility of so-called "Nakina garaža" (translator's note: Naka's garage), from where he was transferred to the Planjina kuća in Svrake, Semizovac Municipality. The witness states that one morning the warden Brano Vlačo came inside the Naka's garage and said: "I have good news for you, we will take you back to Svrake, to your settlement where you'll be staying down there, and the person in charge of you will be Captain Dragan Damjanović. He'll be taking you to labour. For whatever needed, you can talk to him, and in case you make any trouble, then everything that is worse for you would take place". The first day that they arrived to the Planjina kuća, as the witness stated, Dragan Damjanović took 30 of them to forced labour. The witness stated that, while performing forced labour, groups of "arkanovci" and "šešeljevci" rotated (abbreviated name for a member of paramilitary formations from Serbia), and, with the permission of Damjanović, those groups abused and beat the prisoners. The witness stated that he was personally hit by one of those, whereupon he fainted. In addition, the witness stated that on one night, having worked all day before that, Damjanović had addressed them by saying: "Enough for today, go and wash yourselves, you Balijas, just what you look like, you can't go on my truck like that". He then made them wash themselves with dirty water and then said: "Get down and pray a bit, Balijas" and then

ordered them to get down on their elbows and knees. They subsequently went back on board the truck but they needed to pass the gauntlet consisting of ten soldiers on each side who were hitting them. Damjanović also took position in the gauntlet, punching and kicking them, and hitting them with a rifle. Having arrived back in Planjo's house, they again had to pass a gauntlet consisting of soldiers where they were beaten again. The witness stated that on that night a group showed up and started shooting on the building, which was followed by Damjanović entering with several of them and reading a list of persons. Whoever's name he would read out would need to get out in the corridor with their hands above their heads. After that, blows and screams were heard. The same occurred on the following day; approximately 27 people in total were taken then and never returned.

According to the legal definition, this form of the criminal offence of Crimes against Humanity exists in case that there is intentional and extreme depriving any identifiable group or collectivity of fundamental rights contrary to the international law, on the grounds of belonging to a group or community, or on political, racial, national, ethnic, cultural, religious, sexual or any other grounds recognised as impermissible under international law, in conjunction with any offence listed under this paragraph of the Article, or any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina.

When analyzing the ICTY case law that addresses this issue, several elements of this form of the criminal offence of Crimes against Humanity are evident. According to the ICTY case law, a number of criteria were determined in the analysis of the offence. Some examples are consistent with the definition of persecution as set forth in the CPC BiH where they are elaborated in detail, in the Naletilić and Martinović Judgement, Trial

Chamber of 31 March 2003, para. 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.*

Accordingly, pursuant to the foregoing, one basic element which is to be established in the case at hand is the existence of a discriminatory approach on the part of the accused in relation to the prisoners of the Planjina kuća. It is evident from the accounts of all witnesses who were in the territory of Vogošća Municipality in the course of the attack by the Serb population that the Bosniak ethnic group constituted a minority in the area. The overall events in early 1992, including shelling of mainly Bosniak settlements, capturing of Bosniaks, their deportation to camps, and their treatment in camps and detention under poor living condition, all support the fact that this ethnic group was endangered. In addition, it is evident from the statements of the witnesses that the accused systematically abused prisoners in the Planjina kuća camp while they were performing forced labour. It is proven beyond any doubt that the accused insulted the prisoners, calling them "Balijs", and in particular abused witnesses Eset Muračević, Bego Mulavdić, Safet Čelik and Enver Durmo who were direct victims of the acts carried out by the accused. It is also proven that the accused took the prisoners to forced labour based on the direct testimony of Mustafa Handžić, Izet Šehić (son of Huso), Izet Šehić (son of Hasan), Esad Šehić, Omer Čerimagić, Taib Đogo, Zahid Šehić, Bego Mulavdić, Enver Durmo and Safet Čelik, who were all taken by the accused to perform forced labour, which included various types of physical work, performed under severe conditions, and very often along the frontlines. The accused took the prisoners to the so-called "human shield", and he either personally used them in combat or handed them over to other soldiers for their use. Finally, the accused himself beat witnesses Midhat Borčak, Safet Borčak, Izet Šehić (son of Huso), Bego Selimović, Izet Šehić (son of Hasan), Ismet Isenaj, Taib Đogo, Zahid Šehić, Bego Mulavdić, Fikret Sirčo, Suad Masnopita and Hašim Džanko in various ways, as described in the testimony.

It is also a fact that the prisoners were Bosniaks, and they exclusively were taken to perform forced labour and were exposed to inhumane and degrading treatment. In other words, these persons were not of Serb ethnicity. The Serbs were obviously the majority at that time and that place and were exercising control over these prisoners. The accounts of these witnesses, who are victims and eye-witnesses to the acts of the accused, are deemed by the Panel to be credible and consistent. Therefore, the Panel is convinced that the acts of the accused, consisting of taking Bosniak prisoners for forced labour, beating them, insulting them, and degrading them, were committed by the accused himself, were committed only against the detained Bosniak men. It is clear to the Panel that the accused did commit discriminatory acts.

The second condition that needs to be met is that the discriminatory act or omission resulted in deprivation or violation of a fundamental right as defined by international customary or treaty law. Dragan Damjanović's acts as established by the evidence in this Count infringed upon the most basic and universally recognised human rights: the right to life, the right to be free from arbitrary detention, the right not to be enslaved, and the right to be free from torture. These rights are guaranteed by all international human rights treaties¹, beginning with the Universal Declaration of Human Rights, and they are recognised by customary international law. The rights against torture and enslavement have gained the status of jus cogens, that is, peremptory norms of customary international law.

In addition, Article 3 (1) in conjunction with Article 4 IV of the Geneva Convention relative to the Protection of Civilian Persons in Time of War prescribes:

"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, colour, 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;

(c) outrages upon personal dignity, in particular humiliating and degrading treatment;"

As stated, acts of violence against persons, including cruel treatment and torture, enslavement through forced labour, subjection to life threatening situations as human shield, and outrages upon personal dignity in particular humiliating and degrading treatment, are strictly prohibited by international law. Acts of this kind by the accused were frequent. The acts on his part directly contravene the cited prohibitions deriving from the customary international law, international human rights treaties and the Geneva

¹ Universal Declaration, Articles 3, 4, 5 and 9; ICCPR, Articles 6,7 ,8 and 9; ECHR Articles 2,3,4 and 5, African Charter on Human and Peoples Rights, Articles 4, 5 and 6; American Convention on Human Rights, Articles 4, 5, 6 and 7.

Conventions. These acts are also individually prescribed by Article 172 (1) and other provisions of the Criminal Code of BiH.

Furthermore, that the accused committed the criminal offence with the intent to discriminate is evident from the fact that the accused knew that the detained men were Bosniak civilians, and as such, he insulted and degraded them by calling them "Balijs" and cursing their "Balijs" mother. That the accused himself had a discriminatory intent against specifically these detainees is also corroborated by his actual manner of addressing them by calling them derogatory names such as "Balijs", "Bula" (translator's note: Muslim woman), and insulting them by cursing their "Balijs mother" and using similar terms. Not a single witness stated that the accused addressed any of them by name and surname, but instead he addressed all of them as members of an ethnic group of Muslim confession. Therefore, given such conduct on the part of the accused it is clear that the prisoners were evidently an inferior ethnic group to him, and he treated them accordingly. Therefore, the discriminatory intent on the part of the accused in relation to the prisoners against whom he perpetrated these acts, is proven.

The Panel notes that witnesses have difficulties in their accounts to recall exact dates and some other minor details regarding being taken to perform forced labour and to serve as human shield. However, because these acts took place over a period of several months, during which time the witnesses had been living in constant fear of death and their primary interest was to survive, it is not realistic to expect that they could recall all details, nor is this decisive in this specific case, given that all witnesses who took the stand in regard to these events are eyewitnesses and victims, and their accounts are consistent. The panel concludes that the accused committed all individual acts of abuse, belittling, beating, taking for forced labour, taking into human shield with a premeditated intent, while being aware of acts he was committing and while desiring the effects of such acts.

Finally, it has been already reasoned that the general elements of the offence of Crimes against Humanity pertaining to the existence of a widespread or systematic attack, of which the acts of the accused are a part have been met, hence the Panel will not restate the reasoning.

The Panel qualified all these acts as the criminal offence of Crimes against Humanity - persecution, referred to in Article 172 (1) (h) of the CC of BiH. The ICTY jurisprudence (Kupreškić et al. - Trial Chamber, Judgement dated 14 January 2000, p.622), among others, suggests that acts of persecution must

be evaluated not in isolation but in context, by looking at their cumulative effect. Also, in the ICTY case - Vasiljević (Trial Chamber - Judgement dated 29 November 2002, p. 246) it reads: "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".

Therefore, all stated acts committed by the accused had an aim of grave infringement, contrary to the international law, of fundamental rights such as right to liberty and safety, and the right not to be subjected to torture or cruel, or degrading treatment only based on ethnicity, which directly contravenes the above cited provision under Article (3) (1) of the Fourth Geneva Convention, in relation to any criminal offence under Article 172 (1) of the CC BiH.

In this Count of the Indictment, the Prosecutor's Office charged the accused with the criminal offence of Crimes against Humanity in relation with the acts of persecution and torture; however, having in mind the above-mentioned viewpoint of the ICTY jurisprudence and the overall context in which the acts were committed, the Panel believes that the qualification of persecution includes all the acts covered by Count 6 of the Indictment which the Panel found that he committed, specifically the acts of insulting, abusing, taking to forced labour, taking to human shield and the acts of beating. The Panel also finds that the accused committed all the acts constituting the elements of this offence with direct intent, knowing what he was doing and wanting to commit those acts, and therefore, it is beyond doubt that there existed clear intent of the accused to commit this offence through the acts of the commission as described.

Also under this Count, the accused is charged with depriving of life a certain Hošić aka "Hoša" from Bioča, at Golo brdo site in Vogošća Municipality, and charged with especially beating Eset Muračević. However, in regard to these parts of Count 6) of the Indictment, based on the tendered evidence, the Panel could not find with certainty that the accused was responsible for these two acts as charged. The reason for the Panel's decision pertaining to the murder of a person known as Hoša is the fact that the entire grounds for this part of the Indictment is based on the statement of witness Abid Pandžić, whose statement, in the decisive part, is contradictory and unreliable, given that the witness himself gave contradictory observations. First, he says that the accused walked towards Hošić carrying a knife and that after that he only saw the traces of blood. Contrary to that, this witness also says that he saw the

accused firing from a pistol at Hošić. Such contradictions affect the quality of the witness statement and his credibility, because the Panel cannot reliably find what actually happened.

Furthermore, the Indictment charges the accused with beating and abusing Eset Muračević. However, the Panel could not establish in a reliable manner that the accused did beat Eset Muračević as described in the Indictment. Not even Muračević himself charges the accused of the act, instead he clearly states that he was abused by the accused and exposed to certain inhumane treatment, but the witness does not mention any beatings. Therefore, given that the evidence does not confirm in a reliable manner that the accused did commit the two offences he is charged with in this section of the Indictment, the Panel adapted the statement of facts of the Indictment to the evidence presented and decided as in the operative part.

Count 7) of the Indictment refers to the murder of Professor Zahid Baručija. Having heard the statements of witnesses Bego Selimović, Taib Đogo, Hurem Murtić, Hašim Džanko, Zahid Šehić and Refik Bešlija, the Panel concluded that the accused is criminally responsible for the killing of this person. While staying together with Professor Baručija in the Planjina kuća, the witnesses were present while the accused on numerous occasions inhumanely treated Zahid Baručija, due to which Baručija was utterly incapacitated, and, mindful of his physical state, the accused forced him to perform physical labour. In this regard, the witnesses stated the following.

In his previously mentioned statement, witness Bego Selimović gives his recollection of the stay in the Planjina kuća and at forced labour for which they were taken by Damjanović. According to this witness, after being transferred from the school in Podlugovi where he was initially detained to the Planjina kuća in Svake, Vogošća Municipality, there he found Ahmet Hido, Zahid Baručija, Eset Muračević and others. He saw the accused there for the first time, and he found out his name from other prisoners. The witness recalls that out of all prisoners, the accused particularly abused Zahid Baručija, Primary School teacher. The witness claims that Damjanović was saying that it was because Baručija was his teacher and that he would give him poor grades and enter these in green pen.

On one occasion in January 1993, the witness states that Damjanović came and took all those who were either wounded or were on the sick list to load the firewood onto a truck from Paljevo and transport it to the front lines. On that occasion, Taib Đogo, Zahid Baručija and others set out with him. Before they

got under way, the accused punched Baručija in the stomach and neck, due to which Baručija fell down and lost consciousness. Then they loaded him onto the truck and went on their way. When they arrived at the site, the witness states that a few of the prisoners took Baručija off the truck, because he could not stand on his feet due to his poor physical condition. After they carried him off the truck, they lay him down on the ground where there was mud and a bit of snow melting, as the day was sunny. Then, the accused came up to him, pulled a bayonet and engraved a cross on his forehead while saying "baja lazi, baja lazi" (translator's note: literally translated as "the bug crawls", used in nursery rhymes in Bosnian, a possible equivalent would be "itsy bitsy spider climbing up the spout"). The witness saw blood running from Baručija's forehead, saw that he was all muddy and wet, and he was left on the ground all day. After they finished with the firewood, they put Baručija back on the truck, and they went to the house of Rajko Bunjevac where they also took Baručija. The witness states that Baručija regained consciousness that morning. Soon after some three or four days of stay in the house where the witness was together with others, the accused Damjanović came with a certain Boriša and asked a certain Bajro Kundak: "Did the men eat?", and since they had had no dinner, the accused said: "Go and get dinner so the men would eat, but Zahid doesn't need to eat as he did not do any work." Then, the accused ordered the witness "Go and bring him." After the witness and Bajro Kundak brought Baručija from the house, the accused said: "You go and have dinner, Baručija will go with us to load wood for us". They took him away after that. When the witness went to get him that evening, Baručija told him: "He'll kill me." Zahid Baručija did not return after that. According to the witness, it was around 22.00 or 23.00 hours when they took Baručija away. The following day, the accused came for them and took him to Perivoje, along with Taib Đogo and others. When they returned from labour, the witness saw the body of Zahid Baručija, with a shirt lifted on top of his head and tied with aluminium wire and traces of blood in the region of his forehead. As the shirt was lifted, the witness saw black marks on his back that appeared to have come from beating. He saw that the body was approximately 50 meters from the house of Rajko Bunjevac, and they buried him not too far away from that place.

Prosecution witness Taib Đogo confirms the statement of witness Selimović that the accused would beat Zahid Baručija the most. The witness confirms that he saw that Baručija's forehead was wrapped up and that Baručija unwrapped the bandage from the wound and showed them the engraved cross on his forehead, saying that Damjanović did that to him. The account of this witness is consistent with the account of witness Selimović who reported finding the body and burying Professor Baručija. Witness Đogo also confirms

that Professor Baručija was taken away by Damjanović one night, after which Baručija never returned, he also confirms the statement of witness Selimović about when they found the body of Zahid Baručija.)

Witness Zahid Šehić testified that the last time that he saw Professor Baručija was in January 1993, when he was taken away from the Planjina kuća with six other men. Prior to being taken away, the witness states that Dragan Damjanović came to the Planjina kuća and said to Baručija „Get up, this is your last day“. After that, the Professor came outside and he heard that he fell shortly afterwards. The group of the six taken men returned to the Planjina kuća, but the Professor did not return.

Witness Hašim Džanko in a similar manner described the treatment of the accused Zahid Baručija. On one occasion, the witness was in a group when Damjanović took them for labour. That day, even Zahid Baručija who was in extremely poor physical condition and incapacitated, was ordered to go with the group to Paljevo to chop wood. The witness stated that they literally had to lift Baručija up on the truck. Having arrived to Paljevo, they lifted him off the truck, and Damjanović ordered them to leave Baručija on the snow. They left him lying there and they went to chop the wood. Having finished with the wood, they again lifted Baručija onto the truck and they all went to the house of Rajko Bunjevac. They spent that evening in the house and Baručija was with them. The following day, the group went to labour, and the witness states that Zahid Baručija was no longer there after they returned. Upon their return, they were ordered to bury the body of one Mehmed Popović and another younger man, according to the witness. Once they started digging, a soldier came up to them and said: "Dig wider for the Professor also". The witness claims that they referred to Baručija as "Professor".

Witness Hurem Murtić corroborates the account of witness Bego Selimović according to whom on one occasion when they went to get wood towards Žuč, they also took Professor Baručija with them, and because of his poor physical condition due to which he was unable to walk, they had to carry him on and off the truck. He also confirms that the accused ill-treated Baručija by kicking him while he was lying on snow and while they were collecting wood. The witness states that they stayed around one hour and a half there, after which they carried Baručija and placed him onto the truck. According to the witness, the following day, all prisoners were taken from the house except for Zahid Baručija to whom the accused said: "You Baručija will stay here to carry 50 bags of wood tonight". After a couple of days, while he was at labour, one of the soldiers addressed him and said: "Go get stretchers and bring Baručija".

The witness testifies that he went to a place as the soldier explained and there he found the body of Professor Baručija, on his back. The place was 50 to 60 meters away from the house of Rajko Bunjevac.

Witness Refik Bešlija states that he did not know the accused from before the war, and the first time he saw him was when 160 of the prisoners were lined up in front of the Planjina kuća. Zahid Baručija was also standing in the line with them, and Damjanović came up to him and first punched him, and then kicked him, causing Baručija to fall to the ground.

In addition to this testimony, the Panel analysed the report on exchange issued by the State Commission for the Exchange of Prisoners of War dated 23 February 1993. The report says that Baručija's body was exchanged and it was obvious that it was a violent death, as a penetrating wound was noted at his left temple.

The accused systematically and continuously abused Professor Baručija, as was confirmed by a number of witnesses. Damjanović demonstrated exceptionally evil inclinations against Professor Baručija. In this regard, witness Bego Selimović said that Professor Baručija was his teacher whom he beat because while he was his student Professor Baručija used to give him failing grades writing them with a green pencil. Witness Selimović in a precise and detailed manner described how the accused forced Baručija to go to perform labour although he was extremely weak. As he was unable to do it, witness Selimović testifies that other prisoners had to carry him on and off the truck due to his being weak, while Damjanović acted in an utterly inhumane manner by leaving him lying in mud and snow, completely unable to move. In addition, while Baručija was in this state, Damjanović inflicted on him injury with the tip of his knife by engraving a cross on his forehead. These actions with elements of the criminal offence of Crimes against Humanity – torture, were committed by the accused with direct intent and while being aware of the actions he was perpetrating and wanting the execution of the act, and showed a particularly high degree of hatred towards the person who was his childhood teacher. The way Dragan Damjanović treated Professor Baručija demonstrated his active hatred and his desire to do him harm. He explicitly requested Baručija to follow him and a small group of other prisoners to a remote site on the Žuč hill, to the house of Rajko Bunjevac, far away from the protection of guards in the Planjina kuća. When he ordered that Baručija be lifted up to the truck, it was clear that Dragan Damjanović knew that he was not capable of physical labour owing to his physical condition, and there was no legitimate reason for his being taken to the hills. The reason for taking

Baručija to the hills was to kill him, precisely as Damjanovic was heard to tell Baručija on the day he was taken away from Planjina kuća.

As witness Selimović testified, the accused came on one night with a certain Boriša and called Baručija from the house of Rajko Bunjevac, ordering that he should go at that hour, after 22.00 hrs, to prepare firewood. Witness Đogo confirmed that Baručija was so taken by Damjanović. Witness Šehić heard the statement which the accused personally made to Baručija a few days prior to the night he was taken away, letting him know that he had already decided on his fate, which Baručija had in mind up to the moment he was taken away by Damjanovic when he told Selimović that Damjanović would kill him. The Panel considers it important that Baručija was last seen, being taken away by Damjanović, from Rajko Bunjevac's house and his dead body was found near Rajko Bunjevac's house shortly thereafter. So, a short period of time passed from the moment when he was taken away until his body was found later and the other prisoners had no information about him during that period of time. Finally, it was established that Baručija's death was violent. The Panel therefore concluded that Dragan Damjanović took away Baručija from the house of Rajko Bunjevac, and none of those who stayed in the house saw Baručija alive again. Shortly after this, the dead body of Baručija was found on a site near the house. The body was beaten up and shot in the head.

Taking into account the circumstances about which the witnesses testified relevant to this act, as well as the fact which all witnesses confirmed that the accused Damjanović was even more cruel towards Zahid Baručija, than toward all other prisoners, and particularly mistreated him - the Panel concludes beyond doubt that the accused deprived Professor Baručija of his life.

Taking into consideration the elements of torture, it is clear that the above-described acts of the accused against Zahid Baručija constitute the criminal offence of Crimes against Humanity referred to in Article 172(1), namely: torture under subparagraph (f) of the CC BiH and the accused committed this act against Zahid Baručija as a result of his direct intent being aware of the act he was doing and wanting to commit it.

Also if one analyses the behaviour of the accused in which the following elements constituting Murder from Article 172 (1) point a) of the CC BiH could be noted:

- 1. that a person is deprived of his life*

2. *that deprivation of life is a result of direct intent, as the accused was aware of his act of perpetration and he wanted the act perpetrated,*

the above-described acts of the accused towards Zahid Baručija meet the elements of this criminal offence, and so the Panel concludes beyond doubt that the accused is criminally liable for Crimes against Humanity punishable under Article 172 (1) of the CC BiH, specifically murder from point a).

In addition, the Panel notes that witness Selimović stated that one Boriša had been with the accused when he took Baručija away. The Panel finds that this assertion made by witness Selimović does not affect the conclusion on the guilt of the accused. Regardless of whether another person was present and whether that person participated in Baručija's murder, the Panel finds, based on all the evidence presented and all the actions that the accused undertook against Baručija, that the accused is responsible for depriving Zahid Baručija of his life.

The Panel considered the theory of the Defence that a person of the same name and surname as the accused was present at the same time and place as the described incidents, that witnesses were therefore confused about the identity of perpetrator, and that the allegations of the Prosecution are based on error in persona. However, based on the testimonies of all prosecution witnesses, as well as the two defence witnesses, the Panel concluded beyond any doubt that the theory of the Defence is not viable and that the accused Damjanović himself is responsible for each and every Count of the Indictment. Specifically, all prosecution witnesses describe the accused as an armed and uniformed person, black-haired and with beard, who wore a military cap with distinctive nationalistic symbol. That it was indeed the accused Dragan Damjanović and not some other person with the same name and surname, as the Defence claims, is also evident from identification of the accused made by witnesses who had known him from before the war, as well as in court identifications made by most of the witnesses during their testimony. Therefore, any doubt as to his identity has been eliminated.

Notwithstanding the aforementioned, the Panel finds the accused not guilty in connection with Count 3) of the Indictment charging him with the murder of Muharem Hodžić and his wife Mejra, and torture of Hamid Šišić. This Count is entirely based on one single piece of first hand evidence, this being the statement of witness Hamid Šišić given in the course of the investigation, and read out at the main trial as the witness died prior to being summoned to give oral testimony in the main trial. The other evidence, such as the testimony of

witnesses Eset Muračević and Ahmed Hido introduced by the Prosecution in an endeavour to corroborate the statement of Hamid Šišić, are not based on firsthand knowledge, but instead recite what Šišić had told them, which is that the accused Damjanović killed the married couple and abused Šišić. Nor is the criminal responsibility of the accused proven by the findings of the expert witnesses in medicine Ilijas Dobrača and Hamza Žujo, establishing that the death of the married couple was of a violent nature and that perforating wounds, visible on their bodies, resulted in their death. The very findings and opinion of expert witness Ilijas Dobrača, as well as his testimony during the main trial, pose certain dilemmas and questions in relation to the statement of the deceased witness, such as the position of the persons when they were shot, since the expert witness' findings imply that the victims were in a position different from that described by Šišić. Such dilemmas and questions could have been eliminated only by the witness, had he testified at the trial. It is exactly because of this and similar reasons that the jurisprudence of the European Court in Strasbourg (see cases *Unterpertinger v Austria*, Judgment of 24 November 1986, par. 31; *Asch v Austria* Judgment of 26 April 1991 paras. 30-31; *Kostovski v Holland* Judgment of 20 November 1989 par.41) holds that the statement not subjected to the "authentication" at the main trial in front of the accused cannot be used to the extent that the sentence be fully or in a decisive part based on it. And that would be the case herein.

Thus, based on all analysed evidence, the Panel decided as in the operative part. As regards other presented evidence, the Panel has evaluated it, but finds that it did not affect the decision-making to a decisive degree.

III Application of substantive law

As for the substantive law applied in the particular case, in view of the time of the commission of the offence, the Panel rendered the decision as in the operative part by applying the provisions as follows.

Article 3 (2) of the Criminal Code of BiH sets forth the principle of legality, that is, that "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 offence by law or international law, and for which a punishment has not been prescribed by law".

Given that the acts of commission of the criminal case in this specific case were committed in the period of 1992 to 1993, at a time when the Criminal Code of the Socialist Federal Republic of Yugoslavia was in effect, and which

did not have the criminal offence particularly titled – Crimes against Humanity – as a specific offence, and considering that the new Criminal Code of BiH defines the offence as a separate criminal offence, pursuant to the legal theory, a law which at the time when the criminal offence was perpetrated did not define it as a criminal offence is to be regarded as a more lenient one, hence resulting in the mandatory application of a more lenient law, should the law be amended in relation to the time of the commission of the criminal offence. Accordingly, it would be necessary to apply the previously effective law based on the principle of legality.

However, when it comes to the criminal offence of Crimes against Humanity which was not defined by laws effective in Bosnia and Herzegovina in the course of conflict from 1992 to 1995, the Court holds that this criminal offence is a part of international customary law that was in effect at the time of the commission, in addition to being defined by the-then Criminal Code of Yugoslavia through the criminal offences individually enumerated under Article 134 (Inciting national, racial or religious hatred, discord or hostility), Article 142 (War crime against the civilian population), Article 143 (War crime against the wounded and ill), Article 144 (War crime against prisoners of war), Article 145 (Organizing a group and instigating the commission of genocide and war crimes), Article 146 (Unlawful killing or wounding of the enemy), Article 147 (Marauding), Article 154 (Racial and other discrimination), Article 155 (Establishing slavery relations and transporting people in slavery relation) and Article 186 (Infringement of the equality of citizens). Accordingly, although Article 172 of the CC of BiH now defines this act as a separate criminal offence, it nevertheless existed at the time of commission of the criminal offence in a manner that it was prohibited by international law and indirectly through other enumerated criminal offences effective at the time.

Customary status of punishability of crimes against humanity and individual criminal responsibility for their perpetration in the period of 1992 has been confirmed by the UN Secretary General², International Law Commission³, as well as jurisprudence of the ICTY and ICTR⁴. These institutions assessed that sanctioning crime against humanity is an imperative in the international law

² Report of the UN Secretary General in reference to par. 2 of the UN Security Council Resolution 808 3 May 1993 paras. 33-34 and 47-48

³ International Law Commission, Commentary to the Draft Law on Crimes Against Peace and Safety of Humankind

⁴ ICTR Trial Panel in Akayes, 2 September 1998, paras 563 - 577

or *ius cogens*⁵, so it appears indisputable that in 1992 crime against humanity was part of the international customary law.

Article 4a of the CC BiH refers to "general principles of international law". As neither the international law nor the European Convention recognize the term, this term is in fact a combination of "principles of international law" as recognized by the UN General Assembly and the International Law Commission, and "General principles of the rights recognized by the Community of Nations" as recognized by the Statute of the International Court of Justice and Article 7 (2) of the European Convention.

The principles of international law as recognized by the General Assembly Resolution 95 (I) 1946 and the International Law Commission (1950) relate to the "Nuremberg Charter and Tribunal Judgement", thus to the crimes against humanity as well.

The principles of the international law recognized in the Nuremberg Tribunal Charter and in the Tribunal Judgement that the International Law Commission adopted in 1950 and submitted to the General Assembly, Principle VI c provides that crime against humanity is criminalized under the international law. Principle I sets forth that "Any person who has committed an act that constitutes a crime under the international law shall be held responsible and be punished." Principle II sets forth that "The fact that a domestic law does not provide a punishment for a crime criminalized under international law does not exempt a person who has committed the crime from responsibility under international law." Therefore, whether we take the international customary law perspective or the "principles of international law" perspective, it is beyond doubt that crime against humanity constituted a crime in the critical period, i.e. the principle of legality has been satisfied.

Legal grounds for trial or punishment of criminal offences pursuant to the general principles of international law are set forth in Article 4a of the Law on Amendments to the Criminal Code of BiH (Official Gazette No. 61/04), which prescribes that Articles 3 and 4 of the Criminal Code 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. Hereby, the provision under Article 7

⁵ International Law Commission, Commentary to the articles on liability of states for international unlawful acts (2001) Art. 26

(2) of the ECHR was replicated in its entirety into criminal and legal justice of BiH, and hence enabled exceptional deviation from the principle under Article 4 of the Criminal Code of BiH, and accordingly from the compulsory application of a more lenient law in the proceedings for criminal offences according to the international law, as the one at issue against the accused is, as the incrimination at hand is the one including violations of international law. In fact, Article 4a of the Law on Amendments to the Criminal Code of BiH is applied for all offences falling under war crimes, as these very criminal offences are in Chapter XVII of the Criminal Code of BiH - Crimes against Humanity and Values Protected by International Law, and crimes against humanity are accepted as part of the international customary law and as such they represent a provision of international law that cannot be subject to derogation.

When these provisions are read with of Article 7 of the European Convention on Human Rights (hereinafter the ECHR) which prevails over all BiH legislation (Article 2.2. of the BiH Constitution) it can be concluded that the principle of legality under Article 3 of the Criminal Code is contained in the first sentence under Article 7 (1) of the ECHR, while the second sentence of Article 7 (1) of the ECHR prohibits imposition of a more severe penalty than the one applicable at the time the criminal offence was committed. Therefore, the provision prohibits pronouncement of a heavier penalty, without establishing the compulsory application of a law more lenient to the defendant in relation to the punishment applied at the time when the crime was committed.

However, Article 7 (2) of the ECHR provides an exception to paragraph 1 and allows trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations. The identical principle is contained in Article 15 of the International Covenant on Civil and Political Rights. This exception was incorporated with a specific aim to allow the application of national and international law taking effect in the course of and following the Second World War, and in relation to war crimes.

Along these lines, the jurisprudence of the European Court of Human Rights (Naletilić v Croatia number 51891/99, Kolk and Kislyiy v Estonia, No. 23052/04 and 4018/04) underlines the applicability of the provision of paragraph 2 rather than the one of paragraph 1, Article 7 of the ECHR when such acts are in question, which also justifies the application of Article 4a of the Law on Amendments of the Criminal Code of BiH in such cases.

It is the opinion of the Panel that the principle of mandatory application of a more lenient law is excluded in processing the criminal offences which, at the time of commission were fully predictable and commonly known as being contrary to the general principles of international law.

Analysing the provision under Article 172 (1) of the Criminal Code of BiH, it is obvious that this act is part of a group of crimes against humanity and values protected by international law (Chapter XVII of CC BiH). This group of crimes is of a specific nature, as it would not suffice to commit a criminal offence by merely physical activity, but it requires awareness that international laws are being violated by the act of commission and it is assumed that the perpetrator must have known that the time of war or conflict or hostilities is a particularly sensitive one and protected by the generally accepted principles of international law, and as such, the offence itself gains even greater significance and its perpetration entails consequences greater than the offence committed in the course of some other period or condition. Therefore, the application of the Criminal Code of BiH is justified in the opinion of the Panel, and also in accordance with regulations which set the standards in respecting of human rights.

The imposing of the penalty is related to this, as Article 7 of the European Convention on Human Rights encompasses the regime of criminal sanctions. Article 172 (1) with enumerated items of the CC of BiH, prescribes punishment of at least 10 years or long-term imprisonment

IV Meting out the sentence

When deciding on the sanction, the Panel was guided by the general principles of meting out the punishment contained in Article 48 of the CC BiH. The Panel also had in mind the purpose of punishment as stipulated by Article 39 of the CC BiH, and it believes that the imposed sanction will entirely achieve the expected purpose of punishment. Considering the degree of the criminal responsibility of the accused and the gravity of the consequences resulting upon victims, the Panel deems that the sanction should be commensurate to the gravity and seriousness of the crimes and it must ensure adequate punishment of the perpetrator.

The sanction must ensure an effective legal remedy for the society and the individuals whose rights have been violated through the perpetration of the

specific crimes, and first and foremost, justice as a universal principle must be done.

The Panel also took into consideration mitigating circumstances, such as that he is a family man and a father of three, as well as that he has no prior convictions. On the other hand, the Panel had in mind numerous aggravating circumstances for the accused. They are as follows: remarkable persistence and perseverance in the commission of the acts resulting in his notorious reputation in his environment, the fact that, to date, he did not contribute in any way to finding the remains of the missing persons, thus causing continuing suffering to their families and relatives, as well as the manner of the commission of the criminal offence, the acts of which are particularly sadistic and cruel, the cold-blooded, planned and premeditated actions, as well as the use of poor conditions under which the prisoners stayed in the camps in the way that he even worsened such situations.

V Custody

Pursuant to Article 56 of the Criminal Code of BiH, the time which the accused has spent in custody since 6 December 2005 onward, shall be credited towards the prison sentence.

VI Cost of the proceedings

Pursuant to Article 188 (4) of the CPC of BiH, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings and they shall be borne by the Court of BiH, which was decided by the Panel following the consideration that the accused had no particular income, that he is father of three and that he has been sentenced to a rather long term of imprisonment which can bring into question the sustenance of his family.

VII Claim under property law

The injured party Nafila Kodžaga filed a property claim, so pursuant to Article 198 (2) of Criminal Procedure Code of BiH, the Panel instructed her to initiate a civil action, as it is obvious that pursuing of the property claim would significantly prolong the criminal proceedings.

For all the foregoing, the Panel decided as in the operative part, applying Article 285 (1) in relation to the offences that the accused is found guilty of, and Article 284, item c) in relation to the acquitting part of the verdict.

**PRESIDING JUDGE OF THE
PANEL**

Hilmo Vučinić

RECORD-KEEPER

Dženana Deljković

Instruction on legal remedy:

This Verdict can be appealed to the Appellate Panel of the Court of BiH within fifteen (15) days from the date of receipt of the Verdict in writing.

I hereby confirm that this document is a true translation of the original written in Bosnian/Serbian/Croatian.

Sarajevo, 23 February 2007

Certified Court Interpreter for English.

