

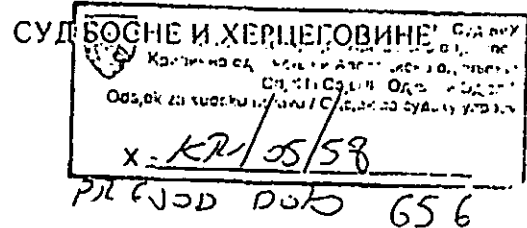
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BZ



SUD BOSNE I HERCEGOVINE

No: X-KR-05/58

Sarajevo, 18 July 2007



### IN THE NAME OF BOSNIA AND HERZEGOVINA!

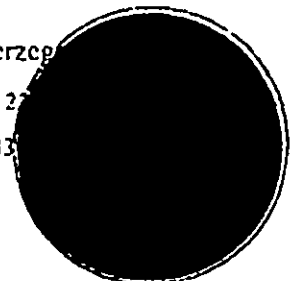
The Court of Bosnia and Herzegovina, sitting on the Panel composed of Judge Davorin Jukić, as the Presiding Judge, Judge Lars Folke Bjur Nystrom and Judge Almiro Rodrigues, as members of the Panel, with the participation of Legal Officer Melika Bušatlić, as the record-taker, in the criminal case against the accused Momčilo Mandić, for the criminal offense of War Crimes against Civilians in violation of Article 173 (1), (c) and (e) of the Criminal Code of Bosnia and Herzegovina (CC BiH), and the criminal offense of Crimes against Humanity in violation of Article 172 (1) (h) of the CC BiH, in conjunction with subparagraphs (a), (c), (f), (i) and (k) of the same Article, all in conjunction with Article 180 (1) and (2) of the CC BiH, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina No. KT-RZ 42/05, dated 4 July 2006, confirmed on 17 July 2006, amended on 23 May 2007, following the main trial partially closed for the public, in the presence of the accused Momčilo Mandić and his Defense Counsel, Attorneys Milan Vujin, Refik Serdarević and Slaviša Prodanović, and the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Behaija Krnjić, on 11 July 2007 rendered and on 18 July 2007 publicly announced the verdict that follows

### VERDICT

**THE ACCUSED: MOMČILO MANDIĆ**, a.k.a. Momo, son of Savo and Milka, née Elez, born on 1 May 1954 in Kalinovik, permanently residing in Belgrade at 5 Uzička Street, Republic of Serbia, of Serb ethnicity, citizen of Bosnia and Herzegovina and of Serbia and Montenegro, lawyer by profession, LL.B, married with two children, average financial standing, convicted to the sentence of imprisonment for the term of five (5) years by the Verdict of the Court of BiH No. KPŽ 03/07,

1

Pursuant to Article 284 (c) of the Criminal Procedure Code of Bosnia and Herzegovina,  
Kraljice Jelene br. 88, 71 000 Sarajevo, Bosnia i Hercegovina, Tel: 033 707 100, Faks: 033 707 27  
Краљине Јелене бр. 88, 71 000 Сарајево, Босна и Херцеговина, Тел: 033 707 100. Факс: 033



the Accused is hereby

### ACQUITTED OF THE CHARGES

That, during the armed conflict between the Armed Force of the Republic of Bosnia and Herzegovina and the force of the Serb Republic of Bosnia and Herzegovina in the City of Sarajevo, by violating Article 3 (1) (a) and (c), Article 27 (1) and Article 33 (3) and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, he planned, instigated, ordered and committed, as well as incited, aided and abetted the planning, instigation and perpetration of unlawful confinement and inhuman treatment of civilians, in as much as he:

1. In the capacity as Deputy Minister of the Interior of the Serb Republic of BiH, he directed an attack against the Training Center for Personnel of the RBiH Ministry of the Interior located in Vraca, Sarajevo, carried out by the police force of the Serb Republic of BiH supported by military and paramilitary formations on 5 April 1992; after the attack and surrender of the managerial and teaching staff of the Center, including the course attendees and students who were in the Center at the time, he assaulted the injured party Dževad Termiz and began beating him, then knocked him down and continued punching and kicking him and wanted to kill him at some point but was prevented by the members of a unit subordinate to him who were nearby and after the incident all the managerial and teaching staff of Bosniak and Croat ethnicity were escorted to the building of the Vraca Local Community where they were subjected to interrogation from where a group comprising Husein Balić, the Director of the Center, Dževad Termiz, Ibrahim Hidović, Meho Mašović, Nermin Levi, Šimo Švabić, Mirza Karajica and Samir Bukvić was singled out and transferred by vehicles to Pale. During the transfer they were severely beaten and upon their arrival they were imprisoned and interrogated at the Police Station and then transferred to a gym in Pale where they were imprisoned, physically abused and mistreated until 10 April 1992 when they were exchanged and taken back to Sarajevo.

### II

Pursuant to Article 284 (c) of the Criminal Procedure Code of Bosnia and Herzegovina, Momčilo Mandić is hereby

### ACQUITTED OF THE CHARGES

That, in the period between May and end of December 1992, within a widespread and systematic attack of the military and police forces, as well as paramilitary forces of the Serb Republic of BiH, directed against the non-Serb civilian population of the City of Sarajevo and Foča Municipality, being aware of the attack in his capacity as the Minister of Justice in the Government of the Serb Republic of BiH, he planned, ordered and committed, as well as incited and aided and abetted the persecution of the non-Serb civilian population on political, national, ethnic and religious grounds, by killing, inhuman treatment, violation of bodily integrity and health, unlawful confinement, forced labor and enforced disappearance, and as a superior and responsible person he also failed to take necessary and reasonable measures to prevent the perpetration of the aforementioned acts and punish the perpetrators thereof, in as much as he:

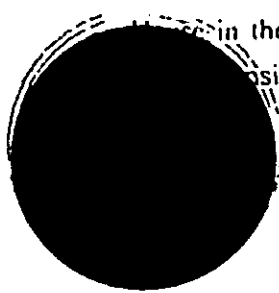
2. By virtue of his office, he was solely responsible for the functioning of all penal-correctional institutions operating in the then Serb Republic of BiH and was an immediate superior of all the management and other personnel who performed various duties in those institutions, whereby he was responsible for the functioning of the Butmir Penal-Correctional Institution in Ilidža and was an immediate superior and responsible for supervision of the managerial and other personnel who exercised their duties in the aforementioned institution which had all characteristics of a detention camp where dozens of civilians of non-Serb ethnicity, those of Bosniak ethnicity in particular, were unlawfully confined without any legal ground and during the abovementioned period these persons were:

2 (a) confined and placed in inhumane conditions, staying on the premises with poor conditions, deprived of a possibility to meet their basic hygienic needs, starved by receiving meager daily meals and many lost weight as a result thereof, denied medical assistance which caused deterioration of health of some of them, which in the case of Izet Ramić, son of Malaga, born in 1956, resulted in his death due to the lack of medical attention.

2 (b) subjected to physical abuse and infliction of serious bodily injuries when, among others, Salko Zolj, Džafer Turković, Husko Ramović, Dervo Bihorac, Alija Durić, Adil Čaušević and Zlata Čaušević were seriously beaten and abused.

2 (c) forced to labor in the course of which many were killed or severely wounded. Among those who were killed were Vahid Gačanović, son of Muhamed, born in 1942; Zulfo Vatrić, son of Vejsil, born in 1927; Mehmed Isić, Izudin Hodžić, Ramiz Smajić, Zuhdija Isić and Hasib Šahović. Among those who were wounded were Munib Isić, Nusret Šunj, Adem Balić, Avdo Pizović and Junuz Harbaš.

2 (d) taken from the prison in unknown directions whereupon they disappeared without a trace, including Alija Durić, son of Suljo, born in 1935; Samir Durić, son of Alija, born in 1968; Suvad Durić, son of Alija, born in 1962; Seid Dević, Besim Dević, Mahmut Čatović, son of Avdo, born in 1946; Haris Kikić, son of Hamza, born in 1971; Dervo Bihorac, son of Hajro, born in 1953; Hasan Džanić, son of Zijad, born in 1953; Elmaz Džanković, son of Hamid, born in 1936; Rifet Džanković, son of Elmaz, born in 1971; Šefet Džanković, son of Elmaz, born in 1963; Mujo Džindo, son of Hamid, born in 1937; Huso Gačević, son of Redžo, born in 1959; Šemso Gačević, son of Redžep, born in 1951; Zuhdija Gačević, son of Redžep, born in 1968; Emir Hajdarević, son of Zildžo, born in 1973; Zildžo Hajdarević, son of Abdulah, born in 1948; Rušid Kovač, son of Ibro, born in 1956; Emin Kulo, son of Mehmed, born in 1934; Hasan Kulo, son of Mehmed, born in 1936; Ervan Martinović, son of Latif, born in 1967; Elmaz Mulić, son of Ramiz, born in 1962; Sabahudin Mulić, son of Redžep, born in 1957; Ujkan Mulić, son of Redžep, born in 1953; Džafer Turković, son of Ibrahim, born in 1956; Husein Turković, son of Jusuf, born in 1953; Kasin Turković, son of Jusuf, born in 1958; Emin Katica, son of Hamza, born in 1954; Salih Bihorac, son of Hajro, born in 1940; Ibrahim Rastoder, son of Čano, born in 1939; Rahman Rastoder, son of Čano, born in 1933; Husein Ramović, son of Smajo, born in 1954; Sabid Selimović, son of Čamil, born in 1951; Nail Maksumić, son of Alija, born in 1948; Feho Erović, son of Rašid, born in 1956, and Habib Medović, son of Rasim, born in 1968; their fate has been unknown to date and it may legitimately be assumed that they were killed.

3. By virtue of his office, he was solely responsible for the functioning of all penal-correctional institutions operating in the then Serb Republic of BiH and was an immediate superior of all the managerial and other personnel that performed various duties in those institutions, whereby he was responsible for the functioning of the Butmir Penal-Correctional Institution Department in Ilidža located in the so-called Planja's  in the village of Svrake, Vogošća Municipality, and was an immediate superior responsible for supervision of the managerial and other personnel that exercised their

duties in the aforementioned institution, which had all characteristics of a detention camp where dozens of civilians of non-Serb ethnicity, those of Bosniak ethnicity in particular, were unlawfully confined without any legal ground, and during the aforementioned period these persons were:

3 (a) confined and placed in inhumane conditions, staying on the premises with poor conditions, deprived of a possibility to meet their basic hygienic needs, starved by receiving meager daily meals and many lost weight as a result thereof and they were denied medical assistance which caused deterioration of health of some of them.

3 (b) subjected to physical abuse and infliction of serious bodily injuries when, among others, Zahid Barudžija, Eset Muračević, son of Nezir; Mirsad Ljevo, son of Hasan; Hajro Šchić, Hilmo Šchić, Avdo Durmić, Enver Durmo, Meša Suljević, Avdo Suljić and Šchić Himzo were severely beaten and abused.

3 (c) subjected to willful killing whereby the following persons were killed: Sulejman Šunj, son of Bajro, born in 1946; Fejzo Ismić, son of Salko, born in 1947; Enver Ismić, son of Salko, born in 1951; Šerif Čović, son of Azem, born in 1946; Džemail Mehanović, son of Hasan, born in 1956; Suljo Omčrović, son of Bajro, born in 1951; Šaban Musić, son of Čamil, born in 1947, and Nedžib Mušinović, son of Edhem, born in 1965.

3 (d) forced to perform labor, including digging trenches and communication lines on the front lines, and used as human shields and, while performing the forced labor and being used as human shields, many were either killed or seriously wounded; among those who were killed were Avdo Tirić, son of Džulaga, born in 1947; Nermin Skando, son of Čamil, born in 1972; Rasim Avdukić, son of Salih, born in 1957; Hamid Rizvo, son of Hasan, born in 1969; Ferid Šchić, son of Ibro, born in 1968; Džemal Šchić, son of Avdija, born in 1952; Azem Durmić, son of Salko, born in 1938; Bajro Hujić, Nusret Selimović, Ferid Terzić, Safet Kruezi, Nail Durmić, Enver Činara, Asif Kamenjaš, Hasan Rizvo, Hasan Fazlić, Ramiz Handžić, Nermin Šchić, Mujo Šchić, Hamo Handžić, Sead Isabegović, Mehmed Šchić and Mustafa Fazlić; among those who were wounded were Hasan Fazlić, Zijad Avdibegović, Zijad Kutlovac, Fikret Sirčo, Izet Šchić, Salem Džogo, Jusuf Bektašević, Fuad Bajraktarević, Mirsad Šchić, Ismet Hujić, Rifet Đurak, Osman Džogo, Muhamed Halilović, Himzo Đurak, Hrustem Šččić, Halko Suljić, Zejnil Muharemović, Hajrudin Kundak, Ismet Isenaj, Nezir Borčak, Himzo Šchić, Nezir Šchić, Zahid Borčak, Esad Šchić, Hajrudin Šchić and Samir Šchić.

3 (c) taken from the prison in unknown directions whereupon they disappeared without a trace, including Hasan Abaz, son of Rasim, born in 1960; Esad Fejzović, son of Alija, born in 1946; Rešad Dedić, son of Sulejman, born in 1952; Nedžad Zlatarac, son of Huso, born in 1971; Salih Čekić, son of Feriz, born in 1949; Semir Salkić, son of Ramo, born in 1964; Seid Salkić, son of Ramo, born in 1968; Abdulah Jelašković, son of Šerif, born in 1943; Emin Jelašković, son of Šerif, born in 1939; Hajrudin Raonić, son of Rifat, born in 1962; Alija Delić, son of Alija, born in 1965; Fikret Prutina, son of Hasib, born in 1950; Himzo Hadžić, son of Abdulah, born in 1957; Mensud Durić, son of Asim, born in 1968; Vehid Spahić, son of Jusuf, born in 1951; Enes Alić, son of Bećir, born in 1943; Idriz Alić, son of Enes, born in 1963; Hašim Durmić, son of Rašid, born in 1941; Džemal Sejdić, son of Kasim, born in 1971; Zahid Bešić, son of Salem, born in 1968; Safet Hodžić, son of Čamil, born in 1954; Rasim Selimović, son of Sulejman, born in 1947; Hasan Fazlić, son of Čamil, born in 1944, Džemo Šchić, son of Kasim, born in 1942; Safet Kozica, son of Aziz, born in 1965; Hakija Kandžer, son of Salko, born in 1960; Ramiz Kandžer, son of Salko, born in 1953; Nezir Mehmetović, son of Idriz, born in 1969; their fate has been unknown to date and it may legitimately be assumed that they were killed.

4. By virtue of his office, he was solely responsible for the functioning of all penal-correctional institutions operating in the then Serb Republic of BiH and was an immediate superior of all the managerial and other personnel who performed various duties in those institutions, whereby he was responsible for the functioning of the *Foča* Penal-Correctional Institution (KPD) in Foča and was an immediate superior and responsible for supervision of the managerial and other personnel that performed their duties in the aforementioned institution, which had all characteristics of a detention camp and where dozens of civilians of non-Serb ethnicity, those of Bosniak ethnicity in particular, were unlawfully confined without any legal ground, and during the aforementioned period these persons were:

4 (a) confined and placed in inhumane conditions, staying on the premises with poor conditions, deprived of a possibility to meet their basic hygienic needs, starved by receiving meager daily meals and many lost weight as a result thereof and they were denied medical assistance which caused deterioration of health of some of them,

subjected to physical abuse and infliction of serious bodily injuries by guards and

other staff.

4 (c) forced to perform labor, including the work in the *Miljevina* Mine in Miljevina, in the furniture factory located within the compound of the Penal-Correctional Institution, in a metal workshop, as well as the work involving tree cutting and agricultural works on a farm,

4 (d) taken from the prison in unknown directions whereupon they disappeared without a trace, including Nedžib Aljukić, son of Šaban, born in 1964; Adil Krajčin, son of Rasim, born in 1958; Sejad Nikšić, son of Vehbija, born in 1956; Kemo Nikšić, son of Munir, born in 1959; Mustafa Nikšić, son of Adem, born in 1957; Salko Šljivo, son of Omer, born in 1944; Salko Srnja, son of Atif, born in 1965; Jusuf Srnja, son of Mustafa, born in 1968; Muamer Srnja, son of Esad, born in 1965; Omer Šljivo, son of Salko, born in 1967; Hamdo Šljivo, son of Salko, born in 1971; Sulejman Šošević, son of Izet, born in 1960; Edin Zametica, son of Avdo, born in 1968; Elvedin Zametica, son of Avdo, born in 1968; Ekrem Šalaka, son of Avdo, born in 1971; Edhem Balić, son of Šrif, born in 1963; Enes Bićo, son of Mustafa, born in 1962; Jasmin Šukalo, son of Šaban, born in 1967; Ramiz Karović, son of Mujo, born in 1961; Esad Kovačević, son of Džemal, born in 1963; Nijaz Kurtović, son of Osman, born in 1971; Edin Kurtović, son of Husnija, born in 1971; Bego Jahić, son of Nurif, born in 1969; Derviš Čankušić, son of Nasko, born in 1940; Rasim Kajgana, son of Alija, born in 1950; Suad Borovina, son of Edhem, born in 1959; Suad Klapuh, son of Sulejman, born in 1964; Alija Dželim, son of Ramiz, born in 1955; Esad Šoro, son of Tahir, born in 1955; Husein Korjenić, son of Hajdar, born in 1968; Samir Mujezinović, son of Džemal, born in 1971; Džemal Balić, son of Meho, born in 1937; Edib Muminović, son of Himzo, born in 1956; Kasim Mušanović, son of Murat, born in 1945; Izet Šoro, son of Memija, born in 1962; Edhem Mušanović, son of Hasan, born in 1955; Nezir Karović, son of Mujo, born in 1957; Ramiz Džano, son of Halim, born in 1957; Sulejman Čelik, son of Uzeir, born in 1941; Suljo Šoro, son of Edhem, born in 1951; Uzeir Muratović, son of Šaban, born in 1956; Mirsad Srnja, son of Abdulah, born in 1955; Ferid Šabanović, son of Mušan, born in 1958; Ekrem Čengić, son of Avdo, born in 1940; Fahrudin Malkić, son of Nazif, born in 1948; Ibrahim Kafedžić, son of Avdo, born in 1948; Halim Dedović, son of Hasan, born in 1935; Nazif Lagarija, son of Salko, born in 1937; Murto Deleut, son of Murat, born in 1937; Šaćir Mulahmetović, son of Halil, born in 1960; Šaćir Mulahmetović, son of Uzeir, born in 1960; Ramiz Bektović, son of Meho, born in 1953; Samir Bektović, son of Hilmija, born in 1969; Edin Čemo, son of Meho, born in 1970; Meho Čemo, son of Salih, born in

Munib Divović, son of Sejmen, born in 1961; Smail Đozo, son of Ibro, born in 1956; Dževad Džinić, son of Hakija, born in 1960; Hakija Džinić, son of Murat, born in 1923; Atif Hambo, son of Ibro, born in 1937; Ferid Krajčin, son of Hasan, born in 1965; Hasan Krajčin, son of Huso, born in 1932; Vejsil Lepir, son of Ahmet, born in 1958; Šaban Mazić, son of Sulejmen, born in 1964; Kasim Mekić, son of Ramo, born in 1940; Vahid Mekić, son of Šerif, born in 1950; Zulfo Mekić, son of Kasim, born in 1967; Rasim Musić, son of Ragib, born in 1964; Halil Oruč, son of Mujo, born in 1926; Ramiz Ramić, son of Himzo, born in 1962; Murat Rizvanović, son of Alija, born in 1932; Nedžib Rizvanović, son of Murat, born in 1963; Mirsad Subašić, son of Salko, born in 1968; Salko Subašić, son of Halil, born in 1947; Šaban Aljukić, son of Smail, born in 1938; Vehid Ahmetspahić, son of Osman, born in 1965; Ramiz Borovina, son of Edhem, born in 1962; Esad Čaušević, son of Bećir, born in 1950; Mehmed Čerimagić, son of Avdo, born in 1935; Šefik Čerimagić, son of Baso, born in 1937; Ramiz Dedović, son of Hamid, born in 1972; Dževad Hajrić, son of Džafer, born in 1958; Ibrahim Isanović, son of Fehim, born in 1960; Rasim Kobiljar, son of Nedžib, born in 1958; Senad Kovač, son of Edhem, born in 1974; Kemal Krkalić, son of Rasim, born in 1965; Salih Kuloglija, son of Agan, born in 1949; Alija Matuh, son of Mujo, born in 1969; Mujo Murguz, son of Aziz, born in 1962; Huso Reko, son of Hasib, born in 1946; Nusret Salčinović, son of Osman, born in 1954; Zijad Softić, son of Mujo, born in 1964; Jasmin Sudar, son of Mustafa, born in 1962; Abdulah Suljević, son of Alija, born in 1962; Elvir Šabanović, son of Ferid, born in 1974; Mehmedalija Šljivo, son of Hakija, born in 1966 and Enes Šoro, son of Tahir, born in 1975; their fate has been unknown to date and it may legitimately be assumed that they were killed.

Therefore,

- under Section 1 of the operative part of the Verdict, during the armed conflict between the Armed Force of the Republic of BiH and the force of the Serb Republic of BiH, by violating Article 3 (1) (a) and (c), Article 21 (1) and Article 33 (3) and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949, he planned, instigated, ordered and perpetrated, as well as incited and aided and abetted the planning, instigation and perpetration of unlawful confinement and inhuman treatment of civilian persons,

- under Sections 2, 2(a), 2(b), 2(c), 2(d), 3, 3(a), 3(b), 3(c), 3(d), 3(e), 4, 4(a), 4(b), 4(c) and 4(d) of the operative part of the Verdict, within a widespread and systematic attack of military and police forces, as well as paramilitary forces of the Serb Republic of BiH,



directed against the non-Serb civilian population of the City of Sarajevo and Foča Municipality, being aware of the attack, he planned, ordered and perpetrated, as well as incited and aided and abetted the persecution of the non-Serb civilian population on political, national, ethnic and religious grounds, by killing, inhuman treatment, violation of bodily integrity and health, unlawful confinement, forced labor and enforced disappearance and, as a responsible person, he failed to take necessary and reasonable measures to prevent perpetration of the aforementioned acts and punish the perpetrators thereof.

Whereby he committed:

- By his actions stated in Section 1 of the operative part of the Verdict, the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (c) and (e) of the Criminal Code of BiH in conjunction with Article 180 (1) and (2) of the Criminal Code of BiH.
- By his actions stated under Sections 2, 2(a), 2(b), 2(c), 2(d), 3, 3(a), 3(b), 3(c), 3(d), 3(e), 4, 4(a), 4(b), 4(c) and 4(d) of the operative part of the Verdict, the criminal offense of Crimes against Humanity in violation of Article 172 (1) (h) of the Criminal Code of BiH in conjunction with sub-paragraphs (a), (e), (f), (i) and (k) of the same Article, all in conjunction with Article 180 (1) and (2) of the Criminal Code of BiH.

Pursuant to Article 189 (1) of CPC BiH, the costs of the criminal proceedings shall be covered from the budget.

Pursuant to Article 198 (3) of CPC BiH, all injured parties with any potential property claims shall be referred to take civil action.

#### **R e a s o n i n g**

Under Count 1 of the operative part of the Indictment of the Prosecutor's Office of BiH No. K1T-RZ-42/05 of 4 July 2006, Momčilo Mandić was accused that during the armed conflict between the Armed Force of the Republic of Bosnia and Herzegovina and the force of the so-called Serb Republic of Bosnia and Herzegovina, by violating Article 3 (1) (a) and (c), Article 21 (1), Article 33 (3) and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949,

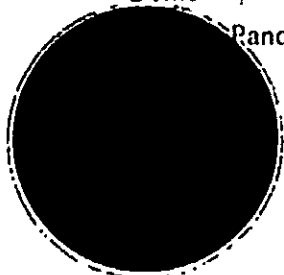
planned, instigated, ordered and committed, as well as incited, aided and abetted the planning, instigation and perpetration of unlawful confinement and inhuman treatment of civilians.

Under Counts 2, 2 (a, b, c and d), 3, 3 (a, b, c, d and e), 4 and 4 (a, b, c and d) of the operative part of the Indictment, he was accused that within a widespread and systematic attack of the military and police forces, as well as paramilitary forces of the Serb Republic of BiH, directed against the non-Serb civilian population of the City of Sarajevo and Foča Municipality, being aware of the attack, he planned, ordered and committed, as well as incited and aided and abetted the persecution of the non-Serb civilian population on political, national, ethnic and religious grounds, by killing, inhuman treatment, violation of bodily integrity and health, unlawful confinement, forced labor and enforced disappearance, and as a superior and responsible person he also failed to take necessary and reasonable measures to prevent perpetration of the aforementioned acts and punish the perpetrators thereof, and that by his actions stated in Count 1 of the operative part of the Indictment he committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) (c) and (e) of the Criminal Code of BiH in conjunction with Article 180 (1) of the Criminal Code of BiH, and by his actions stated under Counts 2, 2 (a, b, c and d), 3, 3 (a, b, c, d and e), 4 and 4 (a, b, c and d) of the operative part of the Indictment, he committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) (h) of the Criminal Code of BiH in conjunction with sub-paragraphs (a), (c), (f), (i) and (k) of the same Article, all in conjunction with Article 180 (1) and (2) of the Criminal Code of BiH.

#### A. The presented evidence

##### 1. By the Prosecutor

The following witnesses for the Prosecution were heard in the course of the evidentiary procedure: Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija, Džafer Hrvat, Avdo Pizović, Mirsad Kršlak, Mirsad Dragnić, Munib Ilić, Hasan Šunj, Mušan Šunj, Alisa Muratčauš, Salko Zolj, Hajrudin Karić, Amir Šehović, Rešad Brdarić, Hasib Delilović, Junuz Harbaš, Nezir Huruz, Eset Muračević, Enver Durmo, Adem Rešidović, Pandžić, Ahmed Hido, Taib Đogo, Omer Čerimagić, Izet Šehić, Zahid Šehić, Zejnil Muharemović, Suad Masnopita, Mirsad Ljevo, Zijad Avdibegović,



Fikret Sirčo, Lazar Stojanović, Radomir Dolaš, Juso Selimović, Rasim Džubur, Mirsad Karović, Safet Hadžiahmetović, Murat Kršo, and witnesses "A", "B", "C", "D", "E", "F", "G", "J" and "X".

Furthermore, in the course of the main trial, the Court reviewed the following evidence submitted by the Prosecutor's Office of BiH: Record on examination of witness Husein Balić No. KT-RZ-42/05, dated 28 December 2005 (T-1); Record on examination of witness Dževad Termiz No. KT-RZ-42/05, dated 27 December 2005 (T-2); Record on examination of witness Meho Mašović No. KT-RZ-42/05, dated 29 December 2005 (T-3); Record on examination of witness Josip Bilandžija No. KT-RZ-42/05 dated 14 February 2006 (T-4); Record on examination of witness Džafer Hrvat No. KT-RZ-42/05, dated 18 April 2006 (T-5); Record on examination of witness X No. KT-RZ-42/05, No. KT-RZ-33/05, dated 10 February 2006 (T-6); Record on examination of witness Avdo Pizović No. KT-RZ-42/05, No. KT-RZ-33/05, dated 10 March 2006 (T-7); Record on examination of witness Mirsad Kršlak No. KT-RZ-42/05, No. KT-RZ-33/05, dated 10 February 2006 (T-8); Record on examination of witness Mirsad Dragnić No. KT-RZ-42/05, No. KT-RZ-33/05, dated 26 February 2006 (T-9); Record on examination of witness Munib Isić No. KT-RZ-42/05, No. KT-RZ-33/05, dated 9 March 2006 (T-10); Record on examination of witness Hasan Šunj No. KT-RZ-42/05, No. KT-RZ-33/05, dated 13 April 2006 (T-11); Record on examination of witness Mušan Šunj No. KT-RZ-42/05, No. KT-RZ-33/05, dated 23 February 2006 (T-12); Record on examination of witness Alisa Muratčauš No. KT-RZ-42/05, No. KT-RZ-33/05, dated 23 February 2006 (T-13); Record on examination of witness Salko Zolj No. KT-RZ-42/05, No. KT-RZ-33/05, dated 22 February 2006 (T-14); Record on examination of witness Hajrudin Karić No. KT-RZ-42/05, No. KT-RZ-33/05, dated 8 February 2006 (T-15); Record on examination of witness Amir Šehović No. KT-RZ-42/05, No. KT-RZ-33/05, dated 8 February 2006 (T-16); Record on examination of witness Rešad Brdarić No. KT-RZ-42/05, dated 5 January 2006 (T-17); Record on examination of witness Hasib Đelilović No. KT-RZ-42/05, No. KT-RZ-33/05, dated 23 February 2006 (T-18); Record on examination of witness Junuz Harbaš No. KT-RZ-42/05, No. KT-RZ-33/05, dated 9 March 2006 (T-19); Record on examination of witness Nezir Huruz No. KT-RZ-42/05, No. KT-RZ-33/05, dated 29 December 2005 (T-20); Photographs of Planja's House facility numbered 0038-7773, 0038-7774, 0038-7775, 0038-7776, 0038-7777, 0038-7778, 0038-7779, 0038-7780, 0038-7781, 0038-7782, 0038-7783, 0038-7784, 0038-7785, 0038-7786, 0038-7787, 0038-7788, 0038-7789, 0038-7790, 0038-7791, 0038-7792, 0038-7793, 0038-7794, 0038-7795, 0068-7796 (T-21); Record on examination

witness Eset Muračević No. KT-RZ-42/05, dated 2 February 2006 (T-22); Record on examination of witness Enver Durmo No. KT-RZ-42/05, dated 26 January 2006 (T-23); Record on examination of witness Adem Rešidović No. KT-RZ-42/05, dated 26 January 2006 (T-24); Record on examination of witness Mensur Pandžić No. KT-RZ-42/05, dated 25 January 2006 (T-25); Record on examination of witness Ahmed Hido No. KT-RZ-42/05, dated 25 January 2006 (T-26); Record on examination of witness Taib Đogo No. KT-RZ-42/05, dated 25 January 2006 (T-27); Record on examination of witness Omer Čerimagić No. KT-RZ-42/05, dated 25 January 2006 (T-28); Record on examination of witness Izet Šehić No. KT-RZ-42/05, dated 25 January 2006 (T-29); Record on examination of witness Zahid Šehić No. KT-RZ-42/05, dated 26 January 2006 (T-30); Record on examination of witness Esad Šehić No. KT-RZ-42/05, dated 26 January 2006 (T-31); Record on examination of witness Zejnil Muharemović No. KT-RZ-42/05, dated 25 January 2006 (T-32); Record on examination of witness Suad Masnopita No. KT-RZ-42/05, dated 12 April 2006 (T-33); Record on examination of witness E No. KT-RZ-42/05, dated 26 January 2006 (T-34); Record on examination of witness Mirsad Ljevo No. KT-RZ-42/05, No. KT-RZ-33/05, dated 13 April 2006 (T-35); Record on examination of witness Zijad Avdibegović No. KT-RZ-42/05, dated 12 April 2006 (T-36); Record on examination of witness Fikret Sirčo No. KT-RZ-42/05, No. KT-RZ-33/05, No. KT-RZ-39/05, dated 15 February 2006 (T-37); Record on examination of witness Lazar Stojanović No. KT-RZ-42/05, dated 24 May 2006 (T-38); Record on examination of witness Radomir Dolaš No. KT-RZ-42/05, dated 24 May 2006 (T-39); Record on examination of witness Jusuf Selimović No. KT-RZ-42/05, dated 23 May 2006 (T-40); Record on examination of witness F No. KT-RZ-42/05, dated 23 May 2006 (T-41); Record on examination of witness G No. KT-RZ-42/05, dated 5 June 2006 (T-42); Record on examination of witness Rasim Džubur No. KT-RZ-42/05, dated 30 May 2006 (T-43); Record on examination of witness Mirsad Karović No. KT-RZ-42/05, dated 31 May 2006 (T-44); Record on examination of witness Safet Hadžiahmetović No. KT-RZ-42/05, dated 7 June 2006 (T-45); Record on examination of witness B No. KT-RZ-42/05, dated 31 May 2006 (T-46); Record on examination of witness A No. KT-RZ-42/05, dated 31 May 2006 (T-47); Record on examination of witness Murat Kršo No. KT-RZ-42/05, No. KT-RZ-33/05, dated 16 June 2006 (T-48); Record on examination of witness C No. KT-RZ-42/05, dated 31 May 2006 (T-49); Record on examination of witness D No. KT-RZ-42/05, dated 5 June 2006 (T-50); ICTY Judgment in the case against Stanislav Galić No. IT-98-29-T of 5 December 2003 (T-51); ICTY Judgment in the case against Dragoljub Kunarac et al. No. IT-96-23-T and IT-96-23/I-T of 22 February 2001 (T-52); ICTY Judgment in the case against Dragoljub Kunarac et al. No. IT-96-23 and IT-96-

23/I-A of 12 June 2002 (T-53); ICTY Judgment in the case against Milorad Krnojelac No. IT-97-25-T of 15 March 2002 (T-54); ICTY Judgment in the case against Milorad Krnojelac No. IT-97-25-A of 17 September 2003 (T-55); Birth Certificate for Momčilo Mandić, No. 03-200-419/90 dated 4 April 1990 (T-56); A list of appointed candidates of the Commission for Personnel and Organizational Issues of the Serb Democratic Party dated 6 November 1991 (T-57); Official Gazette of the Socialist Republic of BiH No. 4 dated 7 February 1991 (T-58); Employment record card No. 647/73 dated 1 September 1970 (T-59); Document of the Party of Democratic Action No. 167/91 dated 8 October 1991 (T-60); Request of the Serb Democratic Party of BiH No. 810-011-01/92 dated 6 February 1992 (T-61); Minutes of the meeting held in Banja Luka on 11 February 1992 (T-62); Dispatch note of the Ministry of the Interior (MUP) of the Socialist Republic of BiH (SR BiH) No. 02-1230 dated 13 February 1992 (T-63); Dispatch note of the MUP of SR BiH No. 02/2-1808 dated 6 March 1992 (T-64); Information of the MUP of the Republic of BiH, State Security Service Sarajevo, No. 805 dated 13 March 1992 (T-65); Dispatch note of the MUP of SR BiH No. 02-2132 dated 18 March 1992 (T-66); Dispatch note of the MUP of SR BiH No. 02-2482 dated 31 March 1992 (T-67); Dispatch note of the MUP of SR BiH No. 57 dated 31 March 1992 (T-68); Order of the MUP of the Serb Republic of BiH dated 14 April 1992 (T-69); Dispatch note of the MUP of SR BiH No. 62 dated 8 April 1992 (T-70); Order of the MUP of the Serb Republic of BiH No. 01-5 dated 13 April 1992 (T-71); Document of the MUP of the Serb Republic of BiH dated 16 April 1992 (T-72); Order of the MUP of the Serb Republic of BiH No. 01-17/92 dated 19 April 1992 (T-73); List of the MUP of the Serb Republic of BiH on advanced payment disbursed to the MUP employees (T-74); Requests of the MUP of the Serb Republic of BiH for rationing of food and other supplies No. 02-1 dated 10 April 1992 (T-75); Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH dated 24 April 1992 (T-76); Interview of Momčilo Mandić published in the *Ekstra magazin* (T-77); Brochure entitled *Bitka za školu na Vracama (Battle for the School in Vraca)* written by Momčilo Mandić (T-78); Video-recording of a TV show entitled *Moj gost – njegova istina (My Guest – His Truth)* recorded by Momčilo Mandić for the Serb Radio and Television Sarajevo in 1994 (T-79); Transcript of the show entitled *Moj gost – njegova istina (My Guest – His Truth)* with Momčilo Mandić from 1994 (T-79A); Video-recording recorded by the Serb Radio and Television Sarajevo related to an interview with Milenko Karišik (T-79B); Photographs of the accused Momčilo Mandić (T-79-C, T-79-D, T-79-E); Minutes of the meeting of the National Security Council and the Government of the Serb Republic of BiH dated 15 April 1992 (T-80); Minutes of the meeting of the National Security Council and the Government

the Serb Republic of BiH dated 22 April 1992 (T-81); Document downloaded from the website of the Government of Republika Srpska on the composition of the Government appointed on 22 April 1992 (T-82); Decisions pertaining to the judicial and prosecutorial domain of the Ministry of Justice of the Serb Republic of BiH No. 01-1/92 dated 1 May 1992 (T-83); Decision on establishing penal-correctional institutions in the territory of the Serb Republic of BiH No. 12-193 dated 1 May 1992 (T-84); Official Gazette of the Serb People of BiH No. 5 dated 9 May 1992 (T-85); Extract from the Official Gazette of the Serb People of BiH No. 6 dated May 1992 (T-86); Notification of the Ministry of Justice of the Serb Republic of BiH No. 01-106/92 dated 4 April 1992 (T-87); Minutes of the meeting of the Assembly of the Serb People of BiH dated 12 May 1992 (T-88); Minutes of the meeting of the Government of the Serb Republic of BiH held on 26 June 1992, No. 03-730 dated 29 June 1992 (T-89); Minutes of the meeting of the Government of the Serb Republic of BiH held on 4 July 1992, No. 03-768 dated 9 July 1992 (T-90); Minutes of the meeting of the Government of the Serb Republic of BiH held on 11 July 1992, No. 03-793 dated 15 July 1992 (T-91); Minutes of the meeting of the Government of the Serb Republic of BiH held on 9 August 1992 (T-92); Minutes of the meeting of the Government of the Serb Republic of BiH held on 27 October 1992, No. 02-434 dated 17 November 1992 (T-93); Notification of the Ministry of Justice of the Serb Republic of BiH, No. 01/2-55-92 dated 25 July 1992 (T-94); Conclusion of the Presidency of the Serb Republic of BiH, No. 01-533/92 dated 6 August 1992 (T-95); Letter of the Ministry of Judiciary and Administration of the Serb Republic of BiH, No. 01/2-105/92 dated 5 September 1992 (T-96); Letter of the Ministry of Judiciary and Administration of Republika Srpska, No. 04/2-111/92 dated 22 October 1992 sent to the Serb Municipalities of Hadžići and Ilidža (T-97); Request of the Presidency of Republika Srpska, No. 01-1251/92 dated 22 October 1992 (T-98); Information of the Ministry of Justice and Administration of Republika Srpska, No. 04/2-112/92 dated 22 October 1992 (T-99); Report on the work of the Ministry of Justice and Administration of Republika Srpska for the period May – October 1992 dated 16 November 1992 (T-100); Audio-recording of telephone conversation between Momčilo Mandić and Vukota Vuković on 18 April 1992 (T-101); Transcript of telephone conversation between Momčilo Mandić and Vukota Vuković on 18 April 1992 (T-101-A); Audio-recording of telephone conversation between Momčilo Mandić and Milutin Kukanjac on 18 April 1992 (T-102); Transcript of telephone conversation between Momčilo Mandić and Milutin Kukanjac on 18 April 1992 (T-102-A); Report No. 6260 of MUP of the Socialist Republic of BiH, (State Security Service) Sector Sarajevo (T-102-B); Audio-recording of telephone conversation between Momčilo Mandić and Boro Škrba on 20 April 1992 (T-103);

Transcript of telephone conversation between Momčilo Mandić and Boro Škrba on 20 April 1992 (T-103-A); Report No. 7124 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-103-B); Audio-recording of telephone conversation between Momčilo Mandić and Tomislav Kovač on 23 April 1992 (T-104); Transcript of telephone conversation between Momčilo Mandić and Tomislav Kovač on 23 April 1992 (T-104-A); Report No. 19,7044 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-104-B); Audio-recording of telephone conversation between Momčilo Mandić and Radovan Karadžić on 1 July 1992 (T-105); Transcript of telephone conversation between Momčilo Mandić and Radovan Karadžić on 1 July 1992 (T-105-A); Report No. 7412 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-105-B); Audio-recording of telephone conversation between Momčilo Mandić and Radovan Karadžić on 4 July 1992 (T-106); Transcript of telephone conversation between Momčilo Mandić and Radovan Karadžić on 4 July 1992 (T-106-A); Report No. 32-7517 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-106-B); Audio-recording of telephone conversation between Momčilo Mandić and one Milena on 21 May 1992 (T-107); Transcript of telephone conversation between Momčilo Mandić and one Milena on 21 May 1992 (T-107-A); Audio-recording of telephone conversation between Momčilo Mandić and Ratko Mladić on 25 May 1992 (T-108); Transcript of telephone conversation between Momčilo Mandić and Ratko Mladić on 25 May 1992 (T-108-A); Report No. 127 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-108-B); Audio-recording of telephone conversation between Momčilo Mandić and Colonel Tolimir on 25 May 1992 (T-109); Transcript of telephone conversation between Momčilo Mandić and Colonel Tolimir on 25 May 1992 (T-109-A); Report 7407 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-109-B); Audio-recording of telephone conversation between Momčilo Mandić and Nedeljko Prstojević on 2 June 1992 (T-110); Transcript of telephone conversation between Momčilo Mandić and Nedeljko Prstojević on 2 June 1992 (T-110-A); Report No. 7474 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-110-B); Audio-recording of telephone conversation between Momčilo Mandić and Nenad Vanovac on 23 June 1992 (T-111); Transcript of telephone conversation between Momčilo Mandić and Nenad Vanovac on 23 June 1992 (T-111-A); Audio-recording of telephone conversation between Momčilo Mandić and one Ninković on 18 June 1992 (T-112); Transcript of telephone conversation between Momčilo Mandić and one Ninković on 18 June 1992 (T-112-A); Report No. 7124 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-112-B); List of persons employed with the Butmir KPD made by the RS Ministry of Justice dated 30 September 1992 (T-113); List of the Butmir KPD - Vogošća Department of the persons of Muslim ethnicity transfer

from the Vogošća Department to *Kula* KPD for exchange (T-114); List of the Ministry of Justice of the Serb Republic of BiH, No. 01-94/92 dated 13 June 1992, on takeover of the detained persons (T-115); Death Certificate for Vahid Gačanović, No. 03/2-13-730 dated 6 March 2006 (T-116); Decision of the Basic Court II Sarajevo No. R-58/94 dated 13 September 1994 (T-117); Decision of the Basic Court II Sarajevo No. R-964/96 dated 23 October 1996 (T-118); Death Certificate for Izet Ramić, No. 10-13-1489 dated 3 March 2006 (T-119); Consent of the RS Ministry of Justice No. "S1"/92 dated 10 November 1992 (T-120); Audio-recording of telephone conversation between Momčilo Mandić and one Radmila on 21 May 1992 (T-121); Transcript of telephone conversation between Momčilo Mandić and one Radmila on 21 May 1992 (T-121-A); Report No. 95 of MUP of the Socialist Republic of BiH, SDB Sector Sarajevo (T-121-B); Audio-recording of telephone conversation between Momčilo Mandić and Radivoje Grković on 3 July 1992 (T-122); Transcript of telephone conversation between Momčilo Mandić and Radivoje Grković on 3 July 1992 (T-122-A); Decision of the Ministry of Justice and Administration of Republika Srpska, No. 01/2-242/92 dated 16 December 1992 (T-123); Notification of the MUP of the Serb Republic of BiH – Novi Grad Public Security Station, No. 5/92 dated 20 May 1992 (T-124); Proposal of the MUP of the Serb Republic of BiH – Ilidža Public Security Station, No. 10/92 dated 25 May 1992 (T-125); Request for funds allocation of the Ministry of Justice of Republika Srpska dated 28 August 1992 (T-126); Order of the Ministry of Justice and Administration of Republika Srpska, No. 01/2-243/92 dated 16 December 1992 (T-127); Decision of the Ministry of Justice of Republika Srpska dated 6 November 1992 (T-128); List of the missing persons from Kasindolska Street – Sarajevo made by the Association *Žene Kasindolske 92 (Women of Kasindolska 1992)*, No. 7/05 dated 29 May 2005 (T-129); Request of Citizens Forum of Stup II Local Community, No. 01-02/01 dated 10 April 2001 (T-130); Letter of Citizens Forum of Stup II Local Community, No. 11-02-02/01 dated 12 July 2001 (T-131); List of camp inmates – Lukavica and Kula made by the BiH Association of Camp Inmates, No. 190-3 dated 10 April 2006 (T-132); List of camp inmates of *Kula* Detention Camp made by the BiH Association of Camp Inmates, No. 74-3/06 dated 15 February 2006 (T-133); List of captured persons made by the Sarajevo Territorial Defense Staff (T-134); Decision of the Municipal Secretariat for Urban Planning, Property, Housing and Utility Affairs and Real Estate Cadastre of the Serb Municipality of Vogošća dated 8 July 1992 (T-135); Video-recording of Paddy Ashdown's visit to the Butmir Penal-Correctional Institution (T-136); Transcript of the audio-recording from the video-recording of Paddy Ashdown's visit to the Butmir Penal-Correctional Institution (T-136-A); Decision of the Ministry of Justice of the Serb Republic of BiH on establishing a detention unit of the



Butmir Penal-Correctional Institution in Vogošća (T-137); Decision of the Ministry of Justice of the Serb Republic of BiH, No. 01-131/92 dated 21 July 1992 (T-138); Decision of the Ministry of Justice of the Serb Republic of BiH No. 01-130/92 dated 21 July 1992 (T-139); List of prisoners made by the Prison Management of the Serb Municipality of Vogošća dated 26 July 1992 (T-140); Conclusion of the Wartime Council of the Serb Municipality of Vogošća No. 03-141/92 dated 6 August 1992 (T-141); List of prisoners of the prison unit of the Serb Municipality of Vogošća dated 3 September 1992 (T-142); Request for consent of the Wartime Council of the Serb Municipality of Vogošća No. 03-141/92 dated 6 August 1992 (T-143); Request of the Ministry of Justice of Republika Srpska, No. 01-208/92 dated 3 September 1992 (T-144); Notification of the Ministry of Justice and Administration of the Serb Republic of BiH, No. 04/2-3/92 dated 10 August 1992 (T-145); List of identified Bosniaks and Croats who were unlawfully detained in the Planja's House concentration camp in Vogošća made by the Agency for Investigation and Documentation Sarajevo (T-146); Overview of imprisoned, abused and killed prisoners in the Planja's House Detention Camp in Vogošća made by the Agency for Investigation and Documentation Sarajevo (T-147); Newsletter of the Vogošća Prison Unit dated 28 August 1992 (T-148); Newsletter of the Vogošća Prison Unit dated 30 August 1992 (T-149); Newsletter of the Vogošća Prison Unit dated 19 September 1992 (T-150); Newsletter of the Vogošća Prison Unit dated 22 September 1992 (T-151); Newsletter of the Vogošća Prison Unit dated 24 September 1992 (T-152); Newsletter of the Vogošća Prison Unit dated 27 September 1992 (T-153); Newsletter of the Vogošća Prison Unit dated 20 October 1992 (T-154); Report on exchange of the State Commission for Exchange of Prisoners of War, No. 02-153-630/93 dated 23 February 1993 (T-155); Death Certificate for Zahid Baručija, No. 04-13-655 dated 29 May 2006 (T-156); Decision of the High Court in Sarajevo, No. KRI-95/96 and 108/96 dated 19 June 1996 (T-157); Exhumation and crime scene investigation record of the High Court in Sarajevo, No. KRI-39/97 dated 24 May 1996 (T-158); Exhumation and autopsy record of the High Court u Sarajevo, No. KRI-95/96, 108/96, 117/96 and 152/906 dated 12 November 1996 (T-159); Official report of the Vogošća Public Security Station No. 19/15-4-39/96 dated 2 September 1996 (T-160); Attestation of death for Fejzo Ismić issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-161); Attestation of death for Šaban Musić issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-162); Attestation of death for Šerif Čović issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-163); Attestation of death for Enver Ismić issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-164); Attestation of death for Nedžib Musinović issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-165); Attestation of

Sulejman Šunj issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-166); Attestation of death for Džemail Mehanović issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-167); Attestation of death for Mustafa Gušo issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-168); Attestation of death for Suljo Omerović issued by the Pathology Service of *JKP Gradska groblja Visoko* (T-169); Death Certificate for Sulejman Šunj No. 03/2-13-346/06 dated 1 February 2006 (T-170); Death Certificate for Džemail Mehanović No. 03/2-13-345/06 dated 1 February 2006 (T-171); Death Certificate for Mustafa Gušo No. 03/2-13-344/06 dated 1 February 2006 (T-172); Death Certificate for Suljo Omerović No. 03/2-13-343/06 dated 1 February 2006 (T-173); Death Certificate for Fejzo Ismić No. 03/2-13-342/06 dated 1 February 2006 (T-174); Death Certificate for Šaban Musić No. 03/2-13-341/06 dated 1 February 2006 (T-175); Death Certificate for Šerif Čović No. 03/3-13-157/06 dated 1 February 2006 (T-176); Death Certificate for Nedžib Musinović No. 03/3-13-156/06 dated 1 February 2006 (T-177); Death Certificate for Enver Ismić No. 03/2-13-340/06 dated 1 February 2006 (T-178); Photo-documentation of Sarajevo Crime Police Sector No. 702/96 dated 6 May 1996 (T-179); Photo-documentation of Sarajevo Crime Police Sector No. 644/96 dated 27 April 1996 (T-180); Sketch of the scene of Sarajevo Security Service Center No. 643/96 dated 13 April 1996 (T-181); Sketch of the scene of Sarajevo Security Service Center No. 649/96 dated 13 April 1996 (T-182); List of identified Bosniaks who, as prisoners in the Planja's House detention camp, were physically abused and then killed, compiled by the Agency for Investigation and Documentation Sarajevo (T-183); List of identified Bosniaks who, as prisoners in the Planja's House detention camp, were killed at Ježevi site, Vogošća Municipality, compiled by the Agency for Investigation and Documentation Sarajevo (T-184); List of identified Bosniaks who, as prisoners in the Bunker detention camp, were killed while doing forced labor in June 1992, compiled by the Agency for Investigation and Documentation Sarajevo (T-185); List of identified Bosniaks who, as prisoners in the Planja's House and the Bunker detention camps, were killed as part of "human shield", compiled by the Agency for Investigation and Documentation Sarajevo (T-186); List of identified Bosniaks who, as prisoners in the Planja's House and the Bunker detention camps, were wounded as part of "human shield", compiled by the Agency for Investigation and Documentation Sarajevo (T-187); List of identified Bosniaks who, as prisoners in the Planja's House detention camp, were taken out in June 1992 whereupon they disappeared without trace, compiled by the Agency for Investigation and Documentation Sarajevo (T-188); List of civilians of Vogošća Municipality whose fate remains unknown to date made by the Association *Udruženje nestalih općine Vogošća (Families of Missing Persons of Vogošća)*

*Municipality*) No. 45/05 dated 8 May 2006 (T-189); Photo-documentation of exhumation of 67 bodies at Svrake site compiled by Sarajevo Crime Police Sector, No. 1095/96 dated 15 May 2006 (T-190); Report of the Command of the Sarajevo-Romanija Corps strictly confidential 10/74-367 dated 21 September 1992 (T-191); Report of the Command of the Sarajevo-Romanija Corps strictly confidential 10/74-375 dated 23 September 1992 (T-192); Decision of the Ministry of Justice of the Serb Republic of BiH No. 01/2-45/92 dated 17 July 1992 (T-193); Letter of the Ministry of Justice and Administration of the Serb Republic of BiH No. 04/2-1/92 dated 25 July 1992 (T-194); Report on the organization of judicial bodies in Foča Municipality (T-195); Request of Foča Penal-Correctional Institution dated 15 November 1992 sent to the Ministries of Finance and Justice (T-196); Request of Foča Penal-Correctional Institution No. 35/92 dated 11 July 1992 (T-197); List of persons under work obligation in Srebrenje Penal-Correctional Institution in the period between April 1992 and October 1994 (T-198); Petition for release from Foča KPD filed by Sadik Demirović dated 30 July 1992 (T-199); Petition for release from Foča KPD filed by Ismet Pašović dated 30 July 1992 (T-200); Report on convicted persons serving sentences made by Foča KPD (T-201); Letter of the Ministry of Justice and Administration of Republika Srpska No. 03/2-121/92 dated 22 September 1992 (T-202); Decision of the Ministry of Justice and Administration of Republika Srpska No. 01/2-244/92 dated 16 December 1992 (T-203); List of imprisoned persons in Foča KPD made by the Agency for Investigation and Documentation Sarajevo (T-204); List of missing persons from Foča KPD made by the Agency for Investigation and Documentation Sarajevo (T-205); Document of the Federation Commission for Missing Persons, No. 01-41-2710/2006 dated 2 June 2006, containing a list of persons who had been imprisoned in Foča KPD, currently registered as missing (T-206); Book of missing persons in the territory of Bosnia and Herzegovina published by the International Committee of the Red Cross (T-207); Decision on appointment of the Republic Advisor No. 01-127/93 dated 31 January 1993 (T-208); Official Gazette of Republika Srpska No. 1 dated 24 February 1993 (T-209); Decree on Awarding Medals of the President of Republika Srpska (T-210); Decision of the Main Board of the Serb Democratic Party, No. 02-1/93 dated 16 February 1993 (T-211); Conclusion of the Executive Board of the Serb Democratic Party No. 04-5/93 dated 24 February 1993 (T-212); Decision of the Main Board of the Serb Democratic Party No. 02-1/93 dated 17 February 1993 (T-213); Law on Internal Affairs, *Official Gazette of the Serb People in BiH*, No. 4, dated 23 March 1992 (T-214); Notification to all Security Service Centers and Public Security Stations, MUP of the Serb Republic of BiH, No. 10-34/92 dated 3 April 1992 (signed by Mićo Stanišić) (T-215); Order to the District Prison in Vogošća, Ministry of Justice

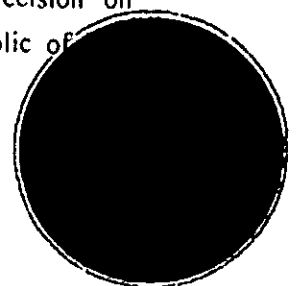
Republic of BiH, dated 22 September 1992 (signed by Momčilo Mandić) (T-216); Minutes of the 24th session of the Government of the Serb Republic of BiH, dated 9 June 1992 (T-217); Minutes of the 25th session of the Government of the Serb Republic of BiH, dated 10 June 1992 (T-218); Instruction how to treat PoWs, *Official Gazette of the Serb People in BiH*, No. 9, dated 13 June 1992 (T-219); Order dispatched to all security services, Central Commission for Prisoner Exchange, Serb Republic of BiH, No. 02-3/14 dated 6 June 1992 (T-220); Information of the Intelligence and Security Agency of BiH on Momčilo Mandić's role in the 1992-1995 war events (T-221); Indictment of the Prosecutor's Office of BiH against Mitar Rašević and Savo Todović No. 162/06 of 22 December 2006 (T-222); *Official Gazette of the Socialist Republic of BiH* No. 18, dated 29 June 1990 (T-223); Law on the Basis of the State Security System, April 1984 (T-224); Decision on Uniform Principles on the Application of Means and Methods Applied by the State Security Organs dated 17 April 1985 (T-225); Decision on the Application of the Prescribed Means and Methods of the State Security toward Certain Public Official in the Socialist Republic of BiH dated 5 June 1990 (T-226).

## 2. By the Defense

The following persons were heard as witnesses for the Defense: Vlatko Lopatić, Malko Koroman, Mladen Mandić, Radojka Pavlović, Alija Delimustafić, Voja Janjetović, Ranko Tešanović, Boro Trapara, Mustafa Handžić, Dževad Rizvanović, Mensur Pandžić, Fikret Išerić, Hurem Murtić, Svetozar Stanić, Branko Vlačo, Željko Mrdić, Alija Jašar, Mitar Rašević, Radoje Lalović, Vojo Gojković, Miloš Zuban, Miodrag Lalović, Slobodan Avlijaš, Soniboj Škiljević, Žarko Radovanović, Ešref Gracić, witnesses "H" and "I", and the Accused himself as a witness.

The Court also reviewed the documents that the Defense for the Accused submitted as evidence in the course of the main trial, as follows: Record on examination of witness Ahmed Hido No. KT-RZ-14/05, dated 21 July 2005 (O-1); Record on examination of witness Taib Đogo No. KT-RZ-39/05, dated 22 December 2005 (O-2); Record on examination of witness Omer Čerimagić No. 14-04/2-61/05, dated 9 December 2005 – SIPA (O-3); Sketch of warehouse in Podlugovi by witness Zahid Šehić (O-4); Record on examination of witness Zahid Šehić No. KT-RZ-39/05, dated 26 January 2006 (O-5); Record on examination of witness Esad Šehić No. KT-RZ-39/05, dated 26 January 2006 (O-6); Record on examination of witness Zejnil Muharemović No. KT-RZ-39/05, dated 26 January 2006 (O-7); Record on examination of witness Zejnil Muharemović No. 14-

4/2-41/05, dated 5 December 2005 – SIPA (O-8); Record on examination of witness Suad Masnopita No. KT-RZ-14/05, dated 1 August 2005 (O-9); Dispatch of MUP of the Socialist Republic of BiH No. Officially dated 1 April 1992 (O-10); Minutes of the 65th session of the Presidency of the Socialist Republic of BiH No.2-011-354/92 held on 4, 5, 6 and 8 April 1992 (O-11); Decision on establishing and appointing ministerial council of the Assembly of the Serb People in BiH, Official Gazette No. 1/92 (O-12); Law on Ministries, Official Gazette of the Serb People in BiH No. 11/92 (O-13); The Lisbon Agreement, copy from *Borba* daily newspaper, 28 February 1992 issue (O-14); Decision on enacting the Constitution of the Serb Republic of BiH, Official Gazette of the Serb People in BiH No. 3/92 (O-15); Minutes and verbatim record of the 22nd session of the *National Assembly of Republika Srpska* held on 24 November 1992 in Zvornik (O-16); Conclusion of the National Assembly of Republika Srpska held on 24 November 1992 in Zvornik (O-17); Decision of the RS Bureau in Belgrade appointing Momčilo Mandić an acting advisor, No. 01/02-6-7/92, dated 2 December 1992 and Review of decisions of the RS Bureau in Belgrade (O-18); Decision on appointment of Republic advisor No. 01-127/93, Official Gazette of Republika Srpska No. 1/93 (O-19); Minister Mandić's Request to Prime Minister Branko Đerić, dated 21 August 1992 (O-20); Minutes of the 37th session of the RS Government No. 03-778 dated 11 July 1992 (O-21); Minutes of the 39th session of the RS Government No.03-869 dated 27 July 1992 (O-22); Tape recording of the 20th session of the Assembly of Republika Srpska held on 14 and 15 September 1992 (O-23); Minutes of the 20th session of the RS Assembly held on 14 and 15 September 1992 (O-24); Decisions on establishment of Penal and Correctional Organizations in the territory of the Serb Republic of BiH, Official Gazette of the Serb People in BiH No. 6/92 (O-25); Decision on material jurisdiction of regular courts in criminal cases, Official Gazette of the Serb People in BiH No.8/92 (O-26); Decision on material jurisdiction of regular courts in civil law, Official Gazette of the Serb People in BiH No.9/92 (O-27); List of candidates proposed to Ministry of Justice for judicial bodies in the territory of Bijeljina Municipality No. 01-012-4/45c-I dated 5 June 1992 (O-28); Decisions of Radovan Karadžić, President of RS Presidency, Official Gazette of the Serb People in BiH, No. 10/92 (O-29); Decisions on appointment of judges and prosecutors, Official Gazette of the Serb People in BiH No.11/92 (O-30); Decisions on appointment of judges and prosecutors, Official Gazette of the Serb People in BiH No.13/92 (O-31); Map of Sarajevo and the surrounding area (O-32); Request of Momčilo Mandić to the Presidency of the Serb Republic of BiH asking for reorganization of the judiciary in the Sarajevo region No. 0172-148-6792 dated 21 August 1992 (O-33); Decision on establishment of judiciary institutions, Official Gazette of the Serb Republic of



14/92 (O-34); CPC with commentary of Articles 190-205 of CPC (O-35); Decision on relieving of duty and appointing judges and prosecutors, Official Gazette of the Serb Republic of BiH 14/92 (O-36); Decision on relieving of duty and appointing judges and prosecutors, Official Gazette of the Serb Republic of BiH 18/92 (O-37); Decision on relieving of duty and appointing judges and prosecutors, Official Gazette of the Serb Republic of BiH 20/92 (O-38); Decision of Radovan Karadžić on establishment, seat and jurisdiction of military courts and prosecutor's offices, Official Gazette of the Serb People in BiH 8/92 (O-39); Request of Minister Momčilo Mandić to the Presidency of the Serb Republic of BiH, Radovan Karadžić, No. 01-119/92 dated 5 August 1992 (O-40); Proposal of Milan Gevro to Prime Minister Branko Đerić for staffing military judiciary organs, Confidential No. 50 dated 5 August 1992 (O-41); Decision of Radovan Karadžić on establishment of the Banja Luka Correctional and Penal Institution (O-42); Decision of Radovan Karadžić on establishment of the Banja Luka Correctional and Penal Institution, Official Gazette of the Serb People in BiH 9/92 (O-43); Decision on establishment of the Butmir – Ilidža Correctional and Penal Institution, Official Gazette of the Serb People in BiH 10/92 (O-44); Decision on establishment of the Bijeljina Correctional and Penal Institution, Official Gazette of the Serb People in BiH 10/92 (O-45); Decision on establishment of the Foča Correctional and Penal Institution, No. 01-258/92 dated 18 July 1992 (O-46); Decision on establishment of district prison in Trebinje, Official Gazette of the Serb People in BiH 19/92 (O-47); Decision on establishment of committees for visits to collection centers and other facilities for prisoners in the Serb Republic of BiH No. 06-20 dated 9 August 1992 (O-48); Report of committee for visits to collection centers and other facilities for prisoners in the Autonomous Region of Krajina dated 17 August 1992 (O-49); Report of Slobodan Avlijaš and Goran Savić (O-50); Decision of the Department of Judiciary, Administration and Regulations of the Serb Municipality of Vogošća on release from custody dated 25 May 1992 (O-51); Government's excerpt from Instructions for Work of Crisis Staff of the Serb People in Municipalities (O-52); Map of BiH with sketches by the Accused (O-53); Order on application of rules of international law in the Army of the Serb Republic of BiH, Official Gazette of the Serb People in BiH 9/92 (O-54); Opinion of Vojo Lalo, Assistant Minister of Justice and Administration No. 02-0-105/92 dated 11 September 1992 (O-55); Bill on Political Organizations, October 1992 (O-56); Bill on Public Attorney's Office (O-57); Copy of Momčilo Mandić's photograph (O-58); Photographs of Momčilo Mandić (O-58, O-59, O-60, O-61); Certificate of the Men Sana medical center (O-62); Sketch by witness "H" (O-63); Discharge letter for patient Duško Jević VP (O-64); Discharge letter for Dušan Jević. Case history No. I 939-J-28- (O-65);

Certificate of the Police Special Brigade on the manner and circumstances of the killing of Mile Lizdek No. 01/1-1023/94 dated 23 April 1994 (O-66); Dispatch of the Prime Minister of the Serb Republic of BiH to Branko Đerić by the Executive Committee of Foča, R. Mladenović (O-67); Dispatch of Serb employees of Stari Grad Public Security Station to the Ministry of Interior of the Socialist Republic of BiH, dated 5 March 1992 (O-68); Decision of the Ministry of Defense assigning JV to the duty of cook at the Butmir-Kula Correctional and Penal Institution No. 06-08-279/94 dated 28 September 1994 (O-69); Authorization for Ranko Tešanović to leave Sarajevo No. 133/92 dated 28 July 1992 (O-70); Certificate confirming that Ranko Tešanović holds an ID Card, No. 21/92 dated 4 June 1992 (O-71); Book from Kasindol Hospital – Protocol (O-72); Record on examination of witness Fikret Išerić No. KT-RZ-42/05 of 25 January 2006 (O-73); Order of the Vogošća Crisis Staff dated 2 May 1992, signed Jovan Tintor (O-74); Report of the Prison Unit of the Serb Municipality of Vogošća dated 9 July 1992 (O-75); Report of the Prison Unit of the Serb Municipality of Vogošća dated 3 July 1992 (O-76); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 4 July 1992 (O-77); Report of the Prison Unit of the Serb Municipality of Vogošća dated 4 July 1992 (O-78); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 5 July 1992 (O-79); Report of the Prison Unit of the Serb Municipality of Vogošća dated 5 July 1992 (O-80); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 6 July 1992 (O-81); Request of the Red Cross of Ilijaš Municipality to the Wartime Staff of the Serb Municipality of Vogošća for take-over of persons from the prison dated 6 July 1992 (O-82); Report of the Prison Unit of the Serb Municipality of Vogošća dated 6 July 1992 (O-83); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 7 July 1992 (O-84); Receipt of the Custody Unit of the Serb Municipality of Vogošća for take-over of persons for informative interviews on 7 July 1992 (O-85); Report of the Prison Unit of the Serb Municipality of Vogošća dated 7 July 1992 (O-86); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 8 July 1992 (O-87); Report of the Prison Unit of the Serb Municipality of Vogošća dated 7 July 1992 (O-88); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 9 July 1992 (O-89); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 10 July 1992 (O-90); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 10 July 1992 (O-91); Report of the Prison Unit of the Serb Municipality of Vogošća dated 10 July 1992 (O-92); Record – list of prisoners at the Prison Unit in the Serb Municipality of Vogošća for 11 July 1992 (O-93); Report of the Prison Unit of the Serb Municipality of Vogošća dated 11 July 1992 (O-94); Record

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January 1992, and Approval of the SRK Commander (O-366); Request for work and assistance of prisoners of the Kula KPD (O-367); Request to take prisoners of the Kula KPD for labor of 14 January 1993 and the Approval of the Sarajevo-Romanija Corps Commander (O-368); Order of the SRK Command on surrender of a prisoner of war on 21 September 1992 (O-369); Request to take prisoners from the Kula prison for labor of 16 February 1993 and the Approval (O-370); Request of the Kasindol Battalion to take prisoners from the Kula prison for labor on 8 February 1993 (O-371); Request of the 1st Romanija Brigade Command to take prisoners from the Kula prison for labor (O-372); Request of the Sarajevo-Romanija Corps Command to take prisoners from the Kula prison for labor on 2 February 1993 (O-373); Request to take prisoners from the Kula prison for labor on 1 February 1993, and the Approval (O-374); Request to take prisoners from the Kula prison for labor on 1 February 1993, and the Approval (O-375); Request of the 1st Romanija Brigade Command to take prisoners from the Kula prison for labor on 24 January 1993 (O-376); Approval of the SRK Command for taking five prisoners out of the Kula KPD for labor on 16 January 1993 (O-377); Request of the 1st Romanija Brigade Command to take prisoners from the Kula prison for labor on 19 January 1993 (O-378); Lists of prisoners as placed in rooms of the Kula KPD (O-379-384); Logbook of prisoners' work assignments (O-385); Discharge letter for Munib Isić from *Kasindo* town hospital (O-386); Logbook of prisoners' work assignments (O-387); Directory (O-388); Request of the Kula KPD for payment of accelerated retirement scheme to employees, sent to the RS Ministry of Finance on 14 October 1992 (O-389); Work schedule for the Kula KPD employees on 1-2 August 1992 (O-390); Work schedule for the Kula KPD employees on 3-4 August 1992 (O-391); Work schedule for the Kula KPD employees on 5-6 August 1992 (O-392); Work schedule for the Kula KPD employees on 7-8 August 1992 (O-393); Work schedule for the Kula KPD employees on 9-10 August 1992 (O-394); Work schedule for the Kula KPD employees on 17-18 August 1992 (O-395); Work schedule for the Kula KPD employees on 21-22 August 1992 (O-396); Work schedule for the Kula KPD employees on 23-24 August 1992 (O-397); Work schedule for the Kula KPD employees on 25 August 1992 (O-398); Work schedule for the Kula KPD employees on 26 August 1992 (O-399); Work schedule for the Kula KPD employees on 27 August 1992 (O-400); Work schedule for the Kula KPD employees on 28 August 1992 (O-401); Work schedule for the Kula KPD employees on 29 August 1992 (O-402); Work schedule for the Kula KPD employees on 31 August 1992 (O-403); Work schedule for the Kula KPD employees on 1 September 1992 (O-404); Work schedule for the Kula KPD employees on 2 September 1992 (O-405); Work schedule for the Kula KPD employees on 3 September 1992 (O-406); Work schedule for the

KPD employees on 4 September 1992 (O-407); Work schedule for the Kula KPD employees on 5 September 1992 (O-408); Work schedule for the Kula KPD employees on 6 September 1992 (O-409); Work schedule for the Kula KPD employees on 7 September 1992 (O-410); Work schedule for the Kula KPD employees on 8 September 1992 (O-411); Work schedule for the Kula KPD employees on 9 September 1992 (O-412); Work schedule for the Kula KPD employees on 10 September 1992 (O-413); Work schedule for the Kula KPD employees on 11 September 1992 (O-414); Work schedule for the Kula KPD employees on 12 September 1992 (O-415); Work schedule for the Kula KPD employees on 13 September 1992 (O-416); Work schedule for the Kula KPD employees on 14 September 1992 (O-417); Work schedule for the Kula KPD employees on 15 September 1992 (O-418); Work schedule for the Kula KPD employees on 16 September 1992 (O-419); Work schedule for the Kula KPD employees on 17 September 1992 (O-420); Work schedule for the Kula KPD employees on 18 September 1992 (O-421); Work schedule for the Kula KPD employees on 19 September 1992 (O-422); Work schedule for the Kula KPD employees on 20 September 1992 (O-424); Work schedule for the Kula KPD employees on 21 September 1992 (O-425); Work schedule for the Kula KPD employees on 23 September 1992 (O-426); Work schedule for the Kula KPD employees on 22 September 1992 (O-427); Work schedule for the Kula KPD employees on 24 September 1992 (O-428); Work schedule of the Kula KPD employees for 25 September 1992 (O-429); ID's of the Red Cross and Merhamet for Ešref Gracić (O-430); Photograph of a part of a devastated apartment at 33 Titova Street (O-431); Newspaper article entitled *Zavjera protiv života (Conspiracy against Life)* (O-432); Photographs – Lawyer Ešref Gracić (O-433); Photographs – wounding on 2 May 1992 at 33 Titova Street (O-434); Certificate issued by Merhamet for Ešref Gracić's Sarajevo-Split-Sarajevo trip (O-435); Recommendation of Reverend Tomo Knežević for unhindered transport of persons to their destination on 25 May 1992 (O-436); Request of the Secretary of the *Preporod* SDD (Serb Charity) for unhindered transport of persons to their destination on 25 May 1992 (O-437); Decision of the RS Presidency on temporary suspension of work of political organizations on 25 June 1992 (O-438); Certificate issued by the SDS confirming that Momčilo Mandić was never a party member in the period from 1990 to 2007, dated 23 April 2007 (O-439); Leadership of Bosnian Serbs 1990-1992; Report on investigation made for the Krajišnik and Plavšić case, 30 June 2002 (O-440); Report of the Commission for Exchange of Prisoners of War and Captured Persons to the Central Commission for Exchange on details of exchange (O-441); Prosecutor's Office of BiH, Motion to take over the case against Momčilo Mandić, dated 5 September 2007 (O-442); Decision of the War Presidency of the Serb Municipality of Foča, dated 18

June 1992 (O-443).

Pursuant to Article 261 (2) (c) of CPC BiH, the Trial Panel heard an expert witness, Professor Dr Zoran Pajić, concerning the structure and the powers of the authorities in the Serb Republic of Bosnia and Herzegovina in the period relevant for the Indictment in this criminal case, that is, the period from April to December 1992.

### B. Closing Arguments

Upon the completion of the evidentiary procedure, the Prosecutor, the Defense Attorneys and the Accused presented their closing arguments.

#### **1. Closing Argument of the Prosecution**

In the introductory part of his closing argument the Prosecutor stressed that the statements of 50 heard witnesses and more than 200 objective material evidence, as well as some evidence presented by the Defense, can undoubtedly serve as a firm basis for rendering a decision that would, beyond any reasonable doubt, conclude that the Accused is criminally responsible for all criminal acts that the Indictment charges him with.

With respect to Count 1 of the Indictment, the Prosecutor stresses that the evidence presented in the course of the proceedings clearly leads to the conclusion that by his actions the Accused committed grave violations of the international humanitarian law which are contained in the Geneva Convention *relative to the Protection of Civilian Persons in Time of War* of 12 August 1949, and that the Accused, before committing the actions that the Indictment charges him with in the statement of facts in Count 1, planned the commission thereof and incited and aided and abetted other persons to take the same actions, and then, as the person in charge and the person with a commanding role, directly participated in the commission of these actions. Furthermore, the presented evidence clearly indicates that the Accused participated in the division and breakup of the then MUP of the Republic of BiH, as he personally stated in his statement in the capacity as a witness, and he also participated in the division of the Special Unit of the then MUP of RBiH. It is also clear from the presented evidence that in the course of 1991 the Accused was appointed the Assistant Minister of the Interior of the then Socialist Republic of BiH, which office he held in early 1992, the time when the actions

activities aimed at division and breakup of the then MUP of SRBiH commenced. It also follows from the evidence presented in the evidentiary procedure that the Accused, in the capacity as the Deputy Minister of the Interior of the Serb Republic of BiH, on the relevant day, 5 April 1992, directly managed the attack against the Vraca School Center. Everything clearly leads to the conclusion that the Accused directly commanded the units that took part in the attack on the School Center and that he also personally took part in the attack that had the character of an armed conflict. Furthermore, it ensues from the statements of the Prosecution witnesses, primarily Dževad Termiz, as well as witnesses Josip Bilandžija, Meho Mašović and Husein Balić, that the Accused, after the attack on the Vraca School Center was finished, when inquiring about his brother, Mladen Mandić, physically assaulted Dževad Termiz by punching him in the head and then in the other parts of the body due to which Termiz fell down on the ground and, while doing so, the Accused insulted and cursed him. Unlike the statements of the Prosecution witnesses, with respect to the same circumstances the Prosecutor states that the statements of the Defense witness Vlatko Lopatić, witness "I", Mladen Mandić and the Accused himself, were given with the intent of concealing the facts incriminating the Accused. After the physical assault on Dževad Termiz, as the presented evidence indicates, in particular the statements of the heard Prosecution witnesses Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija and Džafer Hrvat, all students were taken out of the school and to the premises of the Elementary School at Vraca, while the responsible officials and the teaching staff were first taken to the Local Community Center at Vraca. The following persons were singled out from that Center, namely: Šimo Švabić, Ibrahim Hidović, Nermin Levi, Husein Balić, Dževad Termiz, Meho Mašović, Mirzet Karajica and Samir Bukvić. They were then transferred to the Police Station in Pale. It can be concluded from the aforementioned witnesses' statements that the persons who defended the Center, and those were Bosniak and Croat members of the staff, were arrested after the attack and unlawfully detained for several days during which period they were constantly exposed to physical torture and abuse that considerably damaged their bodily integrity and health.

The Prosecutor states that it was established by the presented evidence that the Accused, as the commander and the most senior police official, was directly responsible for unlawful detention and inhumane treatment and physical mistreatment of the detained persons, and that, in order to release himself from responsibility, the Accused implicated the military in these events in such a way as if members of the Military Police detained the aforementioned persons and transferred them to the Pale Police Station by military force because these persons were allegedly responsible for an ambush in which two

members of the component of the Special Police that conducted the attack on the School Center were killed. The Prosecutor notes that it is clear that members of the Serb Police used military vehicles because as early as then the Army, that is, the former JNA, overtly put itself at the service of the bodies of the Serb Republic of BiH established at the time, hence it placed at the disposal of these bodies, including the Ministry of the Interior of the Serb Republic established at the time, its complete equipment, including arms and vehicles, in order for these bodies to achieve as successfully as possible the objectives for which they had been set up. The arrested persons were brought to the Police Station in Pale where they were subjected to interrogation, which Defense witness Malko Koroman confirmed in his testimony and noted that members of the Pale Public Security Station conducted the interrogation of these persons, not members of the military, and that he, as the Chief of the Pale Public Security Station was not aware at all what was happening to these persons and that he was not interested in it at all, which all obviously indicates that he attempted to shift on the military the complete responsibility for the actions of the accused taken against the arrested persons.

The actions that the Accused took before, in the course of, as well as after the attack on the Center, constitute all elements of the *criminal offense of War Crimes against Civilians*, in violation of Article 173 (1) (c) and (e) of CC BiH, that the Accused is charged with.

With respect to the aforementioned, the Prosecutor believes that it is possible to draw an indisputable, clear and correct conclusion whereby it would be established, beyond any reasonable doubt, that the Accused is individually criminally responsible for all the actions taken, as stated in the description of facts of this Count of the Indictment. The actions taken by the Accused before, in the course of, as well as after the attack on the Center constitute severe violations of the international humanitarian law, therefore, it implies that he is fully criminally responsible for the committed criminal offense of War Crimes against Civilians, in violation of Article 173 (1) (c) and (e) of CC BiH, that the Accused is charged with.

Counts 2, 2 (a, b, c and d), 3, 3 (a, b, c, d and e), 4, and 4 (a, b, c and d) charge the Accused with the *criminal offense of Crime against Humanity* in violation of Article 172 (1) (h) of CC BiH. The Prosecutor notes that the essential elements of this criminal offense have been proven. That is to say, in the period from May until the end of December 1992, there was a widespread and systematic attack directed against

civilian population and this fact clearly ensues from the facts adjudicated in the respective Judgments in the cases against Stanislav Galić, Milorad Krnojelac and Dragoljub Kunarac. These facts have been accepted as proven by the Trial Panel in this case. In addition, it follows from the evidence of the heard witnesses, as well as numerous material evidence, that after the outbreak of the conflict, the non-Serb civilians were subjected to a systematic persecution and that the Accused knew of the existence of such an attack, that his actions constituted an integral part of the attack and that by those actions he violated both international and national law. The Prosecution exhibit No. T-84 established that by the Decision of the Acting Presidents of the then Serb Republic of BiH, dated 1 May 1992, penal-correctional institutions were established in the territory of the so-called Serb Republic of BiH. Pursuant to Article 2 of the Decision, the penal-correctional institutions, which had existed in the legal system of the Socialist Republic of BiH prior to this Decision, were to be taken over and to continue operating as the state administrative bodies of the Serb Republic. In view of the fact that all presented evidence shows that the penal-correctional institutions *Kula* in Kula near Sarajevo and *Foča* in Foča existed in the former Socialist Republic of BiH until the outbreak of the war, it can be concluded clearly that pursuant to the aforementioned Decision these institutions were taken over and continued operating even after the outbreak of the war, but only within the administrative system of the established Serb Republic, that is, Republika Srpska.

Civilians, mostly of Bosniak ethnicity, were detained in the Kula penal-correctional institution without any legal grounds, particularly from May 1992 onwards. Having been arrested and detained in the *Butmir* penal-correctional institution in Kula, they were placed in the conditions which were below any legal standards regulating the treatment of civilians in times of armed conflict. They were given insufficient food as a result of which many of them suffered substantial weight loss. They were kept on the premises with poor conditions, without beds and blankets, and the hygienic conditions were at an extremely low level. They had inadequate medical care and many were subjected to beatings and other forms of abuse. Many of them were forced to labor in the course of which many were killed and some were wounded. These conclusions may be inferred from the statements of the Prosecutor witnesses: female witness X, Avdo Pizović, Mirsad Kršlak, Mirsad Dragnić, Munib Ilić, Hasan Šunjić, Mušan Šunjić, Alisa Muratčauš, Salko Zolj, Hajrudin Karić, Amir Šehović, Rešad Brdarić, Hasib Delilović, Junuz Hrbaš and Nezir Hurić. Furthermore, the Prosecutor notes that there is not a single reason not to accept these statements as credible, as well as the presented evidence. Therefore, it can be concluded that the allegations in Counts 2 and 2a, b, c and d of the Indictment

are entirely founded and correct.

Many pieces of evidence were presented with respect to the facts referred to under Counts 3 and 3a, b, c, d and e of the Indictment, which clearly indicate that the charges in the aforementioned Counts are well-founded. The Prosecution exhibit No. T-84, namely, the Decision on the Establishment of Penal-Correctional Institutions, that is, Article 8 thereof, reads that the Minister of Judiciary and Administration has the authority to render decisions establishing detention units within the penal-correctional institutions as necessary. The Prosecution document No. T-137 confirms that the Accused, in the capacity as the Minister of Judiciary and Administration, used his powers referred to in Article 8 of the aforementioned Decision and rendered a decision to establish the Detention Unit of the *Butmir* KPD, which Unit was located in Vogošća. Before rendering this Decision and on the basis of the request of the Ministry of Judiciary and Administration of the Serb Republic of BiH, Vogošća Municipality, by its Decision of 8 July 1992, and serving the needs of the Prison Unit, allowed the Ministry of Judiciary and Administration to use a house, property of Miralem Planjo, located in Semizovac, which ensues from the Prosecution exhibit No. 135. Based on the aforementioned evidence, it can be concluded clearly that the Detention Unit, located in the so-called *Planja's house* in Semizovac, was a part of the *Butmir* Penal-Correctional Institution in Kula, therefore under the direct authority of the Ministry of Judiciary and Administration of the Serb Republic of BiH, that is, a part of the administrative system of the then Serb Republic of BiH.

The statements of all the heard witnesses, with respect to which there is not a single reason to doubt them and which are entirely confirmed by many pieces of material evidence, clearly lead to the conclusion that dozens of civilians of Bosniak ethnicity were detained unlawfully and without any legal grounds in the unit of the *Butmir* KPD which was located in the so-called *Planja's house* in the locality of Svake, Vogošća Municipality, and that these persons were placed and confined in inhuman conditions, deprived of a possibility of meeting their basic hygienic needs, starved, deprived of a possibility of receiving medical treatment, subjected to physical abuse and infliction of bodily injuries, subjected to willful killings, forced to perform labor in the course of which many of them were killed or wounded, and taken out of the prison and then disappeared without a trace. Such conclusion indicates that the facts stated under Counts 3 and 3 (a, b, c, d and e) of the Indictment are well-founded.

According to the Prosecutor, the same conclusion can be drawn with respect to the facts stated under Counts 4 and 4 (a, b, c and d) of the Indictment related to the *Foča* KPD. With respect to these Counts of the Indictment, the following witnesses were heard in the course of the evidentiary proceedings: Lazar Stojanović, Radomir Dolaš, Juso Selimović, Rasim Džubur, Mirsad Karović, Safet Hadžiahmetović, Murat Kršo, witnesses "A", "B", "C", "D", "F" and "G". All the aforementioned witnesses, except Lazar Stojanović and Radomir Dolaš, were heard in relation to their arrest, imprisonment and detention at the *Foča* KPD, the conditions in which they had been detained and the treatment they had received by the guards and other persons, as well as regarding some other facts related to the events inside the *Foča* KPD during their detention.

With respect to the role and responsibility of the Accused for the events in the aforementioned penal-correctional institutions, the events that the detainees of mostly Bosniak ethnicity experienced, the Prosecutor quotes the Prosecution exhibit No. T-81 showing that at the extended meeting of the National Security Council and the Government of the Serb Republic of BiH, held on 22 April 1992, the Accused Momčilo Mandić was appointed the Minister of Judiciary and Administration. This fact was confirmed by the Prosecution exhibit No. T-82. Furthermore, the Prosecution document No. T-83 clearly shows that the Accused took his office even before the verification of his appointment, which is confirmed by the document of the Ministry of Judiciary and Administration of the Serb Republic of BiH dated 1 May 1992. By this document the Accused, in the capacity as the Minister of Judiciary and Administration, forwarded to the presidents of the regional assemblies the decisions pertaining to judicial and prosecutorial domain, and with respect to those decisions issued orders to them to take necessary actions, including the actions on establishment of penal-correctional institutions in the territory of the Serb Republic of BiH. The Accused occupied this post until the end of December 1992. The Prosecutor stresses that duties and responsibilities of the Accused as the Minister of Judiciary and Administration, especially with respect to the establishment and organization of penal-correctional institutions in the territory of the Serb Republic, were based on the Law on Ministries published in the *Official Gazette of the Serb People in BiH* No. 5 dated 9 May 1992, which is the Prosecution exhibit No. T-85, and the decisions of acting presidents of the Republic of 1 May 1992 which clearly show that the Ministry of Judiciary and Administration, especially the Minister, had special powers with respect to the internal organization of the penal-correctional institution, establishment of Detention Units, and appointments and dismissals of responsible persons in the penal-correctional institutions. These facts give ground to the



conclusion that the Accused, as the Minister of Judiciary and Administration of the Serb Republic of BiH, and afterward of Republika Srpska, that is, the person with the highest level of responsibility within the Ministry, was responsible for the organization and functioning of all penal-correctional institutions which either continued with the operation at the time when the Serb Republic of BiH was established or were established and organized in the period subsequent to the establishment of the Serb Republic of BiH.

In the conclusion of his closing argument, the Prosecutor notes that it follows from all the presented evidence of the Prosecution that during the wide and systematic attack in the city of Sarajevo and the Municipality of Foča, there occurred a deliberate and severe deprivation of the *fundamental rights*, primarily imprisonment, that is, severe deprivation of physical freedom in contravention of the basic rules of the international law, killings, physical abuse and violence against life and person, enforced disappearances, as well as other inhumane acts committed exclusively with the intention to inflict serious physical and mental harm, that is, to cause deterioration of health. These facts indicate that persecution on political, national, ethnic and religious grounds was committed against the non-Serb civilians who were under the authority of the Accused. Furthermore, the Prosecutor states that it can be concluded with certainty that the Accused, taking into account the position he held and his authority in general, with full awareness took the actions aimed at planning, instigating and committing the actions aimed at persecution of non-Serb civilians, as well as the actions by which he aided and abetted, as well as incited other persons, especially his subordinates, to also take actions, in the course of their duties, aimed at persecution of the non-Serb civilians exclusively on the basis of their different national and religious background. Therefore, he is fully individually criminally responsible, as set forth in Article 180 (1) of CC BiH, for the actions taken against the prisoners who went through the penal-correctional institutions subordinated to him which had all characteristics of prison camps. He is also responsible for the actions that his subordinates took against the prisoners, because he certainly knew about them, but deliberately failed to take necessary and reasonable measures to prevent the commission of those acts, and, although he subsequently learned of the commission of such acts, he did nothing to punish the perpetrators, as set forth in Article 180 (2) of CC BiH.

In the end of his closing argument, the Prosecutor also commented on the report of Professor Zoran Pajić, Ph.D., expert in international public and constitutional law, presented at the main trial. According to the Prosecutor, the expert's final conclusion is that the Accused had the authority over and was formally responsible for

implementation of the obligations referred to in the Law on Ministries, and that his responsibility, as a government official, for the application of principles of the international laws of war and serious violations of the international humanitarian law was extremely intensified in the circumstances of the imminent war threat. Therefore, the ministers and members of the Government of the Serb Republic, including the Accused as the Minister of Judiciary and Administration, can be considered the most responsible persons for the application of law in general.

Based on the foregoing, the Prosecutor believes that the presented evidence leads to a completely clear and firm conclusion about the criminal responsibility of the Accused for the criminal offenses that he is charged with. He, therefore, moves the Trial Panel to find the Accused guilty and sentence him according to the law and not to take into consideration any extenuating circumstances for the Accused when determining the type and length of the sentence, because no such circumstance exists. Contrary to that, there is a number of aggravating circumstances that might affect the type and especially the length of the sentence. The unscrupulousness and persistence that the Accused showed while committing the acts that constitute the elements of the criminal offenses he is charged with should primarily be taken into account. The very serious consequences resulting from the committed offenses should be particularly taken into account. Based on the foregoing, the Prosecutor moves the Panel to impose a sentence of long-term imprisonment on the Accused.

## 2. Closing Argument of the Defense

In the introductory part of the joint closing argument the Defense Counsel noted that the practice of the application of the CC BiH in the Court of BiH was not only unacceptable, but also unlawful. In other words, the Defense did not change its position on the obligation of having to apply a more lenient law, irrespective of the Decision of the Constitutional Court of BiH No. AP 1785/06 reading that the application of the CC BiH from 2003 does not constitute a violation of the provision of the European Convention that guarantees application of the basic principle *nullum crimen nulla poena sine lege*.

The Defense presented its position regarding the state of facts and the application of the criminal code from two aspects: the aspect of a consistent adherence to the principle of legality in criminal proceedings, as set forth in Article 2 of the CPC BiH, and the aspect of legality in the application of substantive law, as set forth in Article 3 of the

CC BiH, and from the aspect of the unacceptable practice of the Court of B-H in the application of the CC BiH, declared by the Decision of 24 January 2003, whereby the principle of legality was not honored and decisions contrary to the law and commonly accepted principles of criminal law were imposed. The Defense was also of the opinion that the Trial Panel would not be able to base its decision on the evidence obtained in contravention of Article 2 (2) of CPC BiH, which is unlawfully obtained evidence, such as intercepted telephone conversations, brochures of unknown authors and publishers and the like.

The Defense also commented on the application of one of the fundamental principles of criminal law, which is contained in the provision of Article 4 of CC BiH and which concerns time constraints regarding applicability of the criminal code. The Defense thinks that, beyond any doubt, the criminal code that was in effect at the time of the commission of the actions is to be applied, namely, the Criminal Code of the former SFRY, which was in effect as an adopted law in the Republic of Bosnia and Herzegovina after its recognition as an independent state. Therefore, the amended CC SFRY was in effect at the time of the actions of the accused Momčilo Mandić, that is, in 1992, and it is to be considered that the most severe punishment at that time in Bosnia and Herzegovina was imprisonment for a term of 20 years and in that way conditions were created for that code to be applied as the most lenient for the perpetrator. Furthermore, the Defense points out that Article 4a of CPC BiH was set forth only as an option of application of the Code with respect to adherence to the *nullum crimen sine lege* principle concerning the criminal offenses covered by the law and application of international law, but that Article 4a does not enable pronouncement of a heavier sentence than the sentence of 20 years of imprisonment, as it does not prescribe anything that would relate to imposing sentences. International law does not prescribe punishments and they cannot be prescribed subsequently, and it is in particular not possible to impose sentences heavier than the sentences set forth at the relevant time in the territory where the events concerned took place.

With respect to Count 1 of the Indictment, the Defense considers that it is difficult to separate the actions of the Accused, as they have not been indicated precisely and it is not known by which actions and when the Accused committed the criminal offense of War Crimes against Civilians in violation of Article 173 (1) c) or e) in conjunction with Article 180 (1) of CC BiH that he is charged with. This is particularly so since the Indictment gives a description of facts that indicate both Paragraph (1) and (2) of

180 of CC BiH, whereas the qualification concerns only Paragraph (1) of the said Article. The Defense also notes that the Prosecutor did not provide a single proof on the basis of which it could be concluded that the accused Momčilo Mandić in any way planned the commission of unlawful confinement and inhuman treatment of civilians, as indicated in Count 1 of the Indictment, but rather just assumed that it was proven that he had planned the attack against the School Center at Vraca due to his political and professional activity.

It is also noted that the Prosecutor was obliged to prove the existence of an armed conflict, as well as to identify the parties to the conflict and its timeframe, which, in the opinion of the Defense, the Prosecutor failed to do. In that respect, the Defense states that it was proven that the conflict started on 5 April 1992, which the Prosecutor accepted in the amended Indictment, that is, before the international recognition of Bosnia and Herzegovina as an independent state, and that all the events took place in the former Socialist Republic of Bosnia and Herzegovina, not in the Republic of Bosnia and Herzegovina. Furthermore, the conflict occurred between two armed groups belonging to the same Ministry of the Interior, and not, as the Prosecutor argued, between the armed force of one country and the rebel armed force, as the Republic of Bosnia and Herzegovina did not exist at that time, as the rebel armed force also did not exist.

The Defense also considers that the Prosecutor did not present sufficient evidence to prove his argument that the accused Momčilo Mandić commanded the attack against the School Center at Vraca, regardless of the arguments of certain Prosecution witnesses that they thought that the Accused commanded and coordinated the attack. Furthermore, the Defense commented on the fact that the accused Momčilo Mandić was charged in Count 1 of the Indictment with War Crimes against Civilians but that the Prosecutor did not prove that the persons present at the School Center at Vraca were civilians. In other words, the Defense claims that, in addition to a huge number of students of the secondary school of the Ministry of the Interior, there were more than 170 "course attendees" in the Center, that is, experienced policemen who were armed and who defended the Center for more than three hours. The said persons, who participated in the conflict on the side of the School Center, did not have the status of civilians and anything done against them could not be a criminal offense against civilians. Based on the aforesaid, the Defense notes that the assault against Dževad Termiz by the Accused cannot be considered an assault against a civilian. Even if it is considered that a brief physical contact indeed occurred, it can be regarded that the motive of such attack was the Accused's concern for brother Mladen, who was in the Center, and not some other reason that could be

classified as an element of the criminal offense the Accused is charged with.

The Defense also notes that the Prosecutor did not succeed in proving that the accused Momčilo Mandić was also responsible for the transportation of a group of persons to Pale where they were physically mistreated, because it was not established that he was the superior of the persons who beat Dževad Termiz and other prisoners. The Defense states that the evidence showed that the Accused was not present either in the Local Community building or in Pale and that he could not have known what had been happening after the conflict in the School Center, since he left that area together with his brother immediately upon his brother's appearance from the Center.

The Prosecutor also charges the accused Momčilo Mandić with the criminal offense of Crimes against Humanity in violation of Article 172 (1) (a), (c), (f) and (k) of CPC BiH in Counts 2 (2a, 2b, 2c, 2d), 3 (3a, 3b, 3c, 3d, 3e), 4 (4a, 4b, 4c, 4d). The Defense is of the opinion that, not only that the Prosecutor failed to prove everything that the Accused was charged with, but he also did not attempt to prove the major part of it.

In other words, the Defense argues that not a single Prosecution witness was able to state who ordered their arrest or who decided where they would be accommodated or transferred and that all the evidence of the Defense indicated that the decisions on their arrest were made on the level of Crisis Staffs or later the Councils which subsequently impacted the fate of the said persons through Municipal Committees for PoW Exchange, which the highest level authorities of Republika Srpska also noted. All witnesses only assumed that the military captured them, but they did not know who was in charge of deciding about them afterward.

The Defense also notes that the accused Momčilo Mandić could not in any way be aware of the status and conditions of accommodation and nutrition of the prisoners of war and that the evidence showed who had been in charge of the prisoners, namely, the Vogošća Brigade, the Wartime Crisis Staff of the Serb Municipality of Vogošća or the Wartime Council, and that it is clear that the Accused cannot be criminally responsible for any of the offenses he is charged with in Counts 2-4 of the Indictment. The Defense adds that the accused Momčilo Mandić could not be responsible for the events in the Foča KPD, where even the committee of the Ministry of Justice could not enter, since the military authorities did not allow it. The Defense also argues that not a single Prosecution witness connected the Accused with these events, while witness Rašević clearly confirmed

Mandić had nothing to do with this KPD whatsoever, which also ensues from the facts adjudicated in the ICTY Krnojelac case that the Panel accepted.

The Defense finally notes that the Prosecutor did not prove that the accused Momčilo Mandić committed the criminal offense he is charged with in the Indictment and moves the Court to acquit the Accused.

### 3. Closing argument of the Accused

The Accused separated Count 1 of the Indictment from the other three Counts, as the role of the Accused in the actions referred to in Count 1 completely differs from the role in the actions referred to in Counts 2, 3 and 4 of the Indictment.

In the opinion of the Accused, the facts in Count 1 of the Indictment are completely false and have not been proven in any way. There should exist the material and the mental element of the person commanding the attack by violating the provisions of the laws of war and customs of war, whereas neither of the elements exists.

The Accused considers that there was no armed conflict of any form or character on 5 April 1992 in the Socialist Republic of BiH. Furthermore, at the moment of the conflict at Vraca, Dževad Termiz, Husein Balić, Meho Mašović and other persons were not civilians. They were armed and in camouflage uniforms, in dug-out trenches and sheltered in the buildings of the Center, ready to defend the Center from any incursion or attack at any cost. The Accused further notes that none of the persons preventing the Special Police of the Socialist Republic of BiH from entering the Center was killed or wounded in this conflict and nobody's health was severely harmed during the conflict either. The Accused, when considering the allegations that Dževad Termiz, Husein Balić, Ibrahim Hidović, Meho Mašović, Nermin Levi, Šimo Švabić, Mirza Karajica and Samir Bukvić were mistreated and beaten by the Military Police during the transportation to Pale and in the gym in Pale, states that the injured parties Ibrahim Hidović, Nermin Levi, Šimo Švabić, Mirza Karajica and Samir Bukvić were not heard about these circumstances. Thus only the allegations of Dževad Termiz and Husein Balić about mistreatment during the ride to Pale remain. In the opinion of the Accused, Dževad Termiz and Husein Balić are the sole culprits and the chief organizers of the defense of the Center. The Accused concludes that Dževad Termiz and Husein Balić were harmed for their lives and potential responsibility and for that reason they did not tell

the truth about their treatment, hence their account can be understood as aimed at personal protection.

The element of awareness related to the attack and wounding of civilians has not been fulfilled, either. The Accused says that his state of mind was dominated by the great concern for the life of his brother Mladen who was in the Center at the moment of the attack. The Accused left the scene immediately upon his brother's appearance and did not take part in that attack in any way.

The Prosecutor also charges the Accused in Counts 2, 2 (a, b, c and d), 3, 3 (a, b, c, d and e), 4 and 4 (a, b, c and d) with responsibility, by virtue of holding the office of Minister of Judiciary and Administration in the period from May to December 1992, for the imprisonment of non-Serbs, mostly Muslims, in penal-correctional institutions. The Accused claims that these charges are untrue as well. In favor of it, he stresses the facts adjudicated in the ICTY Judgment in the Milorad Krnojelac case. It was established in the Judgment that the Command of the Sarajevo-Romanija Corps had the authority over non-Serb captives, while the regular courts or the Ministry of Judiciary and Administration had the authority over the persons who were under investigation or serving sentence. Furthermore, the Accused stated that it was clear from the material evidence that the Military Command had all the power in the *Butmir* KPD as well as in the KPD in Foča. The Military Command was the only one deciding which persons would be exchanged or held on the premises of a penal institution.

The Accused claims that the Ministry of Judiciary and Administration, as a civilian body of the state administration in an imminent war threat, did not have any authority over non-Serb captives, prisoners of war or civilians alike. The Order on the application of international law in Republika Srpska<sup>1</sup>, supports this claim. Also, the Defense Minister issued an Instruction on how to treat PoWs<sup>2</sup>. The Instruction reads that solely the army, its security organs and the police are in charge of treatment of non-Serb captives who are treated as prisoners, and not as persons serving sentence or who are in custody pursuant to a decision of an authorized investigating judge of a regular court. The Instruction gives approval to the army, among other things, to use prisoners for construction and other works, which the army did, indeed.

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<sup>1</sup> Exhibit No. O-54.

<sup>2</sup> Instruction of the Defense Minister, published in the *Official Gazette* No. 9/92, Exhibit No. T-21.

In the end of his closing argument the Accused stressed that, by analogy with the facts established by the aforementioned Judgment in the Krnojelac case in relation to the *Foča* KPD, the military authorities had the same attitude toward detainees in the *Butmir* KPD, which case has not been tried anywhere so far. However, the similar established facts in the Krnojelac case judgment state that, when the army takes over the facilities of the institution, it gains power over the detained non-Serbs.

### C. Procedural Decisions of the Court

#### I. Decisions on Witness Protection

On 22 June 2006, the Preliminary Proceedings Judge ordered<sup>3</sup> protection measures for a total of four witnesses in this case. According to that Decision, all personal information of the protected witnesses, their true names and other personal information were declared confidential.

On 15 November 2006, the Prosecutor requested the Panel to order the exclusion of the public as protective measure for a witness whose testimony was scheduled for that day. After having discussed with the parties and the witness, the Panel, considering the principle of proportionality, decided not to apply the measure of exclusion of the public, but a more lenient measure of assigning the witness a pseudonym.

On 20 December 2006 and 16 January 2007, upon the motion of the Prosecutor, a measure of protection of identity of the witnesses was granted. The witnesses were also given pseudonyms and the public was excluded from the trial only while the witnesses' personal information was being taken.

On 17 January 2007, two witnesses testified under pseudonym as ordered by the Preliminary Proceedings Judge on 22 June 2006. The trial was open to the public.

On 25 January 2007, two witnesses testified under pseudonyms assigned to them by the Preliminary Proceedings Judge on 22 June 2006. The trial was open to the public.

On 20 March 2007, the Panel, granting the Motion of the Defense to order protective

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<sup>3</sup> Decision No. X-KRN-05/58, of 22 June 2006.



measures for the witnesses to be heard that day, rendered a decision on the protection of the witnesses' identities and they testified under pseudonyms.

On 15 May 2007, upon the motion of the Prosecutor, the Panel ordered protecting the witness' identity and image and prohibition of distribution of the witness' photograph to the media.

## **2. Decision to Exclude Public**

From the opening until the end of the main trial, the Panel excluded the public from the hearings to discuss and decide on the Prosecution and Defense motions for witness protection measures, as explained in detail in the previous decisions on protection measures. When terminating the closed session, the Panel informed in general the public on the subject of the discussion and the decisions taken.

## **3. Decision to hold the main trial without the presence of the Accused**

On 10 January 2007, the Court received a submission of the detainees in the state Detention Unit informing the Court that they fully supported the hunger strike of the persons who were being tried or who had been convicted for war crimes before the Court of BiH and that they could not attend the trials due to the situation that emerged.

On 11 January 2007, the Court was informed by the authorized official of the state-level detention unit<sup>4</sup> that the accused Momčilo Mandić had refused to attend the main trial, because he adhered to the hunger strike due to his dissatisfaction with the application by the Court of BiH of the CC BiH instead of the CC SFRY.

The Prosecutor filed an oral submission that the main trial should continue without the presence of the Accused and that the witnesses who were in attendance that day should be heard.

The Defense Counsel for the Accused opposed the motion and proposed adjournment of the main trial, given the fact that hearing of a witness without the presence of the Accused would endanger his right to defense. The Panel decided to continue the

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<sup>4</sup> Official Note No. 11/07 of 11 January 2007.

proceedings without the presence of the Accused should he refuse to attend the main trial without an excuse. The Panel also decided to adjourn the main trial in order to make the Accused aware of the course of the proceedings and the Panel's decision, and in order to get information on his position regarding the further course of the proceedings. After consultations with the Accused, the Defense Counsel stated that the Accused had expressed support for the decision of the other detainees being on a hunger strike and that he would not exercise his right to attend the trial until further notice.

The Court considered unjustified his refusal to attend the scheduled hearing to which he was duly summoned, took into account that he was well aware of the decision of the Panel and decided that the main trial should proceed without his presence.

In fact, the accused Momčilo Mandić was well aware that criminal proceedings were conducted against him. The refusal of the Accused to attend the scheduled hearing was a deliberate act that obviously hindered and delayed the proceedings. The failure of the Accused to appear was only due to his own will. His forceful bringing was not the applicable way, given that he was already in custody, just to secure his presence and successful conduct of the criminal proceedings. Therefore, in the specific case, it was more appropriate to inform the Accused in due manner and time that the trial would continue, his defense Counsel would attend the trial, he would be informed about the course of the proceedings which would take place without his presence and instruct him that he could appear at the court whenever he wanted.

This approach is known in the international practice, too. Thus, for example, with respect to an Accused's own choice not to attend the hearings and where the Accused is duly informed of the trial, the International Criminal Tribunal for Rwanda (ICTR)<sup>5</sup> does not prevent the conduct of proceedings without the presence of the Accused, as in such case it would not constitute a violation of the ICTR Statute or violation of the Accused's human rights.

The prohibition of trial *in absentia*, set forth in Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights (ECHR), is not an absolute one.

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<sup>5</sup> *Jean-Bosco Barayagwiza*, Case No. ICTR-97-19-T.

The European Court of Human Rights finds, primarily, that, although it is not explicitly stated in Paragraph (1) of Article 6 of ECHR, the subject and the purpose of this Article, viewed as a whole, shows that the person "charged with a criminal offense" is entitled to take part in the proceedings. Moreover, sub-paragraphs (c), (d) and (e) of Paragraph (3) guarantee anyone "charged with a criminal offense" minimal rights and it is difficult to imagine how these rights can be exercised if the Accused does not attend the hearing<sup>6</sup>.

With respect to Article 6 of ECHR, the Court finds that, in the case the accused does not want to attend his trial, it must be taken into consideration whether: the accused is informed of the charges against him; he was duly summoned to trial; his absence is without justification, that is, he has willfully and undoubtedly waived his right to attend trial<sup>7</sup> and the Defense Counsel is present.

In this case, the Accused was informed of the criminal proceedings conducted against him. The Accused was duly and timely summoned to the scheduled hearings. He was cautioned and informed about the consequences of his failure to appear at the scheduled hearing. He decided on his own will not to exercise his right to attend the main trial and explicitly stated his decision.

After the hunger strike had ended, the Accused appeared on 26 January 2007 at the scheduled continuation of the main trial.

#### 4. Decisions on accepting established facts as proven

##### 4.1 Upon motion

On 5 February 2007, the Trial Panel rendered the Decision granting the Motion of the Defense and the Prosecutor<sup>8</sup> based on Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings Before the Courts in BiH (Law on Transfer), which refers to acceptance of the facts established by the ICTY as proven.

<sup>6</sup> See the Court's Judgment in the *Colozza* case of 12 February 1985, Paragraph 27.

<sup>7</sup> See, for example, the Judgment of the Court in the *FCB vs. Italy* case of 28 August 1991, Paragraph 29-36; Verdict of the Court of BiH No X-KRŽ-05/70 in the *Stanković* case.

<sup>8</sup> No. KT-RZ-42/05 of 20 October 2006.

That is to say, Article 4 of the Law on Transfer sets forth that "at the request of a party or *proprio motu*, the courts, after hearing the parties, may decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY." The Law on Transfer does not lay down the criteria that must be complied with in order for a fact to be considered "adjudicated". However, after reviewing the relevant facts and considering the right of the Accused to a fair trial, the Panel applied the criteria established by the ICTY<sup>9</sup>.

According to the aforementioned ICTY criteria<sup>10</sup>, for taking judicial notice in one case of an adjudicated fact in another case, the fact should be: distinct, concrete and identifiable, restricted to factual findings and not include legal characterizations, previously contested at the trial and forms part of a judgment which has either not been appealed or has been finally settled on appeal or was contested at the trial and now forms part of a judgment which is under appeal, but falls within issues which are not in dispute during the appeal. Furthermore, it must not attest to criminal responsibility of the Accused, it cannot be based on plea agreements in previous cases and it cannot impact the right of the Accused to a fair trial.

The Law on Transfer is *lex specialis* and, as such, it can be applied in proceedings before the Court of BiH, which the Defense has not disputed, either. The Court considers that the fundamental purpose of Article 4 of the Law on Transfer is efficiency and economy which are to be applied to the proceedings. Nevertheless, the Court also had in mind that the application of this legal provision should be approached cautiously, that is, these facts do not jeopardize the fairness of the proceedings and do not attest directly or indirectly to the criminal responsibility of the Accused. Should one of these circumstances not be met, the established facts could not be accepted as proven.

The Court finds that the established facts that follow below fully meet the aforementioned criteria.

Therefore, the Panel, upon the proposal of the Prosecutor, accepted as proven the following facts established in the ICTY Judgment No. IT-98-29-T, dated 5 December 2003, in the case against Stanislav Galić:

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<sup>9</sup> See the Decision of 28 February 2003, in the *Prosecutor v. Momčilo Krujišnik* case.  
<sup>10</sup> These criteria complement ICTY Rule 94 (B) (Judicial Notice) of the Rules of Procedure and Evidence.

1. In September 1991, the Main Board of the SDS recommended the formation of Serbian Autonomous Regions. The first of these was the region of Romanija-Birac in the Sarajevo area. (para. 194, p. 65)
2. On 9 January 1992, the Serbian Republic of BiH was proclaimed with the aim of confederating part of BiH with the SFRY, or otherwise of declaring secession from BiH in order to join the SFRY. During the first months of 1992, Serbian institutions in competition with the ones controlled by the Presidency of the BiH Republic were established throughout BiH, including in most of Sarajevo's ten municipalities. (para. 195, p.66)
3. In early March 1992, conflict broke out along ethnic lines in various locations in BiH. (para. 196, p.66)
4. Sarajevo was made up of ten municipalities: Stari Grad (Old Town), Centar (Center), Novo Sarajevo, Novi Grad, Vogosca, Ilidza, Pale, Ilijas, Hadzici, and Trnovo. (para. 198, p.33)
5. Armed conflict in Sarajevo broke out with fierce shooting and attack on the Academy of the Ministry of the Interior in Vraca. (para. 199, p. 66)
6. On 2 May 1992, a major attack on the centre of Sarajevo occurred. (para. 200, p. 67)
7. The parliament of Republika Srpska on 12 May 1992 ordered the formation of the Bosnian-Serb Army ("VRS"), designating General Ratko Mladic Chief of its General Staff. On 22 May 1992, General Mladic ordered the formation of the Sarajevo Romanija Corps. (para. 201, p.68)
8. Between May and September 1992, shelling of military and civilian targets within the city of Sarajevo by both sides continued, and fighting was intense and brutal. (para. 202, p. 70)
9. The city of Sarajevo came under extensive gunfire and was heavily shelled during the Indictment Period (10 September 1992 – 10 August 1994). (para. 210, p.73)
10. The Kosevo hospital, a well-known civilian medical facility, was regularly targeted during the Indictment Period (10 September 1992 – 10 August 1994) by the Sarajevo Romanija Corps. These attacks caused the death or injury of civilians present at Kosevo hospital, significantly damaged its infrastructure, and substantially reduced the medical facility's ability to treat patients. (para. 509, p. 208)

11. The shelling of the city of Sarajevo was fierce in 1992 and 1993. (para. 561, p. 231)
12. The ultimate purpose of the campaign of sniping and shelling was targeted against civilians in Sarajevo. (para 576, p. 237)
13. The conflict in Sarajevo led to the death or injury of a large number of civilians. (para. 581, p. 239)
14. Fire into the city of Sarajevo was intense between September and December 1992. (para. 590, p.243)
15. A series of military attacks on civilians in Army of BiH-held areas of Sarajevo and during the Indictment Period (10 September 1992 – 10 August 1994) were carried out by the Sarajevo Romanija Corps with a specific purpose, and they constituted a campaign of sniping and shelling against civilians. (para. 594, p. 245)
16. The attack carried out during the Indictment Period (10 September 1992 – 10 August 1994) was directed against the civilian population, and that the attack was widespread or systematic. (para. 598, p. 246)

The Panel also accepted as proven the following facts established in the ICTY Judgment No. IT-97-25-T, dated 15 March 2002, in the case against Milorad Krnojelac:

1. On 8 April 1992, an armed conflict broke out in Foča town. (para. 20, p. 9)
2. Following the military take-over of Foča town, the attack against the non-Serb civilian population continued. (para 22, p. 10)
3. The neighbourhoods were destroyed systematically. (para. 31, p. 13)
4. During April of 1992, soldiers from the Užice Corps in Serbia were running the KP Dom in Foča, the control of which was transferred to local Serbs during the course of the following few weeks. (para. 40, p. 16)
5. The illegal arrest and imprisonment of non-Serb civilian males was carried out on a massive scale and in a systematic way. Hundreds of Muslim men, as well as other non-Serb civilians, were detained at the KP Dom without being charged with any crime. (para. 41, p. 16)

6. The conditions under which non-Serbs were detained were below any legal standard regulating the treatment of civilians in times of armed conflict. Non-Serb detainees were given insufficient food, as a result of which many of them suffered substantial weight loss, they were kept in the rooms which were not heated. (para. 43, p. 16-17)
7. Hygienic conditions were deplorable, while medical care was inadequate. (para. 44, p. 17)
8. Many of the detainees were subjected to beatings and other forms of mistreatment. (para. 46, p. 17)
9. Many non-Serb detainees were taken out of the KP Dom during the period covered by the Indictment (April 1992 – August 1993), allegedly to be exchanged or in order to carry out certain tasks such as picking plums. Many of them did not come back and were never seen again. (para. 48, p. 18)
10. The expulsion, exchange or deportation of non-Serbs detained at the KP Dom, was the final stage of the Serb attack upon the non-Serb civilian population in Foča municipality. (para. 49, p. 18)
11. The detention of non-Serbs in the KP Dom, and the acts or omissions which took place therein, were clearly related to the widespread and systematic attack against the non-Serb civilian population in the Foča municipality. (para. 50, p. 18)
12. At the time and place relevant to the Indictment (April 1992 – August 1993), there was an armed conflict in Foča. (para. 61, p. 22)
13. The Accused, Milorad Krnojelac, held the position of acting warden of the KP Dom until 17 July 1992, at which time he was officially appointed warden by Momčilo Mandić, the Minister of Justice of the Serbian Republic of Bosnia and Herzegovina. (para. 96, p. 38)
14. The lease agreement signed by Milorad Krnojelac related only to the use by the military of the property of the KP Dom, while he retained all powers associated with the pre-conflict position of warden at the KP Dom. (para. 96, p. 38)
15. The Accused, Milorad Krnojelac, as both temporary warden and warden, was responsible to the Ministry of Justice, and only to a certain extent to the Military Command. (para. 104, p. 46)

16. None of the non-Serb civilians was arrested on the basis of a valid arrest warrant. (para. 119, p. 54)
17. None of the detainees at the KP Dom was informed of the reason for his detention, the term of his detention or of any possibility of release. (para. 120, p. 55)
18. The Muslims and other non-Serbs detained at the KP Dom were deprived of their liberty arbitrarily. (para. 122, p. 56)
19. In the period from April 1992 to July 1993, the brutal and deplorable living conditions were imposed upon the non-Serb detainees at the KP Dom. (para. 133, p. 60)

The Panel further accepted as proven the following facts established in the ICTY Judgment No. IT-96-23-T, dated 22 February 2001, in the case against Dragoljub Kunarac:

1. In the period covered by the Indictment (July – November 1992), there was an extensive attack by the Serb forces targeting the Muslim civilian population in the area encompassing the municipality of Foča. (para. 570, p. 189)
2. The attack on the civilian population of the Foča municipality was a systematic attack. (para. 578, p. 191)

Furthermore, the Panel accepted as proven the following facts established in the judgment in the case against Milorad Krnojelac, which were also accepted as proven in the judgment against Momčilo Krajišnik:

1. The Muslims were not detained at the "Foča" KP Dom, on any legal ground, nor was their continued confinement subject to review. None of the detainees was ever charged or tried. (para 642, p. 235)
2. During the first weeks after the start of the conflict, the KP Dom was guarded by the Užice Corps of the JNA and on 18 or 19 April 1992, former guards from the KP Dom returned to carry out their work assignments (para 643, p. 235)
3. As warden, formally appointed by the Ministry of Justice on 17 July 1992, Krnojelac was responsible to the Ministry of Justice and only to a certain extent to the Military Command. (para 644, p. 235)
4. The detainees had to endure brutal living conditions at KP Dom where they were kept in cramped conditions without heating and without adequate food and



hygiene facilities. Medical care was insufficient. Many suffered from severe weight loss and other health problems. (para 646, p. 236)

The Panel also accepted the following facts established in the judgment against Momčilo Krajišnik:

1. Both in the course of interrogations and as part of the daily life at KP Dom, many detainees were insulted, threatened, and brutally mistreated by guards and people from outside the camp. Some of the detainees at the KP Dom were taken out for forced labour. Many detainees were killed, in particular on 17 or 18 September 1992 when at least another 35 detainees were taken away from the KP Dom and killed. (para 647, p. 237).
2. Detainees were also taken out of the KP Dom on exchanges. Around 30 August 1992, a group of approximately 55 men were taken for exchange in Montenegro, but the bus on which they were being transported was intercepted and sent back to the KP Dom where the group was divided in two smaller groups and then approximately 20 younger men were taken away and never seen again. (para 650, p. 238)

Furthermore, upon the proposal of the Defense, the Panel accepted as proven the following facts established in the judgment in the Galić case:

1. Armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992. (para. 199)

The Panel accepted as proven the following facts from the ICTY Judgment No. IT-97-25-T in the case against Krnojelac:

1. On 8 April 1992, an armed conflict broke out in Foča town. (para. 20)
2. Foča town fell to the Serbs somewhere between 15 and 18 April 1992, with many of the Muslims who had remained during the fighting fleeing at that time." (para. 21)
3. The warden held the highest position of authority in the KP Dom and it was his responsibility to manage the entire prison. (para. 97)
4. KP Dom was leased to the military for its own use, in a lease agreement signed by the Accused as warden. (para. 101)

5. The warden retained and sometimes exercised the power to instigate and take disciplinary measures against subordinates who acted inappropriately towards detainees. (para. 102)
6. The warden also retained jurisdiction over all detainees in the KP Dom. When any of the detainees had matters of concern they were always taken to see the warden, and it was made clear to them by the guards of the KP Dom that the Accused as warden was the person ultimately responsible for their welfare. (para. 102)
7. It was the Accused who exercised responsibility for ensuring that detainees did not escape from the KP Dom, without regard to ethnicity. To this end, he requested increased security from the Herzegovina Corps and the Foča Territorial Defense, more oil for lighting from the Ministry of Economy and the placing of land mines inside the KP Dom compound from the War Presidency. (para. 103)
8. It was also the Accused who exercised responsibility for supervising the provision of food and other provisions to both Serb and non-Serb detainees. He wrote to various institutions trying to obtain additional food for everyone in the KP Dom. (para. 103)
9. With respect to the convicted Serb detainees, the Accused did have responsibilities which he did not have with respect to the non-Serb detainees. The Accused was required to report to the Ministry of Justice with respect to these detainees and, based on the behaviour of these prisoners within the KP Dom, he could make recommendations to the Ministry that sentences be reduced or parole be granted. (para. 104)
10. The Accused could also inform the "Foča" Tactical Group of convicted Serbs who wished to be released from the KP Dom to allow them to join fighting units and make recommendations as to who should be released for this purpose. (para. 104)
11. One important ramification of the lease agreement with the military was that it was the Military Command and, in particular, Commander Kovač and not the Ministry of Justice who had power to make decisions concerning which non-Serb detainees would be detained in and released from the KP Dom. In this respect, the Accused was obliged to forward requests for release of these detainees to the Crisis Staff or the "Foča" Tactical Group. (para. 104)
12. Military Command could also make decisions about which persons would be permitted to enter the KP Dom. (para. 104)
13. The release of non-Serb detainees was a matter for the military and Crisis Staff. (para. 105)

14. At the KP Dom it was the Ministry of Justice who had the power over the continued detention of convicted Serb detainees, and not the Accused. (para. 106)

15. A basic medical service was provided to the non-Serb detainees. Gojko Janković, a male nurse, was at the KP Dom on a daily basis and did whatever he could to help the non-Serb detainees. Doctors from Foča hospital also visited the KP Dom on a regular basis. (para. 140)

16. The Accused:

- (i) failed to investigate the allegations of beatings;
- (ii) failed to take any appropriate measures to stop the guards from beating and mistreating detainees ... In particular, the Accused failed to order the guards to stop beating detainees and to take appropriate measures so that other individuals from outside the KP Dom would not be in a position to mistreat detainees;
- (iii) failed to speak to his subordinates about the mistreatment of detainees;
- (iv) failed to punish those guards who would have been identified, had he carried out an investigation, as being responsible for the beatings or to take steps to have them punished;
- (v) failed to report their abuses to a higher authority. (para. 318)

Therefore, the Motions of the Prosecutor's Office and the Defense were accepted and the facts were accepted as proven. Furthermore, the Court treated these facts, accepted as proven, as *presumptio juris et de jure*, so they can be refuted in the course of the criminal proceedings if there is a valid reason and justifiable ground for it.

#### 4.2. Ex officio

Furthermore, by the Decision of 5 July 2007, the Court, pursuant to Article 4 of the Law on Transfer, accepted as proven the facts established by the ICTY in the case against Momčilo Krajišnik, where a decision was taken on judicial notice of adjudicated facts in the case against Milorad Krnojelac. These facts are listed in the Annex 1 to the Decision of 5 July 2007.

The Court also applied the same criterion on the facts listed in Annex 1 to the Decision of 5 July 2007 and, having considered that the accepted criteria were complied with fully, the Court accepted them as proven. Although some of the accepted facts, with respect to time and territory, do not directly pertain to the time and the territory relevant for the

Indictment, the Court considered them to be relevant for these criminal proceedings, since these facts serve as basis for a wider picture of the political, geographical and cultural circumstances and facts that indirectly have a causal link with the events treated in the Indictment. By the Decision of 5 July 2007 the following facts established by the ICTY were accepted as proven.

#### 1. Historical and Geographic Background

1. For centuries the population of Bosnia and Herzegovina, more so than any other republic of the former Yugoslavia, has been multi-ethnic.<sup>11</sup>

2. Serbs, Croats and Muslims comprised the most numerous ethnic groups in Bosnia and Herzegovina.<sup>12</sup>

3. Centuries ago, Serbs were encouraged to settle along what is now the northern and western boundaries of Bosnia and Herzegovina, which at that time formed the military frontier between the AustroHungarian Empire and its predecessors, and that of the Ottoman Turks.<sup>13</sup>

4. The large Muslim population of Bosnia and Herzegovina owes its religion and culture, and hence its identity, to the long Turkish occupation, during which time many Slavs adopted the Islamic faith.<sup>14</sup>

5. The Bosnian Croats live principally in the south-west part of Bosnia and Herzegovina, adjacent to Croatia's Dalmatian coast.<sup>15</sup>

6. As of 1991, some 44 percent of Bosnians were Muslim, 31 percent were Serb, and 17 percent were Croat.<sup>16</sup>

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<sup>11</sup> *Prosecutor v. Duško Tadić*, Case No. IT-94-I-T, Trial Chamber Judgment delivered on 7 May 1997 (hereinafter: *Tadić case*, Trial Chamber Judgment), paragraph 56.

<sup>12</sup> *Ibid.*, paragraph 56-57.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*, paragraph 57; *Prosecutor v. Željko Delalić, Zdravko Mucić also known as "Pavo", Hazim Delić,*

7. Three distinct Yugoslav forces each fought one another during the Second World War: the Ustaša forces of the strongly nationalist Croatian State supported by the Axis powers, the Chetniks, who were Serb nationalist and monarchist forces, and the Partisans, a largely communist and Serb group.<sup>17</sup>

8. At the same time the Chetniks and the Partisans opposed the German and Italian armies of occupation.<sup>18</sup>

9. Although none of these three Yugoslav forces was predominantly Muslim, Muslims were to be found in the ranks of both the Ustaša and the Partisans.<sup>19</sup>

10. Many of the hard-fought and bloody conflicts of the Second World War in Yugoslavia took place in Bosnia and Herzegovina.<sup>20</sup>

11. Many of the outrages against civilians committed during the Second World War, especially though by no means exclusively by Ustaša forces against ethnic Serbs, took place in Bosnia and Herzegovina, particularly in the border area between Croatia and Bosnia and Herzegovina, where the Partisans were especially active, and is the very area in which optina Prijedor lies.<sup>21</sup>

12. Following World War II in optina Prijedor, particularly in rural areas, the three ethnic groups (or "nationalities"), Serbs, Croats and Muslims, tended to live separately so that in many villages one or another ethnicity so predominated that they were generally regarded as Serb or Croat or Muslim villages.<sup>22</sup>

13. During the post-war years until 1991, intercommunal relations in opština

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*Esad Landžo also known as "Zengu", Case No. IT-96-21-T, Čelebići Judgment delivered on 16 November 1998 (hereinafter: Čelebići case, Trial Chamber Judgment), paragraph 99.*

<sup>17</sup> Tadić case, Trial Chamber Judgment, paragraph 61.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, paragraph 62.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid, paragraph 64.

Prijedor were relatively good, with friendships across ethnic and coincident religious divides, with intermarriages and generally harmonious relations.<sup>23</sup>

14. Under the Yugoslav Constitution of 1946, the country was to be composed of six Republics: Serbia, Croatia, Slovenia, Bosnia and Herzegovina, Macedonia, and Montenegro and two autonomous regions, Vojvodina and Kosovo.<sup>24</sup>

15. According to the 1946 Yugoslav Constitution, the peoples of the Republics, other than Bosnia and Herzegovina, were regarded as distinct nations of federal Yugoslavia.<sup>25</sup>

16. The Republic of Bosnia and Herzegovina was unique because unlike the other Yugoslav Republics, it possessed no one single majority ethnic grouping.<sup>26</sup>

17. Because the Republic of Bosnia and Herzegovina possessed no one single majority ethnic grouping, there was no constitutional recognition of a distinct Bosnian nation (people).<sup>27</sup>

18. With the proclamation of the SFRY Constitution of 1974, however, the Muslims of Bosnia and Herzegovina were considered to be one of the nations or peoples of federal Yugoslavia.<sup>28</sup>

19. Throughout the years of Marshal Tito's communist Yugoslavia, religious observance was discouraged.<sup>29</sup>

20. Divisive nationalism and open advocacy of national ethnic identity were also severely discouraged by the Tito regime.<sup>30</sup>

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<sup>23</sup> Ibid, paragraph 64; Čelebići case, Trial Chamber Judgment, paragraph 99.

<sup>24</sup> Ibid, paragraph 65; Čelebići case, Trial Chamber Judgment, paragraph 91.

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid, paragraph 66.

21. In spite of the government's efforts, the Yugoslav population remained very conscious of so-called ethnic identity, as Serb, Croat or Muslim.<sup>31</sup>

22. The territorial division between Roman Catholic and Orthodox branches of the Christian faith had run through the territory of Yugoslavia for many centuries.<sup>32</sup>

23. When the Ottoman Empire, not stopping at the conquest of Constantinople, extended throughout much of the Balkans, the fluctuating boundary between Catholic Christianity and Islam, which also sheltered a numerous Christian Orthodox population, was usually to be found passing through or near Bosnia.<sup>33</sup>

## 2. The Disintegration of the Socialist Federal Republic of Yugoslavia

24. With Tito's death in 1980 and the escalation of a serious economic crisis, cracks began to appear in the unity of the federal State.<sup>34</sup>

25. The political disintegration of the former Yugoslavia began in the late 1980's.<sup>35</sup>

26. Nationalism took the place in the Yugoslav Republics of the country's own brand of communism but with very many of the former communist leaders still in positions of power.<sup>36</sup>

27. In 1988 and 1989 events in both Serbia and Slovenia suggested impending threats to the unity of the federation.<sup>37</sup>

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<sup>31</sup> Ibid.

<sup>32</sup> Ibid, paragraph 67.

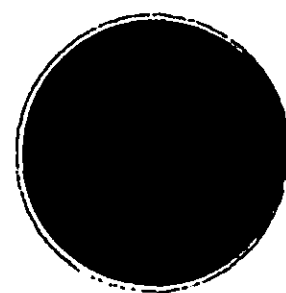
<sup>33</sup> Ibid.

<sup>34</sup> Čelebići case, Trial Chamber Judgment, paragraph 96.

<sup>35</sup> Tadić case, Trial Chamber Judgment, paragraph 70.

<sup>36</sup> Ibid, paragraph 71.

<sup>37</sup> Ibid, paragraph 72.



28. In 1989 at the fourteenth Congress of the League of Communists, Serbian delegates also sought to alter to the advantage of more populous Republics such as Serbia a fundamental feature of the Constitution, that of the voting equality of Republics, substituting for it the one person one vote principle.<sup>38</sup>

29. The conduct of the Serbian delegates caused the resignation of the Slovenian leadership from the League and a walkout from the Congress of the representatives of Croatia and of Bosnia and Herzegovina.<sup>39</sup>

30. Slobodan Milošević, already a powerful political figure in Serbia as a party chief, spoke at a mass rally at the site of the Kosovo battlefield itself.<sup>40</sup>

31. Slobodan Milošević spoke at the Kosovo battlefield as the protector and patron of Serbs throughout Yugoslavia and declared that he would not allow anyone to beat the Serb people.<sup>41</sup>

32. Slobodan Milošević's speech greatly enhanced his role as the charismatic leader of the Serb people in each of the Republics, after which he rapidly rose in power.<sup>42</sup>

33. In May 1990, a new government was elected into office in Slovenia after its first multi-party elections.<sup>43</sup>

34. In December 1990, a plebiscite was held in Slovenia, resulting in an overwhelming majority vote for independence from Yugoslavia.<sup>44</sup>

35. On 25 June 1991 Slovenia and Croatia declared their independence from the

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<sup>38</sup> Ibid.

<sup>39</sup> Čelebići case, Trial Chamber Judgment, paragraph 98.

<sup>40</sup> Tadić case, Trial Chamber Judgment, paragraph 72.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Čelebići case, Trial Chamber Judgment, paragraph 98.

<sup>44</sup> Tadić case, Trial Chamber Judgment, paragraph 73.



Socialist Federal Republic of Yugoslavia.<sup>45</sup>

36. On 19 December 1991, the two autonomous Serb regions within Croatia proclaimed themselves to be the Republic of Serbian Krajina.<sup>46</sup>

37. The independence of Slovenia and Croatia, ultimately recognised by the European Community on 15 January 1992, was challenged militarily by the JNA.<sup>47</sup>

38. The concept of a Greater Serbia has a long history. It emerged at the forefront of political consciousness, in close to its modern form, as early as 150 years ago and gained momentum between the two World Wars. In its modern form, the concept involved two distinct aspects: first, the incorporation of the two autonomous provinces of Vojvodina and Kosovo into Serbia, and secondly, the extension of the enlarged Serbia, together with Montenegro, into those portions of Croatia and Bosnia and Herzegovina containing substantial Serb populations.<sup>48</sup>

39. Serbia and Montenegro continued to support the concept of a federal state, no longer under its old name but to be called the Federal Republic of Yugoslavia and wholly Serb dominated, consisting only of Serbia and Montenegro.<sup>49</sup>

40. The establishment of the Federal Republic of Yugoslavia completed the dissolution of the former Socialist Federal Republic of Yugoslavia.<sup>50</sup>

41. What had taken the place of state socialism in Yugoslavia were the separate nationalisms of each of the Republics of the former Yugoslavia, other than Bosnia and Herzegovina, which alone possessed no single national majority.<sup>51</sup>

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<sup>45</sup> Ibid. paragraph 77; Čelebići case, Trial Chamber Judgment, paragraph 100.

<sup>46</sup> Ibid.

<sup>47</sup> Ibid; Čelebići case, Trial Chamber Judgment, paragraph 100.

<sup>48</sup> Ibid, paragraph 85.

<sup>49</sup> Ibid. 78; Čelebići case, Trial Chamber Judgment, paragraph 116.

<sup>50</sup> Ibid, paragraph 79.

<sup>51</sup> Ibid.

### 3. Bosnia and Herzegovina — Political Background

42. In 1990 the first free, multi-party elections were held in Bosnia and Herzegovina, for both opština assemblies and for the Republican Legislature.<sup>52</sup>

43. The most prominent political parties in Bosnia and Herzegovina were the Muslim Party of Democratic Action ("SDA"), the Serb Democratic Party ("SDS") and the Croat Democratic Union ("HDZ").<sup>53</sup>

44. In the elections for both the Republic Assembly and the opština assembly in Prijedor, the SDA party gained a narrow margin over the SDS.<sup>54</sup>

45. The outcome of the elections was, in effect, little more than a reflection of an ethnic census of the population with each ethnic group voting for its own nationalist party.<sup>55</sup>

46. In Bosnia and Herzegovina, the Parliament declared the sovereignty of the Republic on 15 October 1991.<sup>56</sup>

47. The Bosnian Serb deputies of the Parliament of Bosnia and Herzegovina proclaimed a separate Assembly of the Serb Nation on 24 October 1991.<sup>57</sup>

48. In March 1992 Bosnia and Herzegovina declared its independence following a referendum held in February 1992 sponsored by the Bosnian Muslims with some support from Bosnian Croats.<sup>58</sup>

49. The holding of the February referendum was opposed by Bosnian Serbs, who

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<sup>52</sup> Ibid. paragraph 81.

<sup>53</sup> Ibid; Čelebići case, Trial Chamber Judgment, paragraph 98.

<sup>54</sup> Ibid; Čelebići case, Trial Chamber Judgment, paragraph 99.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid, paragraph 78; Čelebići case, Trial Chamber Judgment, paragraph 105.

<sup>57</sup> Ibid; Čelebići case, Trial Chamber Judgment, paragraph 106.

very largely abstained from voting.<sup>59</sup>

50. The Republic of Serbian People of Bosnia and Herzegovina (later to become the Republika Srpska) was declared on 9 January 1992, to come into force upon any international recognition of the Republic of Bosnia and Herzegovina.<sup>60</sup>

51. The European Community and the United States of America recognised the independence of the Republic of Bosnia and Herzegovina in April 1992.<sup>61</sup>

52. A coalition government was thus formed headed by a seven member State Presidency, with the leader of the SDA, Alija Izetbegović, as the first President.<sup>62</sup>

53. In the Republican Assembly, co-operation between the Muslim and Serbian political parties proved increasingly difficult as time went by.<sup>63</sup>

54. The coalition government of the Republic broke down in October 1991 and failed completely in January 1992.<sup>64</sup>

55. The disintegration of multi-ethnic federal Yugoslavia was thus swiftly followed by the disintegration of multi-ethnic Bosnia and Herzegovina, and, as a result, the prospect of war in Bosnia and Herzegovina increased.<sup>65</sup>

56. Further, the Bosnian Serbs retained vivid memories of their suffering at the hands of the Croats during the Second World War.<sup>66</sup>

57. In September 1991 it was announced that several Serb Autonomous Regions in Bosnia and Herzegovina had been proclaimed, including Krajina, Romanija

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<sup>59</sup> Ibid.

<sup>60</sup> Ibid: Čelebići case, Trial Chamber Judgment, paragraph 105.

<sup>61</sup> Ibid: Čelebići case, Trial Chamber Judgment, paragraph 106.

<sup>62</sup> Čelebići case, Trial Chamber Judgment, paragraph 99.

<sup>63</sup> Tadić case, Trial Chamber Judgment, paragraph 82.

<sup>64</sup> Ibid.

<sup>65</sup> Ibid, paragraph 83.

<sup>66</sup> Ibid.

and Stara Hercegovina.<sup>67</sup>

58. Bosanska Krajina, as the Serb Autonomous Region of Krajina was initially called, consisted of the Banja Luka region and surrounding municipalities where the Serbs constituted a clear majority.<sup>68</sup>

59. In November 1991 the SDS sponsored, organised and conducted a plebiscite primarily for the Bosnian Serb population. Voters were given different ballots depending upon whether they were Serb or non-Serb. The Serb voters were asked to vote on the question: "Are you in favour of the decision reached by the Assembly of the Serbian People in Bosnia and Herzegovina on 24 October 1991 whereby the Serbian people shall remain in the common State of Yugoslavia which would include Serbia, Montenegro, Serb Autonomous Region Krajina, Serb Autonomous Region Slavonija, Baranja and Western Srem along with all others willing to remain in such a State?"<sup>69</sup>

60. In these regions, which included opština Prijedor, the SDS representatives in public office in some cases established parallel municipal governments and separate police forces.<sup>70</sup>

61. Crisis Staffs were formed in the Serb Autonomous Regions to assume government functions and carry out general municipal management.<sup>71</sup>

62. Members of the Crisis Staffs included SDS leaders, the JNA Commander for the area, Serb police officials, and the Serb TO Commander.<sup>72</sup>

63. Likewise, the statute of the Autonomous Region of Krajina provided for the creation of Crisis Staffs in the case of war or immediate danger of war.<sup>73</sup>

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<sup>67</sup> Ibid. paragraph 97.

<sup>68</sup> Ibid. paragraph 98.

<sup>69</sup> Ibid. paragraph 99; Čelebići case, Trial Chamber Judgment, paragraph 105.

<sup>70</sup> Ibid. paragraph 101.

<sup>71</sup> Ibid. paragraph 103.

<sup>72</sup> Ibid.

64. The conflict between Serbia and Croatia, following the declaration of independence by Croatia in June 1991, served greatly to exacerbate the tension between Bosnia and Herzegovina's three ethnic groups.<sup>74</sup>

65. In March 1992, the Assembly of Serbian People of Bosnia and Herzegovina promulgated the Constitution of the Serb Republic of Bosnia and Herzegovina and proclaimed itself a distinct republic.<sup>75</sup>

66. The March 1992 Assembly session was transmitted live on television.<sup>76</sup>

#### 4. Structure of Security Services in the Republika Srpska

67. The chain of command in the security services was as follows: the service was headed on a ministerial level by the Minister of the Interior. Next in the chain of command were the regional authorities, the most relevant in this case being the Banja Luka Security Services Centre (CSB).<sup>77</sup>

68. Between 24 May and 30 August 1992, the head of the CSB was Stojan Župljanin.<sup>78</sup>

69. The CSB was divided into two principal departments, the State Security Department (SDB) and the Public Security Department (SiB). The State Security Department was occupied with intelligence work. Within the Public Security Department there were several sub-sections dealing, for example, with crime, traffic, personnel, passports, and aliens.<sup>79</sup>

70. Simo Drljača was the Head of the Public Security Station in Prijedor during

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<sup>74</sup> Ibid. paragraph 122.

<sup>75</sup> Ibid. paragraph 102.

<sup>76</sup> Ibid.

<sup>77</sup> *Prosecutor v. Miroslav Kvočka et al.*, Case No. IT-98-30/1-T, judgment delivered on 2 November 2001 (hereinafter: Kvočka case, Trial Chamber Judgment), paragraph 26.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

the duration of Omarska camp's existence. The uniformed police department of this station was headed by Dušan Janković, who was immediately subordinate to Simo Drljača.<sup>80</sup>

71. The head of the Prijedor Police Station, Milutin ado, was immediately subordinate to Simo Drljača in the chain of command overseeing the uniformed police or militia.<sup>81</sup>

72. There were three sub-offices or "Police Station Departments" attached to the Prijedor Police Station. Zeljko Mejakić was the commander of the Police Station Department situated in Omarska, where Kvočka and Radiš were also employed.<sup>82</sup>

## 5. The Role of the JNA

73. The SFRY devised a defence system known as "All People's Defence" (or "Total National Defence") to protect SFRY from external attack.<sup>83</sup>

74. Prior to the break-up of the former Yugoslavia, the totality of Yugoslav armed forces included the regular army, navy and air force, collectively known as the JNA, consisting of an officer corps, noncommissioned officers and conscripts, together with a reserve force, and, as well as and distinct from the JNA, the TOs.<sup>84</sup>

75. The JNA was an entirely federal force with its headquarters in Belgrade.<sup>85</sup>

76. There was a distinct TO in each Republic, funded by that Republic and under the control of the Minister of Defence of that Republic.<sup>86</sup>

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<sup>80</sup> Ibid. paragraph 27.

<sup>81</sup> Ibid.

<sup>82</sup> Kvočka case, Trial Chamber Judgment, paragraph 27.

<sup>83</sup> Čelebići case, Trial Chamber Judgment, paragraph 93.

<sup>84</sup> Tadić case, Trial Chamber Judgment, paragraph 105; Čelebići case, Trial Chamber Judgment, paragraph 94.

<sup>85</sup> Ibid.

<sup>86</sup> Čelebići case, Trial Chamber Judgment, paragraph 94.

77. The JNA was a powerful national army, comprised of 45,000 - 70,000 regular officers and soldiers along with 110,000-135,000 conscripts who served on a more short-term basis, equipped with all the conventional weapons and equipment that modern European armies possess.<sup>87</sup>

78. The TOs were equipped with essentially infantry weapons; rifles, light machine-guns, some small calibre artillery, mortars, anti-personnel mines and the like.<sup>88</sup>

79. The TOs had no tanks and their transport would vary depending on the adequacy of a particular Republic's funding of its TO and on how much each received by way of JNA cast-offs.<sup>89</sup>

80. Traditionally all TO weapons were stored locally, within each municipality.<sup>90</sup>

81. In the early 1990s the traditional predominance of Serb officers in the JNA swiftly increased so that very soon very few non-Serb officers remained in the JNA.<sup>91</sup>

82. From 1991 to early 1992, the Serb component of JNA conscripts rose from just over 35 to some 90 percent.<sup>92</sup>

83. On 15 May 1992 the Security Council, by resolution 752, demanded that all interference from outside Bosnia and Herzegovina by units of the JNA cease immediately and that those units either be withdrawn, be subject to the authority of the Government of the Republic of Bosnia and Herzegovina, or be disbanded and disarmed.<sup>93</sup>

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<sup>87</sup> Ibid. paragraph 105; Čelebići case, Trial Chamber Judgment, paragraph 94.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid. paragraph 107.

<sup>91</sup> Ibid. paragraph 108.

<sup>92</sup> Ibid. paragraph 109.

<sup>93</sup> Ibid. paragraph 113.

84. The remainder of the former JNA was to become the army of the new Federal Republic of Yugoslavia (Serbia and Montenegro), known as the VJ.<sup>94</sup>

85. The formal withdrawal of the JNA from Bosnia and Herzegovina took place on 19 May 1992.<sup>95</sup>

86. The VRS was in effect a product of the dissolution of the old JNA and the withdrawal of its non-Bosnian elements into Serbia.<sup>96</sup>

87. The weapons and equipment with which the new VRS was armed were those that the units had had when part of the JNA.<sup>97</sup>

88. The Muslim-dominated government of Bosnia and Herzegovina instructed the Bosnian population not to comply with the JNA's mobilisation order.<sup>98</sup>

89. In October 1991, the Government of the Republic of Croatia declared that the JNA was an invading force.<sup>99</sup>

90. In early 1992, the SDS disassociated itself from the legislature and government of the independent Republic of Bosnia and Herzegovina and formed the independent Serb government of Republika Srpska.<sup>100</sup>

91. In July 1991, on instructions from headquarters in Belgrade, the JNA seized from the Republic's Secretariat for Defence in Bosnia and Herzegovina and from municipalities all the documentation relating to conscription including all the registers of conscripts.<sup>101</sup>

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<sup>94</sup> Ibid, paragraph 114; Čelebići case, Trial Chamber Judgment, paragraph 117.

<sup>95</sup> Ibid, paragraph 115.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid, paragraph 122.

<sup>99</sup> Ibid, paragraph 123.

<sup>100</sup> Ibid, paragraph 124.

<sup>101</sup> Ibid, paragraph 106.



92. Bosnia and Herzegovina was a vital base for JNA operations in Croatia in the second half of 1991, and Bosnian Serbs were an important source of manpower both for the JNA and for the TO.<sup>102</sup>

93. The VRS inherited both officers and men from the JNA and also substantial arms and equipment, including over 300 tanks, 800 armoured personnel carriers and over 800 pieces of heavy artillery.<sup>103</sup>

94. Although these officers and non-commissioned officers had become formally members of the VRS rather than of the former JNA, they continued to receive their salaries from the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).<sup>104</sup>

95. The pensions of those VRS officers and non-commissioned officers who in due course retired were paid by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro).<sup>105</sup>

96. The former Commander of the 2nd Military District of the JNA, based in Sarajevo, General Ratko Mladić, became the Commander of the VRS following the announced withdrawal of the JNA from Bosnia and Herzegovina.<sup>106</sup>

97. The Banja Luka Corps, the 5th Corps of the old JNA, became part of the VRS in Bosnia and Herzegovina, and was named the 1st Krajina Corps, but retained the same Commander, Lieutenant-General Talić.<sup>107</sup>

98. Excluding the Rear Base troops, the Banja Luka Corps numbered some 100,000 men, expanded from a peacetime strength of 4,500 men.<sup>108</sup>

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<sup>102</sup> Ibid.

<sup>103</sup> Ibid. paragraph 114.

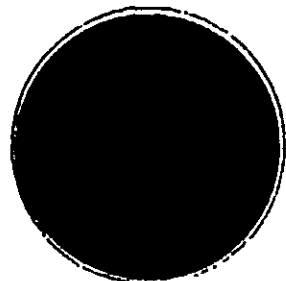
<sup>104</sup> Ibid. paragraph 115.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid. paragraph 118; Čelebići case. Trial Chamber Judgment. paragraph 117.

<sup>107</sup> Ibid. paragraph 120.

<sup>108</sup> Ibid.



99. Units of the Banja Luka Corps took part in the attack on the town of Kozarac near Prijedor on 24 May 1992.<sup>109</sup>

100. By early 1992 there were some 100,000 JNA troops in Bosnia and Herzegovina with over 700 tanks, 1,000 armoured personnel carriers, much heavy weaponry, 100 planes and 500 helicopters, all under the command of the General Staff of the JNA in Belgrade.<sup>110</sup>

## 7. Foča Municipality

### Background to Conflict in Foča

327. According to the 1991 Census, Foča municipality had a pre-war population of about 40,513 inhabitants of whom 52% were Muslim.<sup>111</sup>

328. In September 1991, several Serb Autonomous Regions in Bosnia and Herzegovina were proclaimed.<sup>112</sup>

329. Foča town and municipality are located in the Republic of Bosnia and Herzegovina ("Bosnia and Herzegovina"), Southeast of Sarajevo, near the border of Serbia and Montenegro.<sup>113</sup>

330. According to the 1991 census, the population of Foča consisted of 40,513 persons; 51.6% were Muslim, 45.3% Serb and 3.1% of other ethnicities.<sup>114</sup>

331. Although ethnically mixed, individual neighbourhoods in Foča town or

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<sup>109</sup> Ibid.

<sup>110</sup> Ibid, paragraph 124; Čelebići case, Trial Chamber Judgment, paragraph 113.

<sup>111</sup> *Prosecutor v. Dragoljub Kunarac et al.*, Case No. IT-96-23-T & 23/1-T, judgment delivered on 22 February 2000 (hereinafter: Kunarac case, Trial Chamber Judgment), paragraph 47.

<sup>112</sup> Kvočka case, Trial Chamber Judgment, paragraph 11.

<sup>113</sup> *Prosecutor v. Krnojelac*, Case No. IT-97-25-Z, judgment delivered on 15 March 2002 (hereinafter: Krnojelac case, Trial Chamber Judgment), paragraph 13.

villages in the municipality could be identified as predominantly Muslim or Serb areas.<sup>115</sup>

332. As in much of Bosnia and Herzegovina, Foča municipality was affected at the beginning of the 1990s by the rise of opposing nationalist sentiments which accompanied the disintegration of the Socialist Federal Republic of Yugoslavia.<sup>116</sup>

333. *Tensions between the two major ethnic groups in Foča were fuelled by the Serbian Democratic Party ("SDS") on behalf of the Serbs and the Party for Democratic Action ("SDA") on behalf of the Muslims.*<sup>117</sup>

334. Before the multi-party elections held in Foča in 1990, inter-ethnic relations appear to have been relatively normal, but afterwards the inhabitants of Foča began to split along ethnic lines and inter-ethnic socialising ceased.<sup>118</sup>

335. Both the SDS and the SDA organised rallies or "promotional gatherings" in Foča, similar to those being organised throughout Bosnia.<sup>119</sup>

336. The SDA rally was attended by Alija Izetbegović, leader of the Bosnian SDA, while the SDS rally attracted leading party members such as Radovan Karadžić, Biljana Plavšić, Vojislav Maksimović, Ostojić, Kilibarda and Miroslav Stanić. Nationalist rhetoric dominated both rallies.<sup>120</sup>

337. In the period leading up to the outbreak of hostilities, members of the SDS leadership made various announcements which were hostile to the Muslim population.<sup>121</sup>

338. Maksimović stated that the Muslims were the greatest enemies of the Serbs.

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<sup>115</sup> Ibid.

<sup>116</sup> Ibid. paragraph 14.

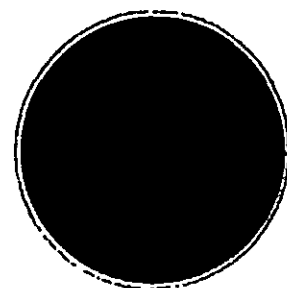
<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Ibid, paragraph 15.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid.



Karadžić said that either Bosnia would be divided along ethnic lines, or one of the nations (meaning ethnic groups) would be wiped out from these areas.<sup>122</sup>

339. SDS leaders also said that, if they were to reach power, the political and economic affairs of Foča would be run by Serbs only.<sup>123</sup>

340. In the months before the outbreak of conflict in Foča, both Serbs and Muslims began to arm themselves with light weapons, though the Muslims were not able to do so as quickly as the Serbs, leaving the latter better prepared for the conflict.<sup>124</sup>

341. The Serbs armed themselves surreptitiously at first, distributing weapons by truck in the evenings, or from local businesses. Immediately prior to the outbreak of the conflict, the distribution of arms to Serbs was done openly.<sup>125</sup>

342. The Serbs also began to deploy heavy artillery weapons on elevated sites around Foča, controlling not only heavy weapons which belonged to the JNA, but also the weaponry of the Territorial Defence.<sup>126</sup>

343. Administrative bodies in Foča, previously jointly controlled by Muslims and Serbs, ceased to function as had been envisaged by March 1992.<sup>127</sup>

344. The Serbs formed a separate local political structure, the Serbian Municipal Assembly of Foča, and both groups established Crisis Staffs along ethnic lines.<sup>128</sup>

345. The Muslim Crisis Staff was based in the Donje Polje neighbourhood of Foča.<sup>129</sup>

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<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ibid, paragraph 16.

<sup>125</sup> Ibid.

<sup>126</sup> Ibid.

<sup>127</sup> Ibid, paragraph 17.

<sup>128</sup> Ibid, paragraph 16.

<sup>129</sup> Ibid, paragraph 17.

346. The Serb Crisis Staff operated from a location in the Serb neighbourhood of Čerežluk, with Miroslav Stanić, President of the SDS-Foča, as Chairman and so-called "First War Commander" in Foča.<sup>130</sup>

347. Daily meetings of SDS politicians in Foča began in early April.<sup>131</sup>

348. On 7 April 1992, following pressure from the SDS leadership, the local police were divided along ethnic lines and stopped functioning as a neutral force.<sup>132</sup>

349. Immediately prior to the outbreak of the conflict, Serbs began evacuating their families and children from Foča, generally to Serbia or to Montenegro.<sup>133</sup>

350. Some Muslims, alerted by the movements of their Serb neighbours coupled with general tension in the town, also fled or managed to evacuate their families before the outbreak of the conflict.<sup>134</sup>

351. Although many Muslims had Serb friends, neighbours and relatives, few were warned about the coming attack. Even for those who did get away, leaving Foča was not easy, with frequent military checkpoints en route to different destinations.<sup>135</sup>

352. On 8 April 1992, an armed conflict broke out in Foča town, mirroring events unfolding in other municipalities.<sup>136</sup>

353. Before the armed conflict had started, Muslim civilians in Foča were removed from their social and professional lives, their salaries remained unpaid or

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<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Ibid.

<sup>133</sup> Ibid, paragraph 18.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Ibid, paragraph 20.

they were told that their services were no longer needed.<sup>137</sup>

354. Most Muslim men were disarmed.<sup>138</sup>

355. Complete ostracism soon followed with the freedom of Muslims to move about and to gather critically curtailed.<sup>139</sup>

356. The SDS political propaganda grew more aggressive, and the outbursts of violence and house-burning more frequent.<sup>140</sup>

357. By 7 April 1992, there was a Serb military presence in the streets, and some people failed to report for work, fearful of the rising tensions in the town. A number of Serbs were mobilised on that day and issued with weapons. That night, Serbs took over the Foča radio station, the warehouse of the regional medical centre and the Territorial Defence warehouse where weapons were stored.<sup>141</sup>

#### The Conflict in Foča

358. On 8 April 1992, an armed conflict between the Serb and Muslim forces broke out in Foča.<sup>142</sup>

359. On 8 April 1992, roadblocks were set up throughout the town.<sup>143</sup>

360. Sometime between 8.30 and 10.00 am, the main Serb attack on Foča town began, with a combination of infantry fire and shelling from artillery weapons in nearby Kalinovik and Miljevinia. Serb forces included local soldiers as well as soldiers from Montenegro and Yugoslavia, and in particular a paramilitary

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<sup>137</sup> Kunarac case, Trial Chamber judgment, paragraph 571.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid, paragraph 572.

<sup>141</sup> Kmojelac case, Trial Chamber Judgment, paragraph 19.

<sup>142</sup> Ibid, paragraph 567.

<sup>143</sup> Ibid, paragraph 20.

formation known as the White Eagles.<sup>144</sup>

361. Most of the shooting and shelling was directed at predominantly Muslim neighbourhoods, in particular Donje Polje, but the Serbs also attacked mixed neighbourhoods such as Cohodor Mahala.<sup>145</sup>

362. Despite Muslim resistance, consisting mostly of infantry concentrated in Donje Polje and ukovac, Serb forces proceeded to take over Foča area by area, including eventually the hospital and the KP Dom prison facility.<sup>146</sup>

363. The military attack resulted in large numbers of wounded civilians, most of them Muslims.<sup>147</sup>

364. There was a systematic attack by the Bosnian Serb Army and paramilitary groups on the Muslim civilian population of the municipalities of Foča, Gacko and Kalinovik.<sup>148</sup>

365. The attack was extensive, and its duration included the period April 1992 to February 1993.<sup>149</sup>

366. It took about a week for the Serb forces to secure Foča town and about ten more days for them to be in complete control of Foča municipality.<sup>150</sup>

367. During the conflict, many civilians hid in their houses, apartments, basements of their apartment buildings, or with relatives in other areas of town; others left Foča altogether, thinking they would be safer.<sup>151</sup>

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<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid.

<sup>148</sup> Kunarac case, Trial Chamber Judgment, paragraph 578.

<sup>149</sup> Ibid, paragraph 567 and 570.

<sup>150</sup> Ibid, paragraph 567.

<sup>151</sup> Kmojelac case, Trial Chamber Judgment, paragraph 21.

368. Many of the Muslims in hiding gave up their personal weapons so that they could not be accused of participating in the conflict. The attack continued for six or seven days, although the worst shelling and damage took place in the first few days.<sup>152</sup>

369. Foča town fell to the Serbs somewhere between 15 and 18 April 1992, with many of the Muslims who had remained during the fighting fleeing at that time.<sup>153</sup>

370. Following the successful military take-over of Foča town, the attack against the non-Serb civilian population continued.<sup>154</sup>

371. Outside the town, Serb forces carried on their military campaign to take over or destroy Muslim villages in the Foča municipality.<sup>155</sup>

372. Villages in Foča municipality sustained attacks until some time in early June.<sup>156</sup>

373. Serb troops followed fleeing Muslims in the direction of Goražde, and captured the JNA fuel depot warehouse at Pilipovići where many Muslim civilians had been seeking shelter. At the warehouse, Muslim men were separated from women and children.<sup>157</sup>

374. After finding an SDA membership card which did not identify to whom it belonged, the Serb forces selected several men whose names were on a list and arbitrarily selected several others.<sup>158</sup>

375. In total, nine men were separated from the others and shot. Of these men,

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<sup>152</sup> Ibid.

<sup>153</sup> Ibid.

<sup>154</sup> Ibid, paragraph 22.

<sup>155</sup> Ibid.

<sup>156</sup> Ibid, paragraph 23.

<sup>157</sup> Ibid.

<sup>158</sup> Ibid.



one escaped and one survived.<sup>159</sup>

376. Once towns and villages were securely in their hands, the Serb forces - the military, the police, the paramilitaries and, sometimes, even Serb villagers — applied the same pattern: Muslim houses and apartments were systematically ransacked or burnt down, Muslim villagers were rounded up or captured, and sometimes beaten or killed in the process.<sup>160</sup>

377. Almost all the remaining Muslim men and women from Foča, Gacko and Kalinovik were arrested, rounded up, separated and imprisoned or detained at several detention centres like Buk Bijela, Kalinovik High School, Partizan and Foča High School, as well as the KP Dom in Foča, in accordance with a recurring pattern. Some of them were killed, raped or severely beaten.<sup>161</sup>

378. The sole reason for this treatment of the civilians was their Muslim ethnicity.<sup>162</sup>

379. The women were kept in various detention centres where they had to live in intolerably unhygienic conditions, where they were mistreated in many ways including, for many of them, being raped repeatedly.<sup>163</sup>

380. Serb soldiers or policemen would come to these detention centres, select one or more women, take them out and rape them. Many women and girls were raped in that way.<sup>164</sup>

381. Some of these women were taken out of these detention centres to privately owned apartments and houses where they had to cook, clean and serve the residents, who were Serb soldiers. They were also subjected to sexual assaults.<sup>165</sup>

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<sup>159</sup> Ibid.

<sup>160</sup> Kunarac case, Trial Chamber Judgment, paragraph 573.

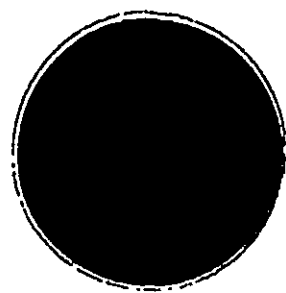
<sup>161</sup> Ibid. paragraph 577.

<sup>162</sup> Ibid.

<sup>163</sup> Ibid. paragraph 574.

<sup>164</sup> Ibid.

<sup>165</sup> Ibid.



382. In particular, the Muslim civilians held at Kalinovik School, Foča High School and Partizan Sports Hall were kept in unhygienic conditions and without hot water.<sup>166</sup>

383. Muslim civilians held at these locations were provided with insufficient food. Their freedom of movement was curtailed; they were not allowed to go to any other territory or to go back to their houses. Most of their houses were burnt down or ransacked. They were guarded and lived in an atmosphere of intimidation.<sup>167</sup>

384. All this was done in full view, in complete knowledge and sometimes with the direct involvement of the local authorities, particularly the police forces.<sup>168</sup>

385. The head of Foča police forces, Dragan Gagovic, was one of the men who came to these detention centres to take women out and rape them.<sup>169</sup>

386. After months of captivity, many women were expelled or exchanged.<sup>170</sup>

387. Some men spent as much as two years and a half in detention for no reason other than their being Muslims.<sup>171</sup>

388. The village of Brod, four kilometres from Foča, was attacked on 20 April 1992, after the village authorities did not respond to a Serb Crisis Staff demand that the village surrender.<sup>172</sup>

389. Serb forces in Miljevina, approximately 18 kilometres from Foča town in the direction of Kalinovik and Sarajevo, set the surrounding Muslim villages on fire,

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<sup>166</sup> Ibid, paragraph 575.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid, paragraph 576.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid, paragraph 577.

<sup>171</sup> Ibid, paragraph 578.

<sup>172</sup> Ibid, paragraph 579.

case, Trial Chamber Judgment, paragraph 24.

and arrested male Muslim civilians.<sup>173</sup>

390. Jeleč, about 22 kilometres from Foča near Miljevina, was shelled and then attacked by infantry and taken over by Serb forces on 4 or 5 May 1992.<sup>174</sup>

391. When Serb forces set the village on fire, the population fled to a nearby forest. Muslims who stayed in their homes or who tried to escape were killed.<sup>175</sup>

392. Other male Muslim villagers were captured and detained in the Kalinovik and Bileća barracks and then transferred to the Foča KP Dom.<sup>176</sup>

393. From Jeleč it was possible to see houses burning, and to see people fleeing from other villages.<sup>177</sup>

394. Muslim houses in Pilipovići and the neighbouring village of Paunci were burned to the ground around 25 or 26 April 1992.<sup>178</sup>

395. Around 28 April 1992, Serb troops attacked Ustikolina where some Muslims had tried to form a resistance.<sup>179</sup>

396. After taking the village, Serb forces set fire to Muslim houses. From there, Serb forces continued attacking and destroying Muslim villages along the left bank of the Drina, downstream from Ošanica, while the population fled or was killed.<sup>180</sup>

397. On 3 July 1992, the Muslim village of Mješaji/Trošanj, situated between

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<sup>173</sup> Ibid.

<sup>174</sup> Ibid.

<sup>175</sup> Ibid.

<sup>176</sup> Ibid.

<sup>177</sup> Ibid.

<sup>178</sup> Ibid, paragraph 25.

<sup>179</sup> Ibid.

<sup>180</sup> Ibid.

Foča and Tjentište, was attacked by Serb soldiers.<sup>181</sup>

398. At the time of the attack, some Muslim villagers in Trošanj continued living in their houses but would sleep in the woods at night and only return to their homes during the daytime.<sup>182</sup>

399. They were afraid because they were able to see other Muslim villages burning and they felt targeted because they were Muslim.<sup>183</sup>

400. Three villagers were killed during the initial attack and, after capturing a group of about 50 Muslim villagers, a further group of seven male villagers were beaten and shot.<sup>184</sup>

401. After the Serb take-over in and around Foča, there was a noticeable presence of Serb soldiers and Serb paramilitary formations.<sup>185</sup>

402. Immediately after the Serb take-over, restrictions were imposed on the non-Serb inhabitants. Muslims were referred to by Serb soldiers by the derogatory term "balija", and cursed when being arrested.<sup>186</sup>

403. From April 1992, Muslims were laid off from their jobs or were prevented or discouraged from reporting to work.<sup>187</sup>

404. Although the Serb Crisis Staff ordered Serbs to return to work sometime at the end of April or beginning of May 1992, Muslims were not allowed to do so.<sup>188</sup>

405. Restrictions were placed on the movement of non-Serbs. A police car with a

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<sup>181</sup> Ibid. paragraph 26.

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

<sup>185</sup> Ibid. paragraph 27.

<sup>186</sup> Ibid.

<sup>187</sup> Ibid. paragraph 28.

loudspeaker went through the town announcing that Muslims were not allowed to move about the town. A similar announcement was made over the radio.<sup>189</sup>

406. At the same time, the Serb population could move around *freely*, with the exception of a night curfew from 8.00 pm to 6.00 am imposed on all inhabitants.<sup>190</sup>

407. Muslims were forbidden to meet with each other, and had their phone lines cut off.<sup>191</sup>

408. In April and May 1992, Muslims stayed in apartments in Foča under virtual house arrest, either in hiding or at the order of Serb soldiers.<sup>192</sup>

409. Houses such as "Planika's" and "Šandal's" were used as interim detention centres by the Serb military.<sup>193</sup>

410. People wishing to leave Foča were required to get papers from the SUP (Secretariat of the Interior) permitting them to go.<sup>194</sup>

411. Military checkpoints were established, controlling access in and out of Foča and its surrounding villages.<sup>195</sup>

412. In April and May 1992, Muslim households were searched by the Serb military police or soldiers for weapons, money and other items.<sup>196</sup>

413. Serb houses were not searched, or at most were searched superficially.<sup>197</sup>

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<sup>189</sup> Ibid. paragraph 29.

<sup>190</sup> Ibid.

<sup>191</sup> Ibid.

<sup>192</sup> Ibid.

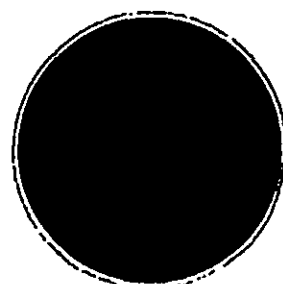
<sup>193</sup> Ibid.

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid. paragraph 30.

<sup>197</sup> Ibid.



414. Muslims were ordered to surrender their weapons while Serbs were allowed to keep theirs.<sup>198</sup>

415. Muslim businesses were looted or burned, or had equipment confiscated.<sup>199</sup>

416. During the attack, neighbourhoods were destroyed systematically. Muslim houses were set ablaze by Serb soldiers during the battle for control of the town as well as after the town had been secured.<sup>200</sup>

417. Donje Polje, the largely Muslim neighbourhood of Šukovac, and Muslim houses in Kamerici and in Granovski Sokak were burned.<sup>201</sup>

418. The old town neighbourhood of Prijeka Čaršija, with its oriental-Islamic style market, was burned down on or around 12 April 1992.<sup>202</sup>

419. On one occasion, Muslim houses were found devastated beside an untouched Serb apartment identified with a note saying "Serb apartment — do not torch".<sup>203</sup>

420. As Muslim houses burned, fire engines protected Serb houses.<sup>204</sup>

421. Other Muslim houses were dismantled for the materials, or reallocated to Serbs who had lost their own homes.<sup>205</sup>

422. Several mosques in Foča town and municipality were burned or otherwise destroyed.<sup>206</sup>

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<sup>198</sup> Ibid.

<sup>199</sup> Ibid.

<sup>200</sup> Ibid, paragraph 31.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid.

<sup>204</sup> Ibid.

paragraph 32.

paragraph 33.

423. The Aladža mosque dating from 1555 and under UNESCO protection was blown up, and the mosque in the Granovski Sokak neighbourhood was destroyed.<sup>207</sup>

424. The mosque in Jeleč was burned and its minaret destroyed.<sup>208</sup>

425. Serb fire brigades stood by and watched as mosques burned.<sup>209</sup>

426. Following the Serb take-over of Foča town, non-Serb civilians were physically beaten by Serb soldiers and military police.<sup>210</sup>

427. Civilians were beaten upon arrest and during transportation to detention facilities from neighbourhoods in town or from villages in the municipality.<sup>211</sup>

428. On one occasion, a Serb soldier severely kicked and beat with a chair three patients in Foča hospital after learning that they were Muslim. The beating stopped only when the doctor intervened and called the police.<sup>212</sup>

429. In mid-June 1992, about 27 Muslim civilians, mostly women and children, were killed in the ethnically mixed Čohodor Mahala neighbourhood.<sup>213</sup>

430. More civilians were killed in Jeleč, Mješaji/Trošanj and Pilipovići.<sup>214</sup>

431. The bodies of others were found floating in the Drina River. KP Dom detainees who were assigned to work duty at the riverbank were made to push

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<sup>207</sup> Ibid.

<sup>208</sup> Ibid.

<sup>209</sup> Ibid.

<sup>210</sup> Ibid. paragraph 34.

<sup>211</sup> Ibid.

<sup>212</sup> Ibid.

<sup>213</sup> Ibid. paragraph 35.

<sup>214</sup> Ibid.

bodies downstream using planks and sticks.<sup>215</sup>

432. Non-Serbs were arrested throughout the municipality of Foča. Muslim men were rounded up in the streets, separated from the women and children and from the Serb population.<sup>216</sup>

433. Others were arrested in their apartments or in the houses of friends and relatives, taken away from their workplaces, or dragged from their hospital beds.<sup>217</sup>

434. During the conflict, many of the Muslims arrested were taken to be detained at the Territorial Defence military warehouses at Livade.<sup>218</sup>

435. Around 14 or 15 April 1992, Muslims and some Serbs were arrested in the centre of Foča town.<sup>219</sup>

436. While the Serbs were allowed to return home after a few hours, the Muslims were required to stay.<sup>220</sup>

437. Between 14 and 17 April 1992, Muslim civilians from other areas of Foča town were arrested and detained in Livade, including several doctors and medical staff from Foča hospital.<sup>221</sup>

438. During the arrests, several of the detainees were severely beaten up and injured.<sup>222</sup>

439. Muslim women were transferred to Buk Bijela, Foča High School and

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<sup>215</sup> Ibid.

<sup>216</sup> Ibid, paragraph 36.

<sup>217</sup> Ibid.

<sup>218</sup> Ibid, paragraph 37.

<sup>219</sup> Ibid.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid, paragraph 38.



Partizan Sports Hall. Serb soldiers repeatedly raped Muslim women and girls, either at these locations or elsewhere.<sup>223</sup>

440. Initially there was a military order preventing citizens from leaving Foča. However, most of the non-Serb civilian population was eventually forced to leave Foča.<sup>224</sup>

441. In May 1992, buses were organised to take civilians out of town, and around 13 August 1992 the remaining Muslims in Foča, mostly women and children, were taken away to Rožaje, Montenegro.<sup>225</sup>

442. On 23 October 1992, a group of women and children from the municipality, having been detained for a month at Partizan Sports Hall, were deported by bus to Goražde.<sup>226</sup>

443. In exhumations conducted in the Foča area, 375 bodies were identified by the State Commission for the Tracing of Missing Persons. All but one of these were Muslim. The remaining one was a Montenegrin who had been married to a Muslim.<sup>227</sup>

445. This attack included the systematic rounding up and imprisonment of non-Serb civilians, the burning and destruction of non-Serb, mostly Muslim, properties, the demolition of several mosques in the Foča town and municipality, the unlawful killing of non-Serb civilians, as well as the torture and mistreatment of many male non-Serb detainees at the KP Dom.<sup>228</sup>

446. All traces of Muslim presence and culture were wiped out of Foča.<sup>229</sup>

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<sup>223</sup> Ibid, paragraph 39; Kunarac case, Trial Chamber Judgment, paragraph 575. 28, 31-37.

<sup>224</sup> Ibid, paragraph 49.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Ibid, paragraph 61.

<sup>229</sup> Kunarac case, Trial Chamber Judgment, paragraph 577.

447. In January 1994, the Serb authorities crowned their complete victory - their "gaining supremacy" over the Muslims - by renaming Foča "Srbinje", literally "the town of the Serbs".<sup>230</sup>

#### KP Dom Detention Facility, Foča

##### Detention of Non-Serb Civilians in KP Dom

462. Prisoners at KP Dom numbered between 350 and 500 with peaks at about 750.<sup>231</sup>

463. Muslim men were simply interned as a matter of principle, sometimes for periods of up to two and a half years.<sup>232</sup>

464. Some of the prisoners were taken out for forced labour, while some others were taken out and never seen again.<sup>233</sup>

465. Food at KP Dom was scarce, hygiene facilities were minimal, there were no beds apart from foam mattresses and cover sheets, which were in insufficient number. Food could not be brought freely to detainees at KP Dom.<sup>234</sup>

466. Provocation, insults, beatings and other deprivations were commonplace at KP Dom.<sup>235</sup>

467. On 17 April 1992, all the male Muslim civilians detained at Livade were transferred to the KP Dom, which had served as a prison prior to the conflict. At this time, soldiers from the Užice Corps in Serbia were running the facility, the control of which was transferred to local Serbs during the course of the following

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<sup>230</sup> Ibid.

<sup>231</sup> Ibid, 26.

<sup>232</sup> Ibid.

<sup>233</sup> Ibid.

<sup>234</sup> Ibid, 27.

few weeks.<sup>236</sup>

468. Other non-Serb civilians from the municipality were also unlawfully arrested and detained in the KP Dom. Several of them arrived at the KP Dom severely beaten and injured.<sup>237</sup>

469. The illegal arrest and imprisonment of non-Serb civilian males was carried out on a massive scale and in a systematic way. Hundreds of Muslim men, as well as a few other non-Serb civilians, were detained at the KP Dom without being charged with any crime.<sup>238</sup>

470. At its peak in the summer of 1992, there were about 500-600 detainees at the KP Dom. The number decreased from the autumn of 1992 until 1993 when about 200-300 detainees remained. Around October 1994, the last detainees, by then numbering less than 100, were released.<sup>239</sup>

471. They were detained there for periods lasting from four months to more than two and a half years.<sup>240</sup>

472. While some Serbs were also held in the KP Dom, they were held legally, having been convicted by courts of law prior to the outbreak of the conflict or having been detained for military offenses during the conflict. By contrast, the non-Serbs were not detained on any legal ground nor was their continued confinement subject to review.<sup>241</sup>

473. Apart from a short period at the beginning of their detention at the KP Dom, Muslim detainees were denied any contact with the outside world or with their families, and (for a long time) with the Red Cross. The legality of their detention

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<sup>236</sup> Kmojelac case, Trial Chamber Judgment, paragraph 40.

<sup>237</sup> Ibid.

<sup>238</sup> Ibid, paragraph 41.

<sup>239</sup> Ibid, footnote 142.

<sup>240</sup> Ibid, paragraph 41; Kunarac Case, Trial Chamber Judgment, paragraph 26.

<sup>241</sup> Ibid, paragraph 438.

was never reviewed by the Serb authorities.<sup>242</sup>

474. Many of the detainees were subjected to beatings and other forms of mistreatment, sometimes randomly, sometimes as a punishment for minor breaches of the prison regulations or in order to obtain information or a confession from them.<sup>243</sup>

475. The screams and moans of those being beaten could be heard by other detainees, instilling fear among all detainees. Many were returned to their rooms with visible wounds and bruises resulting from the beating. Some were unable to walk or talk for days.<sup>244</sup>

#### The Imprisonment of Non-Serb Men at the KP Dom Foča

476. Between 10 April 1992 and the beginning of June 1992, large-scale arrests of non-Serb civilian men, mostly of Muslim ethnicity, were carried out throughout Foča and its environs. Subsequent to their arrest, the men were transferred to the KP Dom.<sup>245</sup>

477. In addition to the mainly civilian population at the KP Dom, there were a small number of Muslim soldiers kept in isolation cells separately from the civilian Muslim detainees.<sup>246</sup>

478. The only personal characteristic which featured in the decision to detain these men was their non-Serb ethnicity, the overwhelming majority of those detained being Muslim.<sup>247</sup>

479. No consideration was given to age, state of health or civilian status. The

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<sup>242</sup> Ibid. paragraph 42.

<sup>243</sup> Ibid. paragraph 46.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid. paragraph 116.

<sup>246</sup> Ibid. paragraph 117.

<sup>247</sup> Ibid. paragraph 118.

detainees ranged in age from 15 years to almost 80 years.<sup>248</sup>

480. There were many elderly persons among the detained, and there was a substantial group of ill, wounded, physically handicapped and mentally disturbed persons among the detained men.<sup>249</sup>

481. None of the non Serb men was arrested on the basis of a valid arrest warrant. None of the detainees was shown an arrest warrant at the time of their initial detention or informed orally of the reason for their arrest.<sup>250</sup>

482. Once detained at the KP Dom, none of the detainees was informed of the reason for his detention, the term of his detention or of any possibility of release.<sup>251</sup>

483. Similarly, interrogations of those detained were conducted sometimes within a few days or weeks, sometimes only after months and, in some cases, never.<sup>252</sup>

484. In the course of these interrogations, some of the detainees were asked about weapons, about their membership in the SDA and about their whereabouts before and during the outbreak of the conflict in the area.<sup>253</sup>

485. A number of detainees were threatened in the course of the interrogations, and others heard fellow detainees being mistreated in neighbouring rooms.<sup>254</sup>

486. None of the detainees was ever actually charged, tried or convicted for any crime before being detained or while detained at the KP Dom.<sup>255</sup>

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<sup>248</sup> Ibid.

<sup>249</sup> Ibid.

<sup>250</sup> Ibid. paragraph 119.

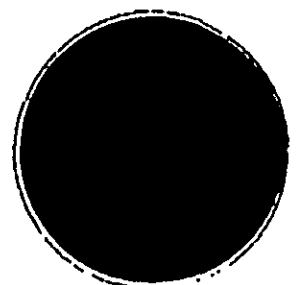
<sup>251</sup> Ibid. paragraph 120.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid.

<sup>255</sup> Ibid. paragraph 121.



487. None of the detainees was ever advised of their procedural rights before or during their detention.<sup>256</sup>

488. Those detained were not criminals under suspicion of having committed a crime or ever accused of having committed a crime under national and/or international law. They were, inter alia, doctors and medical health workers, journalists, former KP Dom employees, managers, police officers and other persons of civilian status.<sup>257</sup>

489. The establishment and perpetuation of inhumane conditions was carried out with the intent to discriminate against the non-Serbs detainees because of their religious or political affiliations.<sup>258</sup>

#### Guards at KP Dom Foča

490. During the first 2-4 weeks after the start of the conflict, the KP Dom was "policed" by military units, apparently from the Užice Battalion.<sup>259</sup>

491. Muslim detainees were rounded up, arrested and taken to the KP Dom by paramilitary units.<sup>260</sup>

492. Inside the KP Dom it was mainly members of the military who supervised the Muslim detainees during their first weeks of captivity.<sup>261</sup>

493. From about 18 or 19 April 1992 onwards, at around the same time that Kmojelac was appointed warden, former Serb guards from the KP Dom returned to carry out their work assignments.<sup>262</sup>

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<sup>256</sup> Ibid.

<sup>257</sup> Ibid. paragraph 122.

<sup>258</sup> Ibid. paragraph 443.

<sup>259</sup> Ibid. footnote 298.

<sup>260</sup> Ibid.

<sup>261</sup> Ibid.

<sup>262</sup> Ibid.

494. Essentially two categories of individuals were involved in the beating of non-Serb detainees: guards of the KP Dom and people coming from outside of the KP Dom.<sup>263</sup>

495. In respect of the first group, many guards were involved in these beatings, including Dragomir Obrenović, Milenko Burilo, Milenko Elčić, Zoran Matović, Vlatko Pljevaljić, Predrag Stefanović, Jovo Savić, Radovan Vuković, Milovan Vuković, Milivoj Milić and Milenko Elčić. These guards called the detainees out of their room and took them to other rooms where they knew that they would be beaten and sometimes personally took part in the beatings themselves.<sup>264</sup>

#### Power of the Ministry of Justice and the Military in Relation to KP Dom Foča

496. As both temporary warden and warden, Krnojelac was responsible to the Ministry of Justice, and to a certain extent to the Military Command.<sup>265</sup>

497. Krnojelac could inform the Foča Tactical Group of convicted Serbs who wished to be released from the KP Dom to allow them to join fighting units and make recommendations as to whom should be released for this purpose.<sup>266</sup>

498. One important ramification of the lease agreement with the military was that it was the Military Command and, in particular, Commander Kovač and not the Ministry of Justice who had power to make decisions concerning which non-Serb detainees would be detained in and released from the KP Dom.<sup>267</sup>

499. In this respect, Krnojelac was obliged to forward requests for release of these detainees to the Crisis Staff or the Foča Tactical Group.<sup>268</sup>

500. The military did, however, have an obligation to ensure that Krnojelac was

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<sup>263</sup> Ibid. paragraph 317.

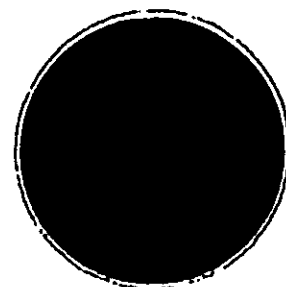
<sup>264</sup> Ibid.

<sup>265</sup> Ibid. paragraph 104.

<sup>266</sup> Ibid.

<sup>267</sup> Ibid.

<sup>268</sup> Ibid.



kept informed about who it decided was to be detained and who was to be released, and Krnojelac did exercise some powers in this regard such as his proposal that detainees held at Bileća prison be transferred to the KP Dom.<sup>269</sup>

501. The Military Command could also make decisions about which persons would be permitted to enter the KP Dom, and it had some power over the appointment of persons to work assignments at the KP Dom and the type of work to be completed by persons assigned to work at the KP Dom.<sup>270</sup>

502. A general consequence of the conflict situation was that guards assigned to the KP Dom who were of military age and in good health were required from at least 30 September 1992 until 2 September 1993 to spend time on the frontline.<sup>271</sup>

503. This factor, however, did not impinge upon Krnojelac's authority over these guards while performing duties at the KP Dom.<sup>272</sup>

#### Paramilitaries at KP Dom Foča

504. There were also certain groups who entered the KP Dom over whom Krnojelac could exercise only limited control. These included the investigators and the paramilitaries.<sup>273</sup>

505. Members of the military would enter the KP Dom, although they needed the prior permission of the military authorities.<sup>274</sup>

506. Krnojelac was able to ensure that such persons did not remove detainees from the KP Dom without the appropriate authority from the Military Command.<sup>275</sup>

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<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid, paragraph 105.

<sup>274</sup> Ibid.



507. The release of non-Serb detainees was a matter for the military and Crisis Staff.<sup>276</sup>

508. A warden does not generally have a unilateral power of release, and at the KP Dom it was the Ministry of Justice who had the power over the continued detention of convicted Serb detainees.<sup>277</sup>

509. The Military Command had the power to release Serb soldiers imprisoned for military offenses during the conflict.<sup>278</sup>

#### Conditions Generally at KP Dom Foča

510. Brutal and deplorable living conditions were imposed upon the non-Serb detainees at the KP Dom in the period from April 1992 to July 1993.<sup>279</sup>

511. The non-Serb detainees were forced to endure brutal and inadequate living conditions while being detained at the KP Dom, as a result of which numerous individuals have suffered lasting physical and psychological problems.<sup>280</sup>

#### Space at KP Dom Foča

512. The non-Serb detainees were deliberately housed in cramped conditions. The KP Dom had the capacity to house more than the maximum 500-700 non-Serbs detained, but the detainees were crowded into a small number of rooms.<sup>281</sup>

513. Solitary confinement cells designed to hold one person were packed with up to 18 people at a time, making it impossible for the detainees to move around the

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<sup>276</sup> Ibid, paragraph 106.

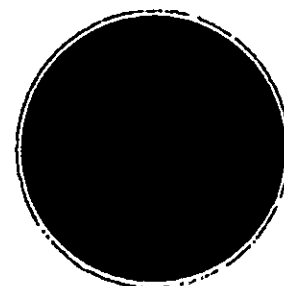
<sup>277</sup> Ibid, paragraph 104.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid, paragraph 133.

<sup>280</sup> Ibid, paragraph 440.

<sup>281</sup> Ibid, paragraph 135.



cell, or to sleep lying down.<sup>282</sup>

514. Non-Serbs were locked in their rooms or in solitary confinement at all times except for meals and work duty, and kept in overcrowded rooms even though the prison had not reached its capacity. Because of the overcrowding, not everyone had a bed or even a mattress, and there were insufficient blankets. (Prosecutor v. Kmojelac, Case No. IT-97-25-T, judgment delivered on 15 March 2002, paragraph 440)

#### Hygiene at KP Dom Foča

515. Hygienic conditions were deplorable and washing facilities minimal. Access to baths or showers, with no hot water, was irregular at best. There were insufficient hygienic products and toiletries.<sup>283</sup>

516. Bedding was insufficient or non-existent. The only bed linen provided was that left over from former convicts, and these items were never washed or changed throughout 1992.<sup>284</sup>

517. Changes of clothes or facilities for washing clothes were not supplied. As a result of these conditions, chicken lice spread from the prison farm to the rooms of the detainees.<sup>285</sup>

#### Heating at KP Dom Foča

518. The rooms in which the non-Serbs were held did not have sufficient heating during the harsh winter of 1992. Heaters were deliberately not placed in the rooms, windowpanes were left broken and clothes made from blankets to combat the cold were confiscated.<sup>286</sup>

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<sup>282</sup> Ibid.

<sup>283</sup> Ibid. paragraph 44 and 440.

<sup>284</sup> Ibid. paragraph 136; Kunarac case, Trial Chamber Judgment, paragraph 27.

<sup>285</sup> Ibid.

paragraph 440.

519. Stoves and furnaces had been produced to heat the offices in the administration building, and there was sufficient raw material for such furnaces to have been produced for the non-Serb detainees. However, it was not until October 1993 that furnaces were finally provided to the non-Serb detainees, and then it was by the ICRC.<sup>287</sup>

520. The suffering of the non-Serb detainees during the winter of 1992 was the result of a deliberate policy on the part of those in charge of the KP Dom.<sup>288</sup>

#### Food at KP Dom Foča

521. Non-Serb detainees were fed starvation rations leading to severe weight loss and other health problems. They were not allowed to receive visits after April 1992 and therefore could not supplement their meagre food rations and hygienic supplies.<sup>289</sup>

522. Non-Serb detainees were given insufficient food, as a result of which many of them suffered substantial weight loss, sometimes more than 40 kilograms or up to a third of their weight.<sup>290</sup>

523. There may have been a general shortage of food in the Foča region during the conflict, but there was a deliberate policy to feed the non-Serb detainees.

524. In contrast, Serb convicts and detainees received "regular army food", not very appetising but nutritious enough to prevent serious weight loss.<sup>291</sup>

525. The contrast between the weight loss of non-Serb detainees and the Serb prisoners makes it apparent that non-Serb detainees were fed much less than the Serb detainees.<sup>292</sup>

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<sup>287</sup> Ibid. paragraph 137.

<sup>288</sup> Ibid. paragraph 138.

<sup>289</sup> Ibid. paragraph 440.

<sup>290</sup> Ibid. paragraph 43.

<sup>291</sup> Ibid. paragraph 139.

<sup>292</sup> Ibid.

526. The food for all detainees at the KP Dom was cooked in the same cauldron, but that nutritious ingredients, like meat, beans, vegetables and spices, were added to enrich only the meals of Serb detainees and convicts and KP Dom staff, who ate after the non-Serb detainees had received their meals from the cauldron.<sup>293</sup>

#### **Medical Care at KP Dom Foča**

527. Medical care was inadequate and medicine in very short supply. A basic medical service was provided but those in need of urgent medical attention were left unattended or given insufficient treatment. At least one detainee died as a result of the lack of or late medical care.<sup>294</sup>

528. Non-Serb detainees who arrived at the KP Dom with injuries sustained prior to or in the course of their arrest were not given access to medical treatment, nor were non-Serb detainees who were severely beaten during interrogations at the KP Dom.<sup>295</sup>

529. Detainees who were kept in isolation cells and solitary confinement were denied all access to medical care.<sup>296</sup>

#### **Psychological Harm Inflicted on Detainees at KP Dom Foča**

530. The camp conditions were psychologically exhausting for the non-Serbs. They were terrified by the sounds of torture and beatings over a period of months.<sup>297</sup>

531. Since they could not identify any criteria for the selection, many non-Serb detainees suffered a continuing fear that they would be taken away next for

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<sup>293</sup> Ibid.

<sup>294</sup> Ibid, paragraph 44 and 440.

<sup>295</sup> Ibid, paragraph 141.

<sup>296</sup> Ibid.

<sup>297</sup> Ibid, paragraph 440.

similar treatment.<sup>298</sup>

532. Any attempts made by non-Serb detainees to improve their living conditions in the camp were punished with solitary confinement.<sup>299</sup>

533. Acts which resulted in beatings or periods in the isolation cells included efforts to get additional food, or access to warm water, and attempts to communicate with each other, the guards, or the outside world.<sup>300</sup>

#### Killings During June and July 1992 in KP Dom Foča

534. During the months of June and July 1992, KP Dom guards went to the rooms of the detainees after the roll call and called out from a list the names of individuals to accompany them for interrogations.<sup>301</sup>

535. They were taken into one of the rooms on the left and right hand sides of the staircase, or into a room which was situated in the left wing of the administration building, or the next room. There they were often beaten.<sup>302</sup>

536. The beatings lasted well into the evening and the sounds of the beating and the screams of the victims could be heard by other detainees at the KP Dom.<sup>303</sup>

537. When the beating stopped, victims were sometimes taken to an isolation cell. In other instances, the sound of pistol shots was heard.<sup>304</sup>

538. During and after the beatings, guards of the KP Dom were seen carrying blankets into the administration building and removing what appeared to be

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<sup>298</sup> Ibid.

<sup>299</sup> Ibid, paragraph 142.

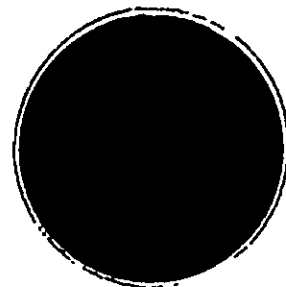
<sup>300</sup> Ibid.

<sup>301</sup> Ibid, paragraph 333.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid, paragraph 334.



bodies in those blankets.<sup>305</sup>

539. Blood and bloodied instruments were seen in the rooms where the beatings occurred.<sup>306</sup>

540. Many of the detainees alleged to have been murdered at the KP Dom had been subject to earlier beatings or acts of torture at the KP Dom. After their release from the KP Dom, many other detainees made contact with the families of the victims. The families informed them that they had received no contact from those alleged to have been murdered, and they had been unable to trace the victims.<sup>307</sup>

541. The guards of the KP Dom participated with the military in the killing of detainees at the KP Dom.<sup>308</sup>

542. Alija Altoka, Hamid "Salem" Bičo, Abdurahman Čankušić, Refik Čankušić, Elvedin "Enko" Čedić, Kemal Dželilović, Ramo Džendusić, Adil Granov, Mate Ivančić, Esad Kiselica, Halim Konjo, Adil Krajčin, Mustafa Kuloglija, Fuad Mandžo, Krunoslav Marinović, Nurko Nišić, Hamid Ramović, Husein Rikalo, Mithat Rikalo, Zaim Rikalo, Ševal Šoro, Kemal Tulek, Enes Uzunović, Džemal Vahida, Munib Veiz, and Zulfo Veiz, died as a result of the acts of members of the military coming from outside into the KP Dom and of the guards of the KP Dom.<sup>309</sup>

543. These acts involved beating, or shooting, the detainees, and they were done by those persons with an intention either to kill them or to inflict grievous bodily harm or serious injury, or in a reasonable knowledge that such acts were likely to cause death.<sup>310</sup>

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<sup>305</sup> Ibid, paragraph 335.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid, paragraph 337.

<sup>308</sup> Ibid, paragraph 339.

<sup>309</sup> Ibid, paragraph 339 and 336.

544. These killings occurred during the months of June and July 1992.<sup>311</sup>

#### **KP Dom Foča - Beatings Associated with the Canteen**

545. Individuals or groups of armed soldiers were allowed into the KP Dom compound during the first months of the non-Serb civilians' detention.<sup>312</sup>

546. It was not unusual for detainees to be beaten by guards of the KP Dom or soldiers from outside the KP Dom while lining up for lunch in the compound or while being taken back and forth through the compound.<sup>313</sup>

547. Sometime in October 1992, and while lining up, FWS-7 I and fellow detainees were approached by five armed policemen who began to beat them for about half an hour before ordering them to lie down on the ground. Mitar Rašević, the Commander of the Guards of the KP Dom, as well as the guards who had escorted them, stood by and watched without interfering.<sup>314</sup>

548. Detainees were systematically beaten and mistreated while detained at the KP Dom.<sup>315</sup>

#### **Torture and Beatings During Interrogation at KP Dom Foča**

549. Detainees were regularly taken out of their rooms or from the isolation cells by guards of the KP Dom, soldiers or policemen for the purpose of interrogations. On several occasions, many detainees who had been taken out in that manner were in fact beaten or otherwise mistreated during the interviews for the purpose of obtaining information or a confession or in order to punish them for some minor violation of prison regulations.<sup>316</sup>

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<sup>311</sup> Ibid. paragraph 331.

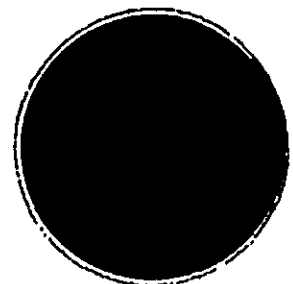
<sup>312</sup> Ibid. paragraph 194.

<sup>313</sup> Ibid. paragraph 194 and 448.

<sup>314</sup> Ibid. paragraph 196 and 449.

<sup>315</sup> Ibid. paragraph 217.

<sup>316</sup> Ibid. paragraph 238.



550. From April 1992 until July 1992 beatings took place on a frequent and systematic basis. KP Dom guards used lists in order to select those detainees to be taken out to the administrative building and beaten there. Some of the detainees were taken out and beaten on several occasions.<sup>317</sup>

551. In the course of the summer 1992 prior to the month of July, Vahida Džemal, Enes Uzunović, Aziz Šahinović and Elvedin Čedić were severely beaten by guards of the KP Dom and military policemen, and they were then kept in solitary confinement for several days.<sup>318</sup>

552. KP Dom guards sometimes took part in the beating and they could be overheard, insulting or provoking the victims; at least five guards took part in one or several of those incidents: Dragomir Obrenović, Zoran Matović, Milenko Burilo, Rade Vuković and Pedrag Stefanović. KP Dom guards and individuals coming from outside beat the inmates with their fists and feet or with batons.<sup>319</sup>

553. Sometime in June or July 1992, Kemo or Kemal Dželilović, Halim Konjo, Mustafa Kuloglija, Mithat and Zaim Rikalo and Munib Veiz were called out of their rooms as a group and taken to the administration building and severely beaten by KP Dom guards including Milenko Burilo, Zoran Matović, Dragomir Obrenović, Rade Vuković and Pedrag Stefanović.<sup>320</sup>

554. When the sounds of the beating died down, several detainees heard shots being fired and FWS-54 saw Matović leaving the administration building and coming back carrying blankets. Shortly thereafter, FWS-54 heard a vehicle leaving the KP Dom. When the vehicle came back 10 or 15 minutes later, he saw men in green-grey uniforms cleaning it with buckets and mops. None of the detainees ever returned, nor were they ever heard of again.<sup>321</sup>

555. Sometime in June or July 1992, Ramo Džendusić and Nail Hodžić were

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<sup>317</sup> Ibid, paragraph 248.

<sup>318</sup> Ibid, paragraph 257 and 457.

<sup>319</sup> Ibid, paragraph 273.

<sup>320</sup> Ibid, paragraph 274.



called out of their room, and were subsequently severely beaten by KP Dom guards Milenko Burilo, Dragomir Obrenović and other unidentified individuals on the ground floor of the administration building. The moans of the victims were heard by other detainees.<sup>322</sup>

556. Sometime in June or July 1992, Emir Frašto and Husko or Husein Rikalo were taken as part of a group of detainees to the administration building where they were severely beaten. Frašto and Rikalo were taken together with Nurko Nisić and Esad Kiselica. The beating of these four men lasted for about two hours.<sup>323</sup>

557. During his detention, in June and July 1992, Adnan Granov was repeatedly beaten by unidentified individuals, KP Dom guards and/or soldiers from outside the KP Dom, including military policemen, on the ground floor of the administration building. He was accused of having travelled to Germany before the war to obtain weapons and of having illegally transmitted radio messages.<sup>324</sup>

558. Granov was eventually taken away and he disappeared.<sup>325</sup>

559. On one occasion in the summer of 1992, Latif Hasanbegović, Aziz Hasković and Halim Seljanci were taken out together and severely beaten by two KP Dom guards, Zoran Matović and Milenko Burilo. They were beaten all over their bodies, including on the soles of their feet, and one of the guards used a baseball bat for that purpose. As a result, they were barely able to move or to stand on their feet when returned to their room.<sup>326</sup>

560. Sometime in June 1992, Kemo or Kemal Isanović and a young man by the last name of Cedić were called out by a soldier from outside the KP Dom, and a KP Dom guard, taken away and severely beaten. Their screams and moans were

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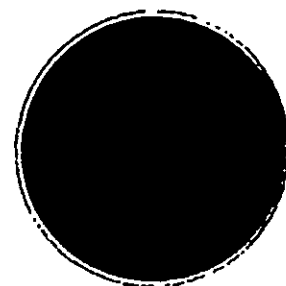
<sup>322</sup> Ibid. paragraph 275.

<sup>323</sup> Ibid. paragraph 276.

<sup>324</sup> Ibid. paragraph 277.

<sup>325</sup> Ibid.

<sup>326</sup> Ibid. paragraph 280.



clearly heard by other detainees. They came back swollen and bruised.<sup>327</sup>

561. In September 1992, Rasim Kajgana was taken out of the KP Dom and never seen again.<sup>328</sup>

562. Sometime in mid-June 1992, Emir Mandžo was taken to the gate of the KP Dom and brutally beaten. Mandžo was placed on a chair while KP Dom guards or soldiers from outside the KP Dom took his shoes off and inserted his arms and legs through the frame of another chair.<sup>329</sup>

563. One of the principal offenders took a baton and beat Mandžo on the arms and legs. Zoran Vuković, a man from Jošanica, hit him with his soldier's boot on the jaw, and he fainted. Another KP Dom guard, Zoran Matović, also took part in the beating.<sup>330</sup>

564. Azim Mesbur was taken out of his room sometime in September 1992 and was never seen again.<sup>331</sup>

565. Mensud Pašović was taken away at some point during the summer of 1992 and never seen again.<sup>332</sup>

566. Nećko Rikalo was taken out sometime in late June or early July 1992 and never returned.<sup>333</sup>

567. Haso Selimović was taken out and never returned.<sup>334</sup>

568. Ševal Šoro was taken away and never returned.<sup>335</sup>

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<sup>327</sup> Ibid, paragraph 281.

<sup>328</sup> Ibid, paragraph 283.

<sup>329</sup> Ibid, paragraph 287.

<sup>330</sup> Ibid.

<sup>331</sup> Ibid, paragraph 290.

<sup>332</sup> Ibid, paragraph 292.

<sup>333</sup> Ibid, paragraph 295.

paragraph 298.

## KP Dom Foča - Use of Detainees to Detect Landmines

569. Two detainees were taken by troops to Kalinovik in an army truck and were then separated from the other twelve and taken to the police station. There they were kept in the prison and required to drive vehicles for the detection of landmines.<sup>336</sup>

## Transfer of Detainees

570. Groups of detainees were transferred from the KP Dom to other camps in Bosnia and Herzegovina, including the camps at Kula, Kalinovik and Rudo.<sup>337</sup>

571. Detainees were taken out of the KP Dom on exchanges. These exchanges generally followed a similar pattern. A KP Dom guard or policeman would come from the gate to the detainees' rooms to call out the detainees for exchanges, according to a list provided by the prison administration. Those selected would then be taken out of the KP Dom. On some occasions they would be beaten first, by KP Dom guards or military personnel.<sup>338</sup>

572. While some of these exchanges were bona-fide, allowing detainees to reach territory controlled by Bosnian Muslims, many detainees taken out for exchange simply disappeared. Witnesses confirmed the fact that the "exchanged" detainees had disappeared after they were themselves released or exchanged, either through contact with the families of those that had disappeared, through other former detainees years later, or through attempts to get information from the ICRC about relatives.<sup>339</sup>

573. On at least one occasion, detainees were taken across a national border. A group of approximately 55 men were taken for exchange in Montenegro around

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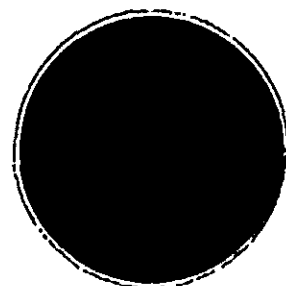
<sup>335</sup> Ibid. paragraph 302.

<sup>336</sup> Ibid. paragraph 410.

<sup>337</sup> Ibid. paragraph 478.

<sup>338</sup> Ibid. paragraph 479.

<sup>339</sup> Ibid.



30 August 1992, but the bus on which they were being transported was intercepted in Nikšić, Montenegro, by Pero Elez, a Bosnian-Serb soldier, who sent the group back to the KP Dom.<sup>340</sup>

574. The group was then divided in two with approximately 20 younger men being taken away, possibly to Goradže, and never seen again. The remaining group of 35 men, of which two witnesses in this case were part, was taken to be exchanged in Rožaj in Montenegro.<sup>341</sup>

575. Around 17 or 18 September 1992, between 35-60 detainees were taken out of the KP Dom in two groups, having been told that they were going to pick plums. Detainees were first asked to volunteer for plum-picking duty, but they were in fact eventually selected by KP Dom guards according to a list.<sup>342</sup>

576. Those selected for the job were told by the guards not to take their belongings. Detainees who were taken away for plum picking did not return to the KP Dom and were never seen again.<sup>343</sup>

577. The bodies of two of those detainees, Murat Crneta and Halid Konjo, were later discovered close to the Goradže frontline near Previla in Bosnia Herzegovina in a mass grave.<sup>344</sup>

## 5. Decision on Admissibility of Material Evidence Proposed by the Parties

On 20 June 2007, the Trial Panel rendered a procedural decision refusing as unfounded the respective objections of the Prosecutor's Office and the Defense in relation to the admissibility of material evidence<sup>345</sup> and admitted into evidence in the case file the

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<sup>340</sup> Ibid. paragraph 482.

<sup>341</sup> Ibid.

<sup>342</sup> Ibid. paragraph 484.

<sup>343</sup> Ibid.

<sup>344</sup> Ibid.

<sup>345</sup> For the sake of clarity, the Panel tried to use the word material evidence in the general sense to include any piece of evidence contained in a material support of information, for instance paper documents or photos, reports or other materials containing information, like instruments of crimes, CDs, DVDs.

material evidence proposed by the parties.

That is to say, *during the main trial*, both the Prosecution and the Defense offered material evidence to be admitted into the case file. They started reciprocally filing objections to some of the material evidence. Then, the Panel decided that all of the offered material evidence the parties wanted to submit should be marked with numbers and the objections, if any, filed with the submitted and numbered material.

#### 5.1. Organization of the material evidence

For the sake of efficiency, the Panel instructed the Prosecution and the Defense, when filing objections regarding the admissibility of the offered material evidence, to take into account three key aspects, namely: relevance, authenticity and probative value. Once all material evidence was offered and objections thereto filed, the Panel, for the sake of organizing all the issues under consideration, classified all offered material evidence as shown in the table in Annex I to this Decision.

In short, all the proposed material evidence specified in the Annex I were classified in nine categories for the purpose of a better overview:

- (1) documents of the Prosecution, without objections;
- (2) documents presented by the Prosecution, with objections;
- (3) documents presented by the Prosecution, with the ICTY number and stamp, without objections;
- (4) original documents presented by the Defense, without objections;
- (5) copies of documents presented by the Defense, with objections;
- (6) photographs presented by the Defense, without objections;
- (7) documents presented by the Defense and introduced through witnesses, with objections;
- (8) Official Gazettes, and
- (9) documents presented by the Defense, with the ICTY number but no stamp, with objections.

Furthermore, category 2 (documents by the Prosecution, with objections) was broken

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floppy disks and so on; documents meaning a kind of material evidence, like original or copies of written paper; exhibits meaning any piece of evidentiary material which has been admitted into the case file; decision.

down into seven sub-categories:

- 2.1 with objections regarding relevance;
- 2.2 with objections regarding authenticity;
- 2.3 with objections regarding authenticity and admissibility;
- 2.4 with the objection regarding legally invalid evidence;
- 2.5 with objections regarding admissibility;
- 2.6 signed "for/on behalf of Momčilo Mandić";
- 2.7 related to citizens' associations, the Agency for Investigation and Documentation, which do not contain source names.

## 5.2. Submissions of the Defense

On 28 May 2007, the Defense filed a written submission pointing out its objections regarding the documents which mainly pertained to the category (2).

With regard to the documents from category (2.1), the Defense submitted that these documents, by their content, cannot be used as evidence in order to establish the relevant facts based on which it could be concluded that the acts the accused Momčilo Mandić is charged with constitute criminal offenses. The Defense alleges that documents falling under paragraph (2.1) are not the type of evidence which allows for a factual conclusion on the existence or non-existence of an unlawful act.

The Defense also submits that the documents in category (2.2) cannot be accepted as authentic without further checks. The Defense points out that T-74, T-97 and T-113 are documents containing no signature or stamp, or their contents indicate that they cannot be considered authentic documents, as is the case with document T-97 the contents of which clearly show that it is not an authentic document.

The Defense further submits that the documents from this category (2.2) are lists of names which evidently do not contain only the names of employees of the Ministry of the Judiciary and Administration of Republika Srpska and it is unknown who made the lists. The Defense, therefore, reiterates the objections with regard to their authenticity as no one identified those documents and they are not signed and contain no stamps either. The Defense believes that documents T-78 and T-79 cannot be considered authentic. As for document T-78, there is no reference of the publisher or printing house or the time of publishing and in addition to the fact that there is no reference to the name of the author,

publisher and printing house, the document does not contain any other information based on which one could check its authenticity. With regard to document T-79, the Defense submits that it has not been provided in its entirety, which leaves space for expanding or shortening the text. Also, with regard to these two documents, the Defense submits that they are irrelevant as they obviously come from the mass media in which the presented information is not necessarily entirely true or authentic and may contain elements of propaganda.

With regard to the documents in category (2.3), the Defense points out that document T-65 was made as an information note by the State Security Service and it is unknown by who and when it was made. Document T-65 is inadmissible, because details from an information note from a secret service cannot be used as valid evidence in criminal proceedings, in particular under the circumstances of troubled relations in a society, political tensions or armed conflict where such information, as a rule, contains unverified and inaccurate data. With regard to document T-82, the Defense submits that it is a print-out from the website of the Republika Srpska Government, it is not known if it is an authentic website and who posted it and it is evident that it contains inaccurate data as to the time of the appointment and the composition of the Government and is, therefore, entirely inadmissible as evidence in the criminal proceedings.

With regard to the audio recordings in category (2.4), the Defense submits that they were obtained in contravention of the Criminal Procedure Code, therefore, in an unlawful manner. The Defense finds unacceptable the position of the Prosecutor's Office that the audio recordings were collected in accordance with the Law on the Basis of the State Security System (Official Gazette of the SFRY), the Law on the Internal Affairs of the Socialist Republic of BiH, Decision of the SFRY Presidency on Uniform Principles on the Application of Means and Methods Applied by the State Security Organs, and the Decision of the SR BiH Presidency on the Application of the Prescribed Means and Methods of the State Security toward Certain Public Official in the SR BiH, therefore, obtained in a lawful manner. The Defense points out that the offered audio recordings cannot be used as evidence in the Court, as the aforementioned laws and decisions are the regulations that the Court is aware of and they can only be referred to as regulations relevant for the protection of the SFRY as a state, and the Socialist Republic of BiH as a federal unit. They cannot be used as regulations protecting the integrity of the Republic of BiH which was recognized as a state on 6 April 1992. According to the Defense, the Prosecution has the duty to prove that those regulations were adopted as the regula

of the new state. Also, the contents clearly show that those regulations pertain only to the highest ranking federal and republic officials in the former SFRY. These regulations required (Article 24 of the Law on the Basis of the State Security System) that the head of a service issues a decision ordering the measures allowing deviation from the principle of inviolability of the confidentiality of letters and other means of communication. Such a decision was not rendered with regard to Momčilo Mandić, which makes this position of the Prosecution unacceptable.

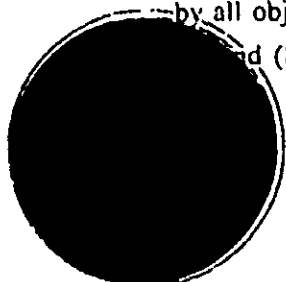
With regard to the documents in category (2.5), in its objections to documents T-79, T-79-A, T-221 and T-222, the Defense refers to the reasoning provided with the objections regarding the authenticity of the documents classified under (2.2).

With regard to the documents from category (2.6), the Defense states that documents T-83 and T-87 are not signed by Momčilo Mandić. Therefore, they cannot be considered as proof of the actions undertaken by Momčilo Mandić. Should they be used as evidence, there would remain reasonable doubt as to whether the accused Momčilo Mandić was aware at all of the contents of those documents, including, in certain situations, doubts about the good faith of the person who made the documents and signed them, allegedly on behalf of Momčilo Mandić, which all raises doubts about the credibility and probative value of such evidence.

With regard to the documents in category (2.7), the Defense submits that those documents were made by citizens' associations or the Agency for Investigation and Documentation. Furthermore, none of those documents contains any information or proof corroborating the contents of the said letters or lists and requests. That means that it would be required to verify the accuracy of each piece of information from these documents and they would have to be proved through other pieces of evidence. The Defense also reiterates fully its objection that the offered documents have no probative value, in particular as they prove the disappearance or death of certain persons which cannot be established in this manner by the Court.

### 5.3. Submissions by the Prosecution

On 29 May 2007, the Prosecution filed a submission with the Court stating that it stood by all objections and they pertain mainly to the documents from categories (4), (5), (6), (7) and (8). The Prosecution points out that it has no specific objections regarding the





original documents from the category (4) of Annex I. With regard to the documents from category (5), the Prosecution points out that, pursuant to Article 274 (2) and (3) of the Criminal Procedure Code of BiH, these documents cannot be used as evidence in the proceedings, in particular the documents containing no signature and stamp. The Prosecution also points out that the aforementioned documents cannot be used in the proceedings pursuant to Article 8 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by the ICTY in Proceedings before the Courts in BiH, either.

With regard to the documents from category (6), the Prosecution submits that it has no specific objections.

With regard to the documents from category (7), the Prosecutor pointed out that he reiterated the objections filed in view of the documents classified under (5). The Prosecutor emphasized the irrelevance of the documents marked with numbers O-26 through to O-31, and O-33- through to O-47. In relation to the documents from category (8), the Prosecutor submits that he reiterates the objections to their admissibility if they are submitted as uncertified copies.

#### 5. 4. The discussion and final views of the Prosecution and the Defense

On 30 May 2007, the Panel convened a status conference in order to have further discussion on the admissibility. The parties and the Defense discussed the objections filed during the proceedings and the written submissions on the table in Annex I to this Decision, verbally stating their final position on the admissibility of the proposed documents.

The Prosecutor stated that he reiterated his earlier response. He also pointed out that the documents classified under (8), the *Official Gazettes*, were not disputable and that, in general, he had no objections to the documents classified under (5), that is, all the documents submitted as photocopies of documents, as well as to the documents under (6), (7), (8) and (9). In addition, the Prosecutor added that, in war crimes cases, the Panel should accept all documents presented in the proceedings and, honoring the proceedings through the application of the free evaluation principle, it should assess all evidence individually and in combination and then give it adequate probative value.

The Defense pointed out that they were also of the opinion that all submitted ev

should be admitted in order to get a comprehensive picture of a complex situation, except for the evidence that is in violation of the fundamental human rights, which, the Defense believes, are the documents classified as sub-categories (2.4) and (2.7).

## 5.6 Analysis of the documents

Having examined the offered evidence and the arguments of the parties, the Panel decided as in the operative part of the Decision for the reasons stated below. At the previous stage of the proceedings, the Panel analyzed only the relevance and authenticity of the collected evidence as aspects of its admissibility, and it evaluated its probative value when rendering the decision.

### a) Principles of Evidence Evaluation

Article 15 of the CPC BiH sets forth the principle of free evaluation of evidence as one of the main principles. According to that provision, "the right of the Court, Prosecutor and other bodies participating in the criminal proceedings to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules". Thus, the probative value of evidence is not predetermined, neither quality- nor quantity-wise. The Court has to evaluate every piece of evidence individually (atomistic approach) and its correspondence with all the other evidence (holistic approach) and, based on the result of such evaluation, conclude whether a fact has been proved or not. The evaluation of evidence includes logical and psychological evaluation thereof. Nevertheless, free evaluation of evidence is limited by the principle of legally valid evidence (Article 10 of CPC BiH).

In fact, Article 10 of CPC BiH (Legally Invalid Evidence) provides that "the Court may not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, nor on evidence obtained through essential violation of this Code". The verdict cannot be based solely on recordings, as this would call into question Article 6 (2) - presumption of innocence, and Article 8 of the ECHR - right to respect for private and family life<sup>346</sup>.

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*Chenck v. Switzerland*, Judgment of 12 July 1998, Series A, No. 140.

On the other hand, the authenticity of a document whose contents are relevant to prove a fact was often raised in the course of the criminal proceedings. Article 274 (2) of CPC BiH, when considering the records on evidence, provides that "to prove the content of writing, recording or photograph, the original writing, recording or photograph is required, unless otherwise stipulated by this Code".

Also, Article 20 (p) of CPC BiH reads that "the term 'original' refers to an actual writing, recording or similar counterpart intended to have the same effect by a person writing, recording or issuing it. An 'original' of a photograph includes the negative or any copy therefrom. If data is stored on a computer or a similar automatic data processing device, any printout or other output readable by sight is considered an 'original'."

Additionally, Article 20 (r) of CPC BiH provides that "the term 'duplicate' refers to a copy generated by copying the original or matrix, including enlargements and miniatures, or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques that accurately reproduce the original."

"Duplicating" for the needs of criminal proceedings is possible by use of certain methods such as duplication, enlargement, reduction, re-recording and reproduction in order to obtain duplicates of the originals and the matrixes. Various technical recordings, if obtained as prescribed by law, may be used as evidence in the criminal proceedings.

Furthermore, Article 20 (s) of CPC BiH also states that "the term 'telecommunication address' means any telephone number, either landline or cellular, or e-mail or internet address held or used by a person."

*In principle, a document has to be submitted to the Court in its original form. However, the principle does not inherently exclude a possibility of using a copy of a document as lawful evidence. In fact, the Supreme Court of the Republic of Croatia<sup>347</sup>, states the following:*

*"The defendants are right in alleging that all correspondence material regarded as evidence is submitted in the original, which in the instant case was not done with the Record of examination of suspect N. Š. dated 8 May 1999 (pages 72-74 of the case file), nor did the first instance court, despite its efforts, manage to obtain the*

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<sup>347</sup> In its Decision No. I K2-645/01.

original thereof during the proceedings. However, contrary to the allegations in the Appeal, it cannot be accepted that it is unlawful evidence within the meaning of Article 9(2) of the CPC merely on account of that formal omission since the accused Š. does not challenge the authenticity of the Record, it was not obtained in consequence of a violation of the rights of the defense guaranteed by the Constitution, law or international law and the defendant himself during the main trial, when presenting his defense, stated that he stood by that defense which was then read out, and he stated that what was read was exactly what he told before the law enforcement agencies. In addition to this, given that the accused Š. entirely denies the commission of the offense, it is unacceptable that the challenged judgment is based on that evidence, therefore, even if accepted that it was evidence referred to in Article 9 (2) of the CPC, the ground for appeal of an unlawful violation under Article 367 (2) of the CPC is not well-founded."

The European Court of Human Rights (ECtHR) established the general rule by which the national courts evaluate evidence. Since the Convention does not contain any explicit relevant provision on evidence evaluation, the ECtHR did not engage in setting the rules on evidence and firmly maintained its position that its task is not to decide on whether the evidence was adequately admitted at trial, which, in principle, is an issue to be regulated under national law, but to establish whether the court proceedings as a whole were fair. In considering whether the trial was fair, the Court examines the manner in which the evidence was obtained and, if obtained in the manner which is in violation of some of the rights under the Convention, the nature of such violation. The weight is attached to the question whether the conviction is based exclusively or mainly on the challenged evidence and whether the rights of the defense have been respected to a sufficient extent. The principle according to which the rules of evidence are to be regulated by national law has been set in the *Schenk v. Switzerland* case and thereafter confirmed on many occasions by that Court.

The ECtHR stated that while Article 6 [. . .] of the Convention guarantees the right to a fair trial, it does not lay down any rules on the admissibility of evidence as such. It is primarily a matter regulated by national law. The Court, therefore, cannot exclude as a matter of principle and in the abstract that unlawfully obtained evidence of the present kind may be admissible.

Also, the ECtHR<sup>348</sup> has held that the use of evidence obtained in breach of the rights under the Convention is not necessarily a breach of the required fairness. No suggestion is made in the case that the right to a fair trial necessarily entails the exclusion of evidence obtained in consequence of a violation of Article 8, but that the conviction based *solely* on evidence obtained by illegal acts of law-enforcement agents constitutes a breach of the statutory provisions and is not in accordance with Article 6. Having rejected the applicant's complaint, the Court noted that the national courts have discretion to exclude the evidence if they consider that the acceptance thereof would have an adverse effect on the fairness of the trial.

In addition, the Court<sup>349</sup> unanimously decided that the use of covert listening devices to record the conversations at the applicant's flat constituted a violation of Article 8 as "not being in accordance with the law". *Considering* that the Government admitted that the surveillance of the applicant's flat by the police was not in accordance with the then applicable law, and bearing in mind the absence of legislation governing the use of listening devices at the police station, the Court was satisfied that Article 8 was violated in both instances. However, the surveillance of telephone conversations is considered necessary in a democratic society, thus there has been no violation of Article 8. Recognizing the similarity of the case to the *Khan v. the United Kingdom* case, the majority of the judges of the Court were satisfied that the use of evidence obtained in such manner did not endanger the right to a fair trial.

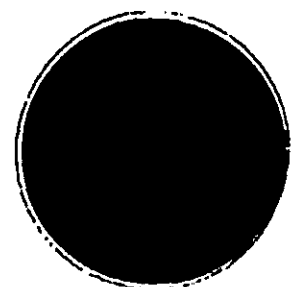
Stating further reasons for rejecting the applicants' assertions that the use, as evidence at trial, of the recordings made in the manner contrary to Article 8 constituted a violation of the right to a fair trial, the Court observed that the recordings of the conversation were not the only evidence against the applicants. Moreover, the applicants were afforded the opportunity to challenge both the authenticity and the use of the recordings. Furthermore, the national court reserved the discretion to exclude the evidence if it considered that the admission thereof would have considerable adverse effects on the fairness.

Furthermore, the Rules of Procedure and Evidence of the ICTY contain no rule relating to the exclusion of unlawfully obtained evidence. It was established in the *Kordić* case that "even when the unlawfulness is established [. . .] we have come to the conclusion

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<sup>348</sup> In the *Khan v. the United Kingdom* case.

<sup>349</sup> In the *P.G. and J.H. v. the United Kingdom* case.



that [...] the evidence obtained by intercepting the enemy telephone conversations at the time of war certainly does not fall under the actions depicted in Rule 95. It is not in contravention of the integrity of the proceedings and would certainly not have an adverse effect thereon". Such position is also accepted in the Trial Chamber Decision in the *Brđanin* case of 3 October 2003.

It is not disputable that the recording of a telephone conversation entails an interference of government with the exercise of a right guaranteed, pursuant to Article 8 (1) of the ECHR, to an individual<sup>350</sup>. What is disputable is whether the established interferences were justified according to the requirements laid down in Article 8 (2) of the ECHR, that is, whether they were "in accordance with the law" and "necessary in a democratic society" in one of the aims enumerated in that paragraph. The word "law" should be interpreted as covering not only statute but also unwritten law<sup>351</sup>.

The second principle, acknowledged by the European Court, is that the "interference in question must have some basis in domestic law"<sup>352</sup>.

Furthermore, the interference must pursue a "legitimate aim" or it must pursue one of the legitimate aims set out in Article 8 (2) of the ECHR (the interest of national security, public security and prevention of disorder or crime, and so on). The interference must also satisfy the requirement of "necessity" in a "democratic society". In this respect, the *Silver and others* Judgment provides a useful outline of the ECHR case law and determines that expression "necessary in a democratic society" means that, to be compatible with the Convention, the interference must, *inter alia*, correspond to a "pressing social need" and be proportionate to the legitimate aim pursued<sup>353</sup>.

A fair balance must be struck between the fundamental rights of the accused and the essential interests of criminal prosecution of the persons indicted for serious violations of international humanitarian law.

#### b) Analysis of evidence by categories

<sup>350</sup> See the *Klass et al.* Judgment of 6 September 1978, Series A, No. 28, and the *Malone v. the United Kingdom* case of 2 August 1984, Series A, No. 82.

<sup>351</sup> See *The Sunday Times* Judgment of 26 April 1979, p. 30, para. 47.

<sup>352</sup> See the *Silver and others* Judgment of 25 March 1983, p. 33, para. 86.  
<sup>353</sup> *Id.*, p. 22-23, paras. 48-49.

The Panel notes that, during the proceedings and the final discussion held at the status conference of 30 May 2007, neither the parties nor the Defense made objections to the documents from categories (1), (3), (4) and (6) of Annex I. The Panel will, thus, analyze the documents from categories (2), (5), (7), (8) and (9) which were subject to objections.

#### b1) Objections of the Defense

The Panel considers that the Defense, in relation to the objections on the documents in sub-category (2.1), did not state specific facts or circumstances for which these documents cannot be used in the criminal proceedings. In other words, the documents are authentic documents and the fact that time-wise they relate to the period which is not covered by the Indictment, in itself does not mean that they are not relevant for understanding this criminal case and that the Prosecutor may not bring them into connection with the other relevant evidence offered.

The Panel also considers that there are no apparent modifications or redactions on the documents in category (2.2) which could indicate that the documents are not copies of authentic documents. Furthermore, the Panel points out that all documents from the sub-category (2.2) contain a copied number and stamp of the ICTY which certifies that they are faithful to the original which is in the possession of the ICTY.

With regard to the objections filed against the documents in sub-category (2.3), the Panel further considers that document T-82 (the print out from the website of the Republika Srpska Government) fulfils all requirements of the legal definition of a "telecommunication address" and the Defense did not challenge any of its elements. Document T-65 contains the number and the stamp of the ICTY and, in terms of relevance and authenticity, this document is admissible. The objection the Defense filed against this document pertains more to its probative value, which is not under consideration in this decision.

With regard to the documents from sub-category (2.4), the Panel, bearing in mind the aforesaid requirements established by the ECtHR jurisprudence, considers that the tapped telephone conversation of the Accused constitutes the interference with the rights guaranteed under Article 8 of the ECHR. However, the Panel recalls that the Prosecutor presented the legal provisions on the basis of which the interference occurred. That po

is corroborated by witnesses' statements on the manner in which the tapping was conducted and the extraordinary circumstances, namely the time of the tapping, that is, the existence of an imminent threat of war or even the state of war.

The Panel, based on the foregoing, is of the opinion that the requirements set forth in Article 8 (2) of the European Convention have been met in the present case. Therefore, the documents under (2.4) were not obtained through violation of human rights and freedoms and there was no violation of Article 10 of the CPC BiH. Furthermore, the admission of the documents under (2.4) did not constitute a violation of the right of the Accused to a fair trial as guaranteed under Article 6 of the ECHR as the Accused was provided with different opportunities during the proceedings of challenging the authenticity of all documents proposed, including those enumerated under (2.4), while the Defense had the opportunity to point in its closing argument at the significance and probative value of these documents.

With regard to the documents enumerated under (2.5), the Panel took into account the objections of the Defense to the documents from sub-category (2.2). The Panel considers that the Defense stated the objection in broad terms, making no specific reference to the elements of the documents under (2.5) or indicating any doubt as to their authenticity, be it originals or certified ICTY copies.

With regard to the documents under (2.6), the objection made by the Defense is unfounded at this stage of the proceedings, because the mere fact that the document was signed "on behalf" or in the name of a certain person does not mean that in the formal sense it cannot be used as evidence.

With regard to the documents from sub-category (2.7), the Panel finds that the objection of the Defense has to do with the probative value, on which the Panel did not decide at the evidentiary procedure stage, as the probative value of the aforesaid documents will be elaborated on in this Verdict.

## **b2) Objections of the Prosecution**

The Panel notes that the Prosecution, at the beginning, generally challenged the authenticity of the evidence from categories (5) and (7). However, the Prosecutor, in relation to documents under (5), did not state facts or reasons for which he challenged the



authenticity of these particular documents. He failed to provide specific elements for which he challenged the proposed evidence, except for making a general objection that those documents were photocopies. With regard to the documents under (7), the Panel notes that the documents O-10 through to O-437 were tendered through the testimonies of Defense witnesses. The said documents were identified by the witnesses and by the Accused during his testimony at the main trial. Nevertheless, the Prosecutor proposed at the status conference, *inter alia*, that these documents be admitted and evaluated in accordance with the legal principle of free evaluation of evidence. This evidence was used during the testimonies of the witnesses (direct examination and cross-examination). Therefore, the principle of equality of arms and the adversarial principle have not been violated in the instant case.

In relation to the documents in categories (6), (8) and (9), the Prosecutor made no particular objection against them in the final discussion and stated later that he did not challenge them. In other words, the documents under (8) are documents published in the *Official Gazette* and many of them are the promulgation of laws and bylaws. No indication was made in the sense that they were not a copy identical to the original. The Panel is aware of the maxims "The Court knows the law" and "Quod abundat non nocet". These documents are also accepted as authentic and kept marked as such. The Panel takes the position that the documents do not represent individual documentary evidence, but only reference of the parties to the relevant legal provisions. Bearing in mind the foregoing and taking advantage of the availability of the documents, the Panel shall keep them in the case file under the numbers already assigned.

### c) Conclusion

Given the foregoing analysis, the Panel concludes that the documents under (1), (3), (4) and (6) of Annex I are admissible as no objections were made to these documents and they are authentic and relevant. In relation to the documents under (2), (5), (7), (8) and (9), the Panel also concludes that they are admissible. For reaching that conclusion, the Panel took into account that the documents under (2.1) are relevant to understand the case, under (2.2) are considered authentic, under (2.3) are relevant and fulfill the "telecommunication address" legal requisite, under (2.4) do not constitute a violation of the right of the accused to a fair trial, under (2.5) are considered authentic as they were not subject to a specific objection, under (2.6) and (2.7) have to do with probative value which will be considered later on. The documents under (5) are also admissible as

are considered authentic for not having been subject to a specific objection. No particular objection was made against the documents under (6), (8) and (9) in the final discussion, and they are considered relevant and authentic. Finally, the Panel accepts the documents under (7) as evidence corroborating the testimonies of the respective witnesses. Additionally, the documents under (3) and (9) are admitted in accordance with Article 3 and 8 of the Law on the Transfer.

In all, the evidentiary materials proposed by the parties are admitted into the case file as exhibits with the assigned and correspondent numbers as above mentioned.

#### D. Charges referred to in Count 1 (War Crimes against Civilians)

Momčilo Mandić is accused under Count 1 of the Indictment because "during the armed conflict between the Armed Force of the Republic of Bosnia and Herzegovina and the forces of the so-called Serb Republic of BiH in the City of Sarajevo, (...) he planned, instigated, ordered and committed, as well incited, aided and abetted the planning, instigation and perpetration of unlawful confinement and inhuman treatment of civilians".

##### 1. Evidence related to Count 1

Prosecution Witnesses Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija and Džafer Hrvat testified about the circumstances referred to in Section 1 of the operative part of the Verdict, that is, the attack against the Training Center for Personnel of the RBiH Ministry of the Interior located at Vraca in Sarajevo. The proposed Defense witnesses Mladen Mandić, Vlatko Lopatić, Alija Delimustafić, witnesses "I" and "H" and the Accused himself testified on the same circumstances.

It clearly ensues from the material evidence, namely, exhibit No. T-58, that pursuant to the decision of the Government of the then Socialist Republic of BiH of 25 February 1991, the Accused was appointed the Assistant Minister of the Interior. The decision was published in the *Official Gazette of the Socialist Republic of BiH* No. 6, dated 28 February 1991. The Accused was appointed to the said office as a candidate of the SDS, which follows from exhibit No. T-57, which is a list of the candidates of the SDS of BiH appointed in the Government of BiH, Ministries and other Government services. Furthermore, although it follows from exhibit No. O-XX that the Accused was never a member of the SDS, it does follow clearly from exhibit No. T-61 that the Accused was

directly authorized to participate and solve all personnel and organization issues in the MUP BiH on behalf of the SDS, which also follows from the respective testimonies of the Accused and witness Alija Delimustafić.

From the presented evidence the Court could not conclude beyond reasonable doubt that the Accused carried out, *de iure* or *de facto*, the duty of Deputy Minister of the Interior of the Serb Republic of BiH from 4 April 1992. In other words, it follows from the exhibits No. T-71, T-72, T-73, T-74 and T-75 that the Accused signed certain documents in the capacity of the Deputy Minister of the Interior, but the dates on those documents range from 10 to 24 April 1992. The fact that Vitomir Žepinić resigned on 4 April 1992 is not sufficient for the Panel to conclude beyond reasonable doubt that the Accused assumed that office on the same day. It ensues from the statement of the Accused that he was to be appointed to the office of Deputy Minister of the Interior after Žepinić's resignation and that for that very reason he signed the aforementioned documents in that capacity although the appointment did not formally take place, since it follows from exhibit No. T-81 that at the extended meeting of the National Security Council of the Government of the Serb Republic of BiH, held on 22 April 1992, the Accused was appointed the Minister of Judiciary and Administration, which is also confirmed by exhibit No. T-82. Furthermore, it follows from exhibit No. T-88 that the Assembly of the Serb People of BiH, held on 12 May 1992, verified the appointments of ministers in the Government of the Serb Republic of BiH including Momčilo Mandić as the Minister of Justice.

With regard to directing of the attack against the Training Center for Personnel of the RBiH Ministry of the Interior, witness Husein Balić stated that he noticed Momčilo Mandić and realized that he was "the person in charge", by which he implied that the Accused commanded, directed and coordinated the activities, and that he gained the impression that the Accused commanded. Witness Dževad Termiz stated that he saw the Accused come in front of a tank, and that from the Accused's very attitude toward him, as well as from the information obtained previously that the Accused had the status of a superior, although he stressed that he did not really know which status it was, he concluded that the Accused directed the attack. Contrary to this, witness Meho Mašović noted that he did not gain the impression that the Accused directed the attack against the school in Vraca, that he did not hear a single word that could be perceived as an order and that he heard that the Accused was looking for his brother. Witness Josip Bilandžija confirmed this in his statement. These witnesses' statements are corroborated by the statements of witnesses Mladen Mandić, Vlatko Lopatić, witness "I" and the testimony

the Accused. It follows from all their testimonies that, on 5 April 1992, the accused Momčilo Mandić came to the Center in Vraca, after the shooting stopped, in order to find out what had happened to his brother Mladen Mandić, who was an employee of the Center and supposed to be inside the premises.

Based on the foregoing, the Court concludes that it has not been proven beyond reasonable doubt that the accused Momčilo Mandić directed the attack against the Training Center for Personnel of the Ministry of the Interior in Vraca. That is to say, the Court did not believe the version given by witnesses Husein Balić and Dževad Termiz, since they gave unfounded assumptions that the Accused was the person who commanded, that is, directed the attack against the Center. These conclusions of the witnesses have not been corroborated by the facts on the basis of which the role of the Accused could be established beyond reasonable doubt. On the contrary, the Court gave full credence to the other witnesses, because they were consistent and clear. In fact, they confirmed that the accused Momčilo Mandić was present at the Center in Vraca after the shooting ceased and they did not notice any order-issuing actions of the Accused or hear the Accused issuing any order. They also noticed that Momčilo Mandić was very concerned for the fate of his brother Mladen Mandić and was trying to find out what had happened to him. The Court in particular could not accept the allegations of the Prosecution that the Accused commanded tanks, as it is a fact of common knowledge that in that period the JNA units were subordinated to JNA commanders, not to the Ministry of the Interior of the then Socialist Republic of BiH.

Witness Alija Delimustafić, who was the Minister of the Interior at that time, said that Vitomir Žepinić went to Krtelj after which he informed the Advisory Board on the need to divide the Special Unit so that the part of the Special Unit composed of the Serb staff would go to the "F" building in Vraca, and the remaining part was supposed to go to the *Dom Policije*. Alija Delimustafić also stated that the Board concurred with the agreed division and that he was not aware whether the Special Unit was granted consent to enter the "F" building and, also, that he did not know that the consent was required.

With regard to the physical assault on the injured party Dževad Termiz by the Accused, Dževad Termiz stated in his testimony that the accused Momčilo Mandić came toward him, started cursing and insulting him and asked him: "Where is my brother, why did you kill my brother?" After this, according to Dževad Termiz, the accused Momčilo Mandić was beating him so hard against his head and body that he fell down. Furthermore,

Dževad Termiz stated that two special policemen, namely Vlatko Lopatić and the witness "I", prevented the Accused from killing him.

However, the testimonies of the Defense witnesses, precisely of witness Vlatko Lopatić, witness "I", Mladen Mandić and the accused Momčilo Mandić do not corroborate the claims of the injured party Dževad Termiz. It follows from these witnesses' statements that the accused Momčilo Mandić, due to the concern for his brother who was in the Center at the time of the attack, approached the injured party Dževad Termiz and assaulted him in the heat of the moment and that the physical contact between the Accused and the injured party was not of the duration or the intensity described by the injured party. The accused Momčilo Mandić does not deny his potential physical contact with the injured party in the heat of the moment, but that contact was not in any way a long-lasting beating as described by the injured party. This version of the facts has also been corroborated by the statement of the Prosecution witness Meho Mažović, who said that the Accused assaulted the injured party, however he was not sure if Momčilo Mandić perhaps hit the injured party once, but he was sure that the Accused did not beat the injured party, that is, did not hit him several times. Also, witness Josip Bilandžija stated that the Accused was extremely upset due to his concern for his brother, he assaulted the injured party in the heat of the moment, but the physical contact was terminated once Mladen Mandić showed up.

Having in mind the foregoing, the Court did not give credence to the injured party Dževad Termiz because his testimony is in its entirety contrary to the other witnesses' testimonies which are more coherent, consistent and reasonable. That is to say, the other witnesses confirm the fact that the Accused physically assaulted the injured party, but state that the physical contact between the Accused and the injured party was not of the intensity described by the injured party, it was much shorter and a result of the emotional state of the Accused caused by his concern for his brother. Likewise, none of the witnesses confirms the version of the facts given by the injured party Dževad Termiz that the accused Momčilo Mandić severely beat him and intended to kill him and he was prevented from doing so by his subordinates. The Court considers that it cannot be concluded on the basis of the presented evidence that the accused Momčilo Mandić committed the actions described in Count 1 of the Indictment with respect to the injured party Dževad Termiz.

With regard to the transfer of the managerial staff to Pale and their detention in the

Station where they were interrogated and then transferred to a gym in Pale, witness Husein Balić stated that eight of them, in two groups of four, were taken to Pale in military vehicles. They were interrogated in the Police Station in Pale, after which they were transferred to a gym there by members of the Military Police. The fact was completely confirmed by the statements of witnesses Dževad Termiz and Meho Mašović. Witness Malko Koroman also confirmed that these civilians were subject to interrogation in the Police Station in Pale, after which they were placed in the gym in Pale. On the basis of the aforementioned witnesses' testimonies the Court finds it is established that Husein Balić, Šimo Švabić, Ibrahim Hidović, Nermin Levi, Dževad Termiz, Meho Mašović, Mirzet Karajica and Samir Bukvić were taken to the Police Station in Pale, where they were interrogated, after which they were transferred to a gym in Pale, where they were detained and physically abused until 10 April 1992, when they were exchanged and returned to Sarajevo. However, the presented evidence does not support the charge in the Indictment concerning the role of the accused Momčilo Mandić. As the Court has already concluded, the Court could not, on the basis of the presented evidence, establish beyond reasonable doubt that on 4 April 1992 the Accused carried out, *de facto* or *de iure*, the office of the Deputy Minister of the Interior and it has not been proven that the Accused was a superior to the members of the police who transferred, detained or interrogated the aforementioned persons in the Police Station or in the Gym in Pale.

## 2. Legal findings pertaining to the Count referring to War Crimes against Civilians

Momčilo Mandić has been charged under Count 1 of the Indictment for having committed the criminal offense of War Crimes against Civilians "by violating the provisions of Article 3(1)(a) and (c), Article 27(1) and Article 33(3) and Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949", in violation of Article 173(1)(c) and (e) of the Criminal Code of BiH in conjunction with Article 180(1) and (2) of the Criminal Code of BiH".

The qualification of the conflict is not at stake in this case. Nevertheless, for the sake of clarity, the Court notes that International humanitarian law, in relation to the qualification of an armed conflict, makes a distinction between international and non international conflict. In general, Geneva Conventions and Additional Protocol I are the set of rules to be applied to the international conflicts; Additional Protocol II and Common Article 3 to the Geneva Conventions are to be applied to the non-international conflicts and, in

accordance with the qualification of some situations (for instance, internal disturbances and tensions), Protocol II is not applicable, but Common Article 3 to the Geneva Convention, being kind of a small and residual convention inside the Conventions, may be applicable. Therefore, in principle, the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 is only applicable to the international conflicts.

In fact, Article I (Material field of application) of Additional Protocol II establishes that:

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions or application, shall apply to all armed conflicts which are not covered by Article I of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts

Common Article 3 to the Geneva Convention foresees:

"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions: (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) out-

upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples".

Common Article 3 requires the warring parties to abide by certain fundamental humanitarian standards by ensuring the application of the rules of humanity which are recognized as essential by civilized nations, which was confirmed by the International Court of Justice in the *Nicaragua* case, where it held that:

Article 3, which is common to all four Geneva Conventions of 12 August 1949, defines certain rules to be applied in the armed conflicts of a non international character. There is no doubt that, in the event of international armed conflicts, these rules also constitute a minimum yardstick, in addition to the more elaborate rules which are also to apply to international conflicts; and they are rules which, in the Court's opinion, reflect what the Court in 1949 called "elementary considerations of humanity"<sup>354</sup>.

Therefore, for a crime to be adjudicated under common Article 3 to the Geneva Convention, three preliminary requirements must be satisfied.

1. There must be an armed conflict, whether international or non international.

It is well established that for common Article 3 to the Geneva Convention to apply there must first be an armed conflict. An armed conflict is said to exist whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. For the purposes of common Article 3, the nature of this armed conflict is irrelevant, due to its residual clause nature (Martens clause). It does not matter whether the serious violation occurred in the context of an international or non international armed conflict, provided the following requirements are met: the violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met; the violation must be serious, that is to say, it must constitute a breach of a rule protecting important values, and the

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<sup>354</sup> *Prosecutor v. Sefer Halilović*, Case No. IT-01-48-T, judgment delivered on 16 November 2005, paras. 641-642 (after: Halilović case, Trial Chamber Judgment)



breach must involve grave consequences for the victim and the violation of the rule must entail the individual responsibility of the person breaching the rule.

2. There must be a close nexus between the armed conflict and alleged offense

In order for a particular crime to qualify as a violation of international humanitarian law under common Article 3 to the Geneva Convention, the Prosecution must establish a sufficient link between that crime and the armed conflict.

There must be a nexus between the armed conflict and the alleged criminal offense<sup>355</sup>. Also, the decision of the ICTY Appeals Chamber in the Kunarac case<sup>356</sup>, listing the factors for the assessment of the existence of *nexus*, establishes that: "In determining whether or not the act in question is sufficiently related to the armed conflict, the Trial Chamber may take into account the following factors: the fact that the perpetrator is a combatant; the fact that the victim is a non-combatant; the fact that the victim is a member of the opposing party; the fact that the act may be said to serve the ultimate goal of a military campaign; and the fact that the crime is committed as part of or in the context of the perpetrator's official duties." The armed conflict must have played a substantial part in the perpetrator's ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.<sup>357</sup>

In this regard, the ICTY jurisprudence developed the notion of "close nexus". The Appeals Chamber held in the Blaškić case that: "Even if substantial clashes were not occurring in the [specific region] at the time and place the crimes were allegedly committed international humanitarian law applies. It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict." Also, in relation to the armed conflict being linked to the crimes, the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must have played a substantial part in the perpetrator's ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed.

<sup>355</sup> Halilović case, Trial Chamber Judgment paragraph 28.

<sup>356</sup> Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković, Case No. IT-96-23&23/1, judgment delivered on 12 June 2002, (hereinafter: Kunarac case, Appeals Chamber Judgment), paragraph 59.

<sup>357</sup> Ibid, paragraph 58.

Furthermore, there is no necessary correlation between the area where the actual fighting is taking place and the geographical reach of the laws of war. The laws of war apply in the whole territory of the warring states or, in the case of non international armed conflicts, the whole territory under the control of a party to the conflict, whether or not actual combat takes place there, and continue to apply until a general conclusion of peace or, in the case of non international armed conflicts, until a peaceful settlement is achieved. A violation of the laws or customs of war may therefore occur at a time and in a place where no fighting is actually taking place. The requirement that the acts of the accused must be closely related to the armed conflict would not be negated if the crimes were temporally and geographically remote from the actual fighting.

3. Crimes must be committed against persons "taking no active part in the hostilities"

Finally, the ICTY jurisprudence added another element to be taken in relation to Common Article 3. The additional requirement for Common Article 3 is that the violations must be committed against persons "taking no active part in the hostilities". In fact, Common Article 3 protects "persons taking no active part in the hostilities", including persons "placed *hors de combat* by sickness, wounds, detention, or any other cause". The ICTY jurisprudence in Tadić case also stated that the legal approach for defining protected persons, hinging on substantial relations more than on formal bonds, becomes all the more important in present-day international armed conflicts. While previously wars were primarily between well-established States, in modern inter-ethnic armed conflicts such as that in the former Yugoslavia, new States are often created during the conflict and ethnicity rather than nationality may become determinative of national allegiance. Under these conditions, the requirement of nationality is even less adequate to define protected persons. The nationality of the victims for the purpose of the application of Geneva Convention IV should not be determined on the basis of formal national characterizations, but rather upon an analysis of the substantial relations, taking into consideration the different ethnicity of the victims and the perpetrators, and their bonds with the foreign intervening State.

The Prosecution bore the burden to prove all essential elements of this criminal offense, namely that the crime was committed during an armed conflict (a), that the crime violated of international law (b), and that the crime was committed against persons "taking

no active part in the hostilities" and that there was a nexus between the crime and the armed conflict (c).

(1) The Court considers indisputable that the event described in Section I of the operative part of the Verdict took place on 5 April 1992. This fact follows beyond reasonable doubt from the testimonies of all the witnesses heard during the trial: Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija, Džafer Hrvat, Mladen Mandić, Vlatko Lopatić, Alija Delimustafić, witnesses "H" and "I", and also the testimony of the Accused. Furthermore, the Panel accepted as proven (the *Galić* case, para. 196) that "in early March 1992, conflict broke out along ethnic lines in various locations in BiH." The Panel considers that the described events constitute a part of the process of internal turmoil and inter-ethnic tensions, and they should be perceived as they were perceived at that time, not as they might be seen nowadays. The Panel also accepted as proven the fact that "armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992" (the *Galić* case, para. 199). The Panel concluded beyond reasonable doubt that the events that took place in Vraca do not fall under the definition of an armed conflict pursuant to Article 1 (1) of the Additional Protocol II to the Geneva Conventions. The described events fall under Sub-Paragraph 2 of the said international legal document. Therefore, given the fact that it is an event that was a part of the said inter-ethnic tensions, it cannot be defined as an armed conflict, be it international or non international, to which the Geneva Conventions and Additional Protocol I or common Article 3 to the Geneva Conventions and Additional Protocol II should, respectively, apply.

(2) Based on the foregoing, it can be clearly concluded that, since an armed conflict does not exist, the *nexus* between an armed conflict and the alleged crime does not exist and, therefore, the second element of this criminal offense has not been fulfilled either.

(3) Furthermore, it follows from the witness testimonies that the managerial and teaching staff of the Center were armed and they actively participated in the conflict. This fact is confirmed by the killing of two special policemen on that day and supported by the death certificates. It follows from the testimonies of witnesses Husein Balić, Dževad Termiz, Meho Mašović, Josip Bilandžija and Džafer Hrvat that at the time of the attack they were armed with automatic and semi-automatic weapons, they were wearing uniforms and they actively participated in the said event by firing back, which resulted in the death of two members of the Special Unit. This was also confirmed by the testimonies of Vlatko Lopatić.

Lopatić, witness "I" and the Accused, as well as the other presented evidence. It follows from the aforesaid that the persons who were in the Center did not have the status of civilians, which constitutes an essential element of the definition of the criminal offense that the Indictment charges the Accused with.

Therefore, the Panel also concludes that the actions taking place in Vraca do not amount *at a minimum* the definition of armed conflict under Article 1 (1) of the Additional Protocol II to the Geneva Conventions. In fact, the described proven actions might fall under Article 1 (2) of the same international legal instrument. Thus, being an incident making part of the ethnic tensions, the said proven actions do not qualify as an armed conflict for the purpose of applying common Article 3 to the Geneva Conventions. In sum, the described actions do not constitute a violation of a rule of the international law, but, on the other side, they might constitute a violation of the national and human rights legislation,

#### E. Charges referred to in Counts 2-4 (Crimes against Humanity)

As it follows from Counts 2 (2a, 2b, 2c, 2d), 3 (3a, 3b, 3c, 3d, 3e) and 4 (4a, 4b, 4c and 4d) of the Indictment, Momčilo Mandić has been charged because, "In the period between May and end of December 1992, within a widespread and systematic attack of the military and police forces as well as paramilitary forces of the so-called Serb Republic of BiH directed against non-Serb civilian population of the City of Sarajevo and the Foča municipality, being aware of the attack in his capacity of Minister of Judiciary and Administration in the Government of the so-called Serb Republic of BiH, he planned, ordered and committed, as well as incited, aided and abetted the persecution of non-Serb civilian population on political, national, ethnic and religious grounds, by killing, inhuman treatment, violation of bodily integrity and health, unlawful confinement, forced labor and enforced disappearance, and as a superior and responsible person he also failed to take the necessary and reasonable measures to prevent perpetration of the aforementioned acts and punish the perpetrators thereof", in the manner described in detail in Sections 2 (2a, 2b, 2c, 2d), 3 (3a, 3b, 3c, 3d, 3e) and 4 (4a, 4b, 4c and 4d) of the operative part of the Verdict.

#### I. Legal findings on crimes against humanity

As it also follows from Counts 2 to 4 of the Indictment, the accused Momčilo Mandić is charged with having committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) (h) of the CC BiH in conjunction with Sub-paragraphs (a), (c), (f), (i) and (k) of the same Article, all in conjunction with Article 180 (1) and (2) of the CC BiH. The burden to prove all essential elements of this criminal offense was on the Prosecution.

### 1.1. Crimes against Humanity

For the existence of the criminal offense of Crimes against Humanity it is necessary that the general requirements of the legal definition have been met, namely widespread or systematic attack directed against any civilian population, the knowledge of the perpetrator of such an attack, and that the act of the perpetrator is part of the attack, in other words that there exists the *nexus* between the act of the perpetrator and the attack on the civilian population. In addition to these general elements, it is necessary to determine the existence of some acts the perpetrator did as part of such an attack and constitute the underlying criminal offenses as, in this case, defined under items h), a), c) f) and k) of paragraph 1 of Article 172 of the CC BiH.

### 1.2. Underlying criminal offenses

Let us look at the commission of the criminal offense of Crimes against Humanity by persecutions [in violation of Article 172 (1) (h)] in conjunction with murder [Article 172 (1) a)], imprisonment [Article 172 (1) (e)], torture [Article 172 (1) (f)], enforced disappearance [Article 172 (1) (i)] and other inhumane acts [Article 172 (1) (k)].

#### a) Persecution

The elements of the offense of persecution, mentioned under Article 172 (1) h) of the CC BiH, with reference to (2) g) of the same Article, "means the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity". It refers to the persecution against any group of people or community on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law. The ICTY jurisprudence determined numerous criteria through the analysis of the offense. Some of the examples are consistent with the definition of the persecution

prescribed under the CC BiH and elaborate on it in detail, and are stated in the *Naleilić and Martinović* Judgment<sup>358</sup>: the perpetrator commits a discriminatory act or omission; the act or omission denies or infringes upon a fundamental right laid down in international customary or treaty law; the perpetrator carries out the act or omission with the intent to discriminate on racial, religious or political grounds and the general requirements for a crime against humanity.

#### b) Murder

Article 172 (1) (a) of the CC BiH has to do with "depriving another person of his life (murder)" as part of a widespread or systematic attack directed against any civilian population, with knowledge of such an attack.

#### c) Imprisonment

The elements for the commission of "imprisonment" as a crime against humanity are as follows: "an individual is deprived of his or her liberty; the deprivation of liberty is imposed arbitrarily, that is, no legal basis can be invoked to justify the deprivation of liberty; the act or omission by which the individual is deprived of his or her physical liberty is performed by the accused or a person or persons for whom the accused bears criminal responsibility with the intent to deprive the individual arbitrarily of his or her physical liberty or in the reasonable knowledge that his act or omission is likely to cause arbitrary deprivation of physical liberty."<sup>359</sup>

#### d) Torture

Article 172 (2) e) says that "*Torture* means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused; except that torture shall not include pain or suffering arising only from, or being inherent in or incidental to, lawful sanctions".

The essential elements for torture, in Article 172 (1) (f) of the CC BiH, are as follows: the

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<sup>358</sup> *Prosecutor v Mladen Naleilić and Vinko Martinović*, Case No. IT-98-34, Judgment delivered on 31 March 2003 (hereinafter: *Naleilić case*, Trial Chamber judgment) paragraph 634.

<sup>359</sup> *Kmojelac case*, Trial Chamber Judgment, paragraph 115.

act was perpetrated against a person under the supervision of the perpetrator; the heavy bodily or mental pain was inflicted upon the victim by the offense; the offense was intentional and the offense is not the consequence of the enforcement of legal sanctions.

#### e) Enforced disappearance

Article 172 (2) h) establishes that "Enforced disappearance of persons means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time".

The essential elements for the perpetration of the act of "enforced disappearance of persons", in Article 172 (1) i), are as follows: there exists an act of abduction/arrest of persons; the act was perpetrated with the authorization or support of a State or a political organization; the perpetrator refused to give information on the fate or whereabouts of those persons and the act intends to remove the persons from the protection of the law for a prolonged period of time.

#### f) Other inhumane acts

The elements for the commission of "other inhumane acts (...) intentionally causing great suffering, or serious injury to body or to physical or mental health" as foreseen in Article 172 (1) (k) of the CC BiH, are as follows: there exists an inhumane act; the offense has not been stated differently in Article 172; the offense is of nature similar to other offenses defined under Article 172; the offense was committed with the intention to inflict heavy suffering or serious physical or mental injuries or deterioration of health and by the commission of this offense, the victims sustained heavy suffering or serious physical or mental injuries or deterioration of health.

Article 172 of the CC BiH is identical to the provision of Article 5 of the ICTY Statute. Thus, the ICTY jurisprudence on Article 5 of the Statute might be followed in this case when interpreting Article 172 of the CC of BiH. On other inhumane acts, the ICTY

established<sup>360</sup> that “The phrase ‘other inhumane acts’ was deliberately designed as a residual category, as it was felt to be undesirable for this category to be exhaustively enumerated. An exhaustive categorization would merely create opportunities for evasion of the letter of the prohibition”. The ICTY believes that this residual category includes, for example, also degrading treatment, forcible transfer and forced prostitution<sup>361</sup>, and use of persons as “human shields”<sup>362</sup>. The suffering inflicted by the act upon the victim does not need to be lasting so long as it is real and serious<sup>363</sup>. The required *mens rea* is met where the principal offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless as to whether such suffering or attack would result from his act or omission<sup>364</sup>.

## 2. Factual Findings on crimes against humanity

The Court has accepted as proven the established fact that, on 8 April 1992, an armed conflict broke out in Foča between the Serb and Muslim forces<sup>365</sup>, and there was a widespread and systematic attack comprising the period from April 1992 through February 1993<sup>366</sup>, as mentioned in the decisions of 5 February 2007 and 5 July 2007. That will be the subject-matter of the Verdict. Furthermore, concerning the city of Sarajevo, the Court also finds established the fact that an armed conflict broke out after the European Community recognized BiH as a sovereign state on 6 April 1992.<sup>367</sup>

Furthermore, although all the evidence presented shows that the Accused knew about the existence of a widespread and systematic attack directed against the civilian population of the Foča Municipality, as well as about the existence of the armed conflict in the territory of the Sarajevo Municipality, and that the acts described under Sections 2 through 4 of

<sup>360</sup> *Prosecutor v. Zoran Kupreškić, Mirjan Kupreškić, Vlatko Kupreškić, Drago Josipović, Dragan Papić and Vladimir Šantić*, Case No. IT-95-16, Judgment delivered on 14 January 2000 (hereinafter: Kupreškić case, Trial Chamber Judgment), para 563.

<sup>361</sup> Kvočka case, Trial Chamber Judgment, paragraph 208.

<sup>362</sup> *Prosecutor v. Dario Kordić and Mario Čerkez*, Case No. IT-95-14/2, delivered on 25 February 2001, (hereinafter: Čerkez case, Trial Chamber Judgment), paragraph 256.

<sup>363</sup> Kmojelac case, Trial Chamber Judgment, paragraph 131.

<sup>364</sup> *Ibid.*, paragraph 132.

<sup>365</sup> Kunarac case, Trial Chamber Judgment, paragraph 567.

<sup>366</sup> Kmojelac case, Trial Chamber Judgment, paragraph 567 and 570.

<sup>367</sup> *Prosecutor v. Stanislav Galić*, Case No. IT-98-28-T, delivered on 5 December 2003, (hereinafter: Galić case, Trial Chamber), paragraph 199.



the operative part of the Verdict constituted part of the widespread and systematic attack, the Prosecution failed to prove, beyond reasonable doubt, that the Accused committed the criminal offenses in the manner described in the Indictment. To wit, the very fact that at the time relevant to the Indictment the Accused performed the function of a Minister of Judiciary and Administration in the Government of the Serb Republic of BiH, cannot in itself constitute ground for the responsibility of the accused Momčilo Mandić, either personal or command criminal liability.

Concerning the circumstances under Count 2 of the Indictment the following Prosecution witnesses were heard: Avdo Pizović, Mirsad Kršlak, Mirsad Dragnić, Munib Isić, Hasan Šunj, Mušan Šunj, Alisa Muratčauš, Salko Zolj, Hajrudin Karić, Amir Šehović, Rešad Brdarić, Đelilović Hasib, Harbaš Junuz, Huruz Nezir and witness "X". On the same Count, the following Defence witnesses were heard: Mustafa Handžić, Svetozar Stanić, Dževad Rizvanović, Mensur Pandžić, Hurem Murtić, Željko Mrdić, Slobodan Avlijaš, Soniboj Škiljević, Radoje Lalović, Boro Trapara, Miodrag Lalović, Ranko Tešanović, Vojo Gojković, Rada Pavlović, Malko Koroman, Voja Janjetović, Miloš Zuban, Alija Jašar,

The testimonies of the above-mentioned witnesses show that they were confined on the premises of the KP Dom "Butmir" in Kula, they were deprived of liberty on no legal ground and there were no court proceedings conducted against them or their responsibility was not established in any other way. The testimonies of the witnesses also say that dozens of persons, mostly Bosniaks, including elderly, women and children, were deprived of liberty and unlawfully imprisoned at the KP Dom "Butmir" in Kula, in the period from May 1992 onwards. With regard to these circumstances, the testimonies were confirmed by the Prosecution Exhibits T-132, T-133 and T-134, namely the lists of camp inmates made by the Association of Camp Inmates of Bosnia and Herzegovina. Furthermore, all Prosecution witnesses confirm that they stayed on the premises with poor conditions, often crowded and with no beds, mats or blankets, they slept on the ground in rooms with no toilette facilities, they were denied the possibility to meet their basic hygienic needs and they relieved themselves in cans that were inside the premises. Furthermore, the confined persons would get meagre daily meals, they all lost weight and their health was deteriorated. Witnesses Avdo Pizović and Munib Isić confirmed in their testimonies that the detainee Izet Ramić died, which was confirmed by the Exhibits T-118 and T-119, which clearly ensue that Izet Ramić died in "Kula" on 28 September 1992.

In addition, the witnesses' testimonies say that the persons confined were subjected to physical abuse and infliction of bodily injuries. Witness Salko Zolj said in his testimony that during the stay in "Kula" he had been severely beaten by unknown persons, witness Rešad Brdarić said in his testimony that Džafer Turković, Husko Ramović, Dervo BiHORac and Alija Đurić were physically abused and beaten. Also witness Nezir Huruz said that Zlata Čaušević and Adem Čaušević had been beaten. Testimonies of witnesses Amir Šehović, Hasib Đelilović, Nezir Huruz, and Murat Šunj say that they had not been mistreated or physically abused by the guards on the premises of the KP Dom Kula, but they confirmed that they were captured and questioned by the army and the police.

Furthermore, the witnesses' testimonies also say that the persons confined had been forced to perform forced labour, working on prison-operated farm and various sites digging trenches and communication trenches, where they were exposed to combat operations. The witnesses' testimonies also say that Vahid Gačanović, Mehmed Isić, Ramiz Smajić, Hasib Šahović, Izudin Hodžić, Zuhdija Isić and Zulfo Vatrić had been killed. This was confirmed by the testimonies of witnesses Avdo Pizović, Munib Isić, Mušan Šunj, Junuz Harbaš and the Exhibits T-116 and T-117. The listed witnesses also confirm that there were wounded persons among the captives; witnesses Avdo Pizović, Munib Isić and Junuz Harbaš confirmed that they had been wounded while performing forced labour, whereas witness Munib Isić confirmed that Nusret Šunj and Adem Balić had been wounded. However, all witnesses described that the army or police members would take them out of the premises of the KP Dom, and that they guarded them while performing labour.

The witness Rešad Brdarić said that when he was deprived of liberty at Kasindolska Street in May 1992, another 37 persons were deprived of liberty with him, and that they all were transferred to the premises of the KP Dom "Butmir", which was corroborated by Exhibit T-125, that is a letter from the Chief of the Public Security Station informing relevant ministries of justice and of the interior on confining the persons in the prison in Kula. All 37 persons were taken away from the prison in Kula on an undetermined day and by unidentified persons as of which moment they have disappeared without a trace. They have been considered missing to date.

Furthermore, the testimonies of witnesses Ranko Tešanović, Miodrag Lalović, Ratko Lalović, Soniboj Škiljević, Željko Mrdić and Malko Koroman say that the members of

the police and army secured the civilians confined on the premises of the KP Dom Butmir until beginning of August 1992.

With regard to circumstances referred to in Count 3 of the Indictment the following Prosecution witnesses have been heard: Hasib Delilović, Junuz Harbaš, Nezir Huruz, Esat Muračević, Enver Durmo, Adem Rešidović, Mensur Pandžić, Ahmed Hido, Taib Đogo, Omer Čerimagić, Fikret Išerić, Izet Šchić, Zahid Šchić, Esad Šchić, Zejnil Muharemović, Suad Masnopita, Mirsad Ljevo, Zijad Avdibegović, Fikret Sirčo and witness "E". On the same Count 3, the following Defence witnesses have been heard: Brano Vlačo, Slobodan Avlijaš, and the Accused.

The testimonies of the witnesses say that they, as civilians and with no legal basis, were deprived of liberty by Serb armed forces, and, following their deprivation of liberty, they were confined in various facilities (including *Bunker*, at *Sonja's*, *Iskra* warehouse in Podlugovi) and finally transferred to *Planja's house*. That dozens of Bosniak civilians were confined in this facility is additionally corroborated by the following Prosecution Exhibits: T-140, which is a list of prisoners made by the Prison Management of the Serb municipality of Vogošća, dated 26 July 1992; Exhibit T-142, which is a list of prisoners of the prison department in Vogošća, dated 3 September 1992; Exhibit T-146, which is a list of identified Bosniaks and Croats who were unlawfully confined in the facility, while this list was made by Agency for Investigations and Documentation in Sarajevo, and Exhibit T-147, which is an overview of confined, abused and killed persons made by the same Agency.

Furthermore, the testimonies of all mentioned witnesses say that the detainees were placed in the *Planja's house*, more precisely in the basement premises of the house, then the premises on mezzanine, where dozens of them were confined, where they had no conditions to relieve themselves, and they confirmed that on several occasions they had to bath in the nearby river, and that due to the above-mentioned many of them sustained health problems.

In addition, all the heard witnesses confirm that food was very poor, that they got one ration a day consisting of one slice of bread, some stewed vegetables or tea, and that due to that they considerably lost weight and received no adequate medical care. In his testimony, witness Zejnil Muharemović confirmed that having returned to *Planja's house* he found a lot of wounded persons whose wounds looked terrible because they did not

receive medical care.

Furthermore, all witnesses confirmed that in *Planja's house* the most physically abused were Zahid Baručija and Esat Muračević, which was also confirmed by Esat Muračević himself, and Mirsad Ljevo, Enver Durmo and Zahid Šehić. The testimonies of witness Suad Masnopita say that Avdo Durmić, Hilmo Šehić, Hajro Šehić were severely beaten, while witness Ahmet Hido confirmed that Meša Suljević had been beaten. Witness "E" confirmed that Avdo Suljić had been beaten, while witness Zahid Šehić confirmed Himzo Šehić had been beaten.

The witnesses Adem Rešidović, Zahid Šehić, Esad Šehić and Enver Durmo clearly said that, in November 1992, Sulejman Šunj, Mustafa Glušo, Fejzo Ismić, Enver Ismić, Šerif Čović, Džemail Mehanović, Suljo Omerović, Šaban Musić and Nedžib Mušinović had been taken out of the *Planja's house* and subsequently killed and buried by the detainees. The fact that these persons were deprived of life was confirmed by the following Exhibits: T-147, which is the overview of confined, abused and killed persons; T-184, which is a list of persons killed on the site of Ježevi, Vogošća Municipality; T-159, which is the Exhumation and Autopsy Record of the Higher Court in Sarajevo, dated 12 November 1996, and T-160, which is the official report of the PSS Vogošća, dated 2 September 1996. Both documents T-147 and T-184 were made by the Agency for Investigations and Documentation Sarajevo

The evidence also says that the persons confined performed forced labour, primarily on the site of Žuč, where constant combat activities took place, and many prisoners were killed while performing labour, and many wounded. The fact is confirmed by the following Prosecution Exhibits: T-148, T-149, T-150, T-151, T-152, T-153, T-186, T-187, which are newsletters made by the prison service; T-186 and T-187, which are lists of wounded persons confined in *Planja's house*; T-188, which is a list of detainees taken from the *Planja's house*, to unknown direction and made by the Agency for Investigations and Documentation, as confirmed by the testimonies of the below-mentioned witnesses; T-189, which is a list of civilians of Vogošća municipality as the *Planja's house* prisoners whose fate remains unknown to date and made by the Association "*Porodice nestalih općine Vogošća*" (Families of missing persons of the Vogošća municipality); T-207, which is a book of missing persons in the territory of BiH, published by the International Committee of the Red Cross. All that is also confirmed by the testimonies of Esat Muračević, Zahid Šehić, Ahmet Hido, Suad Masnopita, witness "E", Esad Šehić, Enver

Durmo, Taib Đogo, Zijad Avdibegović, Fikret Sirčo and Mensur Pandžić.

With regard to the circumstances referred to in Count 4 of the Indictment the following Prosecution witnesses have been heard: Lazar Stojanović, Radomir Dolaš, Juso Selimović, Rasim Džubur, Mirsad Karović, Safet Hadžiahmetović, Murat Kršo, and witnesses "A", "B", "C", "D", "F" and "G". On the same Count 4, the following Defence witnesses have been heard: Mitar Rašević, Slobodan Avlijaš and the Accused as a witness.

It transpires beyond reasonable doubt that the civilians were confined and placed on the premises of the KP Dom Foča, with poor conditions, they were starved, abused, forced to perform labour, and some of them were killed, while some persons were taken in unknown direction and as of that moment they have disappeared without a trace. The Court established beyond reasonable doubt that the events and acts listed under Sections 2.a, 2.b, 2.c and 2.d of the operative part of the Verdict had occurred in the manner as described in the Indictment.

To wit, the testimonies of Juso Selimović, Rasim Džubur, Mirsad Karović, Safet Hadžiahmetović, Murat Kršo and witnesses "A", "B", "C", "D", "F" and "G" clearly say that they were deprived of liberty as civilians, that they were never informed of the reason of their deprivation of liberty and why they were confined at the KP Dom Foča, and that no proceedings were conducted against any of them. The testimonies also say that they were confined in inhumane conditions, in premises with no heating during the winter, and premises that were sometimes overcrowded; they were denied the basic hygienic conditions. In addition, all witnesses confirm that they got a meagre daily meal which is why almost all of them lost weight, they were denied adequate medical protection and because of this their health deteriorated. Testimonies also confirmed that many detainees at the KP Dom Foča were subjected to physical abuse both by guards and other persons coming to the KP Dom. Many detainees were taken to perform forced labor, whereas a large number of them were taken from the KP Dom Foča farm, under the pretext of going to be exchanged or doing certain forced labour, whereupon they disappeared without a trace and have been unaccounted for ever since. In addition to the above-mentioned witnesses, the fact is confirmed by the following Exhibits: T-204 and T-205, which are the lists of missing persons from the KP Dom Foča compiled by the Agency for Investigations and Documentation; T-206, which is a list of persons unlawfully confined at the KP Dom Foča and then taken in unknown direction, and the

list was compiled by the Federation BiH Commission on Missing Persons, which is additionally corroborated by T-207, which is the Book of missing persons in the territory of Bosnia and Herzegovina published by the International Committee of the Red Cross.

In addition to the facts established on the basis of the evidence of the above-mentioned witnesses and exhibits, the Trial Panel on 5 July 2007 rendered *ex officio* the Decision accepting as proven the facts established before the ICTY as follows.

Prisoners at KP Dom numbered between 350 and 500 with peaks at about 750.<sup>368</sup> Some of the prisoners were taken out for forced labour, while some others were taken out and never seen again.<sup>369</sup> Food at KP Dom was scarce, hygiene facilities were minimal, and there were no beds apart from foam mattresses and cover sheets, which were in insufficient number. Food could not be brought freely to detainees at KP Dom.<sup>370</sup> Provocation, insults, beatings and other deprivations were commonplace at KP Dom.<sup>371</sup> On 17 April 1992, all the male Muslim civilians detained at Livade were transferred to the KP Dom, which had served as a prison prior to the conflict. At this time, soldiers from the Užice Corps in Serbia were running the facility, the control of which was transferred to local Serbs during the course of the following few weeks.<sup>372</sup> Other non-Serb civilians from the municipality were also unlawfully arrested and detained in the KP Dom. Several of them arrived at the KP Dom severely beaten and injured.<sup>373</sup> The illegal arrest and imprisonment of non-Serb civilian males was carried out on a massive scale and in a systematic way. Hundreds of Muslim men, as well as a few other non-Serb civilians, were detained at the KP Dom without being charged with any crime.<sup>374</sup> At its peak in the summer of 1992, there were about 500-600 detainees at the KP Dom. The number decreased from the autumn of 1992 until 1993 when about 200-300 detainees remained. Around October 1994, the last detainees, by then numbering less than 100, were released.<sup>375</sup> They were detained there for periods lasting from four months to more than two and a half years.<sup>376</sup> While some Serbs were also held in the KP Dom, they were held legally, having been convicted by courts of law prior to the outbreak of the conflict

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<sup>368</sup> Kunarac case, Trial Chamber Judgment, paragraph 26.

<sup>369</sup> Ibid.

<sup>370</sup> Ibid, paragraph 27.

<sup>371</sup> Ibid.

<sup>372</sup> Kmojelac case, Trial Chamber Judgment, paragraph 40.

<sup>373</sup> Ibid.

<sup>374</sup> Ibid, paragraph 41.

<sup>375</sup> Ibid, footnote 142.

<sup>376</sup> Ibid, paragraph 41; Kmojelac case, Trial Chamber Judgment, paragraph 26.

or having been detained for military offenses during the conflict. By contrast, the non-Serbs were not detained on any legal ground, nor was their continued confinement subject to review.<sup>377</sup> Apart from a short period at the beginning of their detention at the KP Dom, Muslim detainees were denied any contact with the outside world or with their families, and (for a long time) with the Red Cross. The legality of their detention was never reviewed by the Serb authorities.<sup>378</sup> Many of the detainees were subjected to beatings and other forms of mistreatment, sometimes randomly, sometimes as a punishment for minor breaches of the prison regulations or in order to obtain information or a confession from them.<sup>379</sup> The screams and moans of those being beaten could be heard by other detainees, instilling fear among all detainees. Many were returned to their rooms with visible wounds and bruises resulting from the beating. Some were unable to walk or talk for days.<sup>380</sup> Between 10 April 1992 and the beginning of June 1992, large-scale arrests of non-Serb civilian men, mostly of Muslim ethnicity, were carried out throughout Foča and its environs. Subsequent to their arrest, the men were transferred to the KP Dom.<sup>381</sup> In addition to the mainly civilian population at the KP Dom, there were a small number of Muslim soldiers kept in isolation cells separately from the civilian Muslim detainees.<sup>382</sup> The only personal characteristic which featured in the decision to detain these men was their non-Serb ethnicity, the overwhelming majority of those detained being Muslim.<sup>383</sup> No consideration was given to age, state of health or civilian status. The detainees ranged in age from 15 years to almost 80 years.<sup>384</sup> Similarly, interrogations of those detained were conducted sometimes within a few days or weeks, sometimes only after months and, in some cases, never.<sup>385</sup> In the course of these interrogations, some of the detainees were asked about weapons, about their membership in the SDA and about their whereabouts before and during the outbreak of the conflict in the area.<sup>386</sup> A number of detainees were threatened in the course of the interrogations, and others heard fellow detainees being mistreated in neighboring rooms.<sup>387</sup> None of the detainees was ever actually charged, tried or convicted for any crime before being

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<sup>377</sup> Ibid, paragraph 438.

<sup>378</sup> Ibid, paragraph 42.

<sup>379</sup> Ibid, paragraph 46.

<sup>380</sup> Ibid.

<sup>381</sup> Ibid, paragraph 116.

<sup>382</sup> Ibid, paragraph 117.

<sup>383</sup> Ibid, paragraph 118.

<sup>384</sup> Ibid.

<sup>385</sup> Ibid, paragraph 120.

<sup>386</sup> Ibid.

<sup>387</sup> Ibid.

detained or while detained at the KP Dom.<sup>388</sup> None of the detainees was ever advised of their procedural rights before or *during* their detention. Those detained were not criminals under suspicion of having committed a crime or ever accused of having committed a crime under national and/or international law. They were, *inter alia*, doctors and medical health workers, journalists, former KP Dom employees, managers, police officers and other persons of civilian status.<sup>389</sup> The establishment and perpetuation of inhumane conditions was carried out with the intent to discriminate against the non-Serbs detainees because of their religious or political affiliations.<sup>390</sup> During the first 2-4 weeks after the start of the conflict, the KP Dom was "policed" by military units apparently from the Užice Battalion.<sup>391</sup> Muslim detainees were rounded up, arrested and taken to the KP Dom by paramilitary units.<sup>392</sup> Inside the KP Dom it was mainly members of the military who supervised the Muslim detainees during their first weeks of captivity.<sup>393</sup> From about 18 or 19 April 1992 onwards, at around the same time that Krnojelac was appointed warden, former Serb guards from the KP Dom returned to carry out their work assignments.<sup>394</sup> Essentially two categories of individuals were involved in the beating of non-Serb detainees: guards of the KP Dom and people coming from outside of the KP Dom.<sup>395</sup> In respect of the first group, many guards were involved in these beatings, including Dragomir Obrenović, Milenko Burilo, Milenko Elčić, Zoran Matović, Vlatko Pljevaljčić, Predrag Stefanović, Jovo Savić, Radovan Vuković, Milovan Vuković, Milivoje Milić, and Milenko Elčić. These guards called the detainees out of their room and took them to other rooms where they knew that they would be beaten and sometimes personally took part in the beatings themselves.<sup>396</sup> A general consequence of the conflict situation was that guards assigned to the KP Dom who were of military age and in good health were required from at least 30 September 1992 until 2 September 1993 to spend time on the frontline.<sup>397</sup> This factor, however, did not impinge upon Krnojelac's authority over these guards while performing duties at the KP Dom.<sup>398</sup> There were also certain groups who entered the KP Dom over whom Krnojelac could exercise only limited control. These

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<sup>388</sup> *Ibid.*

<sup>389</sup> *Ibid.* paragraph 122.

<sup>390</sup> *Ibid.* paragraph 443.

<sup>391</sup> *Ibid.* footnote 298.

<sup>392</sup> *Ibid.*

<sup>393</sup> *Ibid.*

<sup>394</sup> *Ibid.*

<sup>395</sup> *Ibid.* paragraph 317.

<sup>396</sup> *Ibid.*

<sup>397</sup> *Ibid.* paragraph 104.

<sup>398</sup> *Ibid.*



included the investigators and the paramilitaries.<sup>399</sup> Members of the military would enter the KP Dom, although they needed the prior permission of the military authorities.<sup>400</sup> Krnojelac was able to ensure that such persons did not remove detainees from the KP Dom without the appropriate authority from the Military Command.<sup>401</sup> Brutal and deplorable living conditions were imposed upon the non-Serb detainees at the KP Dom in the period from April 1992 to July 1993.<sup>402</sup> The non-Serb detainees were forced to endure brutal and inadequate living conditions while being detained at the KP Dom, as a result of which numerous individuals have suffered lasting physical and psychological problems.<sup>403</sup> The non-Serb detainees were deliberately housed in cramped conditions. The KP Dom had the capacity to house more than the maximum 500-700 non-Serbs detained, but the detainees were crowded into a small number of rooms.<sup>404</sup> Solitary confinement cells designed to hold one person were packed with up to 18 people at a time, making it impossible for the detainees to move around the cell, or to sleep lying down.<sup>405</sup> Non-Serbs were locked in their rooms or in solitary confinement at all times except for meals and work duty, and kept in overcrowded rooms even though the prison had not reached its capacity. Because of the overcrowding, not everyone had a bed or even a mattress, and there were insufficient blankets.<sup>406</sup> Hygienic conditions were deplorable and washing facilities minimal. Access to baths or showers, with no hot water, was irregular at best. There were insufficient hygienic products and toiletries.<sup>407</sup> Bedding was insufficient or non-existent. The only bed linen provided was that left over from former convicts and these items were never washed or changed throughout 1992.<sup>408</sup> Changes of clothes or facilities for washing clothes were not supplied. As a result of these conditions, chicken lice spread from the prison farm to the rooms of the detainees.<sup>409</sup> The rooms in which the non-Serbs were held did not have sufficient heating during the harsh winter of 1992. Heaters were deliberately not placed in the rooms, windowpanes were left broken and clothes made from blankets to combat the cold were confiscated.<sup>410</sup> Stoves and furnaces had been produced to heat the offices in the administration building,

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<sup>399</sup> Ibid. paragraph 105.

<sup>400</sup> Ibid.

<sup>401</sup> Ibid.

<sup>402</sup> Ibid. paragraph 133.

<sup>403</sup> Ibid. paragraph 440.

<sup>404</sup> Ibid. paragraph 135.

<sup>405</sup> Ibid.

<sup>406</sup> Ibid. paragraph 440.

<sup>407</sup> Ibid. paragraph 44 and 440.

<sup>408</sup> Ibid. paragraph 136; Krnojelac case, Trial Chamber judgment, paragraph 27.

<sup>409</sup> Ibid.

<sup>410</sup> Ibid. paragraph 440.

and there was sufficient raw material for such furnaces to have been produced for the non-Serb detainees. However, it was not until October 1993 that furnaces were finally provided to the non-Serb detainees, and then it was by the ICRC.<sup>411</sup> The suffering of the non-Serb detainees during the winter of 1992 was the result of a deliberate policy on the part of those in charge of the KP Dom.<sup>412</sup> Non-Serb detainees were fed starvation rations leading to severe weight loss and other health problems. They were not allowed to receive visits after April 1992 and therefore could not supplement their meager food rations and hygienic supplies.<sup>413</sup> Non-Serb detainees were given insufficient food, as a result of which many of them suffered substantial weight loss, sometimes more than 40 kilograms or up to a third of their weight.<sup>414</sup> There may have been a general shortage of food in the Foča region during the conflict, but there was a deliberate policy not to feed the non-Serb detainees. In contrast, Serb convicts and detainees received "regular army food", not very appetizing but nutritious enough to prevent serious weight loss.<sup>415</sup> The contrast between the weight loss of non-Serb detainees and the Serb prisoners makes it apparent that non-Serb detainees were fed much less than the Serb detainees.<sup>416</sup> The food for all detainees at the KP Dom was cooked in the same cauldron, but that nutritious ingredients, like meat, beans, vegetables and spices, were added to enrich only the meals of Serb detainees and convicts and KP Dom staff, who ate after the non-Serb detainees had received their meals from the cauldron.<sup>417</sup> Medical care was inadequate and medicine in very short supply. A basic medical service was provided but those in need of urgent medical attention were left unattended or given insufficient treatment. At least one detainee died as a result of the lack of or late medical care.<sup>418</sup> Non-Serb detainees who arrived at the KP Dom with injuries sustained prior to or in the course of their arrest were not given access to medical treatment, nor were non-Serb detainees who were severely beaten during interrogations at the KP Dom.<sup>419</sup> Detainees who were kept in isolation cells and solitary confinement were denied all access to medical care.<sup>420</sup> The camp conditions were psychologically exhausting for the non-Serbs. They were terrified by the sounds of

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<sup>411</sup> Ibid, paragraph 137.

<sup>412</sup> Ibid, paragraph 138.

<sup>413</sup> Ibid, paragraph 440.

<sup>414</sup> Ibid, paragraph 43.

<sup>415</sup> Ibid, paragraph 139.

<sup>416</sup> Ibid.

<sup>417</sup> Ibid.

<sup>418</sup> Ibid, paragraph 44 and 440.

<sup>419</sup> Ibid, paragraph 141.

<sup>420</sup> Ibid.

torture and beatings over a period of months.<sup>421</sup> Since they could not identify any criteria for the selection, many non-Serb detainees suffered a continuing fear that they would be taken away next for similar treatment.<sup>422</sup> Any attempts made by non-Serb detainees to improve their living conditions in the camp were punished with solitary confinement.<sup>423</sup> Acts which resulted in beatings or periods in the isolation cells included efforts to get additional food, or access to warm water, and attempts to communicate with each other, the guards, or the outside world.<sup>424</sup> During the months of June and July 1992, KP Dom guards went to the rooms of the detainees after the roll call and called out from a list the names of individuals to accompany them for interrogations.<sup>425</sup> They were taken into one of the rooms on the left and right hand sides of the staircase, or into a room which was situated in the left wing of the administration building, or the next room. There they were often beaten.<sup>426</sup> The beatings lasted well into the evening and the sounds of the beating and the screams of the victims could be heard by other detainees at the KP Dom.<sup>427</sup> When the beating stopped, victims were sometimes taken to an isolation cell. In other instances, the sound of pistol shots was heard.<sup>428</sup> During and after the beatings, guards of the KP Dom were seen carrying blankets into the administration building and removing what appeared to be bodies in those blankets.<sup>429</sup> Blood and bloodied instruments were seen in the rooms where the beatings occurred.<sup>430</sup> Many of the detainees alleged to have been murdered at the KP Dom had been subject to earlier beatings or acts of torture at the KP Dom. After their release from the KP Dom, many other detainees made contact with the families of the victims. The families informed them that they had received no contact from those alleged to have been murdered, and they had been unable to trace the victims.<sup>431</sup> The guards of the KP Dom participated with the military in the killing of detainees at the KP Dom.<sup>432</sup> These acts involved beating, or shooting the detainees, and they were done by those persons with an intention either to kill them or to inflict grievous bodily harm or serious injury, or in a reasonable knowledge that such acts were likely to

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<sup>421</sup> Ibid. paragraph 440.

<sup>422</sup> Ibid.

<sup>423</sup> Ibid. paragraph 142.

<sup>424</sup> Ibid.

<sup>425</sup> Ibid. paragraph 333.

<sup>426</sup> Ibid.

<sup>427</sup> Ibid.

<sup>428</sup> Ibid. paragraph 334.

<sup>429</sup> Ibid. paragraph 335.

<sup>430</sup> Ibid.

<sup>431</sup> Ibid. paragraph 337.

<sup>432</sup> Ibid. paragraph 339.

cause death.<sup>433</sup> These killings occurred during the months of June and July 1992.<sup>434</sup> Individuals or groups of armed soldiers were allowed into the KP Dom compound during the first months of the non-Serb civilians' detention. It was not unusual for detainees to be beaten by guards of the KP Dom or soldiers from outside the KP Dom while lining up for lunch in the compound or while being taken back and forth through the compound.<sup>435</sup> Detainees were systematically beaten and mistreated while detained at the KP Dom.<sup>436</sup> Detainees were regularly taken out of their rooms or from the isolation cells by guards of the KP Dom, soldiers or policemen for the purpose of interrogations. On several occasions, many detainees who had been taken out in that manner were in fact beaten or otherwise mistreated during the interviews for the purpose of obtaining information or a confession or in order to punish them for some minor violation of prison regulations.<sup>437</sup> From April 1992 until July 1992 beatings took place on a frequent and systematic basis. KP Dom guards used lists in order to select those detainees to be taken out to the administrative building and beaten there. Some of the detainees were taken out and beaten on several occasions.<sup>438</sup>

Based on the aforementioned, the Court found beyond any reasonable doubt that, as described in the Indictment, civilians were confined on premises with poor conditions, were physically abused and mistreated, and killed. Furthermore, with regard to criminal responsibility, the Indictment charged the accused Momčilo Mandić with personal and command responsibility (both being individual criminal responsibilities) referred to in Article 180 (1) and (2) of the CC BiH. Concerning the personal criminal responsibility, the Accused has been charged as follows: in the period from May until the end of December 1992, within a widespread and systematic attack of the military, police and paramilitary forces of the Serb Republic of BiH, directed against the non-Serb civilian population of the city of Sarajevo and the municipality of Foča, he, as Minister of Judiciary and Administration in the Government of the Serb Republic of BiH, knowing of such an attack took part in planning, ordering and perpetration as well as in instigating, aiding and abetting persecution of non-Serb civilian population on political, national, ethnic and religious grounds by killing, inhumanely treating, inflicting injuries to bodily integrity and health, unlawfully confining, forcing to labour and through enforced

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<sup>433</sup> Ibid. paragraph 339 and 336.

<sup>434</sup> Ibid. paragraph 331.

<sup>435</sup> Ibid. paragraph 194 and 448.

<sup>436</sup> Ibid. paragraph 217.

<sup>437</sup> Ibid. paragraph 238.

<sup>438</sup> Ibid. paragraph 248.

disappearances. Contrary to that, based on the command responsibility the Accused has been charged as follows: that as a superior and responsible person, failed to take necessary and reasonable measures to prevent perpetration of the acts and he also failed to take any measures to punish the perpetrators of those acts in the manner as described under Sections 2. (2.a, 2.b, 2.c, 2.d), 3. (3.a, 3b., 3.c, 3.d, 3e) and 4.(4.a, 4.b, 4.c and 4.d) of the operative part of the Verdict.

### 3. Individual criminal responsibility

Article 180 (Individual Criminal Responsibility) of the CC of BiH provides that:

1. A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offense referred to in Article 171 (*Genocide*), 172 (*Crimes against Humanity*), 173 (*War Crimes against Civilians*), 174 (*War Crimes against the Wounded and Sick*), 175 (*War Crimes against Prisoners of War*), 177 (*Unlawful Killing or Wounding of the Enemy*), 178 (*Marauding the Killed and Wounded at the Battlefield*) and 179 (*Violating the Laws and Practices of Warfare*) of this Code, shall be personally responsible for the criminal offense. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.

2. The fact that any of the criminal offenses referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

#### 3.1. Personal responsibility

For the purpose of Article 180 (1) of the CC BiH, "planning means that one or more persons design the commission of a crime at both the preparatory and execution phases."

"Aiding and abetting means rendering a substantial contribution to the commission of a

crime".<sup>439</sup> "Aiding and abetting, which may appear to be synonymous, are indeed different. Aiding means giving assistance to someone. Abetting, on the other hand, would involve facilitating the commission of an act by being sympathetic thereto."<sup>440 441</sup>

Instigation means intentional prompting or inducing another to commit a crime, or to have the instigated person form a decision to perpetrate a crime. "The *actus reus* required for 'instigating' a crime is any conduct by the accused prompting another person to act in a particular way. This element is satisfied if it is shown that the conduct of the accused was a clear contributing factor to the conduct of the other person(s). It is not necessary to demonstrate that the crime would not have occurred without the accused's involvement."<sup>442</sup>

Ordering, as a rule, means the existence of certain relationship of superiority, so this concerns a direct action of superiors. "Ordering entails a person in a position of authority using that position to convince another to commit an offense."<sup>443</sup> "It is not necessary that an order be given in writing or in any particular form. It can be explicit or implicit. The fact that an order was given can be proved through circumstantial evidence."<sup>444</sup> "An order does not need to be given by the superior directly to the person(s) who perform(s) the *actus reus* of the offense. What is important is the commander's *mens rea*, not that of the subordinate executing the order."<sup>445</sup>

Having evaluated all the evidence adduced in the course of the main trial and in light of the factual conclusions, the Court is of the opinion that the Prosecution failed to prove beyond reasonable doubt that the accused Momčilo Mandić, in his capacity as the Minister of Justice, planned, ordered and committed, or instigated, aided and abetted the persecution of non-Serb civilians as described in the operative part of the Verdict. The evidence adduced does not lead to the conclusion that the Accused personally committed

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<sup>439</sup> *Prosecutor v. Radislav Krstić*, case No. IT-98-33, judgment of 2 August 2001 (hereinafter: Krstić, Trial Chamber Judgment), para 601.

<sup>440</sup> Kvočka case, Trial Chamber Judgment, para 254.

<sup>441</sup> See Judgment: *Prosecutor v. Aleksovski*, No. IT-95-14/1-A.

<sup>442</sup> Kvočka case, Trial Chamber Judgment, paragraph 252.

<sup>443</sup> Krstić, Trial Chamber Judgment, para 601.

<sup>444</sup> *Prosecutor v. Tihomir Blaškić*, case No IT-95-14, judgment delivered on 3 March 2000 (hereinafter: Blaškić case, Trial Chamber Judgment), para 281.

<sup>445</sup> *Ibid.*, paragraph 282.

any of the acts described in Sections 2 through 4 of the operative part of the Verdict, or that he participated in the planning to commit the aforementioned acts, either in the preparation or the implementation stage. Furthermore, based on the presented evidence the Court could not establish with a degree of certainty that the Accused rendered a substantial contribution to the commission of the criminal acts as described in the operative part of the Verdict. As regards the instigation, the Prosecutor has not proved beyond any reasonable doubt that the conduct of the Accused was a clear contributing factor to the conduct of other person(s), nor did he present evidence in that respect which would link the actions and the conduct of the Accused with individuals who committed the actions described in detail in the Sections 2 through 4 of the operative part of the Verdict. Not a single order in writing was presented at the main trial to imply the fact that the Accused ordered that the actions described in detail in the operative part of the Verdict. In addition, it follows from the testimonies of the witnesses that they did not know who ordered their confinement or transfer from one penal and correctional institution to another, as confirmed by many witnesses including witness "F", Munib Isić and Zijad Avdibegović.

### 3.2. Command responsibility

Pursuant to Article 180 (2) of the CC BiH, the fact that the criminal offense "was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof".

Command responsibility includes the responsibility for the failure to act, and the commander will be held responsible if he fails to do something he is legally obliged to do. The ICTY jurisprudence established that, in order to hold a superior responsible, the following three elements must be fulfilled: the existence of the superior - subordinate relationship; the superior knew or had reasons to know that a crime was about to be committed or had been committed; and the superior failed to take all the necessary and reasonable measures to prevent the crime or to punish the perpetrator thereof.<sup>446</sup>

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<sup>446</sup> Halilović case, Trial Chamber Judgment, paragraph 56; Čelebići case, Trial Chamber Judgment, paragraph 346; *Prosecutor v. Tihomir Blaškić*, case No. IT-95-14-A, judgment delivered on 29 July 2004. (hereinafter: Blaškić case, Appeals Chamber Judgment), *Prosecutor v. Zlatko Aleksovski*, case No. IT-95-14/1-A, judgment delivered on 24 March 2000. (hereinafter: Aleksovski case, Appeals Chamber Judgment)

a) The superior-subordinate relationship

The superior-subordinate relationship lies in the very heart of the doctrine of a commander's liability for the crimes of his subordinates. It is the position of command over the perpetrator which forms the legal basis for the superior's duty to act, and for his corollary liability for a failure to do so. Indeed, as was held in previous jurisprudence, the doctrine of command responsibility is "ultimately predicated upon the power of the superior to control the acts of his subordinates".<sup>447</sup> The critical factor to the exercise of command responsibility "is the actual possession, or non-possession, of powers of control over the actions".<sup>448</sup> In establishing the degree of control that the superior must have over the subordinate in order to have the command responsibility imposed upon him, the ICTY Appeals Chamber in *Čelebići* established the concept of "effective control" defining it as "a material ability to prevent or punish criminal conduct".<sup>449</sup> In that regard, factors implying the position of authority held by the accused and his effective control may comprise a formal position of the accused, his ability to issue orders whether *de jure* or *de facto*, the procedure of appointment, the position of the accused in the structure, whether military or political, and assignments he actually performed.<sup>450</sup> The degree of control which does not reach the threshold of effective control is insufficient for attributing the command responsibility, or responsibility pursuant to Article 180 (2) of the CC BiH. In *Čelebići*, the ICTY noted that "substantial influence" of control over subordinates, which does not reach the threshold of effective control pursuant to customary law, is insufficient to serve as a means of exercising command responsibility, and thus imposing the criminal liability.<sup>451</sup> The jurisprudence of the Tribunal has interpreted the concepts of command and subordination in a relatively broad sense. Command does not arise solely from the superior's formal or *de jure* status, but can also be "based on the existence of *de facto* powers of control".<sup>452</sup> In that regard, establishing of the existence of hierarchy between the superior and the subordinate is not equivalent to

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paragraph 72; *Prosecutor v. Dario Kordić and Mario Čerkez*, case No. IT-95-14/2-A, judgment delivered on 17 December 2004 (hereinafter: Kordić case, Appeals Chamber Judgment), paragraph 827.

<sup>447</sup> *Prosecutor v. Pavle Strugar*, case No. IT-01-42-T, judgment delivered on 31 January 2005, (hereinafter: Strugar case, Trial Chamber Judgment) paragraph 359.

<sup>448</sup> *Čelebići* case, Trial Chamber Judgment, paragraph 370.

<sup>449</sup> *Prosecutor v. Zdravko Mucić, Hazim Delić and Esad Landžo*, case No. IT-96-21-Abis, judgment delivered on 8 April 2003 (hereinafter: *Čelebići* case, Appeals Chamber Judgment), paragraph 256.

<sup>450</sup> Kordić case, Trial Chamber Judgment, paragraph 418 – 424.

<sup>451</sup> *Čelebići* case, Appeals Chamber Judgment, paragraph 266.

<sup>452</sup> Halilović case, Trial Chamber Judgment, paragraph 60.



the existence of direct or formal subordination. There is no requirement that the superior-subordinate relationship be direct or immediate in nature for a commander to be found liable for the acts of his subordinate,<sup>453</sup> what is required is the establishment of the superior's effective control over the subordinate. As to whether the superior has the requisite level of control, this is a matter which must be determined on the basis of the evidence presented in each case.<sup>454</sup>

b) Element of knowledge: "He knew or had reasons to know"

Element of knowledge required to hold a superior responsible for the acts of his subordinate is if the superior knew or had reasons to know that his subordinate was about to commit a crime. Command responsibility is not a form of strict liability,<sup>455</sup> but it must be proved that the superior had actual knowledge that his subordinates were committing or about to commit crimes or that he had in his possession information of a nature, which at the least, would put him on notice of the risk of such offenses by indicating the need for additional investigation in order to ascertain whether such crimes were committed or were about to be committed by his subordinates.<sup>456</sup> The presence of the element of knowledge must be factually assessed under specific circumstances of each individual case, in relation to a specific situation of the relevant superior in a given moment.

c) Omission to prevent or punish

The duty to prevent should be understood as resting on a superior if he acquires knowledge or has reasons to believe that such a crime is being prepared or planned, whereas the duty to punish is imposed after the commission of the crime.<sup>457</sup>

Having in mind the foregoing, the Court rendered the decision as in the operative part of the Verdict due to the reasons that follow.

In order to determine structure and authorities of governmental bodies in the Serb Republic of Bosnia and Herzegovina in the period relevant to the Indictment of the

<sup>453</sup> Strugar case, Trial Chamber Judgment, paragraph 363.

<sup>454</sup> Ibid, paragraph 392; Halilović case, Trial Chamber Judgment, 63.

<sup>455</sup> Čelebići case, Appeals Chamber Judgment, paragraph 239.

<sup>456</sup> Ibid, paragraph 223 and 241; Halilović case, Trial Chamber Judgment, paragraph 65.

<sup>457</sup> Blaškić case, case No. IT-95-14-A, judgment delivered on 29 July 2004 (hereinafter: Blaškić case, Appeals Chamber Judgment), paragraph 83; Kordić case, Trial Chamber Judgment, paragraph 445-446.

Prosecutor's Office of Bosnia and Herzegovina number KT-RZ-42/05 against the accused Momčilo Mandić, the Court *ex officio* engaged an expert witness, Professor Zoran Pajić, PhD, who presented a thorough and detailed analysis of physical evidence proposed by the Prosecution and the Defense in writing in an authentic and impartial manner, and also gave oral presentation thereof at the main trial, and the Court finally gave full credence to the mentioned findings and opinion.

The Law on Ministries clearly defines that the Ministry of Judiciary and Administration shall be responsible for administrative and other special tasks relating to the organization and work of penal and correctional and juvenile correction organizations, enforcement of sanctions for criminal offenses, management of business units within penal and correctional institutions, pardons and the like.

The decision published in the Official Gazette No. 6 of 12 May 1992 under No. 143 says that penal and correctional institutions shall be taken over and shall continue to operate as bodies of the state administration. The Ministry of Judiciary and Administration shall issue special instruction specifying the manner and place in which sentences will be served. The internal organization of the penal and correctional institution shall be determined by the rules on internal organization issued by the warden with the agreement of the Minister of Judiciary and Administration. Warden and deputy warden shall be appointed and dismissed by the Minister of Judiciary and Administration. Based on the foregoing, in his findings and opinion presented at the main trial, Professor Zoran Pajić gave his conclusion that the above-mentioned would imply the full exclusive responsibility of the Minister of Judiciary and Administration in this field. However, Article 5 of the same Decision reads that "the security of the penal and correctional institutions shall be provided by the employees working in those institutions up to now and, if necessary, employees of the MUP /Ministry of the Interior/ police shall help them". The competencies of the MUP have been defined in the law as follows: "the MUP shall be responsible for administrative and other special tasks relating to organization, arming, equipping, training and continuing the education of active and reserve police officers in the Republic, and establishment and organization of the functional communications systems of the Ministry". Based on the aforesaid, Professor Pajić noted the existence of an area of conflict of competencies concerning the penal and correctional institutions, because the activities of the MUP and organization of police was based on much stricter hierarchy than the organization of the Ministry of Judiciary and Administration and it can be assumed that, under the conditions of imminent threat of

war, the MUP had higher responsibility and duties in this field. Furthermore, the instruction on the treatment of captured persons signed by the Minister of Defense, which was published in the Official Gazette No. 9 of 13 June 1992, under item 18 explicitly reads that "corps commanders of the Army shall be responsible for camp organization and quartering ", while item 19 prescribes that the Commission for the Exchange of Prisoners, operating under the jurisdiction of the Ministry of Judiciary and Administration shall also function as an information bureau for providing information on captured persons. Having compared the documents and citations, the expert witness noted that it can be concluded that it concerned a labyrinth of competencies and different responsibilities and jurisdictions with regard to the KP Doms. The transcript of telephone conversation of 25 May 1992 between Momčilo Mandić and Ratko Mladić (T-108-A) clearly shows the relationship between the Accused as a representative of civilian authorities with Ratko Mladić as a representative of military authorities, which clearly ensues the subordinate position of the civilian authorities and superior position of the military authorities.

*Professor Zoran Pajić states in his Findings and Opinion that the Accused had an ambivalent role. On the one hand, he had the competence of supervision and is responsible by the law for the functioning of penal correctional facilities, and at the same time implicitly accepts that the MUP and the Ministry of Defense, as well as war councils in the municipalities in which the prisons are located interfere in his affairs. On the one hand, as the Minister, he implicitly supported a very critical report of the commission of the Ministry of Judiciary and Administration concerning the living conditions in collection centres for prisoners, (Exhibits O-49 and O-50 dated 17 August 1992); it is also implicitly stated that the mentioned report of the Ministry of Judiciary and Administration covering the period of May/October 1992, at the same time is not supported by measures potentially taken for the implementation of recommendations of the reports which contain a separate paragraph, entitled "proposal of measures", which would have been disclosed by the Minister if there had been any. The second report, for example, warns that "the biggest problem in the work of the institutions are apprehension and taking away of prisoners, without the authorization of wardens of penal and correctional institutions, in which case the rules of penology line of work cannot apply". Even besides such a clear warning, the Ministry never opposed the requests for labour engagement of prisoners, they would be engaged even without notifying the Ministry of Judiciary and Administration of such request. This includes requests coming from war councils of the Municipality of Vogošća or the Vogošća Brigade. Professor Pajić referred*

to Defense Exhibits as the source, namely documents under No. 0-134, 0-201, 0-204, 0-239, 0-310, 0-283, 0-338, 0-370. The documents do not mention any opposition, or consistent opposition of the Minister to such practices and the first reaction followed only on 16 December 1992, when the Minister signed the order that all exchanges are to be approved by the President of a Higher Court and the Commander of the relevant Corps of the Army of the RS. Based on the foregoing, the expert witness pointed out that there was obvious confusion, or fight for power and fight for the control over the prisoners and captured persons, which culminated in issuing several documents, originating outside of the Ministry of Judiciary. Thus, the communication of 24 August 1992, Exhibit O-338, "the MUP demands" "that all security services centres and public security stations, regardless of their competencies, they deliver information on camps, prisons or collection centres". Another document is the order of the Vogošća Brigade of the RS of 18 October 1992, Exhibit O-310, addressed to the Vogošća Prison Management requesting that they loan prisoners for labour. However, this order refers to the Instruction on the treatment of Captured Persons, as the legal ground, which was issued by the Ministry of Defense on 13 June 1992.

According to the assessment of the Court, the presented physical evidence does not say that the Ministry of Judiciary and Administration of the Serb Republic of BiH explicitly exercised its authority over the captured persons.

According to the assessment of the Court, the presented evidence does not give a clear picture of either a *de jure* or *de facto* position of the accused Momčilo Mandić. To wit, the accused Momčilo Mandić, as the Minister of Justice was rather influential; however, his influence does not reach the standards necessary for determining the effective control. One of the principles of international criminal law is that the commander cannot be held responsible for the crimes committed by persons who were not under his command at the time the crimes were committed. The Prosecution failed to prove beyond reasonable doubt that Momčilo Mandić, *de jure* or *de facto*, was superior to the persons who took the prisoners out of the penal and correctional institutions, and took part in the perpetration of the acts described in more detail in Sections 2 through 4 of the operative part of the Verdict. According to the assessment of the Court, the Prosecution also failed to prove that Momčilo Mandić had effective control over the members of the VRS, the MUP or paramilitary formations who committed crimes over the prisoners in the KP Dom "Butmir", the so-called Planja's house and the KP Dom "Foča", and therefore it was not proved that pursuant to Article 180 (1) and (2) of the CC BiH Momčilo Mandić is

responsible as a superior for the crimes committed by his subordinates.

Furthermore, with regard to Section 4 of the operative part of the Verdict, the Panel accepted as proven the ICTY established fact that as both temporary warden and warden, Krnojelac was responsible to the Ministry of Justice and to a certain extent to the Military Command.<sup>458</sup> Krnojelac could also inform the Foča Tactical Group of convicted Serbs who wished to be released from the KP Dom to allow them to join fighting units and make recommendations as to who should be released for this purpose.<sup>459</sup> One important ramification of the lease agreement with the military was that it was the Military Command and, in particular, Commander Kovač and not the Ministry of Justice who had power to make decisions concerning which non-Serb detainees would be detained in and released from the KP Dom.<sup>460</sup> In this respect, Krnojelac was obliged to forward requests for release of these detainees to the Crisis Staff or the Foča Tactical Group.<sup>461</sup> The military did, however, have an obligation to ensure that Krnojelac was kept informed about who it decided was to be detained and who was to be released, and Krnojelac did exercise some powers in this regard such as his proposal that detainees held at Bileća prison be transferred to the KP Dom.<sup>462</sup> Military Command could also make decisions about which persons would be permitted to enter the KP Dom, and it had some power over the appointment of persons to work assignments at the KP Dom and the type of work to be completed by persons assigned to work at the KP Dom.<sup>463</sup> The release of non-Serb detainees was a matter for the military and Crisis Staff.<sup>464</sup> A warden does not generally have a unilateral power of release, and at the KP Dom it was the Ministry of Justice who had the power over the continued detention of convicted Serb detainees.<sup>465</sup> The Military Command had the power to release Serb soldiers imprisoned for military offenses during the conflict.<sup>466</sup> "As warden officially appointed by the Ministry of Justice on 17 July 1992, Krnojelac was responsible to the Ministry of Justice, to a certain extent to the Military Command. Krnojelac could also inform the Tactical Group of convicted Serbs who wished to be released from the KP Dom to allow them to join fighting units and make recommendations as to who should be released for this purpose. The Foča

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<sup>458</sup> Krnojelac case, Trial Chamber Judgment, paragraph 104.

<sup>459</sup> Ibid.

<sup>460</sup> Ibid.

<sup>461</sup> Ibid.

<sup>462</sup> Ibid.

<sup>463</sup> Ibid.

<sup>464</sup> Ibid, paragraph 106.

<sup>465</sup> Ibid, paragraph 104.

<sup>466</sup> Ibid.

Tactical Group comprised a reconnaissance group under the command of Dragoljub Kunarac, and some fourteen others (including Dragomir Vuković, aka Gago, and Montenegrin soldiers). Otherwise, Military Command and the Ministry of Justice were responsible for the continuation of detention of convicted Serb prisoners. It was the Military Command and not the Ministry of Justice who had power to make decisions concerning which Muslim detainees would be detained in and released from the KP Dom. In this respect, Krnojelac was obliged to forward requests for release of these detainees to the Crisis Staff or the Foča Tactical Group who could make decisions on those issues. Military Command could also make decisions about which persons would be permitted to enter the KP Dom, and it had some power over the appointment of persons to work on assignments at the KP Dom and the type of work to be completed by persons assigned to work at the KP Dom.<sup>467</sup>

There are numerous pieces of evidence which seriously call into question whether the Accused was "solely responsible" for the functioning of all penal-correctional institutions operating in the then Serb Republic of BiH and was "an immediate superior of all the management and other personnel" who carried out various duties in those institutions. The allegations are illogical and contradictory because the Indictment emphasizes that the Accused should be responsible for the functioning "of all penal-correctional institutions", whereas the Indictment clearly says that the Accused has been charged with only three penal-correctional institutions, namely Penal and Correctional Institution Butmir in Ilidža, the Department of the Penal and Correctional Institution Butmir in Ilidža, located at the so-called Planja's house in the place of Svrake, the municipality of Vogošća, and the Penal and Correctional Institution Foča in Foča, whilst the Indictment is silent about other penal and correctional institutions. As already stated, the Prosecutor failed to prove the mentioned facts and circumstances beyond reasonable doubt; with regard to the Department of the Penal and Correctional Institution Butmir, located at the so-called Planja's house. Exhibits No. O-300, O-393, O-310, 74, O-105, O-124, O-157, O-142, O-139, 136, O-134, say that the war council of the Serb Municipality of Vogošća, the Vogošća Brigade, the War Staff, the Crisis Staff, had exclusive power and authority to decide on fate of the persons captured and housed in the Planja's house. Hence, the order of the war council of the Serb municipality of Vogošća, Exhibit No. O-134, is addressed to the Serb Station of Public Security Vogošća. It is clear and unequivocal that the mentioned public security station was obliged to provide 8 able-bodied prisoners and put

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<sup>467</sup> Ibid. paragraph 644.

them at the disposal of the Vogošća Brigade, in order to perform works in the Military Factory Pretis Vogošća. Moreover, item 2 of this order reads that the order was to be executed immediately. Other orders of the war council of the Serb municipality of Vogošća are similar, whereas the order of the War Staff of the Serb municipality of Vogošća, Exhibit No. O-105, also says that the War Staff could decide on fate of the captured persons, as the order states that it was the War Staff that ordered to release a Muslim prisoner, Abdija Medić, for the purpose of exchange. Furthermore, the order of the Crisis Staff of the Serb municipality of Vogošća, Exhibit No. O-74, clearly indicates that the Crisis Staff and the Vogošća Brigade as well had unlimited powers over the captured Muslims, and that it was the same with the Vogošća Brigade, which is indicated in the Exhibit No. O-310. The order of the Vogošća Brigade was addressed to the prison management, without any possibility of objecting thereto, and the order indicates that the detained persons would perform construction work in the place of Žuč, generally known as the place where heavy fighting took place at the time. Hence, the Prosecution failed to prove that concerning the Department called Planja's house, the accused Momčilo Mandić had any powers; he was not superior to anyone who issued orders or an institution that executed the orders; there is no evidence in the case file that the accused Momčilo Mandić knew about the mentioned orders, and in no circumstances can be said that the Vogošća Brigade, the Crisis Staff, the War Staff of the municipality of Vogošća, were subordinated to the accused Momčilo Mandić; he had no effective control over them particularly at the time when there was a state of true chaos in the territory under the control of the Serb Republic of BiH.

The situation was similar with regard to the Penal and Correctional Institution Kula. Thus Exhibits No. O-372, O-373, O-375, O-376, O-369, O-370, O-371 also showed that the Military Command had the control over the Muslim prisoners in this penal and correctional institution. Hence, the Exhibit No. O-369 signed by the Chief, Colonel Marko Lugonja, contains an irrevocable order to the Military Prison Kula that the prisoner Emin Hasanović be exchanged with a certain Mr. Bulajić, whereas the Exhibit No. O-376 shows that the Commander of the Sarajevo Brigade, Lieutenant Colonel Veljko Stojanović personally signed the order to use the prisoners of the Penal and Correctional Institution Kula for the needs of the unit. Similar were the orders of the Command of the 1<sup>st</sup> Romanija Infantry Brigade: the Exhibit No. O-378, upon which the prisoners were taken to the front combat lines, and similar orders were issued by Dragan Marčetić, the Chief of Sarajevo Romanija Corps. Furthermore, from the testimony of Malik Koroman, the Court infers that the military was in command of the Penal and

Correctional Institution Kula and that the Police Station Kula also took part therein, because it was this particular witness who managed to work out the release of a Muslim prisoner through Šipčić, Corps Commander, and the Chief of the Police Station Kula, one Tepavčević. Therefore, with regard to the Penal and Correctional Institution Kula, it is obvious that at the time the principal power and authorities over the non-Serb prisoners were held by army and police, and not by the accused Momčilo Mandić.

The state of affairs in the Penal and Correctional Institution Foča was the subject matter of discussion in the *Krnjelac* case, which was pending before the ICTY. In *Prosecutor v. Momčilo Krajišnik* case No. IT00-39-T of 24 March 2005 the ICTY Trial Chamber took judicial notice of the facts adjudicated in the *Krnjelac* case. In paragraph 498, which is an established fact accepted as proven by this Court of BiH Panel, it is clearly and unequivocally confirmed that it was the Military Command, and not the Ministry of Judiciary and Administration that was competent to render decisions on which non-Serbs will be captured, and who were released from the KP Dom. The paragraph 507 reads that the release of the non-Serb prisoners was under the competency of the Army and the Crisis Staff. The paragraph 508 is the most clear, when confirming that the Ministry of Justice was the body deciding on serving the imprisonment of the convicted Serbs, which means that the Ministry of Justice of the Serb Republic of BiH, the head of which was the accused Momčilo Mandić, was competent and responsible for the prisoners who were placed in the Penal and Correctional Institution Foča based on the court decision.

The accused Momčilo Mandić, during his testimony, did not challenge the existence of the mentioned Penal and Correctional Institutions, the poor conditions in the penal and correctional institutions or the taking away and missing persons; but he also claimed that as the Minister of Justice he was in charge and took care of penal and correctional institutions, but only when it concerns previously prosecuted persons before one of the courts of the Serb Republic of BiH. The Accused also stated that he would send various commissions to establish the state of affairs in the terrain, and draw attention to military commands and police concerning certain irregularities, poor conditions in the penal and correctional institutions, and he particularly advocated establishment and functioning of regular judiciary. It is generally-known that the accused Momčilo Mandić holds a degree in law. He was employed as a graduate lawyer in the internal affairs bodies, before the war he was a judge of a regular court. The evidence shows that, given his education and experience, the accused Momčilo Mandić tried to establish and organize the work of the judiciary at the time of war or during an imminent threat of war. Obviously, the Accused



was not successful in achieving that. For that reason he resigned and finally was relieved of duty. He obviously was seen with no sympathy by some persons who held important functions and also had power over military and police, meaning power over armed force. It was not in the interest of those persons to establish a legal system and to have the judiciary functioning; they interfered with the field which at any time, including the time of war, requires special education and experience in law. The incapacity of the Accused to establish order in the penal and correctional institutions reached its peak by the order of the then President of the Serb Republic of BiH, Radovan Karadžić, published in "Official Gazette of the Serb People in BiH" No. 9 of 13 June 1992, which reads that the Minister of Defense of the Serb Republic of BiH shall be authorized to sign the instruction on the treatment of captured persons and, at the same time, it is ordered that the army of the Serb Republic of BiH and Serb Ministry of the Interior should apply and comply with the rules of international war law. Therefore, the mentioned order does not mention the Ministry of Judiciary and Administration anywhere, which leads to the conclusion that the Ministry of Defense, the Ministry of the Interior and the Army of the Serb Republic of BiH were solely responsible for the state of affairs in all penal and correctional institutions in the territory of the Serb Republic of BiH, including the penal and correctional institutions with regard to which the Accused has been charged with. In support of such conclusions expert analysis of Professor Zoran Pajić is mentioned, who among other views, claims that the role of the Accused at the period was ambivalent; on the one hand the Ministry of Judiciary and Administration had competence over the penal and correctional institutions, and, at the same time, implicitly accepted that the Ministry of Defense, the Ministry of the Interior and war councils interfere with his competence. Exhibit T-137, in connection with the responsibility of the Accused, clearly shows that the Accused signed the mentioned document and clearly noted that a detention department in Vogošća would be established within the KP Dom Butmir, and that the provisions of the then applicable CPC SFRY would apply in the detention department. This indisputably points to the conclusion that the competencies of the Accused were merely within the scope of the regular judiciary, which also falls within the scope of the work of the Ministry of Judiciary. The fact that some guards were formally employees of the Ministry of Judiciary does not change the scope of responsibility because all military aged persons at the time of war and imminent threat of war were engaged in the military by the Ministry of Defense, either for work obligation as was the case with the guards, or in a military unit so that on that basis they were not subordinate to the Accused.

The Court concludes that it was not proved beyond reasonable doubt that Momčilo

Mandić personally committed the criminal offenses he is charged with or that he had effective control on the subordinates who committed or were about committing the criminal offenses described in the Indictment.

Therefore, the accused Momčilo Mandić cannot be criminally responsible as charged, pursuant to Article 180 (1) and (2) of the CC BiH, for the crimes perpetrated in the Penal and Correctional Institution "Butmir" in Kula, "Planja's house" and Penal and Correctional Institution "Foča" in Foča.

### 3.3. Joint criminal enterprise

It is also worth mentioning that the Court did not consider potential participation of the Accused in the joint criminal enterprise, which, as part of individual criminal responsibility, is also contained in Article 180 (1) of the Criminal Code, because the charges were not composed for that purpose, and the indictment does not contain elements of that form of the individual responsibility. In fact, in the factual description of the Indictment, neither the role of the Accused, nor of other members of military, police and civilian authorities, nor their participation in the whole matter was necessarily and sufficiently described, as to that the accused would have possibly been involved in the joint criminal enterprise.

## F. Application of substantive criminal law on war crimes (crimes against civilians and crimes against humanity)

### 1. The legal provisions

The CC SFRY was in force at the time the criminal offense was committed. In fact, the SFRY Assembly previously adopted the law at the session of the Federal Council held on 28 September 1976 and published it in the Official Gazette of SFRY No. 44 of 8 October 1976. Following the declaration of independence, the Criminal Code of SFRY was adopted as the law of the Republic of BiH, based on Decree Law of 22 May 1992 (with slight changes), and entered into force on the day of its publishing. In the territory of the Federation of BiH the CC SFRY was in force until 20 November 1998, in the territory of the Republika Srpska until 31 July 2000, and in the territory of the Brčko District until 2001. A new Criminal Code for BiH entered into force on 1 March 2003, for the

Federation of BiH on 1 August 2003, and for the Republika Srpska on 1 July 2001.

War crimes against civilians were foreseen in Article 142 of the CC SFRY and were punishable with at least 5 years imprisonment or death penalty. The CC BiH foresees war crimes against civilians in Article 173 punishable with at least 10 years or long-term imprisonment. On the other side, the CC BiH foresees crimes against humanity in Article 172 punishable with at least 10 years or long-term imprisonment. Meanwhile, crimes against humanity were not foreseen in the CC SFRY.

Comparing the different legal provisions, it must be concluded that: war crimes against civilians are established by both the CC SFRY and CC of BiH, but the penalty foreseen by the CC SFRY is more lenient; crime against humanity was not foreseen by the CC SFRY.

Given the time of the alleged perpetration of the criminal offenses (April – December 1992) and substantive law in force at the time, the Court considers that it is important to pay attention to the principle of legality (on both sides: *nullum crimen sine lege and nulla poena sine lege*) and the principle of time constraints regarding applicability.

## 2. The rule of the principle of legality

Article 3 of the Criminal Code of BiH prescribes the principle of legality where no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offense by law or international law, and for which a punishment has not been prescribed by law.

Article 4 of the Criminal Code of BiH (Time Constraints regarding Applicability) prescribes that the law that was in effect at the time the criminal offense was perpetrated shall apply to the perpetrator of the criminal offense and, if the law has been amended on one or more occasions after the criminal offense was perpetrated, the law that is more lenient to the perpetrator shall be applied.

Similar provisions as Article 3 and 4 of the CC of BiH can be found in the CC of Brčko District, Federation of BiH and Republika Srpska.

The principle of legality is also prescribed under Article 7 (1) of the European

Convention on Human Rights and Fundamental Freedoms (ECHR) which has the priority over all other laws in BiH.<sup>468</sup> According to the mentioned Article of the ECHR "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offense was committed".

Also Article 15 (1) of the International Covenant on Civil and Political Rights (ICCPR) prescribes: "No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby".

Therefore, it is forbidden to impose a heavier penalty than the one applicable at the time when the criminal offense was perpetrated. Hence, these provisions prescribe a ban on imposing a heavier penalty without determining the obligatory application of a more lenient law on the perpetrator, in comparison to the penalty applied at the time of the commission of the criminal offense. This is the rule of the principle of legality, but there is an exception of the principle of legality.

### 3. The exception of the principle of legality

In fact, Article 4a) of the CC BiH prescribes that Articles 3 and 4 of the CC 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.

Also, Article 7 (2) of the ECHR prescribes that "This article [Article 7 (1)] shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations".

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<sup>468</sup>Article 2 (2) of the Constitution of BiH.

Furthermore, Article 15 (2) of the ICCPR prescribes that "Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations".

In sum, Article 4a) of the CC BiH adopted, in fact the provisions of Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR thus explicitly enabling exceptional departure from the principle referred to in Article 4 of the CC BiH, as well as departure from obligatory application of a more lenient law in the proceedings concerning criminal offenses according to international law, concerning the charges including violation of the rules of international law. Such a position was taken in the hitherto jurisprudence of the Court of BiH, following international jurisprudence<sup>469</sup>.

The State of Bosnia and Herzegovina, as a successor state of the former Yugoslavia, ratified the ECHR and the ICCPR and they cover the incriminating time of the criminal offenses.

Therefore, these treaties are binding on the State of Bosnia and Herzegovina and governmental bodies of Bosnia and Herzegovina must apply them. Hence, Article 4a) of the CC BiH constitutes a mere national legal reminder because it would not be necessary for the application of the treaties. That is why these treaties are binding on all courts in BiH, and Article 4a) of the CC BiH is not a necessary condition for their application.

At the relevant time, the criminal offense of War Crimes against Civilians was prescribed under Article 142 of the Criminal Code of SFRY which was then in force in Bosnia and Herzegovina. Article 173 of the CC BiH also prescribes war crimes against civilians. Therefore, the criminal offense of War Crimes against Civilians was prescribed under the law and the principle *nullum crimen sine lege* is met.

However, war crimes against civilians were punishable with at least 5 years imprisonment or death penalty under Article 142 of the CC SFRY, while Article 173 of

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<sup>469</sup> See the Decision of the Constitutional Court of Bosnia and Herzegovina in the *Abduladhim Maktauf* case, of 30 March 2007, Decision on Admissibility and Merits, No. AP1785/06, but also as already referred to in the Court of BiH Verdict against Radmilo Vuković, No. X-KR/06/217, of 16 April 2007, the ECtHR Judgment in the *Karmo v. Bulgaria* case, Decision on Admissibility, 9 February 2006.

the CC BiH punishes war crimes against civilians with at least 10 years or long-term imprisonment. Nevertheless, as the provisions show, the prescribed punishment referred to in Article 173 of the CC BiH is surely more lenient than the death penalty prescribed under Article 142 of the CC SFRY and which was in force at the time the criminal offense was committed.

#### 4. The European Court Jurisprudence

Article 7 (1) of the ECHR and Article 4 of the CC BiH prescribe that the law that was in effect at the time when the criminal offense was perpetrated shall apply if it is more lenient to the perpetrator. In practice, the European Court finds the violation of Article 7 when by retroactively applying the new law which has direct or indirect effect (e.g. the provisions of recidivism) on sentencing, the convicted person is pronounced a heavier penalty than the one the person would face at the time of the perpetration of the criminal offense.<sup>470</sup>

In fact, the abolishing of the death penalty in BiH<sup>471</sup> initiated new issues in this regard, or more precisely where the national law replaced the death penalty (Article 142 of the CC SFRY) with the penalty of long-term imprisonment (Article 173 of the CC BiH). The European Court took the rule and the exception of the principle of legality as equally well recognized and making part of the same principle. The European Court considered this issue in, at least, two cases.<sup>472</sup>

In the *Kurmo* case, the applicant has been convicted of aggravated murder he committed in 1993. The types of criminal sanctions prescribed under the Criminal Code of Bulgaria which was then in force amounted to fifteen to twenty years of imprisonment (maximum) or death penalty. Amendments of the law in 1995 introduced the sentence of life, and the death penalty was abolished in 1998. In 1996 the applicant was found guilty and sentenced to the death penalty. Upon the appeal, the Supreme Court of Bulgaria delivered a Judgment on 17 April 1998 revoking the first-instance Judgment, and the sentence modified to life imprisonment.

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<sup>470</sup> See e.g. ECtHR, *Jamil v. France*, Judgment of 8 June 1995; ECtHR, *Achour v. France*, Judgment of 10 November 2004; ECtHR, *Achour v. France*, Grand Chamber, Judgment of 29 March 2006.

<sup>471</sup> In compliance with Protocols No. 6 and No. 13 of the ECHR.

<sup>472</sup> *Kurmo v. Bulgaria*, Decision on Admissibility of 9 February 2006. Also, see *Ivanov v. Bulgaria*, Decision on Admissibility of 5 January 2006.

The applicant filed an appeal pursuant to Article 7 of the Convention because he was sentenced to life, which was not prescribed under the national law at the time when the criminal offense was committed. He believed that he was supposed to be sentenced to imprisonment of maximum of twenty years. The European Court refused the appeal as "obviously unfounded".<sup>473</sup>

According to the jurisprudence of the European Court, one cannot refer to a violation of Article 7 of the Convention in the event when the applicant has been imposed a life imprisonment or the penalty of long-term imprisonment for a criminal offense for which death penalty was prescribed at the time of the commission, although a life imprisonment, or a long-term imprisonment were not prescribed under the law that was in force at the time, because a life imprisonment is obviously more lenient than the death penalty.

Therefore, as already said, the application of Article 173 (1) (c) and (e) of the CC BiH does not, either, constitute a violation of the principle *nulla poena sine lege* and the rights of the accused to receive a more lenient penalty upon him. Rather the contrary, it is also completely in compliance with "the law and international law", or "general principles of international law", or Articles 3 and 4a) of the CC BiH.

## 5. International Law

As seen above, the CC BiH foresees crimes against humanity in Article 172 that are punishable with at least 10 years or long-term imprisonment. However, crimes against humanity were not foreseen in the CC SFRY. Following the aforementioned, it must be noted that, at the time the criminal offenses were allegedly committed, Bosnia and Herzegovina, as a successor state of SFRY, was a signatory party to all relevant international conventions on human rights and international humanitarian and/or criminal

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<sup>473</sup> On the following grounds: "The Court recalls that according to the Court's case-law, Article 7 (1) of the Convention embodies generally the principle that only the law can define a crime and prescribe a penalty and prohibits in particular the retrospective application of the criminal law where it is to an accused's disadvantage. The Court notes that in the present case the domestic courts, arguing that the applicant should have been sentenced to death, imposed a joint sentence of "life imprisonment", which they found to be more lenient than the death penalty. Accordingly, the amendment of the forms of penalties envisaged in the Criminal Code for the most severe offence for which the applicant was found guilty operated in the applicant's favour and he received a more lenient penalty than was envisaged for that offence at the time it was committed" (ECHR, *Kurma v. Bulgaria*, Decision of 9 February 2006).

law.<sup>474</sup>

Also, customary status of criminal responsibility for war crimes (against civilians or against humanity), and individual criminal responsibility for these criminal offenses committed in 1992, was recognized by the UN Secretary-General<sup>475</sup>, the International Law Commission<sup>476</sup>, as well as jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR)<sup>477</sup>. These institutions have established that criminal responsibility for war crimes constitutes a peremptory norm of international law or *jus cogens*.<sup>478</sup> That is why it appears undisputable that the criminal offenses committed in 1992 constituted part of customary international law.

This conclusion was confirmed by the Study on Customary International Humanitarian Law<sup>479</sup> conducted by the International Committee of the Red Cross. The Study concluded that "serious violations of international humanitarian law constitute war crimes" (Rule 156), "individuals are criminally responsible for war crimes they commit" (Rule 151) and "States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects" (Rule 158).

According to the universal jurisdiction principle, customary international humanitarian law is obligatory for each state throughout the world, regardless of whether it has ratified the appropriate international legal instruments. Therefore, each state is bound to

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<sup>474</sup> This particularly includes: The Convention on Genocide (1948); The Geneva Conventions (1949) and their additional Protocols (1977); The Convention on Slavery amended in 1956; The International Convention on the Elimination of All Forms of Racial Discrimination (1966); The International Covenant on Civil and Political Rights (1966); The Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity (1968); The International Convention on the Suppression and Punishment of Apartheid (1973); The Convention on the Elimination of All Forms of Discrimination against Women (1979); The UN Convention against Torture (1984).

<sup>475</sup> Report of the UN Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 of 3 May 1993, paragraphs 34-35 and 47-48.

<sup>476</sup> International Law Commission, Commentary to the Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 8.

<sup>477</sup> ICTY, Appeals Chamber, *Tadić case*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 151; ICTY, Trial Chamber, *Tadić case*, Judgment of 7 May 1997, paragraphs 618-623.

<sup>478</sup> International Law Commission, Commentary to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26.

<sup>479</sup> Jean-Marie Henchaens and Louise Doswald-Beck; *Customary International Humanitarian Law*; ICRC, Cambridge University Press, 2005; page 568 et seq.



prosecute or extradite (*aut dedere aut judicare*) all persons suspected of having violated customary international humanitarian law. Any restriction imposed by a State in relation to the extradition, without prosecution, of the persons suspected of having violated international humanitarian law constitutes a violation of the international obligations of that State.

Principles of international law recognized in the UN General Assembly Resolution 95 (I) (1946) as well as in the International Law Commission (1950) refer to "the Charter of the Nuremberg Tribunal and the Judgment of the Tribunal", hence to war crimes in general. "Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal" were adopted by the International Law Commission in 1950 and submitted to the General Assembly.

Principle I prescribes that "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment". Principle II also prescribes: "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law".

As said above, crimes against humanity were not foreseen in the CC SFRY, but they are included in Article 172 of the CC of BiH. However, the criminal offense of Crimes against humanity should in any case be placed under "general principles of international law" referred to in Article 3 and Article 4 (a) of the CC BiH. That is why, regardless of whether viewed from the aspect of customary international law, international treaty law or "the principles of international law", it is indisputable that war crimes, including crimes against humanity, constituted a criminal offense at the critical time. In other words the principle of legality is complied with, in the sense of both *nullum crimen sine lege* and *nulla poena sine lege*.

Article 4a) of the CPC BiH refers to "general principles of international law". Article 7 (2) of the ECHR refers to "the general principles of law recognized by civilized nations" and Article 15 (2) of the ICCPR refers to "the general principles of law recognized by the community of nations". Neither the ECHR nor the ICCPR recognized the identical term to the one used in Article 4a) of the CPC BiH. In fact the term "general principles of international law" constitutes a combination of "the principles of international law" as recognized by the UN General Assembly and the International Law Commission, on the

one hand, and "general principles of law recognized by the community of nations" recognized by the Statute of the International Court of Justice, Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR, on the other hand.

Therefore, in accordance with the Common Article 3 (1) (a) and (c) of the Geneva Conventions and Article 27(2) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, Crimes against Humanity should in any event be subsumed under "international law" or "general principles of international law" referred to in Articles 3 and 4(a) of the CC BiH. Therefore, it is indisputable that war crimes against civilians constituted a criminal offense at the relevant period and are punishable under Article 173 of the CC BiH.

Furthermore, the jurisprudence of the European Court on Human Rights stresses the application of Article 7 (2) in comparison to the application of Article 7 (1) of the ECHR in several similar cases<sup>480</sup> in which the subject matter was the existence and punishment of Crimes against Humanity as a crime. Moreover, in *Kolk and Kislyiy v. Estonia*, the European Court "recalls that the interpretation and application of domestic law falls in principle within the jurisdiction of the national courts"<sup>481</sup> This also applies when the domestic law pertains to the rules of the general international law or international treaties.

Therefore, the criminal offense of Crimes against Humanity in any case is subsumed under "the general principles of international law" referred to in Article 4a) of the CC BiH and the principle *nullum crimen sine lege* is met.

#### G. Conclusion

Having in mind the above-mentioned, based on the results of evidentiary proceedings, the participation of the accused Momčilo Mandić in a widespread and systematic attack directed against non-Serb civilians of the city of Sarajevo and the municipality of Foča, and in the persecution of non-Serb civilians, described in detail in Sections 1 and 2 (2.a, 2.b, 2.c, 2.d), 3. (3.a, 3.b, 3.c, 3.d, 3.e) and 4. (4.a, 4.b, 4.c and 4.d) of the operative part of

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<sup>480</sup> See e.g. ECtHR Judgment in *Naležilić v. Croatia*, 51891/99 and Judgment.

<sup>481</sup> See *Papon v. France* No. 54210/00, ECtHR 2001-XII and *Touvier v. France*, No. 29420/95, Decision of the Commission of 13 January 1997.

the Verdict, was not proved beyond reasonable doubt., Therefore, the Court, pursuant Article 284 (c) in conjunction with Article 3 of the CPC BiH, acquitted the accused Momčilo Mandić of the charges for the criminal offense.

To wit, Article 3 of the CPC BiH prescribes the presumption of innocence and *in dubio pro reo*. In accordance with it, the Court has the duty to render an acquitting verdict where any doubt persists. The Accused shall be acquitted not only when the innocence of the accused has been proved, but also when the culpability of the accused has not been proved beyond reasonable doubt. That means that, where any doubt in the relevant facts persists, the presumption of innocence prevails and must be reflected to the benefit of the accused. The Court must establish the facts with certainty and must not doubt their existence.

The burden to prove the guilt of the Accused beyond reasonable doubt is with the Prosecution. The Trial Chamber interprets the standard "beyond reasonable doubt" as meaning a high degree of probability; it does not mean certainty or proof beyond the shadow of doubt.<sup>482</sup> Again, in accordance with the principle *in dubio pro reo*, each potential lack of clarity or doubt has to be solved in the favour of the Accused.

The Court, pursuant to Article 189 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, decided that the costs of the proceedings prescribed under Article 185 (2) (a) through (f) of the CPC BiH, as well as the necessary expenses and remuneration of defense counsel shall be borne by the budget, given that the accused Momčilo Mandić has been acquitted of charges.

The Court, pursuant to Article 198 (3) of the CPC BiH, also decided that the injured parties, for the same reason, should pursue their claims under property law in a civil action.

**RECORD-TAKER:**

Melika Bušatlić

*/Signature affixed/*

**PRESIDENT OF THE PANEL  
JUDGE**

Davorin Jukić

*/Signature and stamp affixed/*

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<sup>482</sup> Halilović case, Trial Chamber Judgment, footnote 24.

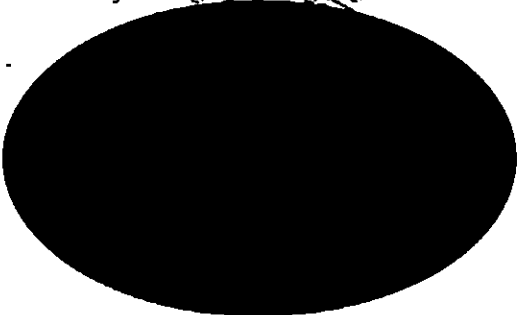
**INSTRUCTION ON LEGAL REMEDY:** This Verdict may be appealed with the Appellate Division of this Court within 15 days of the day the Verdict was received.

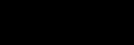
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*We hereby confirm that this document is a true translation of the original written in Bosnian/Croatian/Serbian.*

*Sarajevo, 13 November 2007*

 (pages 1-132)  
*Certified Court Interpreter  
for English Language*



 (pages 133-172)  
*Certified Court Interpreter  
for English Language*

