BOSNIA AND HERZEGOVINA
COURT OF BOSNIA AND HERZEGOVINA
SARAJEVO

Number: K-127/04

In Sarajevo, July 1, 2005

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, the Panel consisting of Judge Salem Miso, as the Presiding Judge, and Judges Davorin Jukić and Azra Miletić, as members of the Panel, with participation of Court Officer Amela Skrobo, as the court reporter, in the criminal case against the Accused Abduladhim Maktouf, having decided upon the Indictment filed by the Prosecutor's Office of Bosnia and Herzegovina, number KT-H-1/04 of September 10, 2004, amended on June 23, 2005, for criminal offense of War Crimes against Civilians, referred to in Article 173 (1) (e), in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina, after main public trial held in the presence of the Accused and his Defense Attorneys, Adil Lozo, Attorney-at-Law from Travnik, and Ismet Mehić, Attorney-at-Law from Sarajevo, and Jonathan Schmidt, Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina, Special Department for Organized Crime, Economic Crimes and Corruption, on July 1, 2005, has reached and publicly announced the following

VERDICT

The Accused Abduladhim Maktouf, son of Muhamed and Sabiha née Saber, born on January 3, 1959, in Basra, Iraq, citizen of Bosnia and Herzegovina and Iraq, with residence in Travnik, at III-35 Fatmić-Lamela Str., married with three children, currently in custody in the Detention Unit of the Court of Bosnia and Herzegovina in Sarajevo,

HAS BEEN FOUND GUILTY

In as much as he:

On or about October 19, 1993, in Travnik, Bosnia and Herzegovina, during the War in Central Bosnia, contrary to Article 3 (1) (b) of the IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War, as a member of the Army of

Bosnia and Herzegovina, intentionally helped Abu Džafer and other members of the Al Mujahid Unit abduct the following Croat civilians Ivo Fišić, Kazimir Pobrić and Ivan Rajković by driving his green Volkswagen van to the building called Amerikanka at Hadži Ali Bega Hasanpašića Str. in Travnik around 2000;
Abu Džafer and other members of the Al Mujahid Unit were on board the van;

When they arrived to the Amerikanka building, Abduladhim Maktouf stayed in the van to wait, whereas Abu Džafer and other members of the Al Mujahid Unit got out of the van. Some members of the Al Mujahid Unit, armed with long barrels and sabers, entered the Amerikanka building and went to the apartment of Ivo Fišić on the second floor. The other members of the Al Mujahid Unit kept watch on the building's staircase and in the neighboring street;

When they entered Ivo Fišić's apartment, the members of the Al Mujahid Unit found Ivo Fišić and Kazimir Pobrić there. They were both civilians; they wore civilian clothes and did not carry arms on that occasion. The Al Mujahid fighters forcibly took Ivo Fišić out of his apartment and into the van waiting in front of the building. There they forced him to get on board the van;

Then the Al Mujahid members forcibly took Kazimir Pobrić to the waiting van. The Al Mujahid fighters then forced Kazimir Pobrić to get on board the van;

The Al Mujahid members also took Ivan Rajković forcibly to the van from his apartment in the building known as Glista at Trg Republike Str. The Glista building is only a few hundred meters away from the Amerikanka building;

While Ivo Fišić, Kazimir Pobrić and Ivan Rajković were being taken from their apartments and forcibly thrown into the van, Abduladhim Maktouf was waiting at the driver's seat. When all the three civilian hostages were aboard the van, Abduladhim Maktouf started the engine and drove the hostages to the camp of the Al Mujahid Unit in the village of Orašac. While they were driving, Abu Džafer was sitting next to Abduladhim Maktouf;
In the course of the ride, at point-blank range and blindfolded, the hostages were ordered to lie on the floor;

That night, other two civilians, Dragoljub (Dragan) Popović and Dalibor Adžaip, were also taken to the camp in Orašac;

In that camp, members of the Al Mujahid Unit beat and mistreated all the five civilian men. The culmination of the mistreatment was the beheading of Dragoljub Popović;

The other four men were ultimately released; Kazimir Pobrić was released approximately on October 23, 1993. That night, Abduladhim Maktouf came to the Orašac camp, asked to see the prisoners, entered the building where all the prisoners were kept and took Kazimir Pobrić out. Abduladhim Maktouf then drove Kazimir Pobrić back to Travnik;

Two weeks later, on November 6, 1993, Ivo Fišić and Ivan Rajković were released.
Several weeks later, Dalibor Adžaip was released, too;

Thereby the Accused committed criminal offense of War Crimes against Civilians, referred to in Article 173 (1) (e), in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina;

Therefore, pursuant to the above-mentioned legal regulations and with application of Article 49 of the Criminal Code of Bosnia and Herzegovina, the Court

SENTENCES HIM TO IMPRISONMENT FOR A TERM OF FIVE (5) YEARS

Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina, the time the Accused spent in custody pending trial since June 12, 2004 shall be counted as part of the sentence of imprisonment.

Pursuant to Article 198 (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties Ivo Fišić, Kazimir Pobrić, Ljiljana Popović and Tonka Rajković, with claims under property law, and Dalibor Adžaip, with potential claim under property law, are instructed to take civil action.

Pursuant to Article 188 (1) of the Criminal Procedure Code of Bosnia and Herzegovina, the Accused must reimburse the costs of criminal proceedings, and the amount of the reimbursement shall be decided on in a separate decision upon collection of data.

Reasoning

In its Indictment number KT-H-1/04 of September 10, 2004, the Indictment having been amended with respect to the factual and legal grounds in the course of the main trial on June 23, 2005, the Prosecutor's Office of Bosnia and Herzegovina accused Abduladhim Maktouf for criminal offense of War Crimes against Civilians, referred to in Article 173 (1) (e), in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina, and founded its charges on the evidence presented in the course of the investigation and the main trial, which evidence provided grounds for the proposal of the Prosecutor's Office of Bosnia and Herzegovina that the Accused should be found guilty and punished by law for criminal offense of War Crimes against Civilians, referred to in Article 173 (1) (e), in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina.

At the guilty or not guilty plea hearing the Accused had pleaded not guilty, the course that the Defense of the Accused pursued during the main trial as well.

In the course of the evidentiary hearing, the evidence for the Prosecution was presented, followed by the presentation of the evidence for the Defense.

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The following witnesses for the Prosecution directly testified before the Court: Salko Beba, Emsad Kadirić, Nikica Petrović, Tomislav Petrović, Merzuk Kobilić, Ljubica Šekerija, Muhamed Suhel Tafi, Kazimir Pobrić, Branimir Markunović, Ivo Fišić, "the witness" -- personal data protected, Ahmad Al Haj Ahmed, Husein Delić, Halid Genjac, Dragan Majstorović, Tonka Rajković, Ljiljana Popović, Salkan Đakulić, Ifeta Kalušić, Hasib Kalušić, Adel Nizamić, Božidar Rajković, Mirko Kuprešaković and expert witness Evan Kohlman.

In the course of the main trial the following statements were read out: statement of witness Dalibor Adžaip given in the International Criminal Tribunal for the Former Yugoslavia in The Hague on September 7, 2004; statement of Emsad Kadirić given to the Military Police of HVO in Vitez on October 12, 1993; record on examination of Salko Beba in the Prosecutor's Office of Bosnia and Herzegovina on August 19, 2004; statement of Ivan Rajković given in Zagreb on February 22, 1996; statements of Ivo Fišić given to the Hague investigators on November 26, 1999 and January 30, 2004; record on examination of witness Ivo Fišić in the Prosecutor's Office of Bosnia and Herzegovina of August 23, 2004; record on examination of "the witness" in the Prosecutor's Office of Bosnia and Herzegovina of August 6, 2004; record on examination of witness Ahmad Al Haj Ahmad in the Prosecutor's Office of Bosnia and Herzegovina of February 22, 2005; transcripts of statements of Ivo Fišić and Dalibor Adžaip given in the International Criminal Tribunal for the Former Yugoslavia on February 4, 2004; record on examination of Edina Kurtić in the Prosecutor's Office of Bosnia and Herzegovina of September 2, 2004; record on examination of witness Nusret Abdibegović in the Prosecutor's Office of Bosnia and Herzegovina of September 20, 2004; record on examination of witness Salkan Đakulić in the Prosecutor's Office of Bosnia and Herzegovina of March 31, 2005; record on examination of witness Hasib Kalušić in the Prosecutor's Office of Bosnia and Herzegovina of March 24, 2005; record on examination of witness Amir Kalajdžija in the Prosecutor's Office of Bosnia and Herzegovina of April 8, 2005;
In terms of contents, the following evidence was presented by way of reading, presentation and audio and video reproduction: a sketch of the position of the Parish House in Travnik; a diagram of the position of the Amerikanka building and close-up photographs of the building; the letter of Croat citizens of October 18, 1993 to the War Presidency of Travnik; audio recording of the statement of Ivan Rajković calendar* 1993; a sketch of the house where the hostages were; photographs of the house in which the hostages were held; photographs of individuals among whom the individual that had beheaded Dragoljub Popović was recognized; certificate on additional salary for members of the armed force of the Croat Republic of Herzeg-Bosnia -- Ivo Fišić and Vjera Fišić of August 28, 1996; video-reproduction of interview of witness Venceslav Topalović questioned at a video-link conference between the office of the Hague Tribunal in Sarajevo and Zagreb on March 15, 2005; video-recording of promotion of the Al Mujahid Unit and the transcript thereof; record on identification of persons made by the Police Administration -- Crime Police Sector Sarajevo, number 12/2-400 of November 9, 2004; audio reproduction of the recoding of the conversation between "the witness" and the person who tried to influence him to change the testimony and the transcripts thereof; a photograph of "the witness"; data for conscripts Ivo Fišić, Dalibor Adžaip, Ivan Rajković and Kazimir Pobrić, issued by the Defense Administration Travnik, number [illegible]-03/23-

* Word as published; translator's note

20-01-130-3/05 of March 10, 2005; Statutory Decision of Municipal Government and Municipal Administration of NZ HZ HB of June 13, 1992; memorandum on check of personal data of Dragoljub Popović drafted by the Defense Administration Travnik, number 21-02-03-22-56-3/05 of March 31, 2005; list of fighters of the Muslim Force drafted by the Muslim Armed Force of the Army of Bosnia and Herzegovina, number 07/309-32/92 of September 15, 1992; reproduction of the video recording of the founding of the Muslim Force; verdict of the Municipal Court in Travnik number P-74/99 of August 24, 1999; contract between Edina Kurtić and Husein Ćosić; lawsuit of Edina Kurtić against Abduladhim Maktouf filed with the Municipal Court in Travnik; criminal report of Edina Kurtić against Abduladhim Maktouf filed in the course of 2002; verdict of the Municipal Court in Travnik number K-74/01 of February 7, 2002; verdict of the Cantonal Court in Travnik number KŽ-105/02 of May 28, 2002; business card of *Palma* tailor's shop and business card of *Šehić* tailor's shop, property of Besim Šehić; finding of the expert evaluation by Evan Kohlman; memorandum on the results of checks made for Luej Maktouf and Sabiha Saber, drafted by the Police Administration Sarajevo, number 09-04-3-1703/5 of August 30, 2001; a sketch of the position of the Amerikanka building made by witness Božidar Rajković during the main trial; verdict of the Municipal Court I in Sarajevo number K-510/87-II of March 2, 1988; memorandum of the Defense Administration Travnik number 21-01-49-1-36-22/05 of April 23, 2005; verdict of the Cantonal Court in Zenica number K-66/01 of November 23, 2001; memorandum of the Police Administration Zenica number 08-02/3-4-04-2-102-3/05 of May 11, 2005, attached to which is a criminal report against an unknown perpetrator of criminal offense of Murder; memorandum of the Prosecutor's Office of Bosnia and Herzegovina to Police Administration Travnik of June 6, 2005 and response of Police Administration Travnik number 02/7-10/05 of June 7, 2005 with accompanying documentation; subpoena issued by the Prosecutor's Office of Bosnia and Herzegovina to detainee Salkan Đakulić on March 21, 2005; correspondence between detainee Salkan Đakulić and Prosecutor Jadranka Lokmić-Misirača in the period from March 3, 2005 to May 3, 2005.

The following witnesses for the Defense directly testified before the Court: Bahrudin Kadrić, Edina Kurtić, Karaj Kamel Bin Ali, Muhamed Ćurić, Besim Halilović, Besim Šehić, Mirsada Kulovac, Mustafa Indžić, Nasir Ćurić, Safet Hodžić, Redžo Glavaš, Ahmed Adilović, Edin Begović, Nusret Abdibegović, Ajman Awad, Ferid Grabus, Vjekoslav Vavra, Semin Konjalić, Amir Kalajdžija, Murveta Boljević, Husein Šeperović, Mijo Dujmović, Asim Džambasović, Josip Medić, Nijaz Isaković, Isljam Kalender, Muharem Ridžić, Munir Memiš, and expert witnesses Šaćir Arnautović, Asim Džambasović and Enes Ljevaković.

Likewise, in terms of contents, the following documentation of the Defense was read out and presented at the main trial: a map of Bosnia and Herzegovina with marked positions of armed forces in the course of 1993; photographs of the Amerikanka building; a plan of the Parish House drafted by authorized expert witness; a set of photographs of different automobiles presented to the witness with the aim of having him recognize the automobile in which he had been abducted; verdict of the Cantonal Court in Zenica number K-60/98; judgment of the Supreme Court of the Federation of Bosnia and Herzegovina number KŽ-519/98; information of the Cantonal Court Zenica number K-60/98 of April 13, 2005; a scheme of the hierarchy of the Al Mujahid Unit according to the information dated November 28, 1995; plaque for

Abdullah Hany from January 1996; decision on change of name, number 21-17/05-205-16/97 of August 28, 1997; information number 02-49-600/04 of September 20, 2004; certificate of September 16, 2004; information of MUP SDB Sarajevo, number 7-3/29-429 of May 16, 1995; information of Security Administration number 7-1/29-429 of May 21, 1995; certificate on membership in the Army of the Republic of Bosnia and Herzegovina, number 20-8-02-03-831/99 of July 27, 1999; information of the Defense Sector Zenica, number 18-07-02-03-24-165-1/05 of April 14, 2005, that "the witness" is a member of the Al Mujahid Unit; decision and official note of the Cantonal Prosecutor's Office Travnik number KT-3451/04 of November 26, 2004, that is, December 14, 2004; Decision of Travnik Municipality on delivery of information, number 02-49-12/05 of March 9, 2004, and the list of documents delivered on the basis of thereof; a brief report on the work of Defense Secretariat Travnik of November 11, 1993; information on contacts with the aggressor's side number 01-192/93 of December 11, 1993; document number IO-02-90/93 of December 7, 1993 – the problem of finding place for keeping the bodies of the killed; document number IO-0289/93 of December 3, 1993 – Decision on forming a commission for exchange of PoWs; document number IO-02-86/93 of November 19, 1993 – Decision; document number SU 75/93 of November 5, 1993; document number IO-02-82/93 of November 1, 1993 – Order; document number 06/3-82-1-861/93 of October 25, 1993; document number 1-02-40/93 of July 15, 1993 – Survival Program; document number 06/3-82-1-778/93 of December 16, 1993; document number 01-181-23/93 of October 25, 1993 – Decision; document number IO-02-75/93 of October 22, 1993 – Information on Implementation of the Order of Presidency of Republic of Bosnia and Herzegovina; document number 952/29 of August 23, 1993; document number 02-011-439/93 of August 21, 1993 – Order; document number IO-02-78/93 of October 15, 1993 – Abridged Record; document number 01-738/92 of July 31, 1992 – Record; document number 01-273/92 of July 29, 1992 – Conclusion; document number 01-270/92 of July 23, 1992 – Decision; document number 01-264/92 of July 17, 1992; document number 01-258/92 of July 17, 1992 – Decision; document number 01-255/92 of July 10, 1992 – Decision; document number 01-395/94 of August 6, 1994 – Report; document number IO-02-73/93 of September 28, 1993 – Conclusion; document number 41-35 of October 20, 1993 – Order; document number U-200/93 of December 8, 1993 – Request for Assistance to Population of Banja Luka, Kotor Varoš and Šiprage; document number 06/3-82-1-778/93 of September 24, 1993; document number 06/3-82-1-778/93 of September 28, 1993; document number 01-181-19/93 of August 20, 1993 – Conclusions; document number V1-02-58/93 of August 5, 1993 – Conclusion; document number 05/668-1 of July 31, 1993 – Forming of Compulsory Work Service Unit; document number 06/3-82-1-410/93 of July 22, 1993 – Report; document number 01-132/93 of July 26, 1993 – Decision; document number V1-02-53/93 of July 29, 1993 -- Conclusion; document of July 23, 1993 — Request for Leaving the War Zone; document number V1-02-51/93 of July 27, 1993; document number V1-02-48/93 of July 23, 1993 – Conclusion; document number V1-02-45/93 of July 20, 1993 – Conclusion; document number V1-02-44/93 of July 19, 1993 -- Decision; document number V1-02-42/93 of July 17, 1993 – Conclusion; document of July 15, 1993 – Order; document number 06/3-82-1-489/93 of July 12, 1993; document number 126 of July 14, 1993 – Information; document V1.02-37/93 of July 12, 1993 – Conclusion; document number 02-37/93 of July 12, 1993 – Conclusion; document number V1-91/93 of June 25, 1993 – Conclusions; document number V1-02-19/93 of June 23, 1993 – Conclusions; document number V1-02-17/93 of June 21, 1993 –

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Conclusion; document dated June 13, 1993 – Conclusion; document dated June 9, 1993 – Decision; document number VI-02-9/93 of June 11, 1993 – Order; document number 01-366/92 of December 8, 1992 – Launching of an Initiative; document number 01-7/93 of January 11, 1993; document received under number 01-184 of May 5, 1993 – Request for Restitution of Apartments; document dated February 8, 1993 – Conclusion from the meeting between HVO Travnik Brigade and Army of Bosnia and Herzegovina; document number 06/3-82-1-102/93 of February 13, 1993 – Arrival of Displaced Persons; document number 01/239-1 of March 2, 1993 – Instruction; document number – 01-92/93 of March 3, 1993 – Information; document number 06/3-82-1-164/93 of March 8, 1993 – One-Off Assistance; document number 01-329/92 – Order; document number 01-15/93 of January 12, 1993 – Order; document number 01-24/93 of February 25, 1993 – Information; document number HVO 01-283/93 of March 3, 1993 – Protest; document number 01-90/93 of March 4, 1993 – Conclusion; document number 01-95/93 of March 5, 1993; document number 06/3-82-1.130/93 of February 24, 1993 – Arrival of 1,000 Refugees from Šipovo; document number 01-82/93 of February 25, 1993 – The Refugees Problem; document number 01-43/93 of February 16, 1993 – Order; document number 01-65/93 of February 12, 1993 – Prisoner Exchange; document number 01-13/93 of January 11, 1993 – Order; document number 01-10/93 of January 7, 1993 – Record; document number 19-8-9-42 of March 29, 1993; document number 01-1-217-19 of March 29, 1993 – Information; document number 06/3-82-1-239/93 of April 6, 1993 – Arrival of Refugees from Banja Luka; document number 19-8-46 of April 5, 1993 – Proposal To Make Changes to Decisions; document number 01-84/93 of February 24, 1993 – Decision; document number 01-34-2/93 of January 25, 1993 – Request; document number 17-5/07-20/93 of February 17, 1993; document number 01-15/93 of February 8, 1993 – Information on Negotiations; document from April 1994 – Report on Work of War Presidency of Municipal Assembly of Travnik; document number 02-111-2352/94 of December 16, 1994 – Decision; document number 01-90/95 of April 18, 1995 – Authorization; document number 02/15-204-130/1993 of March 1, 1993 – Decision; Information of Central Bosnia Canton MUP number 04-02/7-3-23-6/2/05 of February 28, 2005; document number 04-03/1-2/34-1-157/05 of February 3, 2005 – Information and Certificate; document number 21-07-02-49-1-50/05 of March 7, 2005 – Certificate; document number 06-01/6-44-119-5/05 of March 10, 2005 -- Response to Request; document number 02-49-11-1/05 of January 17, 2005 – Decision; document number 04-03/13-200.2-83/04 of December 13, 2004 – Delivery of Information; document number 06-13-5081/04 of December 15, 2004 – Delivery of Information; Judgment of the Hague Tribunal against Tihomir Blaškić number IT-95-14-T of March 3, 2000; Request for Materiel Acquisition of Command of 1st Krajina Corps str. pov. number 18/1-15/1 of October 24, 2003; List of VRS officers on promotions and appointments with orders; Order of Command of Split Zone of Operations and Ploče Command Post, class 8/92-01/91 UR number 6030-02/92-1 of May 19, 1992; Order of HVO Municipal HQ Mostar pov. number 02-01-11/92 of December 9, 1992; Order of Command of Split Zone of Operations and Ploče Command Post, class 8/92-01/91 UR number 6030-01/92-1 of May 16, 1992; Dispatch of MUP Special Police Brigade and Trnovo Command Post number 113/095 of June 30, 1995; Order of Republika Srpska MUP number 64/95 of July 10, 1995; Conclusions of Herzegovina Regional Community – Travnik Regional Community of November 12, 1991; sketches of combat tasks of 3rd Corps; Order of HVO – HQ Mostar str. pov. number 01-7/92 of October 20, 1992; Information of Command of 1st Krajina Corps – Forward Command Post str. pov. number 350-1/93 of June 6, 1993;

Information of Command of 1st Krajina Corps –Forward Command Post str. pov. number 349-1/93 of June 6, 1993; Order of Command of 1st Krajina Corps – Forward Command Post str. pov. number 352-1/93 of June 7, 1993; Appeal of HVO Bobovac Vareš Brigade Command Post Ponikve – Vareš number 01-586-1/93 of September 9, 1993; Certificate and Approval Issued by Command of 2nd Light Brigade and 2nd Light Infantry Brigade number 8-357/93 of April 25, 1993 and pov. number 09-666 of September 20, 1993; list of foreigners made by SIS Center Tomislavgrad number 02-4/2-4-032/93 of November 3, 1993; Information of the Institute for Research of Crimes Against Humanity and International Law Sarajevo number 151/I-05 of April 25, 2005 on delivery of photocopied documents; Order of the Supreme Command HQ Sarajevo str. pov. number 14/75-86 of August 13, 1993; Official Note on Issuance of Photocopied Documents – Archives of the Army of the Republic of Bosnia and Herzegovina number 57/01-05 of January 6, 2005 with the list of seized documents from 1 to 26 inclusive; Decisions on declaring state of war in Bosnia and Herzegovina and Order on declaring general mobilization in the territory of the Republic of Bosnia and Herzegovina – *Official Gazette of the Republic of Bosnia and Herzegovina* number 7/92; Survey of information about individuals of African-Asian origin of May 6, 1995; Information number 258-33 of September 14, 1994 – Army of the Republic of Bosnia and Herzegovina; Report on work of the committee for taking care of families of the deceased and wounded members of the Armed Force of the Republic of Bosnia and Herzegovina from May 1994; List of documents of Federation Ministry of Defense – Security and Intelligence Affairs Sector number 06-04/6-4.4-313/05 of April 25, 2005 seized for defense needs; diagram of the room in Sarajevo Correctional Facility in which the Accused Salkan Đakulić was accommodated; photograph of Husein Ćosić; letter of Husein Ćosić to Edina Kurtić of October 9, 2003; Decision number 01-14/4-224-331/02 of October 21, 2002; Settlement number P.126/99 of September 14, 1999; a copy of cadastral plan of the Medresa building of May 23, 2005; military awards; witness examination record Ki.Kri.50/99 of May 27, 2005; witness examination record KT-203/04 of August 23, 2004; witness statement of November 20, 1999; witness statement to the Hague Tribunal of January 30, 2004; Notice of JP BiH Telekom number 12.9-4468/05 of June 14, 2005; photographs of Hunting Lodge and Libertas café; finding of expert witness Asim Džambasović; statement of witness Salkan Đakulić KT-203/04 of March 31, 2005; finding and opinion of expert witness Assistant Professor Enes Ljevaković, Ph.D.

Having evaluated all the above-mentioned pieces of evidence for the Prosecution and the Defense, both individually and in mutual relation, the Court has rendered the decision as quoted in the operative part for the following reasons:

In other words, it is beyond doubt that at the time of the incident in question an international conflict was underway in the Central Bosnia region, which has been established by the ICTY Judgment number IT-95-14/2-A of December 17, 2004, reached upon the appeal in the Prosecutor vs. Dario Kordić and Mario Čerkez case; the ICTY first-instance Judgment number IT-95-14/2 of February 26, 2001 in the Prosecutor vs. Dario Kordić and Mario Čerkez case, and ICTY Judgment number IT-95-14 of March 3, 2000, in the Prosecutor vs. Tihomir Blaškić case, as well as the overall evaluation of the evidence, and, in particular, the testimonies of the witnesses who lived in the region of Central Bosnia at the time, that is, were members of armed forces.

The Court accepted these facts as established by adopting the Joint Request of the Prosecution and Defense, pursuant to Article 4 of the Law on Transfer of Cases from the ICTY, that the War in Central Bosnia Was an International War.

The Court of Bosnia and Herzegovina may, ex officio or upon proposal of the parties, accept as proven the facts established by decisions of the ICTY, and, since the Request quotes the very ICTY decisions in which it was established that the conflict between Bosnian Croats and Bosniaks in Central Bosnia in 1993 had been an international conflict, namely, the ICTY Judgment number IT-95-14/2-A of December 17, 2004 reached upon the appeal in the Prosecutor vs. Dario Kordić and Mario Čerkez case, ICTY first-instance Judgment number IT-95-14/2 of February 26, 2001 in the Prosecutor vs. Dario Kordić and Mario Čerkez case, and ICTY Judgment number IT-95-14 of March 3, 2000 in the Prosecutor vs. Tihomir Blaškić case, the Court has accepted the Request.
Therefore, the fact that the conflict of Bosnian Croats and Bosniaks in Central Bosnia in 1993 was an international conflict is considered to be an established fact, because of the direct participation of the troops of the Army of the Republic of Croatia in the conflict and its overall control of the Croat Defense Council.

This fact was also made indisputable with the evaluation of many pieces of evidence for both the Prosecution and the Defense, and, in particular, presentation of the expert analysis and opinion of Šaćir Arnautović, expert witness for the Defense, who corroborated his allegations of an international conflict with a map of Bosnia and Herzegovina that he had drawn personally and that contains exact directions and zones of operation of particular military formations in 1992 and 1993.
For the said reasons, the Court considered the other pieces of evidence for the Prosecution and the Defense in that respect to be irrelevant, since the fact of an international conflict in the region of Central Bosnia, which had taken place in 1993 and at the time of the abduction of the Croat citizens from their apartments in the town of Travnik in October 1993, had been accepted as an established fact.

It is beyond doubt that the Al Mujahid Unit participated in this international conflict as a component part of the Armed Force of the Republic of Bosnia and Herzegovina, that is, the Army of Bosnia and Herzegovina.

This arises from the Order issued by the HQ of the Supreme Command of the Armed Force of Bosnia and Herzegovina, that is, the Army of Bosnia and Herzegovina, number 14/75-86 of August 13, 1993, on formation of this unit, as well as the findings and opinions of Asim Džambasović and Šaćir Arnautović, expert witnesses for the Defense, who, in the explanations they gave, clearly emphasized the organization and operations of military formations that had operated in that period in the territory of Bosnia and Herzegovina, and especially in Central Bosnia, and clearly described the forming and operations of this unit, the Al Mujahid Unit, too.

Expert witness Asim Džambasović asserts without doubt, which is partially being confirmed by expert witness Šaćir Arnautović as well, that at the beginning of the aggression against Bosnia and Herzegovina, foreigners originally from African and Asian countries came from Western European countries via the Republic of Croatia to Bosnia and Herzegovina, to the Central Bosnia region. Expert witness Šaćir Arnautović points at this very fact in his statements and explanations, clearly

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indicating the routes of the arrival of the foreigners from African and Asian countries to Central Bosnia. They had first joined the existing units attached to the Territorial Defense headquarters, which expert witness Asim Džambasović points at, and then, reinforced with the domestic population, Bosniaks from Central Bosnia, they formed the Al Mujahid Unit, the unit that belonged to the Armed Force of Bosnia and Herzegovina.

The list of members of the Muslim Force and the plaques-commendations that were awarded to many members of the Al Mujahid Unit by the General Staff of the Army of Bosnia and Herzegovina in December 1995 and signed personally by Army General Rasim Delić indicate that the Al Mujahid Unit was a component part of the Armed Force of Bosnia and Herzegovina, that is, the Army of Bosnia and Herzegovina, the fact confirmed beyond doubt by witness Ajman Awad, member of the Al Mujahid Unit, who described how he had arrived in the unit, that he had arrived from the Republic of Croatia to the region of Central Bosnia, that the Unit HQ had been in Zenica, that they had had camps in Orašac and Mehurići near Travnik, and that they had participated in combats in the region of Central Bosnia either independently or in cooperation with other units.

The fact that Bosniaks from the Central Bosnia region had also joined the Al Mujahid Unit was clearly confirmed by witness for the Defense Ahmet Adilović, who had joined the ranks of this unit of the Army of Bosnia and Herzegovina primarily, as he said, due to its honoring of the Islamic religious principles, which was also clearly confirmed by witness for the Prosecution Emsad Kadirić.

Emsad Kadirić particularly spoke in his testimony of his being captured as a member of the Al Mujahid unit during the conflict between HVO and BiH Army, that is Al Mujahid unit, in the area of Central Bosnia, that is Novi Travnik, death and capture of the members of the Al Mujahid unit, who not knowing the road, mistakenly found themselves in the area of Travnik that was, at the time, under control of HVO.
He, as the only surviving prisoner, particularly pointed out the treatment he had during the time of his being detained in Busovača, and the efforts of his unit for him to be exchanged, especially urged by the then commander of the BiH Army Third Corps, Mehmed Alagić.
The witness Emsad Kadirić is explicit that at the time of capture he had a military ID card which read BiH Army, Al Mujahid Squad, and this ID card was found during his capture by the HVO members.
That the Al Mujahid unit was trying to arrange the exchange for Emsad Kadirić, as a member of the Al Mujahid unit, is also confirmed by witnesses, both Salko Beba and Nikica Petrović, the then Chairmen of the Exchange Commissions of BiH Army and HVO for the region of Central Bosnia, respectively.

Namely, witness Salko Beba, in an entirely clear and consistent manner, talks about the visits of Abu Džafer, a member of Al Mujahid unit, and the Accused to his office in Travnik, when they made enquiries as to the possibility of the exchange of the captured members of the Al Mujahid unit. Salko Beba is determined that Abu Džafer and the Accused wore military uniforms, with the fact that Abu Džafer was armed. Witness Salko Beba is resolute that on the occasion of one of such visits Abu Džafer emphasized that he would "catch" several respectable Croat citizens of

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Travnik in order to exchange them for the members of his unit, when he warned him that the exchange of civilians for captured soldiers is not possible.
The Chairman of the Commission for Prisoner of War Exchange and Exchange of Bodies of the Killed Soldiers of HVO, Nikica Petrović, is also clear in the explanations on the impossibility to exchange soldiers for civilians, and that there were contacts and discussions regarding the exchange of the captured member of the Al Mujahid unit, Emsad Kadrić, and regarding the failure of the exchange.

It is a fact that the Accused was a member of Army of the Republic of Bosnia and Herzegovina, that is, before and after the incriminated event, a member of the Armed Forces of the Republic of Bosnia and Herzegovina, which particularly follows from the evidence of the Prosecution-playing of a video recording showing the forming of Muslim Forces in Travnik in front of the building of Madrasah in August 1992, findings and opinion of Court Expert of the Defense, Asim Džambasović, who concludes that the Accused was a member of the Armed Forces of BiH, which can be seen clearly from the Certificate of the Federation Ministry of Defense-Administration/Defense Department in Travnik, number 21-07-02-49-1-50/05 of 07 March 2005, the facts that have also been partially confirmed by witness Edina Kurtić, ex wife of the Accused, who recognized him on the video recording showing the forming of the unit of Muslim Forces, a Territorial Defense Unit, in August 1992, in front of the building of Madrasah in Travnik.

That the Accused had links and contacts with the Al Mujahid unit, clearly with the members of the unit, who were mostly foreigners of Afro- Asian origin, together with the fact that the Accused is a citizen of Iraq, who among others speaks the Arabic language, results primarily from the testimonies of the following witnesses: Salko Beba, Husein Delić, Halid Genjac, Safet Hodžić, Ajman Awad, Edina Kurtić.
Witness Salko Beba is convincing in asserting that he had several meetings with the Accused and Abu Džafer due to the exchange of the captured members of the Al Mujahid unit. Witnesses Hasan Delić and Halid Genjac particularly point out that the Accused indeed had unquestionable contacts with the members of Al Mujahid unit, that he contacted them, that he was frequently seen in the company of Abu Džafer, as well as with other members of the Al Mujahid unit.

Witness Ajman Awad, who himself was a member of the Al Mujahid unit, speaks of the Accused as the person who performed various duties referring to logistics, especially procurement of weapons and food.

That he came to the camp in Orašac, a camp of the Al Mujahid unit, where the members of this unit were stationed, is clearly confirmed by witness Safet Hodžić, who was also a member of this unit and who as a guard at the ramp, had the opportunity to see the Accused entering the camp, and the camp could not be entered without the previous announcement, check, and permit by the command of the unit, however the Accused entered the camp without those procedures, those facts being confirmed by witness Salko Beba as well, quite clear in his testimony that the Accused and Muhamed Suhel Tafi could always freely enter the camp in Orašac- a camp of the Al Mujahid unit.
It evidently results from a part of testimony of the witness Edina Kurtić, the Accused's ex-wife, that the Accused had direct contacts with the members of the Al Mujahid unit, direct contacts with Abu Džafer and other members of the unit, that

they came to the house of the Accused in Travnik, and in their behavior and manner of communication, and that they spoke Arabic on those occasions.

Undoubtedly, it is an indisputable fact that the incriminated event- the abduction of three Croat citizens of Travnik occurred exactly at the time, place and in the manner described in the amended Indictment, i.e. that, on or about 19 October 1993, from the apartment of Ivo Fišić, located in the so called Amerikanka building in Travnik, using force and threatening with weapons, Ivo Fišić and Kazimir Pobrić were taken away by the members of the Al Mujahid unit, as well as that from the apartment of Ivan Rajković located in the so called Glista building in Travnik, also using force and threatening with weapons, members of the Al Mujahid unit took away Ivan Rajković, after which they were placed in a vehicle and then taken to the camp of the Al Mujahid unit in Orašac, and, the same night, Dragoljub Popović and Dalibor Adžaip were brought into the camp as well. In that camp, the above mentioned persons were exposed to inhuman treatment, i.e. mistreatment, which, after some time spent in the camp, culminated in beheading of Dragoljub Popović. It is a fact that during the night of 23 October 1993 Kazimir Pobrić was released, and taken out of the camp by the Accused Abduladhim Maktouf and returned to Travnik, and that on 06 November 1993 Ivo Fišić and Ivan Rajković were released, that is set free from the camp, and that several weeks later Dalibor Adžaip was released, as well. These facts clearly result from the testimony of the witnesses, primarily the injured parties: Ivo Fišić, Kazimir Pobrić, Dalibor Adžaip; "the witness" whose personal information remained protected by exclusion of public from the main trial while taking personal information, with a fact that the witness testified publicly on facts when the public was not excluded, the term "the witness" shall be used in this verdict in reference to confirmation of certain facts by the aforementioned witness; as well as the witnesses Mirsada Kulovac, Ifeta Kalušić, Hasib Kalušić, Josip Medić and Ljiljana Popović.

The injured party, Ivo Fišić, in his testimony, direct examination during the main trial before the Court, in a completely clear and convincing manner describes the critical night, when he, together with his wife, Kazimir Pobrić, and the neighbor Mirsada Kulović and her husband Nusret Kulovac was in his apartment in the Amerikanka building in Travnik.

He understandably remembers the first banging on their door, calling the police and their arrival, when they made an official note about the event, which was clearly confirmed by Muharem Redžić who is explicit that he, as reserve police officer in October 1993, was sent to the Amerikanka building to the apartment of Ivo Fišić, since they had been explained that someone had come to the door to the apartment and banged. Ivo Fišić talks very clearly about the rest of the evening, banging on the door and waiting for the police to arrive again, certain persons who knocked on the door falsely introducing themselves as the police, and them opening the door. Unknown men raided the apartment, wearing strange garbs and armed with sabers, as well as with long barrels, and he with one of them recognized his wallet that had been seized from him as early as 1992 at one of BiH Army check points. One of them wore "Palestinian" cap, and he recognized the insignia of the BiH Army on their uniforms. They ransacked the apartment, took valuable things, and then him and Kazimir Pobrić were taken out of the apartment. After they had been taken out of the apartment, they were brought to a van that had been parked near the building. When they were taken

out of the apartment and while going down stairs, there was one soldier standing at each floor of the building.

He was brought to the van in which there had already been a driver at the steering wheel, and he was thrown into the vehicle through the back door. There was one seat in front of him in the vehicle. Shortly after he had been thrown into the vehicle, Kazimir Pobrić was brought too, with a fact that one person had already been in that vehicle, and he recognized the voice of Ivan Rajković. After they had been put into the back of the vehicle, they proceeded in the van off the building before they had put blindfolds on the head, with some light that came from the nearby cafes, as well as with the fact of the duration of the ride before going out onto the main road and the moment of putting the blindfolds onto the head, at the drivers seat, concerning the position and the place where he was in the vehicle, he recognized the Accused as the driver of the van, the truth is, with the fact that he saw the side of his head, while they were driving in the vehicle.
Witness Kazimir Pobrić is explicit in his testimony that on the critical evening he was coming back from duty from the Civil Defense Headquarters, where he was performing duty as a member of Civil Defense. After he had been on duty, on his return to the Amerikanka building where he was living, he entered the apartment of Ivo Fišić where he found Nusret Kulovac and his wife, the neighbors. There was improvised light in the apartment. Under certain circumstances, unknown persons knocked on the door to the apartment, they spoke poor Bosnian. Wanting to see what was going on outside, he went out on the balcony and then he noticed one vehicle parked in front of the building, and another moving. Those were transportation vehicles and looked like van. The persons who were knocking insisted on entering the apartment, introducing themselves as military police. After those unknown persons had entered the apartment, they started searching the apartment, the truth is they did ask for his ID, and after that, they physically mistreated him. It was exactly under those circumstances that they explained to them that he and Ivo Fišić would go with them. They were armed. After they had taken them out of the apartment they were brought to a van parked in front of the entrance and they were pushed in through the back door of the van. That was a van that looked like VW van. When they came to the spot, they were taken out of the vehicle, their hands were tight and they were taken into a house.

Ivo Fišić and Kazimir Pobrić agree in their testimonies that after they had been taken into the camp, deserted house, they were mistreated, they were beaten, where Kazimir Pobrić was explicit, Ivo Fišić was beaten, they banged his head on the wall, and it happened that four soldiers were beating them at the same time.
Ivo Fišić is particularly convincing that after they had been beaten and mistreated, they were humiliated by being addressed with insulting words "big pig", "fat pig", and that the beatings did not stop until they themselves said they were pigs.
It is an indisputable fact which was undoubtedly pointed out by Ivo Fišić and Kazimir Pobrić, that after some time that they had spent at that house where they were physically mistreated, except for Ivan Rajković, who was not beaten up due to his old age, in the ritual, when they were taken to a place outside the building where the members of the Al Mujahid unit were lined up, Dragoljub Popović was beheaded, after which they were ordered to kiss that head, and then they buried the body and the head of Dragoljub Popović into an improvised space, a hole, with their hands.

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Kazimir Pobrić is objective in his testimony that after some time that he had spent at the detention, where he was mistreated, beaten up, with visible injuries on his body, the Accused brought him back from the captivity to Travnik by a van, leaving him near the building where he lived, afterwards he did not appear in the public for some time, because of visible injuries and all that was happening about it.

Witness Mirsada Kulovac confirmed the facts that were pointed out by witnesses Ivo Fišić and Kazimir Pobrić, since, on the critical evening, she was in the apartment of her then-neighbor, Ivo Fišić. That night, together with her husband, she was in the apartment of Ivo Fišić and his wife when Kazimir Pobrić came to the apartment as well. It is correct that unknown armed persons raided the apartment of Ivo Fišić, of whom she particularly noticed one, as she herself was threatened by one of the unknown persons, since he put a knife under her neck. Undoubtedly, Ivo Fišić and Kazimir Pobrić were taken from the apartment, with a fact that she does not know who those persons were.

That the injured party Ivan Rajković was taken away from his apartment on the critical night was confirmed, in consent, by the testimonies of Ifeta and Hasib Kalušić, those testimonies being considered and accepted as objective and convincing by the Court.
They agree that on that evening they were in their apartment, and that opposite them in the staircase was the apartment of their neighbor, Ivan Rajković. Ifeta Kalušić is explicit, that on the evening, and not only that evening, they did not have electricity in the apartment, nor did the phone work, and that just before the event she was tiding up her kitchen, and her husband Hasib was putting her sister's minor child to sleep. Someone knocked on the staircase door, since they locked it, and using hand-made lamp she went to the door, unlocked it, and a person unknown to her entered and asked about the apartment of Ivan Rajković. It was exactly that person who also went to the apartment of Ivan Rajković, and he was taken away from the apartment.
Those facts are undoubtedly confirmed by Hasib Kalušić as well, partially also by witness Josip Medić, who was also Ivan Rajković's neighbor, with a fact that that evening he also was in his apartment. After Ivan Rajković had been taken away from the apartment, the apartment was searched and sealed, which is undoubtedly pointed out by Hasib Kalušić.

Dalibor Adžaip and Dragoljub Popović were, on the critical evening, taken away by the members of the Al Mujahid unit to the camp in Orašac- this is undoubtedly indicated by the facts that were mentioned by Dalibor Adžaip, and the wife of Dragoljub Popović-Ljiljana Popović.

Witness Dalibor Adžaip, a victim of abduction, is explicit and completely clear when talking about his abduction, he talks also about Ivo Fišić, Ivan Rajković and other persons who were captured with them.
He says that while he was coming back from his friend's toward his apartment, in the vicinity of the Amerikanka building, he was stopped by unknown persons who asked him about his name, and after he had told them his name, they started pushing and beating him, taking him toward the underground garages of the Amerikanka building. When they brought him there they threw him in the van, and covered with a blanket and then he sensed he was not alone in the van. After that they were taken in unknown direction, and when they stopped, they were taken to a house with their heads down,

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and locked in a room in the house. Four more persons were with him in the room. He does not know where exactly the house was, but from conversations with other detainees, he supposed that it was somewhere in the area of Mehurići, where there were "Croat" villages, because above the front door to the house he saw a sticker on which it was written that the house was blessed, which indicated it was a "Catholic" house.
The whole evening, and for days afterwards, they were constantly beaten up. They were beaten by guards, soldiers of Muslim forces.
Dalibor Adžaip completely confirmed the consenting stories of witnesses-victims: Ivo Fišić and Kazimir Pobrić, that a couple of days after being captured, all the hostages, with the exception of Ivan Rajković who was old and weak, were taken out onto a clearing in the middle of which there was a hole and where, in an unordinary way, several rows of soldiers were lined up, and after that, in a ritual manner, Dragoljub Popović was beheaded, and other hostages had to kiss the head, and then burry it into the hole together with the body, with their hands.
Not remembering the exact date of leaving this captivity, December 1993, he says that afterwards he was handed over to the Military Police of the BiH Army who kept him in the former JNA military barracks in Travnik, and after that he was transferred to Correctional Institution in Zenica, where he remained until 21 March 1994, when he was released.

Witness Ljiljana Popović, the wife of the abducted and then murdered Dragoljub Popović, in her testimony particularly pointed out several facts claiming that, primarily, on that evening her husband went to the neighbor's, Ante Šunjić, so that they would, listen to the news together, as they did every evening, and that after that he was supposed to come for her at the Amerikanka building around 9:00 p.m.
While waiting for him, she found out about the taking away of Ivo Fišić and Kazimir Pobrić, and she immediately phoned the neighbor's apartment to check whether her husband had left for home. When she found out that he had, and knowing the road that he was supposed to take by habit when coming back to the apartment, she became aware that he might be sharing the same destiny as those abducted, and this was later proven as true. She spent the night awaiting the potential return of her husband, and in the morning, as early as 6 a.m. she went to Halid Genjac, a neighbor from the apartment building, asking him for help in getting information as to where he husband was. She tells very clearly that Halid Genjac immediately, in her presence, called Abduladhim Maktouf, but he was informed, from the other side of the telephone line, that he was sleeping.

It has also been particularly confirmed by the testimonies of witnesses Husein Delić, Salko Beba, Halid Genjac, Nikica Petrović, Tonka Rajković, Božidar Rajković, Besim Halilović, Muhamed Ćurić, Besim Šehić, Edina Kurtić that Ivo Fišić, Ivan Rajković, Kazimir Pobrić were indeed abducted from their apartments, and taken to the camp of Al Mujahid unit.

Tonka Rajković, the wife, and Božidar Rajković, the son of the abducted Ivan Rajković, who were in the Republic of Croatia at the time of the abduction, and contacted Ivan through the Red Cross, confirmed in consent that they found out only later about the abduction of the husband, that is father. Tonka Rajković found out from the Slobodna Dalmacija daily newspaper, as well as from the direct contact with

her husband after he had been released from captivity, and upon his arrival to the Republic of Croatia.

Witnesses Halid Genjac, Husein Delić, Muhamed Ćurić and Salko Beba, persons who held positions of high responsibility, were particularly explicit that they found out about those abductions on the following day, and not only as persons who held positions of high responsibility, but as citizens of Travnik, at the time.
Halid Genjac particularly pointed out that he first found out about the abduction from Ljiljana Popović who asked for help; Salko Beba as the Chairman of the Exchange Commission of the BiH Army, immediately after the adduction found out about it and kept constantly in touch with the families of the abducted persons; Muhamed Ćurić as the member of Travnik War Presidency was also informed about this abduction after the event; and, naturally, Husein Delić as well, as the Chief of Police in Travnik.

Therefore, clearly bearing in mind the presented evidence, undoubtedly, the Court finds that there are three relevant facts, first of all, that in the area of Central Bosnia before, after, or about 19 October 1993, there was an international conflict between HVO and Croatian Army of the Republic of Croatia on one side, and BiH Army on the other side; that on or about 19 October 1993, from the apartment of Ivo Fišić in Travnik, where he was living with his wife at the Amerikanka building, around 8:00 p.m., Croat citizens of Travnik- Ivo Fišić and Kazimir Pobrić were taken by the members of the Al Mujahid unit, as well as Ivan Rajković from his apartment in the so called Glista building in Travnik, a person of Croat ethnicity, who was also abducted by the members of the Al Mujahid unit. Afterwards, they were taken to the camp in Orašac, a camp of the Al Mujahid unit, where Dragoljub Popović and Dalibor Adžaip were also taken, and where they were physically and mentally mistreated, humiliated, beaten up, and Dragoljub Popović was beheaded in a ritual ceremony.
With those two previous real facts, there is also a third fact, that on, or before 19 October 1993, a member of Al Mujahid unit, Emsad Kadirić, was detained by HVO, that is that HVO held the bodies of the killed members of the Al Mujahid unit killed during the operation when Emsad Kadirić was captured.

It is questionable, however, whether the Accused, based on previous arrangement, and in a way, at the time, and place noted in the Indictment, helped Abu Džafer and other members of the Al Mujahid unit in taking of Ivo Fišić, Kazimir Pobrić and Ivan Rajković, as hostages, from their apartments and in taking them to the camp of Al Mujahid unit in Orašac. All this took place at the time of war conflict in the region of Central Bosnia, the area of the municipality of Travnik, between HVO/ HV RH and the BiH Army, all with the purpose of potential release by HVO, of a warring party, the captured members of the Al Mujahid unit of the BiH Army.
It is therefore questionable whether the Accused, by putting at disposal his own van, and driving it, waiting in front of the Amerikanka building for Abu Džafer and other members of the Al Mujahid unit to take out from an apartment in that building the abducted Ivo Fišić and Kazimir Pobrić, that is, to take out from the nearby Glista building Ivan Rajković, and by driving the abducted persons to the camp of the Al Mujahid unit in Orašac, aided in the perpetration of this criminal action.
In the concept of defense, the defense of the Accused advocated the argument that the Accused did not participate in the perpetration of the criminal actions, that is, that on the critical evening, on or about 19 October 1993, the Accused, together with his family- wife Edina Kurtić, two minor children, his wife's mother and step father, as

well as wife's cousin, Murveta Boljević, was at his house, and that anyhow, curfew that limited the movement of citizens, was in force as of 09:00 p.m., that is, that he was informed about the event only during the following day.
The Defense based this concept primarily on the testimonies of witnesses of the Defense: Edina Kurtić, Murveta Boljević and Husein Šeperović.
The above mentioned witnesses claimed that the Accused, on the critical evening, was in the house, that he entered the house before the curfew, and the he slept over in the house.
Witness Edina Kurtić, wanting to confirm the argument of the Defense that the Accused did not take part in the commission of this criminal offence, particularly emphasized that on the critical evening, at the time when the Accused was in the garden, she received a phone call from Ifeta Kalušić, who wanting to speak to the Accused, informed her that unknown men had come and banged on her door, looking for the apartment of teacher Ivan Rajković, clarifying the facts from that period. Upon the arrival of the Accused into the house, she immediately informed him of the phone call, he went to the apartment of Ifeta Kalušić, but he soon came back home, where he spent the night.
Husein Šeperović, the stepfather of the wife of the Accused, also asserted that the Accused was home that evening, that he was sitting with him in the garden, and then entered the house, which he did not leave afterwards.
Murveta Boljević, a cousin of the wife of the Accused, pointed out that, at that time, she stayed at their house as a refugee from Novi Travnik. The Accused spent that night, as well as majority of nights during the war, at his house, with his family, particularly pointing out that he spent most of the time playing computer games.
The Court found unconvincing the argument of the Defense that the Accused did not participate in this action, and thus also the testimony of the witnesses referring to these facts, who, first of all, in the opinion of the Court, were biased for realistic reasons, as they were members of the family of the Accused and interested in removing the liability of the Accused for this criminal action.

Understandably, the aforementioned conclusion of the Court in terms of witnesses and the concept of defense, and especially the facts that the Defense stimulated through the testimonies of the above-noted witnesses, is logical, especially if the testimonies of witnesses of the Prosecution: Ivo Fišić, "the witness", witness Ahmed Al Haj Ahmad, Husein Delić, Ifeta Kalušić, Tonka Rajković and Božidar Rajković, are taken into account.

Namely, witness Ivo Fišić, completely clearly describes the manner of his being taken out of the apartment and thrown into the vehicle- van, in which he recognized Abduladhim Maktouf at the driver's seat, the recognizing of whom he, among other things, supports by knowing the physiognomy of the head of the Accused, that although, under weak light that came from a couple of surrounding cafes, still was revealed. The duration of the first ride in about first 300 meters when he was driven without being blindfolded, his position from which he was able to see clearly the right side of the Accused, according to him, were completely sufficient to recognize the Accused as the driver of the van.
All the circumstances in the event, particularly the fact that his apartment was raided by persons looking atypically for this region (Arabs), knowing the Accused from before as a citizen of Travnik, but also as an owner of a video store whose member the witness was as well, therefore, meeting frequently with the Accused additionally

make stronger his testimony referring to recognizing, where Ivo Fišić remained consistent in his explanations given in the direct testimony before the Court.

"The witness" is completely clear and specific in stating the Accused as the person who helped in the execution of the abduction, motives and reasons, as well as the circumstances referring to knowing the Accused, but also the post-war cooperation with the Accused. Namely, explaining that by the abduction of the reputable Croat citizens of Travnik they tried to arrange an exchange on the captured members of the Al Mujahid unit, he clearly says that with the Accused, immediately after finding out about the capture of his fellow-fighters, he went to Salko Beba in order to get information on the possibilities and procedures of exchange. He also says that Salko Beba told them that for the exchange they also needed soldiers, that is, members of HVO. He further points out that realizing that at that moment there were no members of HVO captured by BiH Army, they decided to arrest several reputable Croat citizens of Travnik who would be exchanged for the captured members of the Al Mujahid unit.
With the purpose of achieving the plan, that is, the abduction of the citizens of Croat ethnicity, together with the Accused, he met with witness Halid Genjac, the then President of SDA party in Travnik and the Director of Medical Centre in Travnik, when they discussed this issue, and when he got the list of such reputable citizens. The Accused, as a long-time inhabitant of Travnik was well familiar with the addresses of those citizens. "The witness" did not know those people, or where they lived.
The account of "the witness" is therefore fully convincing, as he himself is one of the perpetrators of this offence, and who in all his testimonies given during the proceedings, both during the investigation and directly at the main trial, in a completely objective and impartial manner, although aware of the consequences that might arise for him, talks about the reasons and planning of the abduction, time, manner and place of its execution, the roles of individual perpetrators, and also the Accused himself, whose contribution, as the only perpetrator of this offence who knew the addresses of the persons who were to be abducted, was reflected in the placing at disposal of his own VW green van, and driving it. The witness, namely, clearly describes that the Accused drove him and several more members of the Al Mujahid unit to the Amerikanka building, that is the place where the persons noted in the list were living, as he knew the addresses and who those people were, that he remained in the van waiting for the abducted persons to be brought, and then he drove them to the camp of the Al Mujahid unit in Orašac, together with him. "The witness" himself, as he claims, was during the entire ride, sitting at the passenger seat, particularly watching out for the behavior of the abducted persons who were at the back of the van.

That the van was owned by the Accused results primarily from the testimony of "the witness", but also witness Amir Kalajdžija, a former employee of the video store that Accused had, and who says completely clearly that his then boss- the Accused, after he had decided to close down the video store and sell all the video tapes, instead of the money, got a green VW van for the sold tapes. He also asserts that it belonged to the Al Mujahid unit in January 1994.
His testimony, in this part, is also fully confirmed by witness Ajman A[illegible] who clearly remembers that his unit, Al Mujahid unit, bought the green VW van from Abduladhim Maktouf- the Accused, in winter 1994.

In this context, the Court also considers the testimony of witness Ivo Fišić, who describing the vehicle in which he was taken away, although not consistent in all his testimonies provided after the event, and describing this vehicle as a field vehicle or Lada Niva, still, after the insight – the presentation of evidence of the Defense consisting of several photographs of the vehicle- the van of the same type, taken from various angles, particularly of the back part of the inside of the van, claims with certainty that he was taken away in green VW van.
He makes the association guided by the fact that previously he often saw the Accused driving that vehicle around town.

The participation of the Accused in the perpetration of this criminal action is also mentioned by Husein Delić, who, in addition to general information known to all the citizens of Travnik, particularly points out the discussion with Abu Džafer when Abu Džafer told him clearly that he had gone to Halid Genjac together with the Accused when he received the list of Croat citizens of Travnik whose capturing would facilitate the exchange for four captured members of the Al Mujahid unit.

This view of the Court, especially bearing in mind the unconvincing efforts of the Defense to prove that the Accused spent the critical evening at home, was contributed to by the testimony of Ifeta Kalušić, a neighbor of Ivan Rajković, who remembering clearly the critical evening, asserted that that evening, as was the case on many evenings during the war, telephone lines were not operational, nor was there electricity, describing then the hand-made lamps that were used as the only source of light, and expressing obvious surprise at the mentioning of telephone connections, and a fact presented by Edina Kurtić, that it was her who phoned her that critical evening and that the Accused came to her apartment.
Also, Hasib Kalušić, her husband, talking about the general war situation in Travnik, confirms that at the night when their neighbor Ivan Rajković was taken away phones were not working and there was no electricity.

Tonka Rajković, wife of the abducted Ivan Rajković, in her testimony, stresses that her late husband, although reluctantly, when talking about that event which was traumatic for him, nevertheless, was repeatedly saying that Abduladhim Maktouf was responsible for his abduction.
Abduladhim Maktouf, as a person responsible for abduction of Ivan Rajković is mentioned by his son Božidar Rajković, remembering one of his postwar visits to Travnik-visiting his parents, when after he came back from the hairdressers, he was rebuked by his father, with whom he was in these circumstances, because he went to the hairdressers owned by Abduladhim Maktouf, individual responsible for his abduction.

Therefore, if we take into consideration testimonies of these witnesses, the facts they indicated and which the Court gave credence to, the testimonies of witnesses Edina Kurtić, Husein Šeperović and Murveta Boljević in respect to the fact that the Accused spent the critical night in the house are obviously unconvincing, so the Court did not trust them.
Such conclusion of the Court is also supported by the fact that, on the critical night, curfew was not in force at all, which arises from the evidence for the Prosecution – Order of the War Presidency of Travnik number: 01-181-23/93 dated 25 October 1993 by which only as of 25 October 1993 and for the period 21:00 to 05:00 hrs the

curfew was introduced as well as prohibition of movement of citizens without competent permit.

Although the Defense stressed, on several occasions, insecurity of the witness Ivo Fišić, in respect to recognizing the Accused as an individual who was driving the van, the Court accepted his testimony as a whole being of the opinion that his first testimonies about the critical event were given in the postwar period which in the territory of Central Bosnia, Travnik in particular, was still insecure for Croat citizens, which specifically arises from the fact that even today a couple of murders of Croat police officers of the Ministry of Internal Affairs of Central Bosnia Canton remain unresolved. Such a situation, the Court considers, explains why Ivo Fišić, when giving the statement before the then Municipal Prosecutor Mijo Dujmović, that is, Investigating Judge of the Municipal Court in Travnik, Vavra Vjekoslav, was not mentioning that he recognized the Accused as the individual who was driving the van, still being afraid for his safety and safety of his family.

Considering these facts and relating them to those fasts indicated by "the witness", it justifies the conclusion of the Court about credibility of the facts indicted by "the witness" about participation of the Accused and his contribution in perpetration of this criminal act which reflected in placing at disposal his own van, driving the van to the place of abduction, waiting for the abducted citizens to be taken out from their apartments and driving them to the camp in Orašac where they were kept, mistreated both physically and mentally, humiliated and all of it to the end of extorting their exchange for the members of Al Mujahid unit arrested by HVO.

The Court accepted as a whole the testimony of "the witness" considering in particular his friendly relations with the Accused, the fact that after his arrival to Bosnia and Herzegovina, it was the Accused who offered him the first assistance, that he lived in the apartment of the Accused, located in Žitarnica in Travnik, that almost on daily basis he spent time with the Accused and that after the war period as a friend of the Accused he was managing the business unit of his company "Palma" in Kakanj, which clearly results in mutual confidence between the Accused and "the witness".
The fact that there was an attempt to influence "the witness" to change his statement also supports full acceptance of the testimony of this witness and this is the fact that "the witness" himself speaks about clearly and it was specifically confirmed by the witness Mirko Kupreškić.

That truly there was an interest to find the witness presenting the facts incriminating the Accused in reference to this criminal act and attempt to influence this witness, is also confirmed by the witness Ahmed El Haj Ahmad. The same person is explicit in his testimony that on couple of occasions the brother of the Accused-Luej Maktouf, being under wrong impression that he is "the witness", contacted him telling him to be careful and asking for a meeting, so they met in one of coffee bars in Zenica when witness Ahmed El Haj Ahmad explained that the issue was mistaken identity, that he had nothing to do with his brother and that at the critical time he was not even in the territory of Central Bosnia but on Igman.

Out of all the above mentioned there arises obvious conclusion that there was an interest of the concept of the Defense primarily to find "the witness" whose testimony was not in favor of the accused, in other words, which was incriminating, in order to

try to influence the same witness to change his testimony and testify that the Accused did not participate in taking away of Ivo Fišić, Kazimir Pobrić and Ivan Rajković.
Due to the aforementioned, the question arises what would be the reason to do that if the Accused did not participate in this criminal act.

It is not logical to offer some individual a certain amount of money to speak the truth, that is, to look for certain individual who could, as estimated, be "the witness" and to try to influence him with a remark that he should be careful when it was established that it was the wrong person. It is obvious that in this case there was a different thesis, to try to find "the witness", to influence him, threaten, and once when established who the real witness is, to continue exerting pressure on him to change his testimony, to present facts and circumstances differently from the real ones which are those incriminating the Accused.

And exactly these undertaken actions in respect to the "the witness" and witness Ahmed El Haj Ahmad, then the facts indicted by witness Salkan Đakulić, prisoner who shared the cell with Abduladhim Maktouf, who was clearly saying that the Accused Abduladhim Maktouf had a cell phone in the cell, which, it is true, he was giving for use to other prisoners as well, and that from that phone he was calling, among others, his children as well, to whom, Đakulić was categorical, on several occasions he was telling to pass message to their mother Edina Kurtić that if somebody would ask where the Accused was that critical night, that he was in his house, indicate credibility of the facts pointed out by the witness, in other words, participation of the Accused in perpetration.
The concept of the Defense of the Accused and thesis about what kind of personality is "the witness", that "the witness" is not telling the truth, that the issue here is fabrication of certain facts and circumstances which the witness wanted to invent thus accusing the Accused without basis, that it is obviously conspiracy against the accused, conspiracy of the witness and some other individuals motivated by gain, in the opinion of the Court is not convincing.

This thesis of the Defense, that the whole testimony of the protected witness was given for material gain, the Court did not accept as objective at all, being of the opinion that the testimony of the witness is convincing, explicit and partially confirmed, in the first place, by testimonies of witnesses Ivo Fišić, Husein Delić and Salko Beba. The fact that the Accused and the witness knew each other well, in addition to the above mentioned persons, was also confirmed by witnesses Husein Delić, Halid Genjac and Besim Halilović.
In that sense, considering the above mentioned, the Court did not accept objection of the Defense that this was illegally obtained evidence given that recording of conversations between the witness and individual who insisted that he should change his testimony given before the Court, was carried out pursuant to the Order of the Court ordering recording of conversations between the witness and individual interested in the witness changing the testimony before the Court and presenting the facts differently.

In this case, for the Defense, it was disputable whether witnesses Ivo Fišić, Kazimir Pobrić and Ivan Rajković and the other two individuals abducted and taken to the camp Orašac, under the circumstances of the event itself, were civilians, that is, the position of the Defense was that they did not have status of civilians since they were

members of the HVO which was under single command and which, within its composition, in addition to civilian had also military structure.
Even this concept of the Defense in the opinion of the Court is not convincing moreover if we take into consideration the facts indicated by witnesses –injured parties, Ivo Fišić and Kazimir Pobrić, out of whose testimonies there arise no facts on any kind of their involvement, their membership in any of the HVO units in that period of time, nor the facts that they wore uniforms, weapons, going to front line which would make them recognizable in the environment in which they lived. Witnesses Mirsada Kulovac, Halid Genjac, Salko Beba, Ifeta and Hasib Kalušić, Konjalić Semin and Ćurić Muhamed, in their testimonies did not confirm that Ivo Fišić, Kazimir Pobrić and Ivan Rajković were military, members of the HVO units which were in conflict with the Army of BiH units at that time. Salko Beba is explicit in his testimony that "civilians cannot be exchanged for soldiers" which, in particular, he stressed in his conversation with the Accused and Abu Džafer when possible capturing of civilians aimed at exchange of the captured members of Al Mujahid unit was discussed.
Based on the above mentioned and particular based on the objective documentation from military records, presented and fully explained by Dragan Majstorović, employee of the Federation Ministry of Defense, evidently there arises that the abducted individuals, at the time of the critical event, were not members of any military formation.
Taking into consideration the facts given in the testimonies of the above mentioned witnesses and objective documentation, the Court did not accept as convincing the evidence for the Defense that only based on the certificate on additional salaries for the HVO members and explanations given by the expert witness for the Defense Asim Džambasović which were based on the identical documentation of the evidence for the Prosecution that Dragan Majstorović, employee of the Federation Ministry of Defense, presented his opinion about, the conclusion may be drawn that the mentioned were soldiers, that is, military and members of the military units of the HVO which were in conflict with the Army of BiH at the time of the critical event.
That the thesis of the Defense is completely illogical, it also clearly arises from the estimate of the overall situation in Travnik after the break out of the conflict between the Army of BiH and HVO. In other words, under the circumstances when the majority of Croat citizens of Travnik left Travnik, that would mean that, according to the arguments of the Defense, Ivo Fišić, Kazimir Pobrić and Ivan Rajković but also Dragomir Popović and Dalibor Adžaip, as members of the HVO, meaning one of the warring parties, would go to fight against the Army of BIH, then put aside the weapons and absolutely safe return to their homes, to the apartments in Travnik which was controlled by the units of the Army of BiH.
Therefore, indisputably, in the opinion of the Court, there arises that Ivo Fišić, Kazimir Pobrić and Ivan Rajković were civilians, Croat citizens who lived in Travnik in their apartments, on or about 19 October 1993, in the period when the international conflict was ongoing in the territory of Central Bosnia between the HVO and Croatian Army of the Republic of Croatia on one side and Army of BiH on the other side, when the abduction was carried out and when they were taken to the camp Orašac by members of Al Mujahid unit and, understandably, to the end of their exchange.

Considering all the aforementioned evidence the Court is of the opinion established that, at the time of the international armed conflict in the territory of Central Bosnia and Travnik Municipality, between the HVO and Croatian Army of

the Republic of Croatia on one side and Army of BiH on the other side, on or around 19 October 1993, contrary to Article 3 (1) (b) of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War, the Accused, as a member of the Army of BiH, knowingly, assisted Abu Džafer and other members of Al Mujahid unit to take hostages, civilians of Croat ethnicity from Travnik, that is, Ivo Fišić, Kazimir Pobrić and Ivan Rajković from their apartments where they were living, from the Amerikanka building and from the Glista building and, in no uncertain terms, to the end of their exchange for the captured members of Al Mujahid, unit which was within the Army of BiH. He did it in a manner that placed at disposal his vehicle VW van and together with the members of Al Mujahid unit he drove to the place of abduction, waited for the members of Al Mujahid unit to abduct Ivo Fišić, Kazimir Pobrić and Ivan Rajković from the apartments, which they did using force and threats and he waited in the van for them to be thrown into the van and then driving the same vehicle, together with Abu Džafer and other members, he drove them to the camp pf Al Mujahid unit in Orašac where they were detained and afterwards subjected to mistreatment, humiliation and beating of members of Al Mujahid unit. Dragoljub Popović and Dalibor Adžaip, also civilians, were taken to the same facility where they were physically mistreated, humiliated and after a certain period of time, the members of Al Mujahid unit performed the ritual beheading of Dragoljub Popović.

If all the circumstances, established facts and actions taken by the Accused are taken into consideration, the Court, considering in particular, within the context of his consciousness and will, personality of the accused, his education and involvement during the state of war in Bosnia and Herzegovina, the Court found out that the Accused, at the time of perpetration of the criminal offense, was able to understand the significance of his act and could control his actions, in other words, that he was fully accountable and aware that by his actions he was violating the rules of international humanitarian law thus causing the forbidden consequence.
Therefore, the Accused, was aware that, by placing his own van at disposal and driving it, driving the kidnappers to the place of perpetration, waiting for abduction to be performed and then driving away the abducted persons to the place where they would be kept, he was assisting kidnappers in perpetration of this offense.
Acting with direct intent, by helping he committed the offense which represents direct violation of the rules of international humanitarian law and specifically Article 3 paragraph 1 subparagraph b) of the IV Geneva Convention relative to the Protection of Civilian Persons in Time of War dated 12 August 1949 but at the same time of the general principle of humanitarian law, established also by the ICTY Statute Article 2 (g) (h) and European Convention on Human Rights- Article 5.

Gravity of breach is the best illustrated by repetition of the provision of Article 3 in all the three Geneva Conventions but also by confirmation of this position by the International Criminal Tribunal for the Former Yugoslavia.
Therefore, it is prohibited, to treat 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, and in all circumstances inhumanely, with any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
In particular, 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:

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(a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) Taking of hostages;

The this is a general principle of humanitarian law there also arises from the provision of Article 2 (g) and (h) of the ICTY Statute reading that the International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(a) willful killing…..

(h) taking civilians as hostages.

And the European Convention also, Article 5, regulating that everyone has the right to liberty and security, in particular stipulates that no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfillment of any obligation prescribed by law;

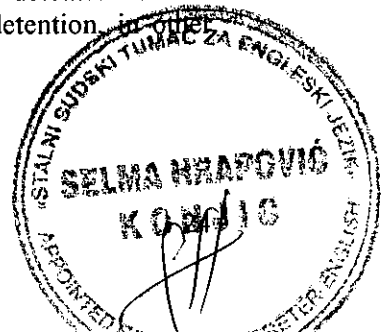
(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition

Such conditions set for lawful detention clearly indicate that detention of Ivo Fišić, Kazimir Pobrić and Ivan Rajković represented illegal detention, in other words, violation of international humanitarian law.



The above mentioned is also supported by the position of the Human Rights Chamber for Bosnia and Herzegovina that it is forbidden to "arrest and detain persons to the end of exchange for detainees kept by others", explaining, in the concrete case, that in the mentioned list of grounds for detention there is no detention with the purpose of exchange.

Exchange, therefore, even as a possible motive for taking hostages, which was specially stressed by the Defense of the Accused, could not be considered legal detention.

The right to liberty and security of a person are also fundamental principles of the International Covenant on Civil and Political Rights, Article 9 paragraph 1, which stipulates that no one can be subject to arbitrary arrest or detention except for the reasons and pursuant to the procedure envisaged by law.

No one shall be subjected to arbitrary arrest, detention or exile is the regulation of Article 9 of the Universal Declaration of Human Rights of the United Nations.

Therefore, considering this general principle of humanitarian law, established primarily by the Geneva Conventions but reaffirmed and further promoted by all the other mentioned international documents and time, manner and place of deprivation of liberty of Ivo Fišić, Ivan Rajković and Kazimir Pobrić and it is absolutely clear that the issue here is breach of international humanitarian law, that the Accused was aware of, and although he could, he did not even try to prevent use of force and threats that the other perpetrators used when taking the mentioned persons for hostages.

Consequently, the Accused, by violating the rules of international humanitarian law in time of war and in particular the provision of Article 3 paragraph 1 subparagraph b) of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, as stated in the enactment clause, acting with direct intent, helped Abu Džafer and other members of Al Mujahid unit in commission of the criminal offense of War Crimes against Civilians referred to in Article 173 paragraph 1 subparagraph e) in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina.

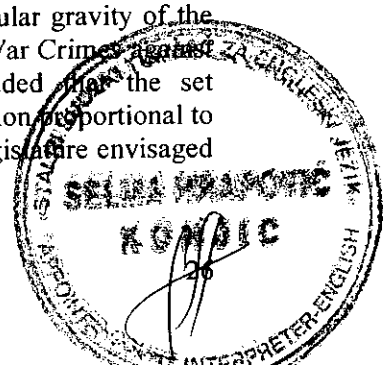
For the above mentioned criminal act the Court has found the Accused guilty and sentenced him to imprisonment for a term of 5 years, applying the provisions of Article 31 of the Criminal Code of Bosnia and Herzegovina.

Therefore, the Court, accepted as whole legal qualification of charges and sentenced the Accused for the criminal offense of War Crimes against Civilians referred to in Article 173 paragraph 1 subparagraph e) in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina, being of the opinion that the Criminal Code of Bosnia and Herzegovina is the law lenient for the perpetrator than the Criminal Code of the SFRY which had the same criminal offense referred to in the provisions of Article 142 and which was in force at the time of perpetration of the criminal offense. In other words, pursuant to Article 142 of the Criminal Code of the SFRY, applicable at the time of perpetration of the criminal offense, the mentioned criminal offense was punishable by imprisonment for a term not less than five years and death penalty while according to the applicable Criminal Code of Bosnia and Herzegovina the same criminal offense is punishable by imprisonment for a term not

less than ten years or long-term imprisonment. Article 7 of the European Convention on Human Rights and Fundamental Freedoms from 1950 envisages that no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. This principle from the Convention was elaborated in the provisions of Article 3 of the Criminal Code of BiH (Principle of Legality) and Article 4 of the Criminal Code of Bosnia and Herzegovina (Time Constraints Regarding Applicability), so Article 3 stipulates that no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law and Article 4 envisaged that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence and if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied. Therefore, Article 3 and 4 of the Criminal Code of Bosnia and Herzegovina define general rules of application of the Criminal Code pursuant to Article 7 paragraph 1 of the 1950 Convention on Human Rights and Fundamental Freedoms.

In this concrete case it is obvious that, in the meantime, the Criminal Code was amended and in respect to stipulated criminal sanction, so instead of previous legal minimum of five years the new law regulates level of ten years and instead of previously stipulated death penalty there is a long-term imprisonment (45 years). When the stipulated sentence (imprisonment of at least ten years and long term imprisonment) is considered as a whole in respect to previously stipulated sentence (at least five years or death penalty) this Court is of the opinion that the criminal sanction, that is, stipulated sentence pursuant to the new law is more lenient than the previous sanction, because, according to the customary international law it is established that death penalty is any case more severe punishment than long-term imprisonment and likewise according to the customary law it is an absolute right of the suspect not to be executed and a state is bound to provide for that right which was done by adoption of the new law. The truth is that the previous law sets the lower limit of minimum punishment than the new law. When deciding on the imprisonment for a term of 5 years, as mitigating circumstances for the Accused, the Court took into consideration that the Accused is father of 3 minor children, that he was not convicted, the fact that he drove the injured party – witness Kazimir Pobrić, in his own vehicle to the vicinity of his apartment after the time spent in detention, in the camp.

As for aggravating circumstances for the Accused, the Court decided that it was the number of civilians abducted the critical night, who were taken hostages, the fact that these civilians were mistreated both physically and mentally, beaten, humiliated in addition to the unavoidable fact that this, objectively, among citizens of Croat ethnicity-civilians who remained to live in Travnik which was controlled by the Army of BiH, increased the degree of fear and insecurity, fear for their lives and lives of their family members. Considering all the circumstances, in particular gravity of the offence and the Accused as perpetrator of the criminal offence of War Crimes against Civilians, it is true, having accessory role, the Court concluded that the set punishment for the Accused of five years is adequate criminal sanction proportional to gravity of the offence and Accused as its perpetrator. Given that legislature envisaged



the possibility of mitigating minimum stipulated imprisonment, which in this case is minimum of 10 years of imprisonment, if the actions of the Accused are reflected in aiding in perpetration of the criminal offence, which was applied by the Court in this case, given that these are the aiding actions of the Accused and his contribution to perpetration of the criminal offence of War Crimes against Civilians referred to in Article 173 paragraph 1 subparagraph e) in conjunction with Article 31 of the Criminal Code of Bosnia and Herzegovina and taking into consideration that with such sentence of imprisonment the purpose of punishment referred to in Article 39 of the Criminal Code of Bosnia and Herzegovina will be achieved, that it will have educative influence on the Accused not to perpetrate criminal offense in future and clearly to have preventive influence on others not to perpetrate such or similar criminal offences.

The Court did not accept the evidence for the Prosecution, testimony of the witness Ivo Rajković, audio recording and witness examination record given that, in the opinion of the Court, this is the evidence evaluated as illegally obtained evidence.

The other presented evidence, both for the Prosecution and Defense, subjective and objective, clearly indicated above, the Court considered irrelevant in respect to decisive and essential facts, given the amended Indictment and factual substratum of the Indictment.

Pursuant to Article 56 of the Criminal Code of Bosnia and Herzegovina the time which the Accused spent in custody pending trial will be counted as a part of the pronounced sentence of imprisonment.

Deciding on the claims of the injured parties the Court refers, pursuant to Article 198 paragraph 2 of the Criminal Procedure Code of Bosnia and Herzegovina, the injured parties Ivo Fišić, Kazimir Pobrić, Ljiljana Popović and Tonka Rajković who filed the claims and Dalibor Adžaip with a possible claim, to civil action given that establishing facts in respect to the level of claims would require longer period of time which would extend the proceedings itself, therefore, the Court refers them to civil action.

Pursuant to Article 188 paragraph 1 of the Criminal Procedure Code of Bosnia and Herzegovina the Accused must reimburse the costs of criminal proceedings and by the separate decision the issue of costs of the criminal proceedings will be settled after collection of data.

Court Reporter — Presiding Judge

Court Officer

Amela Skrobo — Salem Miso

REMEDY: This Verdict can be appealed against to the Appellate Panel of this Court within fifteen days (15) after the day of receipt.

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

Sarajevo, August 4, 2005

Certified Court Interpreters for English: *Selma Hrapović*

Emilija Lazić

Edina Neretljak