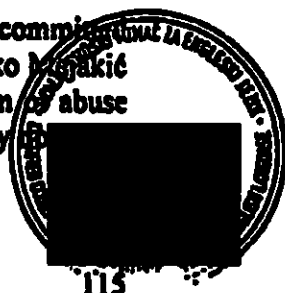
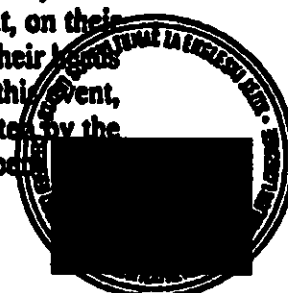


statement he noted that he was beaten during the questioning, without precisely saying who beat him on that occasion. According to the statement of this witness, when he entered the interrogation room which was located on the upper floor, an interrogator who was wearing a police uniform waited for him, and another member of the police also entered the room. According to the statement of witness Saud Bešić, he was hit on his back and he was told "You were dating Serbian women." Furthermore, the witness stated that he was beaten during the questioning until he fainted, after which the interrogator would splash him with water and, when he regained consciousness, he was ordered to sit down on a cube drawn on the floor. As the witness stated, during the above-mentioned events, the Camp Chief Željko Mejakić entered the room and told him "Young man, I know you, if you do not say..." and then he kicked him in his chest with his boot and the witness fell over his side due to the kick and he fainted, and when he regained consciousness the accused Mejakić was no longer there. With regard to the identity of Željko Mejakić, the witness stated that he remembered him particularly because he entered the room in which he was questioned and kicked him, and because he used to see him walking around the Camp and talking to the reporters and he noticed that the Camp staff were doing what he told them and that the guards were afraid of him. The witness based all his knowledge about the fact that the person who kicked him on the critical occasion was none other than Željko Mejakić on the information which he received from the guards and other detainees. Such a description of the accused Mejakić's behavior, as the witness saw it, is completely consistent with the description provided by other witnesses, who also thought him to be the Camp Chief and a person who moved freely around the Camp giving certain orders to the guards. The Court finds that it is quite logical that the witness particularly remembered the person who kicked him personally and that he remembered his name when the others informed him about who that person was after the beating. In terms of the description of the person who kicked him, the witness provided certain information which suggests that it was none other than Željko Mejakić. Namely, according to the witness, the accused Željko Mejakić wore a blue beret on special occasions, which was also confirmed by Witness K042, whereby witness Saud Bešić provided a certain physical description of the Accused, after which he recognized him in the courtroom. This witness, who linked the person who kicked him in his chest on the critical occasion with the accused Mejakić, noted that he remembered him as the person who read the lists of names on the occasions of the transfer of detainees from Omarska to Trnopolje. These claims were also confirmed by witnesses K03 and K023, who saw the accused Mejakić reading the lists of detainees who were supposed to leave the Omarska Camp. During the cross-examination, the Defense tried to deny the veracity of the statement of witness Saud Bešić with regard to the identity of the accused Željko Mejakić, but the witness was explicit in his statement that it was precisely the Accused who kicked him and he even corrected himself with regard to the age of Željko Mejakić during the critical period. Namely, during the direct examination the witness said that the accused Željko Mejakić was 40, whereas during the cross-examination he said that he was younger, which the Court accepts in its entirety, since a person's ability to assess someone's age is individual and depends on a series of factors.

With regard to the beatings and other forms of physical abuse that were committed against the detainees directly and personally by the persons over whom Željko Mejakić had effective control and which were committed in furtherance of the system of abuse and persecution in the Camp in which he participated, the Indictment primarily



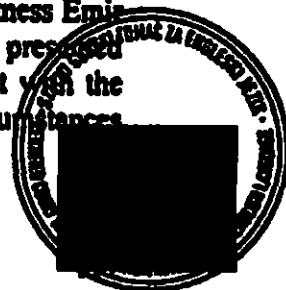
event when in the night of 29 or 30 May 1992 two rows of the Camp guards beat the detainees who were just brought to the Camp, including Witness K041, after which they were beaten in the restaurant and on their way back from the restaurant. During the main trial, many witnesses testified about the circumstances of the beating of the detainees when they arrived at the Camp, on which occasion the guards would line up in two rows and beat the newly-arrived detainees. In this manner, witness Ermin Striković, who was among the first detainees who arrived at Omarska, noted in his statement that, upon arrival at the Camp, the detainees were forced to run the gauntlet comprising uniformed persons who cursed and beat them. According to witness Sakib Jakupović too, on the occasion of the arrival of the detainees at the Camp, when they would get off the buses armed persons would line up in two rows and hit them over their heads, backs and chests, so that the detainees had to run, since it would be disastrous for them if they would fall. The statements of the previous witnesses about two rows that were lined up on the occasion of the arrival of detainees are also corroborated by the statement of Witness K034, who noted that two groups were formed on two sides and they beat the detainees while they were passing by, namely with their fists, feet and rifle-butts. Witness K041 described the two rows of the Camp guards who beat a group of detainees who were just brought to the Camp, including himself. As Witness K041 stated, he was brought to the Omarska Camp in the evening of 28 May 1992, which is consistent with the time set in the Indictment, in which it was noted that K041 was brought to the Camp in the night of 29 or 30 May 1992. The date when K041 was brought to the Camp was not definitely determined in the Indictment, so that it leaves a possibility that the named person arrived at the Camp on 28 May 1992, as it was noted by the witness himself. The fact that K041 was beaten on the occasion of his arrival at the Camp stems from the part of his statement in which he noted that two buses arrived on that occasion and they were stopped in the place opposite of the garage and the detainees were then ordered to get off the buses, to walk on all fours and to bark like dogs and this was ordered by the people who brought them. As far as the forming of two rows is concerned, the witness noted that the two rows were formed from two columns and the witness was specific in his claims that the two rows were formed from the persons who were already in the Camp and who beat the newly-arrived detainees, including the witness. Precisely this statement of Witness K041 leads to the conclusion that the two rows were formed by the Camp guards and not the persons who escorted the buses in which the detainees were brought. Witness K041 also described the beating of detainees, including himself, on their first occasion of going to have a meal, which took place, as he noted, after four days they spent in the Camp. With regard to this beating, the witness noted that at approximately 8 p.m. it was ordered that a group of 30 detainees should get out, that they would go to have a meal in groups and that they had to run to the restaurant, eat and go back in three minutes. These claims of Witness K041 are completely consistent with the statements of other witnesses who described the way the detainees were taken to have a meal in groups of around 30 detainees, as well as the time they had to have a meal. Furthermore, Witness K041 stated that on the critical occasion, while the group of detainees to which he belonged was on its way to have a meal, this group was beaten on their way inside, the people were beaten while they were eating for as long as another group would come to have a meal, as well as that, on their way back when they returned to the rooms, they were forced to kneel and put their hands between their legs, on which occasion they were beaten again. With regard to this event, Witness K041 was explicit in his claims that this group of detainees were beaten by the guards, whom the detainees did not know during the first few days that they spent



Camp, however, bearing in mind the fact that this witness was detained in the Camp ever since it was formed until the beginning of August 1992, it is quite certain that during the period he spent in the Camp, over time he was able to recognize the faces of the persons who were guards in the Camp and those who were not.

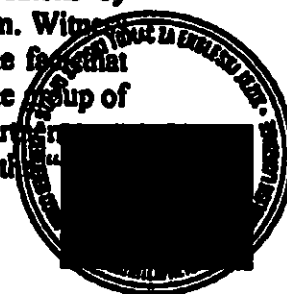
Witness K042 gave a detailed account of his beating, which, according to the allegations in the Indictment, took place on 4 June 1992 when he was beaten by the guards in the Camp, specifically by whips with balls attached at their ends. The Court has found the above-mentioned event established, since the witness, while describing the details of the beating, provided sufficient data about these circumstances, which the Defense did not bring in question with anything serious. According to the statement of Witness K042, he linked the above-mentioned date to an important event in his life, so that he was absolutely sure that his beating took place precisely on 4 June 1992. The witness noted that on the critical occasion he was taken outside by the guard with the surname Predojević, placed against a wall and ordered to walk up the stairs, on which occasion the guard Paspalj and several more guards were present there along with Predojević. As Witness K042 said, he was ordered to put three fingers on the wall, after which they started beating him, namely with thick cables and a whip with metal balls attached on the top, and this beating lasted for some 20 minutes, after which the guard Predojević said: "Throw the brute outside, so that he would not croak here." Since, based on the statements of witnesses who mentioned that the whip with a metal ball attached at the top was used, the Court has determined that such a whip was regularly used for beating the detainees and not a whip with a leather ball, therefore a correction was made with regard to the devices with which the beating was carried out in terms of the allegations in the Indictment. As for the injuries which Witness K042 received on the critical occasion, the witness said that both sides of his rib cage and his clavicles were broken, that he was not able to move because of the pain and he stressed that he never received any medical assistance and that nobody from the Camp staff ever tried to help him. The statement of Witness K042 was partly corroborated by the statement of witness Fadil Avdagić, who personally knew K042 and who saw the results of his beating. From the statement of witness Fadil Avdagić it stems that he saw that the named person was roll-called and that he was brought back beaten after some time. According to the description of this witness, K042 was brought inside because he could not stand due to the injuries, he was all black and blue from top to toe, with bruises all over his body and he could not talk. The only difference in the contents of the statements of these witnesses is the time K042 was roll-called, since Witness K042 noted that the roll-call took place at 10 a.m., whereas according to the statement of witness Fadil Avdagić he was roll-called at around 2 or 3 a.m. However, bearing in mind the time distance, as well as the weakened ability to remember details, the Court did not find the above-mentioned difference in the statements to be significant, particularly bearing in mind the consistency of the witnesses' statements with regard to the decisive fact of the roll-call, that is, the physical state K042 was in after he returned to the room.

The events that refer to the beating of Emir Beganović were listed in the Indictment in a chronological order one by one with a note that each event took place several days after the previously described one. However, on the occasion of the hearing of witness Emir Beganović during the main trial, when asked by the Prosecutor he precisely presented his position on the sequence of each beating, which was entirely consistent with the statements of other witnesses who were heard about the above-mentioned circumstances.

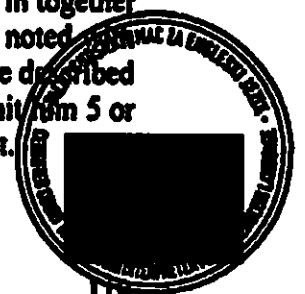


in terms of the time and circumstances in which each referenced event took place. According to the statement of witness Emir Beganović, he was beaten three times, as it was noted in the factual part of the Indictment. He was beaten for the first time when a group of visitors came, including a person called "Dragan", Nikica Janjić, Šaponja, Zoran Žigić and Duško Knežević a.k.a. Duća, on which occasion the following witnesses were also roll-called together with this witness: K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić. Many witnesses gave their statements about the circumstances of the referenced beating, including those who saw the arrival of the above-mentioned group of visitors to the Camp and the taking away of these detainees to the "white house" and the return of the beaten detainees and the persons who beat them from the "white house", as well as the witnesses who were in the "white house" and who personally saw, that is, heard the beating itself. All the witnesses who observed the referenced event, from the angle that depended on the part of the Camp in which they were located, linked it with the beating of the above-mentioned four detainees by a group of unknown persons, whom the witnesses claim did not have any real function in the Camp and were just visitors. According to the witnesses' statement, those persons were Nikica Janjić, a person called "Dragan", "Šaponja", Duško Knežević and Zoran Žigić. According to the statement of Witness K027, the event took place two or three days after his arrival at the Camp, which is close to the time that is noted in the Indictment, bearing in mind the fact that this witness was brought to the Omarska Camp on 9 June 1992, while the event took place on or around 10 June 1992. Witness K027, who had a clear view over the pista, the "white house" and the hangar building from the place where he was located, stated that he saw Zoran Žigić, who he claims was not part of the Camp structure, drove to the Camp with some other people in the car, that he howled, shouted and yelled while he was looking for certain people including Emir Beganović and Asaf Kapetanović. Witness K03, who also knew Asaf Kapetanović, Rezak Hukanović, Emir Beganović and K036, saw when the named persons were taken towards the "white house" and this witness also confirmed the connection between the arrival of Žigić, Duća, Šaponja and others at the Camp and the beating of the above-mentioned persons. In addition, according to the statement of witness Azedin Oklopić, who saw those four detainees when they were taken towards the "white house", the beating of the above-mentioned detainees was also connected with the arrival of Žigić, Duća and Janjić at the Camp. The statement of witness Asmir Baltić is also consistent in terms of the decisive facts of the circumstances of the referenced event. This witness said that the beating took place in the middle of their stay on the pista, which is consistent with the time noted in the Indictment, namely the period between 10 and 13 June 1992. Just like all the other heard witnesses, witness Asmir Baltić also stated that Žigić and "those four persons" arrived at around 11 o'clock and took Rezak, K036, Began and Asaf towards the "white house".

In his statement, witness Emir Beganović stated that Nikica Janjić and "Dragan" came to the Camp on the critical occasion at the time when he was in the restaurant. Furthermore, from the statement of Emir Beganović it stems that he was ordered to move towards the "white house", on which occasion he was hit with batons by "Dragan". While crossing the pista he saw Rezak, Asaf and K036 behind him. Witness K036 entirely confirmed the statement of witness Emir Beganović about the fact that Asaf Kapetanović, Rezak Hukanović, Emir Beganović and himself were in the group of the detainees who were singled out and taken towards the "white house". Furthermore, witnesses Emir Beganović and K036 described the events that took place in the

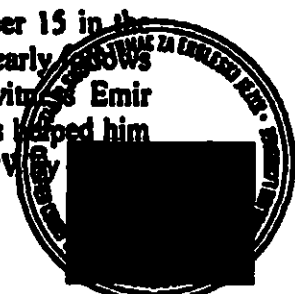


house". According to the statement of witness Emir Beganović, after he entered the "white house" he was "thrown inside" the second room on the right side, while the rest of the detainees were thrown inside the second room on the left side, after which Nikica and Dragan entered the room in which he was. Witness Beganović further on noted that they immediately started beating him, namely Dragan with a baton, while Nikica was kicking him, with his boots on. While he was describing the way he was beaten, witness Emir Beganović stated: "It went on for a long time. Dragan forced me to lie on my stomach. I offered physical resistance, screamed, they were beating me...", stressing that in some cases they broke the spines of the detainees. The witness said that during the time he was beaten he heard screams and moans of K036, Asaf and Rezak, but that he did not pay much attention to that, since he expected that Nikica would slit his throat. As he noted, during the questioning Šaponja, Žigić and a third person, whose name he heard was Duško Knežević, entered once or twice, on which occasion Šaponja would kick him. In his statement, Witness K036 stated that after Žigić roll-called him and took him to the "white house" together with Began, Asaf and Rezak, Žigić started beating him in the room on the left side, but that in the "white house" they would be beaten by anyone who would come by, stressing that on this occasion he saw Šaponja, Duća and Nikica. The witness stressed that, besides Žigić, the three above-mentioned persons also beat them, that everybody was there, the victims and the perpetrators and that the detainees were kicked and punched. Based on the consistent statements of these two witnesses it stems that all the persons who were on the critical occasion brought to the "white house" were beaten by Žigić, Duća, Šaponja, Nikica Janjić and Dragan, depending on who entered the rooms and who got to beat them. The Court has also found as established the event included in the Indictment, described in the statement of witness Emir Beganović, whom Nikica Janjić stabbed in the arm. Regarding this incident, Witness Emir Beganović stated that Nikica took a big knife and stabbed him in his arm, he plunged the knife through his arm and pulled the knife out, after which the witness saw that his wrist was broken and that he was covered with blood. These claims of witness Emir Beganović were also confirmed by witness Abdulah Brkić. Although it is true that other witnesses did not mention him in the context of the events that took place in the "white house", this witness provided detailed information about the beating of the above-mentioned group of detainees and himself, so that the Court was completely convinced that he was also present in the "white house" on the critical occasion and that he too was beaten up. The fact that witnesses Emir Beganović and K036 did not mention this witness as a person who was beaten in the "white house" on the critical occasion is justified by the situation in the area of the "white house" at that moment, when everybody was beaten by everybody, so that it was logical that a person in fear of his life due to the things that were happening to him at that point would not be able to notice other detainees who were present there and who exactly was beaten. According to the statement of witness Abdulah Brkić, Žigić threw him inside a room, where he saw how Janjić was beating Beganović and he heard noises from the corridor and he saw K036, who was severely beaten by "Duća's" group. The witness clearly saw when Janjić made a cut, that is, stabbed Beganović's arm, namely his hand. In the view of the beating which witness Abdulah Brkić suffered himself, he noted that he recognized the person who beat him, that it was Duško Knežević, who came in together with Žigić, Šapina (meaning Šaponja) and Timarac. Witness Abdulah Brkić noted with certainty that Knežević was the first man he saw when the door opened and he described him as carrying a baton with a metal ball attached at the top, with which he hit him 5 or 6 times over his head, as well as that he punched and kicked him with his boot.



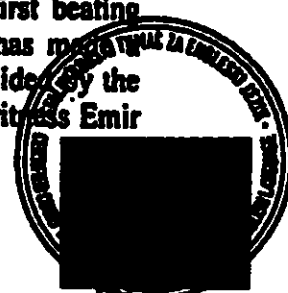
The events which occurred in the aftermath of the beating of Emir Beganović, Rezak Hukanović, K036 and Asaf Kapetanović, as well as the physical state in which these persons were after they left the "white house", were described by the witnesses who saw when the above-mentioned group was taken out of the "white house", as well as by witnesses Emir Beganović and K036. First of all, witness Emir Beganović stated that after the beating everybody went out in front of the "white house" and that Žigić ordered them to drink water like dogs, after which they started drinking water. This witness stated: "Šaponja, Žigić and Duća were together with K036, Asaf and Rezak. When Žigić ordered me to drink water Dragan and Nikica were around, as well as Duća, we were all there. They were standing, we were 'drinking' (referring to water from a pool of rain water)". According to the statement of Witness K036, who said that he was beaten all over his body, the results of his beating were broken teeth and he was all covered with blood, whereby after he got out of the "white house" he washed the blood off his face in a pool of rain water together with Began, Hukanović and Asaf. Witness Azedin Oklopić described the situation in which the above-mentioned detainees got out of the "white house", noting that he saw Asaf Kapetanović, Rezak Hukanović, Emir Beganović and K036 coming, while Žigić, Duća and Janjić followed them and that, as soon as they reached the pista, these four detainees lied down in a pool, as well as that they were all covered with blood and beaten and that they washed their faces with the rain water from the pool. The statement of witness Azedin Oklopić was also confirmed by Witness K03, who said that he saw that Rezak Hukanović, K036, Asaf and Emir were beaten and that these detainees washed themselves in a pool of rain water, while Žigić and Duća were standing beside them. Witness Asmir Baltić also testified about the consequences of the beating of these four detainees, and said that they were beaten, but still alive, whereby while they were bringing them back, the witness heard someone say "There, he is riding either K036 or Rezak." According to the statement of Witness K027, the detainees who were beaten on the critical occasion were unable to go to have a meal, so that food was brought to them, since they were so beaten that they were unable to walk and only several days after that when they showed up they had visible injuries, they were all black and blue, their heads were swollen and covered with traces of caked blood and they were all mutilated. The fact that Emir Beganović also received head injuries, along with the injuries caused by stabbing with a knife and other injuries all over his body, is also corroborated by the fact that during the second beating he had a piece of cloth tied around his head to protect the injuries sustained, whereby witness Abdullah Brkić stated, while he was describing Beganović after the beating, that he was black and blue all over and covered with blood. In accordance with the substantive results of the witness's statement, the Court has made a correction with regard to the factual part of the Indictment in the manner that the beating of Slavko Ećimović was omitted, since it was included in the part of the Verdict that refers to the killings in the Omarska Camp.

The second beating of Emir Beganović by the visitors to the Camp, including the visitor "Dragan", as this witness noted, took place a couple of days after the above described beating, at the time when the witness was already placed in room number 15 in the hangar building. Considering the time fixed in this way by the witness, it clearly shows that the next beating took place in mid June 1992. In his statement witness Emir Beganović noted that he was roll-called, on which occasion other detainees helped him get up and when he reached the door he saw Dragan again and he told him "Vidjela sam te."



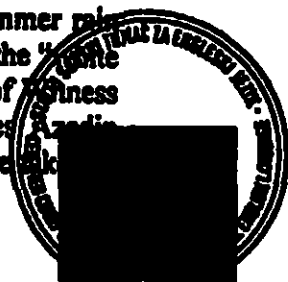
need that, you are not a *hodža*," since the witness bandaged himself with a piece of cloth the injuries he had sustained on his head during the beating in the "white house" and, after that, the witness was taken to the workshop in which there were 5 or 6 uniformed persons. From the statement of witness Emir Beganović it stems that the beating followed, due to which he fell, they started kicking him and one of the perpetrators grabbed his legs and pulled him along for a couple of meters, after which they put his legs in a wire cable and hanged him and when the witness fell down, Dragan told him "Get up, you are going upstairs." After he returned to room number 15, the witness fainted. Certain corrections, which were noted in the operative part of the Verdict, were made in terms of this event too, regarding the factual part of the Indictment, whereby the Court was mindful of both the subjective and the objective identities of the Indictment.

Witness Emir Beganović also described in detail the third time he was beaten, which, according to his statement, took place in mid June 1992, namely a couple of days after the second time that he was beaten, and it was carried out again in the "white house" by Nikica Janjić, who passed by the place on the grassy area near the "white house" where the witness was located. From the statement of witness Beganović it stems that Nikica Janjić approached him and told him to go inside the "white house", after which the witness turned to Čkalja and asked him to prevent his being taken to the "white house" and then Čkalja, who according to the assessment of the Court could certainly see Beganović's injuries from the previous beatings since they were visible, told him "Get inside, he will not hurt you," whereas the beating started the moment he entered the house. In his statement witness Emir Beganović stated that it was guard Čkalja, however based on other circumstances about this person, the Court has concluded that it was one of the shift commanders in the Omarska Camp, Momčilo Gruban a.k.a. Čkalja. Momčilo Gruban was the only person in the security of the Omarska Camp with the nickname Čkalja, while the very fact that Beganović turned to him to ask for protection suggests that Čkalja had certain influence and a position compared to other guards, since it is quite certain that he was not the only member of the guard staff who happened to be nearby at that moment. During the further course of the events that followed the entrance of the witness and Nikica Janjić into the "white house", the witness said that Nikica immediately started beating him by pulling out his *Colt* pistol and started hitting him with it over his head, so that he fell. The blows were so severe that the witness was screaming and moaning and he could be heard all over the Camp area. While he was describing the injuries he sustained during the third time he was beaten, the witness said that his whole head was all holed out and that it was swollen as a ball and that the blood on his head started clotting. In his attempts to describe the number of blows he received on that occasion, as well as during the previous two beatings, the witness stated that his entire body was in pain and that he was all black and blue due to the beating as if he was a black man. During the cross-examination the Defense pointed out the statement of witnesses given in the Kvočka and Tadić cases with regard to the sequence and the time of each beating, however the witness was explicit in his claims that the beatings took place in the manner and at the time described in his statement before this Court, which was accepted in its entirety, since this witness's statement was consistent in the decisive facts with the statements of other witnesses, especially in terms of the first beating which was noticed by a large number of persons. Therefore, the Court has made a correction with regard to the factual description in the Indictment, being guided by the substantial results which stem from the description of the event given by witness Emir Beganović.



The two beatings of Witness K022, which were described in the operative part of the Verdict, are closely connected with the beating of Bećir Medunjanin to death, which took place in the building of the "white house". Considering the fact that the above-mentioned beatings took place shortly after the apprehension of Bećir Medunjanin and K022, the Court has determined in a reliable way that it took place in mid June 1992, which stems from the statement of Witness K022, as well as from the statements of witnesses who were in the "white house" during the critical period and who eye-witnessed the events. Just like in the case of the previous event, the Court has made certain corrections with regard to the description given in the Indictment, as it was noted in the operative part of the Verdict, as a result of the contents of the statements of witnesses who were heard about the referenced circumstances. This primarily refers to the number of beatings of K022 by Duško Knežević and Zoran Žigić in the Camp. Namely, the witness stated that he saw the named persons on two separate days in the Omarska, the first time when they beat the detainees who were held in the "white house", including himself and Bećir Medunjanin, on which occasion Amir Cerić and Avdić were killed, and the second time when Bećir Medunjanin was so beaten that he passed away. In the factual description of the Verdict the Court also omitted the death of Bećir Medunjanin due to the beating, since it was included in the part of the Verdict that refers to the killings. In the view of the beating of K022, the Court has based the conclusion that the referenced event did take place primarily on the statement of Witness K022, who provided a detailed chronological description of the events, starting from the point when he was brought to the Omarska Camp, including the events in the "white house". Witness K022 said that on the same day following the second interrogation he was beaten up in the "white house." According to the statement of Witness K022, a group of four soldiers who were wearing camouflage uniforms arrived in the afternoon and they were looking for Bećir Medunjanin, on whom they had a down. From the four above-mentioned persons the witness remembered two, namely Duško Knežević, whom he saw in the military barrack in Prijedor after his apprehension, and Zoran Žigić. While he was describing the beating by Duško Knežević and Zoran Žigić, the witness stated that they beat him using different objects, including chairs, police batons and short batons with springs and a metal ball attached at the top, whereby in terms of the manner the beating was carried out the witness noted: "He knocked me down on my back, sat on my stomach, took a police baton and started hitting me from one ear towards the other, so that he would not miss any millimeter of the tissue," referring to Duško Knežević. With regard to this, the Court has made a correction in the factual part of the Indictment, as it was noted in the operative part of the Verdict, and omitted the allegations from the Indictment that the beatings were carried out with a wooden baton. In the view of the identity of Duško Knežević, Witness K022 stated that after the first beating he was interested to know who it was, so he learned all the data about Knežević from a person called Samir a.k.a. "Ešefin", and these data were also confirmed by other detainees who knew the accused Knežević.

As it stems from the statement of Witness K022, he was beaten for the second time shortly after the first beating. The witness connected that event with the summer rain shower and the point when some detainees were transferred from the pista to the "white house", on which occasion Bećir Medunjanin died of beating. The statement of Witness K022 is in this part completely consistent with the statements of witnesses Azedin Oklopić and Fadil Avdagić, who belonged to the group of detainees who were taken





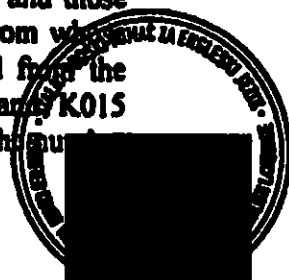
the "white house" because of the summer rain shower. While he was describing the second beating by Duško Knežević and Zoran Žigić, Witness K022 noted that "those two got in," that Duća beat Bećir Medunjanin, while Zoran Žigić was beating the others, whoever was at his hand, but he beat the witness himself the most. With regard to the injury he sustained, the witness noted that on the critical occasion his nose was shifted to the other side and that even today he can turn it by 180 degrees, that at one point he fainted and that, when he regained consciousness, he was located on a small meadow in front of the "white house". As far as the injuries the witness sustained on the critical occasion are concerned, the Court has made a correction in the factual part of the Indictment with regard to this part too, in accordance with the contents of this witness's statement. The statement of Witness K022 that on the above-mentioned occasion Duća Knežević and Zoran Žigić, together with two other visitors, came to the "white house" and beat the detainees, is also corroborated by the statements of witnesses Fadil Avdagić and Azedin Oklopčić, who also mentioned Knežević and Žigić, while witness Azedin Oklopčić also mentioned Željko Timarac, along with those two. From the statement of witness Fadil Avdagić it stems that, after he entered the "white house" he saw Bećir Medunjanin and K022, describing that they were in a horrible state and all beaten up, and that K022 was unable to sit up. According to this witness, the last time he saw them they were in the "white house" and they both looked terrible. The Court has looked into the event regarding the beating of K022 in the context of the statements of witnesses who described the beating of the group of detainees including Emir Beganović, Rezak Hukanović, Asaf Kapetanović, K036 and Abdulah Brkić, since it is obvious that the above-mentioned beatings took place at the same time, when a certain number of persons were killed in the "white house". All the above-mentioned witnesses gave consistent statements about this, namely that the beating was carried out by a group of visitors, including Dušan Knežević and Zoran Žigić, who were clearly carrying out the referenced beating together, on which occasions they agreed on the role each of them would have with regard to "who would beat whom." When he mentioned the second time he was beaten, Witness K022 stated that other detainees were also beaten on this occasion, which was also confirmed by witness Fadil Avdagić, who was beaten himself on the critical occasion. With regard to this beating, witness Fadil Avdagić noted that Duća, Žigić and another two uniformed persons beat Dalija Hrnčić and another younger man (meaning the young man who was wearing boots, a t-shirt and military trousers), upon whom they particularly pounced, whereby when they stopped beating that young man, they started beating everybody with batons, on which occasion he himself was hit by Duća several times, as a result of which, as he stated, his head and his jaw were broken. Having analyzed the above-mentioned statements of the witnesses, the Court has found this criminal action completely determined, however minor corrections were made with regard to the objects that were used for the beating and the injuries the detainees sustained on this occasion.

The event that refers to the beating of Muhamed Čehajić, according to the Indictment, took place on or around 23 June 1992, when at least one guard in the Camp beat the named person on two occasions, as a result of which he had bruises all over his body. However, during the evidentiary proceedings, based on the evidence presented the Court did not determine in a reliable way that Muhamed Čehajić was severely beaten on two occasions, nor was it determined in what kind of injuries his beating resulted. From the statements of the witnesses who were heard about the above-mentioned circumstances it stems that Muhamed Čehajić, who held the post of the mayor of the



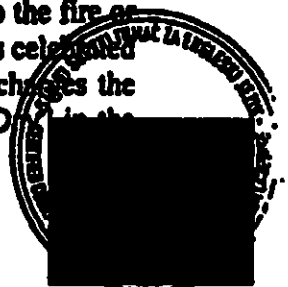
Municipality after the first multi-party elections, was a subject of different kinds of humiliations and maltreatment, but the contents of the witnesses' statements suggest that he was beaten only once by at least one guard in the Camp. Witnesses Nusret Sivic, K021 and K041 were heard about the referenced circumstances. Witness K041 described the situation when Čehajić, who was held together with him in the room called the "garage", was forced to take out and wash the bucket in which the detainees relieved themselves, whereby on one occasion he was even ordered to drink water from that bucket, which eventually did not happen. The statement of this witness about the different kinds of humiliating Muhamed Čehajić was also confirmed by witness K021, who saw him in the Omarska Camp and who noted that Čehajić was routinely transferred from one room to another, so that he would be humiliated in different ways and tortured, which was also confirmed by witness Nusret Sivic, who stated: "The guards were very severe towards Čehajić, I had an impression that it was their task to humiliate him." With regard to the roll-call of Muhamed Čehajić by the guards, witnesses Nusret Sivic and K041 gave consistent statements. According to the statement of witness Nusret Sivic, who was apprehended to the Omarska Camp for the second time on 20 June 1992, he found Muhamed Čehajić in the room called the garage and, as he noticed, he was pale and with visible traces of torture. As this witness noted, on one occasion a group of guards showed up at the door and they started provoking the named person, whereby one of them, to whom they referred to as "Žuti", ordered the detainees to sing nationalistic songs. Furthermore, from the statement of witness Nusret Sivic it stems that the guard "Žuti" took Muhamed Čehajić outside, after which screams, moans and beating could be heard, which lead the Court to the conclusion that Muhamed Čehajić was beaten up on this occasion. Witness Nusret Sivic noted that Čehajić then entered the room and said: "Men, they ask me to give him 100 marks, they will kill me if I do not," as well as that he got the money from Ago Sadiković and Osman Mahmuljin. With regard to the described event, the statement of witness Nusret Sivic was corroborated by the statement of Witness K041, who noted that Čehajić was roll-called from the "garage" and that after he returned he was all pale with ruffled hair, which also suggests that Čehajić was beaten in front of the room, although this witness said that from the garage he could not hear what was going on outside. According to the statements of witnesses K041 too, Muhamed Čehajić told the other detainees that they asked him for money and threatened to kill him. As far as the time when the referenced event took place is concerned, the Court determined that it happened during the period that was noted in the factual description of the Indictment, that is, on or around 23 June 1992. Namely, from Nusret Sivic's statement it stems that he was brought to the Omarska Camp on 20 June 1992 and that he was put in the "garage" on the same day, so that it is quite certain that Muhamed Čehajić was not beaten before that date, but directly after Nusret Sivic arrived at the room called the "garage", as the witness himself stated.

Based on the evidence presented during the main trial, the Court has undoubtedly determined that around 120 detainees were transferred from the Keraterm Camp to the Omarska Camp on 4 July 1992. Four witnesses who were on the above-mentioned occasion brought to Omarska from Keraterm were heard before this Court, and those were the following witnesses: Ante Tomić, Izet Đešević, K09 and K015, from whose statements it stems that a group of around 120 detainees were transferred from the Keraterm Camp to the Omarska Camp. Witnesses Ante Tomić, K09 and K015 consistently stated that it took place on 4 July 1992, whereas with regard to the number

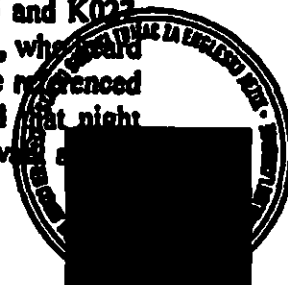


of detainees the Court has accepted the approximate number is 120 detainees, also bearing in mind the statements of the above-mentioned witnesses about that fact. Namely, witness Anto Tomić noted in his statement that 115 detainees were on the list, but he allowed the possibility that there could have been up to 120 people, witness Izet Đešević mentioned over 150 people, witness K09 noted that between 100 and 105 people were transferred, while Witness K015 mentioned between 110 and 120 people, which approximately represents the number of 120 detainees. Based on the contents of the statements of the above-mentioned witnesses the Court was not able to determine in a reliable manner that all the detainees who were on the critical occasion transferred from the Keraterm Camp to the Omarska Camp were beaten up, as it was noted in the factual part of the Indictment. Considering the fact that witnesses Anto Tomić and K09 did not mention at all that they were beaten upon their arrival at the Omarska Camp, a correction was made in the manner that it was noted that some of the above-mentioned approximate number of the detainees who arrived were beaten up. Witness K015 who arrived at the Omarska Camp by a bus on the critical occasion described in detail the events that followed his getting off the bus, noting that the detainees were brought there at around noon or in the afternoon, that they were ordered to lean against a wall with three fingers raised in the air, that they kicked them and asked them for money and wrist-watches and that they wrote down their names and then directed them towards the garage. Although he did not say anything about him being beaten upon the arrival, witness Anto Tomić also noted that a list of names was made and that the newly-arrived detainees had to stand by the wall and put their hands up with 3 fingers raised in the air. Witness Izet Đešević also confirmed the statement of Witness K015 about the beating of the newly-arrived detainees. In his statement he noted that two buses arrived full of detainees, that the buses stopped in front of the hangar building, namely the "garage", and that, when the detainees from the first bus got out, they were told to squat down and go to the wall, turn their heads towards the wall and put their hands up with three fingers raised in the air. Furthermore, witness Izet Đešević, who observed the referenced event from the bus, stated that a group of around 15 people came by, including Milorad Tadić Brko, whom the witness knew well from before, and that they started beating the detainees, stressing that this was done by the guards wearing camouflage and police uniforms, the persons who were already in the Camp, that they beat the detainees with batons, kicked and punched them and that the beating went on for approximately 10 minutes. This witness did not mention that his group was beaten, only the group of detainees from the first bus, which leads to the conclusion that not all the detainees who were brought to the Omarska Camp on the critical occasion were beaten up. With regard to this event, the Court has made a correction in terms of the factual part of the Indictment, as it was noted in the operative part of the Verdict, in the manner that it omitted sticks as objects with which the beating was carried out, since none of the witnesses mentioned sticks, whereby witness Izet Đešević noted that the beating was, among others, carried out with batons.

In the factual description of the Indictment it was noted that either before the holiday called "St Peter's Day" or in the night of that holiday the guards in the Camp severely beat detainees using sticks, batons and knives, while they forced them to walk around fire, and that they forced a former football player known as Durat to get into the fire or smoldering cinders. The orthodox religious holiday called "St Peter's Day" is celebrated on 12 July, when fires are built. With regard to the date, the Prosecution charges the accused persons with the event that took place in the night of "St Peter's Day" in the



above-described manner. With regard to these circumstances, many Prosecution witnesses were heard and based on their statements it was determined beyond any reasonable doubt that on the critical night that took place in mid July 1992, that is on 12 July when "St Peter's Day" holiday is celebrated, the guards built an open-air fire in the Camp-yard, which was followed by the beating of detainees, forcing them to walk around the fire. Some of them were even forced to step into the fire, and the smoldering cinders. Witnesses K041, Ermin Striković, K015, K035, Saud Bešić and K027, who gave their statements about the events that took place in the night of "St Peter's Day", consistently stated that a fire was built during that night. According to the statements of Witness K041, tires were set on fire, whereas witness Ermin Striković, who was held in room number 15 above the hangar, noted that he wanted to know about the setting of car tires on fire in front of the "white house", the noises, shooting, moans and screams, so that he observed the referenced event through a small window and he saw people running around the fire and they were beaten and pushed towards the fire. Consistent with the statement of witness Ermin Striković that the detainees were forced to run around the fire that night and that they were beaten and pushed into the fire, is also the statement of Witness K035, who stated that tires were set on fire that night in front of the "white house" and that this caused smoke and suffocation, as well as that from one room he saw when the flame shed light on a man's body, that is, legs in a tire, which is also partly confirmed by Witness K015 who did not observe the referenced event, but he heard terrible cries and felt the smell of burning and he saw the light of a fire. Since some of the detainees from the room in which K015 was held were looking outside to see what was going on, the witness heard from the detainees that people were pushed into the fire, whereby he concluded it himself based on the cries that were coming from the outside, stressing that the cries could be heard for a long time. In his statement which is consistent with the statements of the previous witnesses, witness Saud Bešić also noted that, on the critical occasion, the room in which he was held was flooded with light, because a fire was built in front of the window, whereby the witness was easily able to notice this since he was held in the "white house" in front of which the fire was built. The witness also noted that he heard moans of the people who were beaten outside and that the moans went on for an hour or an hour and a half, which is consistent with the statements of other witnesses, who estimated that the referenced event lasted for a long period of time. Witness K027 confirmed the statements of all previous witnesses, noting that he saw the guards set tires on fire on "St Peter's Day", that he personally saw the fire and that a terrible shooting took place. In addition, from the statement of witness Sakib Jakupović it stems that he remembered the night of "St Peter's Day" as a bad one, since, as he noted, he heard terrible cries and screams, he saw the killing, and also confirmed the claims from his previous statement given in 2000, which states that during the night cries and singing could be heard, a huge fire was built in front of the "white house", there was black smoke and tires were burnt. Therefore, on the critical occasion all the above-mentioned witnesses, who were held in different rooms in the Omarska Camp, saw and some of them heard that the guards built a fire by burning tires, on which occasion they beat detainees and made them run around the fire, which was noted by witness Ermin Striković and that some of the detainees were pushed into the fire, as stems from the statements of witnesses Ermin Striković, K035 and K027 who eye-witnessed the event, as well as from the statement of Witness K015, who heard what was going on by himself and also from the persons who observed the referenced event through a window. The cries and moans which the witnesses heard that night confirm their claims that the detainees were severely beaten and forced to walk



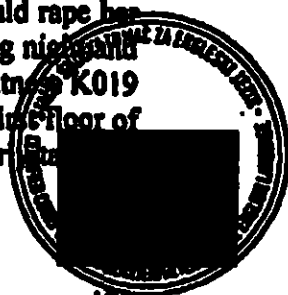
the fire. Since, based on the contents of the statements given by the above-mentioned witnesses, the Court was unable to determine with certainty with which objects the guards beat the detainees on that night, a correction was made with regard to the factual part of the Indictment, as it was noted in the operative part of the Verdict, that is, it was omitted that sticks, batons and knives were used, which basically does not change the essence of the relevant circumstances regarding the referenced event. While he was describing the morning after the night of "St Peter's Day", Witness K015 stated that he saw the remains of burnt tires as a result of the events that took place the night before, Witness K041 stated that on the following days he saw detainees Mujo and Burho taking a young man, who was wearing a t-shirt with the inscription FK "Rudar" and who was all black from the soot, to wash him. During the cross-examination, this witness noted that the young man who was led by Mujo and Burho washed himself from the tap in front of *Mujina soba*, while he was some 10 meters away from the above-mentioned spot, so that, according to the assessment of the Court, the witness was able to notice the young man's appearance from the referenced distance, as any average person. The statement of Witness K041 was also corroborated by witness Asmir Baltić, who was present when the young man was taken away and he identified him as goalkeeper Durat Duratović. According to the statement of witness Asmir Baltić, he saw when Durat came in all black and beaten, after which they washed him up while he was crying. The statement of this witness given during the cross-examination about the fact that Durat was all stained with oil or the dirt from the tires suggests that the witness indirectly connected Durat Duratović's appearance with the dirt from tires and this, in the context of all other pieces of evidence presented, leads to the conclusion that Durat was all black because of the burnt tires which the guards set on fire for "St Peter's Day" holiday.

According to the allegations in the Indictment, Mustafa Puškar was beaten on or around 17 or 18 July 1992, when this detainee was, as noted in the Indictment, severely beaten by the guards in the Camp with an iron bar. With regard to this beating, the Court has undoubtedly determined that it did take place, however certain corrections were made in accordance with the contents of the statement of Mustafa Puškar, who was heard about the referenced circumstances. Namely, in his statement Mustafa Puškar noted that on one occasion on around 20 July 1992, which is consistent with the approximate time stated in the Indictment, he was beaten by the Camp guards while he was in the toilet. Witness Puškar stressed that a guard with the nickname "Žužo" and another guard got inside the toilet, that he fell and the guards started beating him with a threaded clamp bar, that the blow was strong and by the time he was knocked down for the second time he fainted, that is, he was half-conscious, after which he was again hit in his stomach. The Court did not find it determined that on the critical occasions the guards dragged Mustafa Puškar, therefore a correction was made with regard to the factual part of the Indictment, which was noted in the operational part of the Verdict. The fact that the named person was severely beaten stems from the fact that he was beaten with an object, that is, with some kind of an iron bar, due to which he fainted. It is true that only witness Mustafa Puškar, who was beaten on the critical occasion, was heard with regard to this event, however considering the fact that the beating took place in the toilet, where it was not likely that other detainees were present, it is realistic to expect that only the injured party could testify about these circumstances.



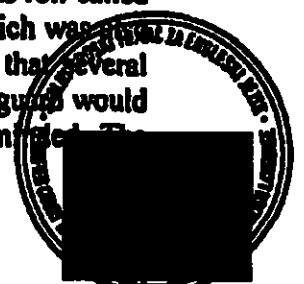
With regard to the circumstances of the beating of K017, who was, according to the Indictment, beaten on or around 20 July 1992 by one of the Camp guards with a police baton, the Court has also determined beyond any reasonable doubt that this event did take place. However, just like in the previous cases, a correction was made with regard to the factual part of the Indictment, in accordance with the statement of a witness who testified about the referenced circumstances, as noted in the operative part of the Verdict, on which occasion the subjective and objective identity of the filed Indictment was taken into consideration, so that the parts of the Indictment in which it was noted that the named person was punched and kicked were omitted, as well as that he subsequently fell into a coma, which was substituted with the words "he lost consciousness." In his statement Witness K017 noted that he was beaten in the toilet, where a guard beat him with a police baton, and that he grabbed his hair, put his head into a basin and beat him from behind his back over his head and his neck, his right ear and the right side of his back, that is, over the kidney region. According to the statement of Witness K017, while he was protecting his head, the guard beat him over his back, with a police baton to be specific, and after he broke away from him and started running away, the guard hit him twice from behind his back, due to which he fell and then he got up again, after which he fled. As Witness K017 noted, he felt very bad after he returned to the room in which he was held, since he was already exhausted because of dysentery from which he suffered during that period, and another detainee told him that he was lying down during the following two days in some kind of a coma, or more precisely that he was drifting in and out of consciousness. The Court has entirely accepted these claims of Witness K017, regardless of the fact that no other evidence was presented about the referenced circumstances, except for the hearing of the injured party himself, since this witness's statement given about the circumstances of the killing and beating of other detainees was assessed as reliable and credible, whereby the very fact that K017 was beaten with a police baton over his head led to the logical conclusion that he quite certainly lost consciousness due to the blows. As far as the date of the above-mentioned beating is concerned, the Court has determined that it took place approximately around the date noted in the Indictment, since the witness, who was considerably resolute with regard to other events in terms of time and dates, stated that this beating took place between 15 and 20 July 1992.

During the evidentiary proceedings, the Court determined in an undisputable way that during the relevant time period in the Omarska Camp rape and other forms of sexual abuse were committed against the detainees in the Camp by the persons over whom the accused Željko Mejačić had effective control, which were committed, just like the above-mentioned killings and beatings, in the furtherance of the Camp system of abuse and persecution in which he himself participated. With regard to Witness K019 it was determined beyond any reasonable doubt that she was sexually abused by the guards in the Camp on several occasions. The Court based this conclusion primarily on the statement of Witness K019 herself, in connection with the contents of the statements of other detainees who were heard about the referenced circumstances. It stems from the statement of Witness K019 that she was apprehended on 14 July 1992. After she was brought to the Omarska Camp a guard would often take her out and he would rape her every time, and she noted that it took place approximately seven times during night and two times during daytime. While she was describing her being taken out, Witness K019 noted that she would be taken to the room at the end of the corridor on the first floor of the administration building and that, along with the guard who would regularly



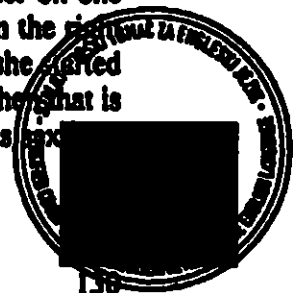
out, other men would come too, according to her estimation two or three or more of them, who would, as she stated: "come in one by one, do their thing and leave." Witness K019 stated that the period of the day in which she would be roll-called was during night, more precisely after midnight, which was also confirmed by witnesses K040 and Zlata Cikota, who consistently stated that K019 was routinely roll-called during the night. According to the statement of witness Zlata Cikota, she was roll-called often. With regard to the multiple rapes which were committed by several guards during the night, Witness K019 could not precisely say who were the guards, since it was dark and she could not recognize anyone, except for the guard who used to come to get her regularly. The same guard, as the witness noted, raped her twice during the daytime, on which occasions he was alone, in the manner that he would come to the restaurant to get her and take her to the room that was located on the ground floor. During the evidentiary proceedings, the Defense, during the cross-examination, pointed out to the witness her earlier statement in which she did not mention rape. In terms of the differences between the statements, the witness gave an explanation noting that she was afraid at that time, that she was in a shock due to the traumas she went through, as a result of which she omitted the rape. The Court accepted these arguments, bearing in mind the fact that the referenced statement was given in May 1993, meaning less than a year after the critical events, at which point the witness was quite possibly still in a state of shock and in fear of everything she went through in the Omarska Camp. Along with this, the Court bore in mind the above-mentioned statements of witnesses Zlata Cikota and K040 about the fact that K019 was regularly taken out and raped, namely by the guard called "Lugar", which suggests that she was raped by the guards in the Camp on several occasions. With regard to the identity of the persons who regularly sexually abused witness K019, the Court could not determine beyond any reasonable doubt that this was committed by the guards Pavlić and Lugar, as noted in the indictment, considering the fact that insufficient reliable evidence was presented to suggest such a conclusion. Namely, witness Zlata Cikota, who was held in the same room as Witness K019, stated that the named person was regularly taken outside by the guard "Lugar", whereas, while testifying about the taking out of Witness K019, Witness K040, who was held in the room next to that, noted that "Lugar" did not roll-called women from her room, which leads to the conclusion that "Lugar" roll-called women from another room. The very statement of K040 about how a woman from the room next to the one in which she was held used to sit alone and cry, leads to the conclusion that K019 used to be taken out during night, because of which she behaved like that in the restaurant during daytime. However, while she was determining the identity of the person who raped her on a regular basis, Witness K019 noted that this person might have had the surname Pavlić, whereas some other women used to call him *Poštar* (Mailman) too, but she categorically claimed that his nickname was not "Lugar" and that "Lugar" was another person. Bearing in mind the above-mentioned differences in the contents of these witnesses' statements regarding the identity of the person who raped Witness K019, the Court could not with certainty determine if Witness K019 was raped by the guard Pavlić or Lugar or both of them, but it is quite certain that it was a guard in the Omarska Camp.

In her statement, Witness K019 noted that she was not the only one who was roll-called and that she remembered that one woman was roll-called each evening, which was confirmed by witness Zlata Cikota, as well as witness K027, who noted that several women were roll-called during night, that it would happen very often and a guard would usually roll-called them, whereby the women were worried and absent-minded. The



statements of these witnesses suggest that rape in the Omarska Camp was not an isolated case, but that detainees were regularly sexually abused, by the guards in the Camp. During her testimony, Witness K027 described the incident when she was sexually abused by one of the shift commanders in the Omarska Camp, Mlado Radić, also known by the nickname of Krkan. With regard to another incident involving Nedeljko Grabovac, which took place in July 1992, Witness K027 noted that he did not hold any post in the Camp, that he used to come there from time to time and that he was wearing a military uniform. The incident took place in the same room in which she was abused by Krkan after she was invited to make him some coffee. While she was testifying in the case against the accused Miroslav Kvočka and others before the Hague Tribunal, Witness K027 gave a detailed description of the events which took place when she was sexually abused by Mlado Radić a.k.a. Krkan and Nedeljko Grabovica. Part of the transcript from the above-mentioned trial, which refers to the referenced incidents, was listed as Prosecution evidence under the ordinal number 194. From the statement of Witness K027 it stems that on one occasion Mlado Radić a.k.a. Krkan grabbed her breasts and her buttocks and put his hand between her legs, after which she tried to break away, begging him to let her go. While she was describing the behavior of the person called Krkan, the witness noted that he tried to have a sexual intercourse with her and he almost did, however he gave up on that because the witness had her period. As the witness stated, Krkan let her go then and he told her that she should come to him as soon as her period is over, whereas, according to the claims of the witness, on this occasion she got bruises over her breasts and between her legs. Witness K027 stressed that the person with the nickname Krkan used to call her, grab her breasts and her buttocks on other occasions too, but that that occasion was the worst she remembers. With regard to the incident involving Nedeljko Grabovac, in her statement given before the Hague Tribunal Witness K027 noted that on one occasion when she was called to make him a coffee and when she was alone with him, he told her that he liked her and he started kissing her all over her face, pulling her t-shirt and squeezing her breasts. On this occasion too the Witness tried to break away, telling her attacker that she was not feeling well, at which he bit her cheek, grabbed her t-shirt and her breast, pulled up her skirt and took off her underpants and he tried to have a sexual intercourse with her, which eventually he did not manage to do. According to the statement of Witness K027, Nedeljko Grabovac told her that she should not even try to run away from him, showing her his weapon that was put aside in the room. Just like on the previous occasion, the Witness noted that after she was sexually molested by Grabovac, she had as a consequence bruises over her breasts and the inner side of her thighs.

With regard to the sexual abuse of witness K040 by the guard called "Lugar", the Court has also undoubtedly determined that it did take place, whereby this conclusion is based primarily on the statement of the witness herself, which was also partly corroborated by the statement of the accused Željko Mejakić given as a witness. Namely, in her statement Witness K040 described in detail two situations in which she was sexually abused, stressing that the guard called "Lugar" did it. According to the claims from the statement of Witness K040, "Lugar", whom she met in the Omarska Camp and who worked as a guard in the restaurant securing the female detainees, ordered her on one occasion to come with him out of the restaurant and he took her to a room on the right side on the ground floor, after which he told her to take off her clothes. Since she started crying and told him that she cannot because she had her period, he told her "when that is over, I want you to sleep with me." The second event when Witness K040 was

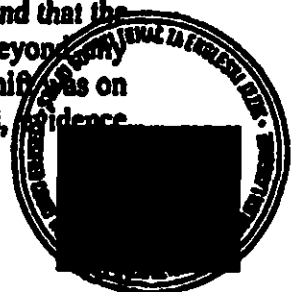




abused by the guard "Lugar", according to her statement, also took place during a day when he took her out threatening to kill her, however, based on her statement it stems that she again managed to resist the assault by the named person, who told her again on that occasion: "Make sure to get in touch with me again, I want to sleep with you." The witness also mentioned the third time when the guard "Lugar" talked to her in the same context, which happened upon the departure of the inspectors from the Camp, on which occasion he told her: "Tonight I will come to your room." Although based on the statement of Witness K040 it stems that she was not raped in the critical situations, it is quite certain that the very attempts of the guard to force Witness K040 to have sexual intercourse with him can be treated as sexual harassment, especially bearing in mind the circumstances under which they took place and the helpless position of the victim in the above-mentioned situation. This is particularly true for the reason that the above-mentioned guard used his position of superiority in the referenced situation while he was trying to force Witness K040 to have sexual intercourse, since he threatened to kill the witness if she would not comply and come with him, and even that he would kill her if she told anyone what happened. The statement of Witness K040 about how she informed Željko Mejakić about the referenced event and that he told her that he would dismiss "Lugar" from "that guard post" suggests that he was a regular guard in the Omarska Camp, as confirmed by the Accused himself in his statement given as a Defense witness, since he noted that he tried to identify that guard, that is, that he asked other guards in the Camp who he was, however he did not manage to identify the guard.

With regard to the accused Momčilo Gruban, according to the allegations in the Indictment, primarily listed were the events, which were marked as killings of detainees committed either directly and personally by the persons during the time Momčilo Gruban's shift was on duty and over whom he had effective control, which were committed in furtherance of the system of abuse and persecution in the Camp in which he himself participated. The first event refers to the taking away of Burhanudin Kapetanović and a person called Badnjević (corrected with regard to the factual part in the Indictment), which took part in July 1992. As noted above, the Court had found the referenced event determined based on the evidence presented, whereas the Court has based the conclusion that it took place during the shift of Momčilo Gruban a.k.a. Čkalja primarily on the statement of witness Enes Kapetanović, who was roll-called on the critical occasion together with Burhanudin Kapetanović and Badnjević. Witness Enes Kapetanović particularly referred to the situation when Momčilo Gruban met him after the roll-call and brought him back to the room, offering him even a meal and telling him "it would be a pity if such a fellow were gone." Witness Senad Kapetanović also confirmed these claims and described in an identical way the referenced event when his brother was roll-called and taken away and then brought back by Momčilo Gruban. In addition, both witnesses consistently stated that their mutual friend told them that on one occasion he met Gruban, who told him that he had saved one of the Kapetanovići from certain death, referring to Enes Kapetanović.

With regard to the event regarding the taking away of Emsud Baltić and several men with the surname of Mešić in July 1992, when at least seven detainees disappeared (corrected with regard to the factual part in the Indictment), the Court has found that the Prosecutor's Office of BiH did not offer sufficient evidence that would beyond reasonable doubt suggest that this was committed while Momčilo Gruban's shift was on duty. Namely, with regard to this event, which the Court found determined,



was presented by hearing the witness Asmir Baltić, whose brother was taken away in the group of the above-mentioned detainees. During his testimony this witness noted that his brother was taken away on 24 or 25 July 1992, however he expressed his dilemma about which shift was on duty in the critical period, noting that it took place either at the end of Krić's or Čkalja's shift. One more time during the direct examination the witness repeated: "When my brother was roll-called and when I last saw him I think Čkalja's shift was on duty." Therefore, the witness suspected that Čkalja's shift was on duty at that time, however he was not certain about his claims. In addition, the Prosecutor's Office failed to offer a single piece of evidence that would resolve the doubt in terms of whose shift was on duty in the night when Emsud Baltić and other men were taken away, so that the Court did not find it determined that the event took place during Momčilo Gruban's shift so it was classified in the group of killings of detainees that were committed either directly and personally by the persons who were not on Momčilo Gruban's shift in the furtherance of the system of abuse and persecution in the Camp in which he participated.

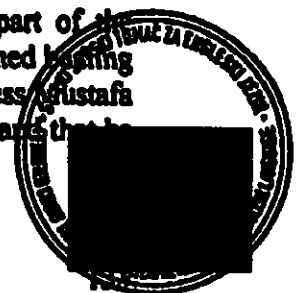
Contrary to this, with regard to the event that refers to the killing of a large number of unidentified persons, including at least 50 inhabitants of the Hambarine village, which took place in late July 1992, during the main trial evidence was presented leading to the conclusion that this event took place while Momčilo Gruban's shift was on duty. The Court has found the basis for this conclusion in the statement of witness Izet Đešević, who, as he noted, knew Momčilo Gruban from before and with whom he on one occasion sat together in the "Galeb" café bar in Orlovci. With regard to the referenced event the witness noted: "It was Čkalja's shift. I am surprised that this happened during Čkalja's shift. I have never seen him kill anyone. That is what pushed me the most to think that it was Čkalja's shift, since I was surprised how come that this happened during his shift." The reasons given by this witness about determining which shift was on duty on the critical occasion are in the Court's opinion quite logical and justified, since, as it was noted by the witness himself, there was a prevailing and generally-known opinion among the detainees that Čkalja's shift was the most peaceful. The Court's determination that the above-mentioned event took place during Momčilo Gruban's shift is based on the fact that the witness had expected that the upcoming night in the Camp would be peaceful, since he expected that Čkalja's shift would be on duty, however the referenced event made him thinking, as he noted himself, about how come that something like that could have happened during Čkalja's shift, which surprised him.

With regard to the beatings and other forms of physical abuse committed against the detainees directly and personally by the persons who were on duty on Momčilo Gruban's shift and over whom he had effective control, with the beatings and abuse having been committed in the furtherance of the system of abuse and persecution in the Camp in which he himself participated, the Indictment includes the event in which detainee Emir Beganović was beaten up. As it has been already noted, in mid June 1992, a visitor to the Camp Nikica Janjić took Emir Beganović to the "white house", where Emir Beganović showed Momčilo Gruban the injuries he sustained during the previous beating by Janjić and others and he asked him to help him, at which Gruban told him to go to the "white house" with Janjić and that Janjić would not abuse him any more, after which Janjić severely beat Beganović again. Based on the operative part and the above-mentioned reasoning part of the Verdict, the Court has found it determined that the referenced event took place, however certain corrections were made with regard to

factual part of the Indictment, as a result of the contents of the evidence presented. Witness Emir Beganović explicitly claimed that on the critical occasion Čkalja was standing beside the "white house" when Nikica Janjić took the witness towards the "white house" to beat him. The Court has entirely trusted this witness with regard to the above-mentioned, since while he was describing Momčilo Gruban, who was the only member of the Camp staff with the nickname Čkalja and who was known among the detainees as Čkalja, the witness noted that Čkalja was tall and that he was wearing short trousers, which is completely consistent with the description of the named person provided by other witnesses. Furthermore, in his statement witness Emir Beganović noted that he had no problems with Čkalja except for the situation in which he let him go with Janjić to the "white house", which is a fact that is also based on other presented evidence of subjective nature, since all the heard witnesses assessed that Čkalja was not a kind of person who was prone to violence. Along with the fact that the witness referred to Momčilo Gruban as one of the guards, from the statement of this witness it stems that he did not basically know who the shift leaders were, except for the Krkan's shift, so that the witness did not know anything about Gruban's role in the Omarska Camp. However, ample evidence, to which the Court will refer later on, leads to the conclusion that Momčilo Gruban a.k.a. Čkalja, whom witness Emir Beganović mentioned as a guard, was a leader of one of the three shifts in the Camp.

The Court has also undoubtedly determined that the bringing in of a group of around 120 detainees from the Keraterm Camp to the Omarska Camp took place on 4 July 1992, on which occasion some of them were beaten, as elaborated on in the part of the Verdict that refers to the referenced event. The fact that Momčilo Gruban's shift was on duty at the time the referenced event took place stems from the statement of witness Izet Đešević, who was brought there as part of a group of detainees and who noted that he remembered that Gruban's shift was on duty at that point. Although when he was asked by the Prosecutor about the shift, the witness did not with certainty state that it was Čkalja's shift, when he noted the first time he saw Čkalja, the witness said that it was on the same day when they were brought in there, and that he saw him before 7 p.m. and that the detainee called Vlado, who was brought together with him and who used to work with Čkalja, told him that Čkalja would come and bring food and coffee. Considering the fact that these witnesses were brought between noon and 2 p.m., as confirmed by witness Izet Đešević, Anto Tomić and K015, and that it follows from the statement of all the heard witnesses that the guards changed their shifts at 7 a.m. and 7 p.m., it can be quite clearly concluded that Momčilo Gruban's shift was on duty when these detainees were brought in, since witness Izet Đešević saw him on the same day they were brought in, before 7 p.m., which means before the shifts changed. The conclusion that on the occasion of the arrival of the detainees from the Keraterm Camp in the Omarska Camp Čkalja's shift was on duty was also corroborated by the statement of Witness K015, who was also brought in that day and who noted in his statement that it was none other than Čkalja who wrote down the names of the newly-arrived detainees and that he heard about him later on, since he did not know him from before.

In addition, the Court has also undoubtedly determined that the beating of Mustafa Puškar took place at the time and in the manner described in the first part of the reasoning of the Verdict. The Court has found the fact that the above-mentioned beating took place on Momčilo Gruban Čkalja's shift based on the statement of witness Mustafa Puškar, who said that he was beaten by the guard "Žučo" and another guard and that he

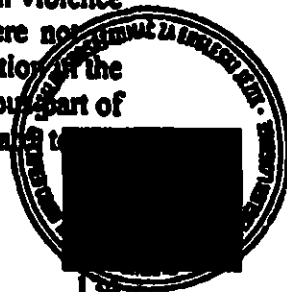


was beaten on Čkalja's shift, since he knew that "Žužo" and the other guard, who was plump and short, were guards on the shift whose leader was Momčilo Gruban. Furthermore, witness Mustafa Puškar noted that during the time he was beaten and when the guards took him, they said: "There is Krivaja," whereby the witness personally saw Stanko Krivaja, who was going towards the exit of the garage and whom he connected with Gruban's shift. These claims of witness Mustafa Puškar were also additionally in part corroborated by the claims of the accused Željko Mejakić, who gave his statement as a witness and who stated during the cross-examination, when asked by the Prosecutor who was on Momčilo Gruban's shift, that Stanko Krivaja was there among the others.

The Court has also determined the circumstances of the event that refers to the beating of K017 for the reason noted in the part of the reasoning of the Verdict in which the referenced event is described. In addition, according to the assessment of the Court this event also took place during the shift of Momčilo Gruban a.k.a. Čkalja, since the witness explicitly claimed that he was beaten by a guard who belonged to Gruban's shift, noting: "That guard was on Čkalja's shift, I used to see him on Čkalja's shift." It is quite certain that the detainees, although they did not know each guard by his name and surname, connected them with certain shifts, that is, to a certain shift leader. Since the referenced event took place in late July 1992, whereas Witness K017 was brought to the Omarska Camp in late May 1992, it can be undoubtedly concluded that the witness was clearly able to recognize which guards were on duty on which shift by the time he was beaten and therefore to whose shift the guard who beat him actually belonged.

As for the event that took place on the occasion of "St Peter's Day", the Court did not find it determined that Momčilo Gruban's shift was on duty at that point, since the Prosecutor's Office of BiH did not offer a single piece of reliable evidence regarding this and since none of the witnesses stated that the event which took place on "St Peter's Day" happened on the shift of Momčilo Gruban a.k.a. Čkalja. Witnesses Ermin Striković and K015 who were asked during the direct examination by the Prosecutor during whose shift the referenced event took place noted that they did not remember which shift was on duty on the critical night. Therefore, this event was included in the group of the beatings and other forms of physical abuse committed against the detainees directly and personally by the persons who were not on Momčilo Gruban's shift in the furtherance of the system of abuse and persecution in the Camp in which he himself participated. The same thing applies to the rape and other forms of sexual abuse that refer to the sexual abuse of witnesses K019 and K040, bearing in mind that the Court did not find it determined that they were committed directly and personally by the persons on the shift of Momčilo Gruban and over whom he had effective control. The reason for this is that the Court could not reliably determine which guards in the Omarska Camp sexually abused Witness K019, and it was not determined with certainty to which shift the guard "Lugar" who sexually abused Witness K040 actually belonged.

Other events noted in the factual description of the Indictment and in the operative part of the Verdict, which refer to the killings, beatings and other forms of physical violence and which were committed directly and personally by the persons who were not on Momčilo Gruban's shift in the furtherance of the system of abuse and persecution in the Camp in which he participated, were described and elaborated on in the previous part of the Verdict. As far as the accused Momčilo Gruban is concerned, with regard to

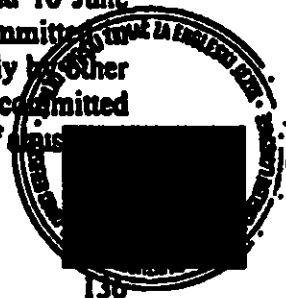


factual part of the Indictment and in view of the individual events of killings and beatings, the Court has omitted the killing of Ahil Dedić, which took place on or around 28 May 1992 (as well as with regard to the accused Željko Mejakić), and the killing of Asaf and Avdo Muranović, which took place on or around 30 May 1992, as well as the beating of K041, which took place on the night of 29 or 30 May 1992, since it was not determined if the referenced events took place at the time Momčilo Gruban took over the command of one of the three shifts in the Omarska Camp. Namely, from the contents of all the evidence presented it stems that the mass bringing of detainees to the Camp took place during the day and night of 30 May 1992, in the aftermath of the armed conflicts in the town of Prijedor, when the majority of detainees were brought to the Camp. Having considered the possibility that there were only two shifts during the first days of the functioning of the Camp and that the accused Gruban was not one of the commanders, the Court has found that, following the mass bringing of the detainees to the Camp, there was a need to form the third shift in order to facilitate the guarding of the large number of the newly-arrived detainees, as well as that the guarding was organized in two shifts for only a couple of days until the number of the detainees in the Camp changed drastically. In addition, all the Prosecution witnesses who were brought to the Camp starting from 30 May 1992 consistently confirmed that Momčilo Gruban was one of the leaders of the three shifts in the Camp and all the witnesses connected the name of this Accused with the leader of one of the shifts from the very beginning of their stay in the Camp. The only witness who noted that Momčilo Gruban was a regular guard was Emir Beganović, however, from the statement of this witness it follows that he did not know who were the shift leaders, so that the Court did not assess his statement as relevant. In addition, in his statement witness Mustafa Puškar noted that the accused Momčilo Gruban came to the post of the shift leader only after Miroslav Kvočka left the Camp, which took place in the second half of June 1992. The Court also did not accept these claims by witness Mustafa Puškar, since his statement was in that part obviously contradictory to the statements of numerous Prosecution witnesses, who connected the accused Gruban as the shift leader with the entire period of their stay in the Camp. Except for witness Mustafa Puškar, none of the witnesses who were already detained in the Omarska Camp as of 1 June 1992, stated that Gruban was a regular guard from the beginning of their stay in the Camp and that he was appointed as a shift leader only subsequently. All the witnesses testified about Momčilo Gruban only as a leader of one of the three shifts, pointing out his presence in the Camp on the post of a shift leader since their very arrival at the Camp, which leads to the conclusion that Momčilo Gruban's role of a shift leader is connected to the period in which the number of the detainees in the Camp was enormously increased. In their statements, a series of Prosecution witnesses noted that there were three shifts in the Omarska Camp and that Momčilo Gruban was the leader of one of the three shifts, which stems from the statement of witness Asmir Baltić, who noted that Momčilo Gruban was in the Camp from the very beginning, as well as the witnesses K041, K017, Senad Kapetanović, Zlata Cikota, K03, K09, K042, Nusret Sivac, K035, Azedin Okloptić, K027 and others. The statements by the Prosecution witnesses were also confirmed by the Defense witness Branko Starčević, from whose statement it stems that he was engaged in the Omarska Camp as a guard from the very beginning of the Camp operation, and who said that there were three shifts in the Camp, as well as witness Živko Piljić, who was also a former guard in the Omarska Camp, who said that he heard about the Camp in late May 1992, when he started working in the Camp as a guard, that at the beginning the security in the Camp was organized in two shifts and that the third shift of guards was organized



already after a couple of days and it included guards from the village of Marićka, which is in fact consistent with the very beginning of June 1992. With regard to this, the Court did not accept the statements of Defense witnesses who denied the participation of the accused Momčilo Gruban in the leadership of one of the three shifts, since, in accordance with the concept of Momčilo Gruban's Defense, these witnesses generally claimed that there were no shift leaders in the Omarska Camp at all, which is completely contradictory to the statements of the Prosecution witnesses, who identified the accused Gruban as one of the shift leaders in the Camp. Therefore, during the evidentiary proceedings the Defense tried to portray the accused Momčilo Gruban as an ordinary guard in one of the three shifts in the Omarska Camp, as well as that there were in fact no shift leaders in the Camp. However, based on the evidence presented by both the Prosecution and partly the Defense, it stems that three shifts were organized in the Omarska Camp and that the accused Momčilo Gruban, whom the guards and the detainees called by the nickname of Čkalja, was the leader of one of the three shifts, whereas Milojea Kos and Mlado Radić, who according to the claims of witnesses had the nicknames of Krlc and Krkan, were leaders of the other two shifts. The above-mentioned fact stems from the statements of the following witnesses: Asmir Baltić, K041, K017, Senad Kapetanović, Zlata Cikota, Mustafa Puškar, K03, K09, K042, Nusret Sivac, K035, Azedin Oklopčić, K027 and others. Contrary to a large number of Prosecution witnesses, who consistently claimed that Momčilo Gruban was a commander of one of the shifts, the Defense witnesses noted in their statements that no particular persons were appointed as shift leaders within the organization of the three shifts in the Camp, whereas Defense Witness K052, a former detainee of the Omarska Camp, explicitly claimed that Gruban was not a shift leader and that he was not a chief in relation to any guard in the Camp. During his testimony, this witness compared the name of "Gruban's shift" with the name of the room called *Mujina soba* in which detainees were held and which, according to the witness, was called like that after the room orderly called Mujo, who was in charge of the referenced room, by which his statement is contradictory with regard to these relevant circumstances. The reasoning of the facts based on which the Court reached the conclusion that the accused Momčilo Gruban was the leader of one of the three shifts in the Omarska Camp, as well as of the concrete situation that leads to such conclusion, was given in the part of the Verdict that refers to the command responsibility of the accused.

With regard to the individual events in which the accused Duško Knežević a.k.a. Duća took part, which were described in the operative part of the Verdict, the Court has provided a more detailed reasoning in the first part of the Verdict. Furthermore, based on the evidence presented regarding the circumstances of each individual event, the Court has determined that the accused Duško Knežević committed the above-mentioned criminal actions, that is, that he took part in the killing of detainees that were committed personally and directly by himself or in his presence, with a discriminatory intent, namely the killing of Amir Cerić and a man with the surname of Avdić, which took place in the "white house" in mid June 1992, the killing of Dalija Hrnić, committed in the "white house" in June 1992, the killing of Bećir Medunjanin, committed in mid June 1992, the killing of Slavko Ećimović a.k.a. "Ribar" committed on or around 10 June 1992, as well as the killing of Emir Ramić a.k.a. "Hanki" or "Hankin", committed in mid June 1992. The other killings that were committed directly and personally by other persons, in which the accused Knežević did not take part and which were not committed in his presence, and which were committed in the furtherance of the system of



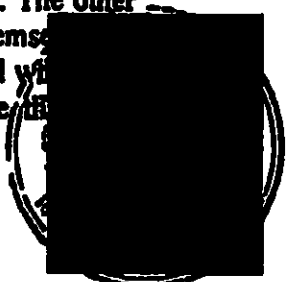
persecution in the Camp in which the Accused too participated, were also elaborated on in the first part of the Verdict.

With regard to the beatings and other forms of physical violence over the detainees that were committed directly and personally by the accused Duško Knežević or in his direct presence with a discriminatory intent, based on the evidence presented the Court has undoubtedly determined, as it has been elaborated above, that the accused Knežević undoubtedly took part in the following beatings: the beating of Emir Beganović, K036, Rezak Hukanović, Asaf Kapetanović and Abdulah Brkić, which took part on or around 10 June 1992, as well as the beating of K022 and Fadil Avdagić, which took part in mid June 1992 in the "white house" building. With regard to the other beatings and other forms of physical abuse of the detainees, which were committed by other persons and in which the accused Knežević did not personally take part, but which were committed in the furtherance of the system of the abuse and persecution at the Camp in which he participated, just like in the case of the killings, the Court has given a more detailed reasoning in the first part of the Verdict.

## **THE KERATERM CAMP**

In the opinion of the Prosecution and the Defense, it is beyond dispute that the Keraterm camp was located in the compound of the ceramic tile factory in Ćirkin Polje (fact No. 253), on the outskirts of Prijedor, in which the detainees were held in four separate rooms known as rooms 1, 2, 3, and 4 in line next to one another (fact No. 258). It is also indisputable that a concrete area known as "pista" was in front of the said rooms where the detainees were held. The layout of the facilities within the camp compound was established on the basis of witness testimonies, corroborated by the material evidence in the case file, that is, the photographs of the Keraterm camp tendered as the Prosecution evidence in the course of the evidentiary proceedings. According to the facts in the Indictment, the approximate timeframe of the Keraterm camp operation was from 24 May to 30 August 1992. In accordance with the testimonies of the witnesses who were detained in this camp, the Court made corrections to these allegations in the Indictment by determining the time when the last detainees left the camp. It can be concluded from the evidence of the examined witnesses that, following the arrest of Bosnian Muslim and Croat civilians, which started as early as 24 May 1992, some of the captives were first taken to the Keraterm camp, where they would stay briefly, and were thereupon transferred to the Omarska camp. The testimonies of witnesses K023, Ermin Striković and Fadil Avdagić, who were in the first group of the Omarska camp detainees brought from the Keraterm camp, lead to this conclusion.

According to the testimonies of all the examined witnesses, Bosnian Muslims, Croats and other non-Serbs were detained in the camp, except for one person whose name was Jovo Radočaj, who was brought to the camp because he was a member of the SDA, that is, voted for that party, according to witnesses Edin Ganić and Ante Tomić. The other detainees in the camp were Bosnian Muslims, Croats or persons declaring themselves as Bosnians. The witnesses who testified before this Court at the main trial and who were detainees of the Keraterm camp stated at the beginning of their evidence that



declared themselves as Bosniaks or Muslims, witness Anto Tomić as a Bosnian, and witness K013 as a Croat.

The concordant statements of the witnesses lead to the conclusion that the conditions in the Keraterm camp were brutal and degrading and followed by an atmosphere of terror, as the detainees were being kept in the camp without the basic necessities of life, such as adequate food, drinking water, medicines and medical care, and that the rooms they were held in were cramped and that the conditions in the camp were unhygienic in general. It is beyond dispute for both the Prosecution and the Defense that the food given to the detainees was not being prepared in the camp, but was delivered once a day in barrels and distributed to the detainees. The testimonies of witnesses K013, K08, K029, K09 and K015 lead to this conclusion. With respect to the status of the detainees, special treatment was reserved for the detainees who were held in one period in room 3 and who were the inhabitants of the villages belonging to the so-called Brdo region. Witness Enes Crljenković, who was held in room 3 for one period, said in his evidence that there were no meals "for [room] 3" and that only two crates with bread were thrown in one evening, so that each detainee got a thin slice of bread, as there were around 400 detainees in the room, in his estimate. The statement of witness Enes Crljenković was confirmed by witness K07, who was also detained in room 3 at the same time and who said in his testimony that he did not eat anything for 10 days. Witnesses K016 and K010 also corroborated these witnesses' statements stressing that the detainees who were held in room 3 did not receive food at all and could not get out, either. Witness K010 said he personally heard these detainees calling the other detainees pleading with them to bring them bread and water.

In addition to the fact that the camp inmates received one meal a day, it also follows from the witnesses' testimonies that the quality of the food received by the detainees was very poor and that the quantities were not adequate. The detainees would sometimes not get a meal for days, as witness K044 stated, since he received his first meal only on his sixth day in the camp, and witness K010 ate only on the tenth day of his detention. According to witness K016, there was not enough food for one meal a day given that, in his estimate, there were around 1,000-1,300 detainees in the camp, while lunch was being brought for 650 detainees, so that quantity had to be distributed in order for every detainee to get at least some kind of meal. Witness K05 stated that sometimes food was distributed once in two days. As for the meals contents and food quality, which was obviously poor, witnesses K044 and K015 stated that hot water with one cabbage leaf and two thin bread slices were being distributed, which is also confirmed by witness K014, who stated that two thin bread slices and some soup were distributed for meal, the soup actually being the ordinary heated water. Witness K05 described the meal as two bread slices with beans. According to witness K044, only a couple of times did he receive small parcels with food that his father was bringing regularly every day, also confirmed by witness K015, who stated that they were not receiving the parcels sent to the detainees by their families. Witness K09 stressed that a detainee could get a parcel provided he gave a certain amount of money to a guard. As witness K014 said, the guards used to take the food brought to the detainees by their families and would throw away the rest, which all indicates that the access to the food sent to the detainees by their families or friends primarily depended on the guards' good will.



Like in the Omarska camp, the poor quality and quantity of the food in the Keraterm camp also resulted in a drastic difference in the detainees' weight prior to the detention and upon leaving the camp. According to all the witnesses, on average the Keraterm camp detainees lost between 15-30 kg of weight. Thus witness K044 said that he lost 16 kg in the Keraterm camp, witness K014 15-17 kg, witness K05 had 92-93 kg prior to the detention and 61 kg after the camp, witness K08 lost 20 kg, witness K013 25 kg, while witness K010 had 130 kg prior to the Keraterm camp and was weighed in the Trnopolje camp after leaving Keraterm and the scales showed 66 kg. In addition to the fact that the food in the camp was of poor quality and insufficient, it can also be concluded from the witnesses' evidence that the detainees were not given enough time for the meal. Witness K013 stated that they had to finish the meal in 20 seconds, while it follows from the statement of witness K044 that the detainees were allowed only 2-3 seconds for a meal during certain shifts in the camp. Describing a lunch in the Keraterm camp, witness K044 stated that the guards ordered the detainees not to eat before a guard signaled it and when the guard said "enough", the detainees had to put down their spoons and end the meal, otherwise, they would be punched. Witness K05, describing the guards' conduct with the detainees during lunch, said that the detainees were under threat to finish the meal as fast as possible, since during lunch they were being punched by the guards in order to finish the meal as fast as possible, while the remainder of the food was thrown away. Witnesses K015 and K08 also stated that the meal time was limited, and, according to witness K08, when some detainee did not manage to eat his meal in time he had to throw away the remainder. The statements of witnesses K044 and K05 that going to lunch and eating the lunch itself were followed by punching and mistreatment of the detainees were also confirmed by witness K013 and witness K08, who stated that the detainees had to sing during meals, as well as witness K015, whose statement indicates that the detainees were being beaten while having lunch.

The detainees also did not have sufficient access to drinking water, especially given the huge number of detainees and high summer temperatures during the period concerned, while some detainees did not have water at their disposal at all. According to witness K044, access to water depended on the shift on duty at a given time, and, to his recollection, water tanks came to the camp bringing water only twice throughout his entire detention. This witness described an event concerning detainee Zejro Čaušević, who asked for water after a beating, but did not get it, so he was forced to urinate in a bottle and drink the urine. According to this witness, the detainees who asked for water would be beaten, so many did not even go to the toilet out of fear. Witness K015 stated that the detainees could obtain water from the toilet and hydrant, but that that water was polluted, while some detainees did not have any opportunity whatsoever to get water, primarily the detainees from the Brdo region, held in room 3. According to witness Enes Crljenković, who, as indicated earlier, was detained in room 3 for a while, the detainees had not-for-drink water at their disposal, while witness K07, who was detained in the same room, stated explicitly that the detainees did not have access to water and that he personally did not drink water for six days during his detention in room 3. The only time the detainees in room 3 got water, according to witnesses Enes Crljenković and K07, was when a barrel of water was put in their room. According to both witnesses, the water was poisoned and the poison made the detainees' eyes water and caused diarrhea. As witnesses K07 and Enes Crljenković stated, the inserted poison affected the as all the detainees who had drunk the water from the barrel started acting insane and taking their clothes off. These witnesses' assertions that the detainees in room

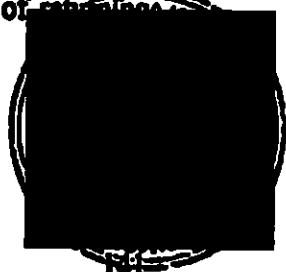
not have drinking water at their disposal were also confirmed by witness K010, who stated that the room 3 detainees were locked in without access to food and water and were calling the other detainees to give them water and bread, as well as by witness K043, who said that a barrel of water was put in room 3 for the detainees from the Brdo region and that banging on the door could be heard throughout the night as they started suffocating from that water. A small number of witnesses said during the evidentiary proceedings that, to their recollection, water from the tanks was at the detainees' disposal. However, it is obvious that there was not enough water in the camp, given the huge number of detainees and high summer temperatures, and many witnesses stated that the limited quantity of water that the detainees did have access to was not drinkable.

The hygienic conditions in the Keraterm camp were bad, as follows from the witnesses' testimonies. The time for detainees to relieve themselves was limited or denied completely, and beatings also occurred on the detainees' way to and from the toilet, due to which the detainees were forced to relieve themselves in the rooms they were staying in. According to witness K044, the detainees' access to the toilet depended on the shift on duty, so, despite the toilet, located between rooms 2 and 3, the detainees were forced to relieve themselves into bottles and plastic bags, which was also confirmed by witness K010. Witness K05 said that detainees held in all four rooms used a single toilet, so the hygienic conditions were very bad and sometimes their going to the toilet was restricted. According to witness K015, the toilet was often non-operational as it was clogged, and the detainees could go to the toilet only when permitted. The aforementioned witnesses' assertions that the detainees could not freely relieve themselves were also corroborated by the evidence of witness K013, who stated that a single toilet was used by more than 1,000 people so the toilets became clogged, and stressed that there were cases that the detainees were being beaten while on their way to the toilet. Witness K013's declaration on the beating of the detainees on their way to the toilet were corroborated by a specific case that witness K044 testified about describing the beating of a person whose last name was Katlak, whom the guards beat up on his way to the toilet.

With the impossibility of access to a sufficient quantity of water and high summer temperatures that during the said period ranged between 30° and 40° C, according to the witnesses, additionally aggravating were the conditions in the rooms where the detainees were held. According to detainees K09 and K013, more than 1,000 people were held in the Keraterm camp who, as stated earlier, were held in four rooms, while witness K016 said that the number was actually as many as 1,300 detainees. Generally speaking, all rooms in the camp were overcrowded, without sufficient air and room for sleeping. Witness K015 said that the living conditions in the Keraterm camp were so bad that the detainees would sit on wooden pallets provided there was room and that it was stuffy and hot. This witness, who was brought to the Keraterm camp on 17 July 1992 where a huge number of detainees had already been held in the camp, described these people's physical appearance as horrible, stating that their hair and beards had overgrown, that they were sun-burnt, and many had bruises, fractures and torn clothes. Witness K033 compared the detainees' position in the camp to the conditions animals lived in. Witnesses K029, K044, K05 and K013, who were held in room 1, said the living conditions in it were very difficult, as the detainees slept on the cement and the wooden pallets, since it was overcrowded, and witness K044 said that the detainees could not lie down but just sit in such an overcrowded room. As this witness stated, 250 people were held in room 1, while witnesses K05 and K013 estimate that there

300-400 detainees there. Judging by the statements of the examined witnesses, the living conditions were no better in the other rooms, either. According to witness K044, who spent a certain period of time in room 2, 350-400 detainees were held in it and there was not enough room to lie, so the detainees squatted. According to K014, there were 400-500 people in room 2, while witness K010 stated that as many as 512 people were held in room 2 at any one time, since a list of detainees was made so the exact number was known. Comparing the conditions in room 3 with the conditions in the Omarska camp, witness Izet Đešević said that the conditions were unbearable, although he described the situation in Omarska to be somewhat more difficult. Witness K08, who was held in room 3 during one period, stated that approximately 250-300 people were held in the said room, that the room was full and that it was impossible to sit, and that he stayed in that room until it was said that it should be vacated for the detainees from the Brdo region. Judging by the testimonies of witnesses K016 and K09, the conditions in room 4, in which they were held, did not differ from the conditions in the other rooms. This room was overcrowded, too, and, according to witness K09, 300-400 people were held in it, they were sitting on the concrete floor, and since the windows in the room were narrow and placed high, it was difficult to air the room. The situation most certainly was most difficult in room 3 at the time the detainees from the Brdo region were held in it. In the estimate of witness Enes Crijenković, around 400 people were held in it, while witness K07, who was also detained in that room, stated that the room was so crowded that the detainees would stand on one foot, could not lie and sleep and the room door could hardly close, due to the room being so overcrowded.

The detainees of the Keraterm camp practically had no medical care, not even when they sought medical assistance. Witness K044 stated that detainee Zejro Čaušević, who was severely injured, did not get medical assistance although the witness personally asked for it to be administered to Zejro Čaušević on three occasions, hence detainee Čaušević had open wounds for 7-8 days. Witness K08 also stated that there was no regular medical aid, except that on one or two occasions some detainees were taken to hospital. This witness stated that the male medical attendant Kobas visited the camp once and brought the flea and lice powder, but did not administer aid to anyone, which was also confirmed by witness K015. It also follows clearly from the testimony of witness K016 that the detainees were not administered medical aid, even when they would ask for it several times, but were only distributed lice powder. Witness K09 testified about the taking of the detainees to hospital and also said that those detainees who stayed in the camp and who needed aid, did not get one. However, the detainees who were taken to hospital were not treated there, but would even be beaten during the stay in the hospital while they were trying to recover. Thus witness K013, who had an opportunity to go to the hospital after having been beaten heavily, stated that he did not get medical aid in the hospital, but that his arm was just put in a cast instead, with the explanation that the fracture would heal. Even while in hospital, he was being beaten by the visiting guards. Witness K08 corroborates witness K013's statement that the detainees were not administered medical aid in the hospital, quoting the example of a man who had stomach problems and who was transported to the hospital, but to whom aid was not administered, while witness K05 described the case of detainee Emsud Bahunjić, who was taken to the hospital because of beating, but instead of being cured, he returned with a "4S" insignia carved on his chest and forehead.





Like in the Omarska camp, the detainees in the Keraterm camp were also interrogated in a room that, according to the witnesses, was located on the floor above the dormitories and the interrogations were conducted by interrogators from Prijedor and Banja Luka. It can be inferred from the witnesses' testimonies that the questions concerned the detainees' personal conditions, their activity in the army and politics prior to the war conflict and weapon possession. The witnesses did not sign their statements and no proceedings whatsoever were instituted against them. Some detainees were beaten during the interrogation, as is the case with witness K05, while some other detainees were being beaten while being taken to and from interrogation, as witness K033 described.

In the part dealing with the individual events that took place in the Keraterm camp, numerous killings and beatings that the Keraterm camp detainees were exposed to have been described. Based on the testimonies of the witnesses examined on the circumstances surrounding individual events, the Court is satisfied that the camp inmates were exposed to daily beating on all occasions, from getting out of the buses that had brought them to the camp, going to meals, interrogations, going to the toilet, which follows from the situations described above, as well as during the stay in the concrete area called the pista, where the detainees were forced to sit or lie motionless for hours. The beatings of the detainees when they would arrive in the camp were described by witnesses K044, K05, K08, K07, K043 and others. According to witness K044, on arrival the detainees were forced to raise three fingers as the Serb salute and were being beaten on the way. Witness K05 described in his statement a gauntlet he had to run together with other detainees upon his arrival in the camp, on which occasion the detainees were beaten with different objects. A group of detainees that arrived in the camp on 14 June 1992, including witness K08, was also beaten when getting out of the buses, as was a group that arrived in July 1992, of which witness K07 testified. Describing his arrival in the Keraterm camp on 3 June 1992, witness K043 stated that the guards ordered his brother to get out of the bus upon the arrival in Keraterm and cursed his mother. They also beat a group of detainees and ordered them to put their penises into each other's mouths and to sit with their anuses pressed against a glass bottleneck. Witness K013 also described the situation in the Keraterm camp stating that the beatings happened during the daytime and nighttime alike, that the guards beat the detainees on a daily basis, during lunch, in the corridors and rooms, while it follows from the testimony of witness K029 that the beatings happened more at nighttime. Witness K015 confirmed that the detainees feared the camp staff and said that he dared not tell the camp administration that he had been beaten up, as he was in a camp where killings were a daily occurrence. According to this witness, one detainee who sought medical help dared not say that he had been beaten up, but explained that his injuries were a result of fall. All the aforementioned events, as well as the events described in the part of the Verdict concerning the individual incidents, lead to the conclusion that the beating of the detainees occurred on a daily basis and on all occasions, and that some of the beatings resulted in deaths as a consequence of the severity of the beating and the lack of adequate medical help. Therefore, the Court, taking into consideration these cases, as well as the cases of killings of the detainees from firearms, was satisfied that it was established that dozens of detainees were killed or died as a result of the conditions described above in the Keraterm camp during the relevant period. With respect to the number of the killed and deceased detainees, the Court made a correction in relation to the facts in the Indictment, as stated in the operative part of the Verdict, guided by

results of the evidentiary proceedings, primarily the testimonies of the examined Prosecution witnesses.

### **Individual incidents**

With respect to the individual incidents related to the Keraterm camp, the Indictment first referred to the said killings of the detainees personally and directly committed by the Accused Duško Knežević or in his immediate presence with discriminatory intent. Thus the Indictment charged the Accused Duško Knežević that, during the period from late May to 19 June 1992, together with the camp guard Predrag Banović, Zoran Žigić, and others, he repeatedly and severely beat Emsud Bahunjić, a.k.a. "Singapurac" and "Snajperista", at one point over seven or eight consecutive days, using a baseball bat, thick electrical cable, rifle butts, and various implements, and on or about 19 June 1992 this detainee died as a result of the beatings. The Court made certain corrections with respect to the facts in the Indictment concerning this incident, in accordance with the statements of the witnesses who testified about the beating and the death of Emsud Bahunjić. It is indisputable that Emsud Bahunjić was detained in the Keraterm camp for a certain period, which was confirmed in unison by witnesses K016, Anto Tomić, K08, K033, K014 and K05. In addition to this, all these witnesses agreed that Emsud Bahunjić died as a result of the beatings he was exposed to in the Keraterm camp. Furthermore, the Court established beyond any reasonable doubt that the beatings of Emsud Bahunjić, to which he succumbed, were committed by the Accused Duško Knežević, a.k.a. "Duća", together with Zoran Žigić and camp guard Predrag Banović, which follows from the testimonies of the aforementioned witnesses. Thus witness K016 explicitly stated that Emsud Bahunjić, whom he had known well before, was being beaten up every day, that he died a few days later, and that he was being beaten for four or five consecutive days by Duća and Žigić. According to witness K016, Duća (reference to Duško Knežević) would come and automatically start beating Emsud Bahunjić, and this witness saw when Emsud Bahunjić died from the beating as he was the last person with whom the victim talked. The beating to death of Emsud Bahunjić was also confirmed by witness Anto Tomić, who described Duća's visits to the camp in that context, stating that on one occasion when Duća came he entered room 2 and said: "I will not beat the ones in the front today, but the ones in the back." Witness Anto Tomić also stated that Duća was looking for the person nicknamed "Snajperista", who was lying half-dead from the previous beatings in one part of the room. The witness described the beating of the person nicknamed "Snajperista" as follows: "They kicked Snajperista because he was lying helpless, they also beat another couple of people for 10-15 minutes, I saw it all with my own eyes." This witness also stated that the person nicknamed "Snajperista" died after a couple of days and that his body was taken out behind room 4. Witness K014, who described the beating of Emsud Bahunjić in detail and who also confirmed that Bahunjić died as a result of the beating, said that he knew Emsud Bahunjić, that he saw Bahunjić 6-7 days upon the arrival in the camp, that Bahunjić's nose was broken and that he had big black circles under his eyes. Witness K014 confirmed the statement of witness K016 that Emsud Bahunjić was being beaten on a daily basis by Duško Knežević, Zoran Žigić and Predrag Banović, only the latter having been a guard in the camp, while Knežević and Žigić were visitors from outside. This witness claimed that Duća participated in every beating of Bahunjić and that he did not discriminate between the implements to beat him v

he used bats, feet, and rifle. The witness even said that he saw on Emsud's forehead scars from extinguished cigarettes and a carved cross, which leads to the conclusion that a sharp instrument was used during Emsud Bahonjić's mistreatment. As witness K014 stated, Dušan Knežević and Zoran Žigić always beat Emsud Bahonjić together. Describing one of his beatings by Predrag Banović, the witness said: "I remember when we were going for a meal, everybody went out and Emsud was not able to walk. Predrag Banović entered with a rubber hose. I did not see him beating Emsud, but when I returned, Emsud had scars". It follows from this witness' testimony that the persons who used to beat up Emsud Bahonjić on a daily basis did so with the goal of beating him to death, as Bahonjić told him on one occasion that should Duća come to Keraterm, he [Bahonjić] would be dead. When the witness saw Bahonjić the last time around, Bahonjić asked him to take care of his children, which also indicates that Emsud Bahonjić was aware of the intentions of the persons who beat him. Like the other witnesses, so did witness K014 see Emsud Bahonjić's body in the Keraterm camp, and the last time saw Bahonjić alive was two hours before Bahonjić died in room 2, whereby he confirmed the statement of witness K016, who was present in room 2 when Bahonjić died. Witness K05 also confirmed the statements of the aforementioned witnesses, as he also saw Emsud Bahonjić in the Keraterm camp and claimed that Bahonjić was being beaten up every day by Žigić and the guards, including Predrag Banović, a.k.a. "Čupo". According to witness K05, the one who beat Emsud Bahonjić the most was Duća, that is, Duško Knežević, and it happened often, even twice a day. It follows from the statement of witness K05 that Emsud Bahonjić died as a result of the beatings by the Accused Knežević. Witness K05, just like the other witnesses, also saw Emsud Bahonjić's body and added that the body was thrown to the garbage dump. Therefore, on the basis of the statements of the aforementioned witnesses, the Court established beyond doubt that Emsud Bahonjić was beaten up brutally several times and that the perpetrators were Zoran Žigić, Predrag Banović, and in particular Duško Knežević, using different implements. Based on the description of Emsud Bahonjić's condition, the Court also finds it established that he succumbed due to the consequences of the beatings. As for the time of Emsud Bahonjić's death, the Court established beyond doubt that the death occurred in the second half of June 1992, especially given the statement of witness K05, who linked the said event to a certain important family date. The time of death was also confirmed by witness Anto Tomić, who was brought to the Keraterm camp on 14 June 1992 and who said that the person nicknamed "Snajperista" died a couple of days later. The death of Emsud Bahonjić and his condition before the death were also confirmed by witness K08, who was also brought to the camp on 14 June 1992 and who saw Emsud Bahonjić in a very bad shape a couple of days later, and on the following day or in a couple of days he saw Bahonjić being taken out on a pallet in front of the hall and claimed that he was dead. This witness also heard that Emsud Bahonjić was being beaten, as did witness K033, who, upon the transfer from the Keraterm camp to the Omarska camp, heard that Emsud had died. Witnesses K016, K05 and Anto Tomić confirmed that the person concerned was Emsud Bahonjić, nicknamed "Snajperista" and "Singapurac". Anto Tomić did not know the victim's real name, but remembered him by these nicknames that the other witnesses also knew him by. Emsud Bahonjić's death was also confirmed by the documentary evidence in the case file:  tendered by the Prosecution, that is, Nicolas Sébire's Additional Report of 28  2002, indicating that Emsud Bahonjić was discovered in the Pašinac pit and identified (PC-44-001B).

With respect to the beating of Drago Tokmadžić, who, according to the Indictment, was beaten by the camp guard Predrag Banović and camp visitors Duško Knežević and Zoran Žigić, to which beatings this detainee succumbed in late June 1992, the Court examined witnesses K08, K044, Anto Tomić, K016, K09, K015 and Edin Ganić. The majority of the examined witnesses linked the beating of this detainee to the beating of Esad Eso Islamović and some of the witnesses were in the group of detainees who were beaten up on that same occasion, such as witness Edin Ganić. According to witness K015, he heard one evening "Drago" being called out, and Esad Islamović was called out on the same occasion, too. The witness claimed that he personally heard the beating and that, after they were brought in, Drago asked for water, whereupon he died. The testimony of witness K015 indicates that Drago died a couple of minutes after having been brought into the room and his body was taken out the following morning. The beating of Drago Tokmadžić was also confirmed by witness Edin Ganić, who was also taken out of the room on the occasion concerned and beaten up. Describing the beating of Drago Tokmadžić and Esad Islamović, witness Edin Ganić said that on that occasion Zoran Žigić told him "Be careful what you do, Edin, or you will end up like that swine," uttering Drago Tokmadžić's full name. The persons who beat up Drago Tokmadžić were identified by witness Edin Ganić as Zoran Žigić, Duća, whose last name, in the witness' opinion, is Knežević, Goran Laić, the Banović brothers, and several other guards from Banović's shift. The witness understood that these persons had the intention of killing Drago Tokmadžić, because he heard Žigić saying "Finish it", which was a message to the other perpetrators that Drago Tokmadžić should be killed. Witness K09 also confirmed the statements of the preceding witnesses that several persons participated in the beating of Drago Tokmadžić, stating that he thought that the Banović brothers participated in the beating, among others. According to the witness, this incident happened in the evening of 24 June 1992, which the witness connects to the time of his arrival in the Keraterm camp, that is, the second or the third day of his detention. According to witness K09, the beating of Drago Tokmadžić happened in front of the door of the room where the witness was held, so he could clearly hear the blows and yelling, as well as curses and insults, which was unpleasant for him to listen to. This witness also links the beating of Drago Tokmadžić with the beating of Esad Islamović, stressing that these two persons were brought into the room together after the incident. As for Drago Tokmadžić's death, witness K09 stated that Drago was unconscious and that he died, and gave a precise time of death. The witness also confirmed that Tokmadžić's body was taken out in front of the door the following day, whereupon it was taken behind the building. The witness said that Žigić and Duća were the perpetrators of the said beating and stressed that the detainees knew that these two men were coming to the camp and carried out beatings. Witness K016 confirmed that Drago Tokmadžić was beaten to death, whereupon he was literally thrown into the room, and that he died the same night. This witness personally took out Drago Tokmadžić's body the following morning to the dump where the dead people were being disposed of. The witness identified Banović and Goran Laić among many persons as the perpetrators of the beating, which corroborates the statement of Edin Ganić, the eyewitness to the beating, who also mentioned these persons that made up the group that beat Drago Tokmadžić to death. Witness Anto Tomić also testified about the beating of Drago Tokmadžić and it was on his testimony that the Court also based its conclusion that Tokmadžić was beaten up by a group of perpetrators, including Duća and Žigić. The witness stated that he was present when Tokmadžić and Islamović were called, and he also heard Duća and Žigić counting the blows, which sounded very painful.

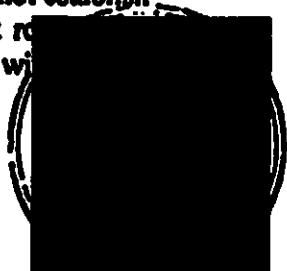
Witness Anto Tomić confirmed the statements of the preceding witnesses that Drago Tokmadžić died very quickly after the beating. The allegations in the Indictment regarding the killing of Drago Tokmadžić were also confirmed by the statement of witness K08, who saw Tokmadžić's body being thrown to the garbage dump and who heard that Tokmadžić had been beaten up, and witness K044, who also saw Tokmadžić's body being loaded onto a cart and who heard that he was killed. The Court fully accepted the timeframe of Drago Tokmadžić's death set out in the Indictment, taking into account the time indicated by witness K09, who heard Tokmadžić being called out on 24 June 1992, two-three days upon his own arrival. The Court is also satisfied that the allegations in the Indictment that Drago Tokmadžić was beaten by several persons, including guard Predrag Banović and outsiders Duško Knežević and Zoran Žigić, have been established, in particular taking into account the statements of witness Edin Ganić, who personally saw the perpetrators as he was also beaten up on the same occasion, as well as of witnesses K016 and Anto Tomić, who recognized the voices of Banović, that is, Duća and Žigić. The Court is satisfied that on the basis of the voices the witnesses could easily determine who of the perpetrators was present, as their testimonies indicate that the said persons visited the camp on a regular basis, and Predrag Banović was a guard, so these were the voices that the witnesses had the opportunity to hear every day. The death of detainee Drago Tokmadžić is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that the said person was declared officially dead by a decision of the Municipal Court in Sanski Most.

The Court also established beyond doubt the beating of Sead Jusufović, a.k.a. "Car", which, as the Indictment reads, was committed by Duško Knežević, Zoran Žigić and others, due to which this person died in June 1992. A number of eye-witnesses to this person's beating and death were examined about this event. The part in which the Court made corrections with respect to the Indictment concerns the number of the beatings of detainee Sead Jusufović, a.k.a. "Car". That is to say, it follows from the evidence of the majority of the witnesses examined about this incident that Sead Jusufović died as a result of one beating, whereas only one witness claimed that beating happened several times. Witnesses K014, K043, K016 and K044 linked the incident when Sead Jusufović "Car" was beaten up with the incident when he was forced to assemble and disassemble a heavy machine gun, that is, when he was ordered to run with the heavy machine gun in the open area in front of the rooms where the detainees were held. According to witness K016, who knew Sead Jusufović "Car" by his full name, "Car" was forced to run carrying the machine gun while Duća and Žigić beat him relentlessly. The two of them played the main role in the beating in which other persons also took part. According to this witness, "Car", who had not been in the camp for a long time, died from the beating and his body was taken away. Witness K044 confirms witness K016's statement that Duća and Žigić forced "Car" to run carrying a heavy machine gun while Duća was hitting him with a baton against his head, due to which he would fall. Witness K044, who had known "Car" by his nickname before, was an eyewitness to his death, as "Car" was thrown into the room where the witness was held upon the beating. According to witness K044, after "Car" had died, Dr. Jelenko pronounced him dead and Duća and Žigić ordered the body to be taken to the dump. Witness K014 also described the incident in which the detainee nicknamed "Car" was beaten up. This witness stated that "Car" was ordered to run carrying a heavy machine gun that he disassemble and assemble. Witness K014 stated that "Car" was called out by Žigić.



was in the Accused Knežević's company, whereupon they beat him with different implements. The witness also saw "Car's" dead body on the dump. Witness K05 also confirmed the statements of the preceding witnesses, stating that "Car" was given a heavy machine gun to crawl with it across the pista, which was ordered by Duća and Žigić. This witness stated, as all the other preceding witnesses, that "Car" died. Finally, witness K043 also described the incident when Žigić gave "Car" a heavy machine gun to assemble and disassemble and run in circles carrying it and, when he got tired, they started beating him; whereupon "Car" died and his body ended up on the dump. It is a fact that witness K043 did not mention Duško Knežević by his full name as a person who took part in the beating of "Car", but, when mentioning Zoran Žigić in his evidence, the witness used plural, clearly indicating that Žigić was not alone. Since it follows from the testimonies of all the preceding witnesses that on the relevant occasion Zoran Žigić and Duško Knežević came to the camp together and beat up the detainees, as in the majority of the other cases, everything clearly leads to the conclusion that Knežević was with Žigić on the relevant occasion, too, irrespective of the fact that this witness did not state it explicitly. Witnesses K016 and K014 stated in agreement that the beating and the killing of Sead Jusufović "Car" happened in June 1992, whereby they confirmed the allegations in the Indictment concerning the time of his death. The death of detainee Sead Jusufović "Car" is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that Sead Jusufović was found in the Pašinač pit and identified (PC-37-001B).

With respect to the killing of Besim Hergić, in the evidentiary proceedings the Prosecutor's Office of B-H succeeded in proving that it happened in the Keraterm camp. However, the Court did not find it established that detainee Besim Hergić was killed by Duško Knežević, since not a single witness mentioned the Accused Knežević in the context of this detainee's killing. That is why this event was classified in the group of the killings of detainees committed directly and personally by other persons, not Duško Knežević, with the aim of improving the system of abuse and persecution in the camp in which he took part. Witnesses K044 and K010 were examined about the said incident. The witnesses had known Besim Hergić from before and saw him in the Keraterm camp, and witness K010 was placed on the same pallet in the room with him. Witness K010's statement indicates that Besim Hergić was called out together with other 9-10 detainees who were forced to kneel on the pista while being beaten. Witness K010 personally brought Besim Hergić into the room at the order of guard Kondić and Hergić was still alive when he was brought in, according to the witness, and told them: "Brothers, leave me alone, do not touch my body." This leads to the conclusion that Besim Hergić was severely beaten on the said occasion. The witness claimed that Besim Hergić died that night, specifying that the killing happened on 27 July 1992. The statement of witness K010 on Besim Hergić's killing, although he did not see the beating, was confirmed by witness K044, who saw Hergić dead, heard from a friend that he had been killed and saw his sports-shoes worn by another person. Describing Besim Hergić's dead body, witness K044 stated that Besim's legs were contorted and that he was holding his hands in front of his face. The witness stated that the killing of Besim Hergić happened in late June or early July 1992, and since the Court could not establish with certainty whether the killing took place in June or July 1992, it left room for possibility that it was either month, hence the relevant correction was made with reference to the allegations in the Indictment.



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With respect to the killings committed directly and personally by persons other than Duško Knežević but with the aim of improving the system of abuse and persecution in the camp in which the Accused took part too, the first incident described in the operative part of the Verdict is the killing of Jovo Radočaj, the only Serb detainee in the Keraterm camp. According to the Indictment, the said killing happened on or about 23 June 1992 and it was committed by Predrag Banović, by beating with a baseball bat. The Court also found this incident established but with certain corrections with respect to the facts in the Indictment. Witnesses Anto Tomić, K015, K09, K016 and Edin Ganić were examined about the beating and death of Jovo Radočaj and they stated in accord that Jovo Radočaj was an ethnic Serb and a detainee of the Keraterm camp. According to witness Anto Tomić, Jovo Radočaj was taken out and killed one night, and, as the witness was held in the same room with Radočaj, he heard someone calling Radočaj out: "Jovo, get out." Jovo Radočaj said: "It's over", having a presentiment that he would be killed. The witness stated that he personally saw Jovo Radočaj's dead body the following day in front of room 4 where dead bodies used to be laid down. Witness K015, who arrived in the Keraterm camp on 19 June 1992, said about the beating of Jovo Radočaj that, in the evening when Radočaj was brought, someone came in front of the door and said: "Come on, Serb, get out." The witness recognized the voice of Kajin, one of the shift leaders, after which they started beating Radočaj. Witness K015 said he heard a sound as if a wet ball was hitting against a wall, and when Jovo Radočaj was thrown into the room, he spoke incomprehensibly, according to the witness. The following day the witness saw a bloody imprint at the height of one meter, based on which he concluded that the stain was a result of the victim hitting the wall with his head. With respect to the identity of the persons who beat Jovo Radočaj, the witness could not say with certainty which of the guards was present on that occasion, except that he recognized Kajin's voice, but he said that there was more than one person. The beating to death of Jovo Radočaj was also described by witness K09, who arrived in the camp on 23 June 1992 and who heard on his first night the call-out when Jovo Radočaj was taken away. The witness said that he heard yells, noise, shouts and blows and his estimate is that the beating lasted for 30-45 minutes. This witness also confirmed that several persons participated in the beating of Jovo Radočaj, which he concluded from the number of voices, of which he afterward recognized the voice of one Banović brother. Since witness K09 was held in the same room into which Jovo Radočaj was thrown after the beating, he heard him yelling and complaining of pain, and he was also present when Jovo Radočaj died the following morning, whereupon his body was taken out. The death of Jovo Radočaj was also confirmed by witness K016, whose testimony indicates that he saw only the consequences of the beating, as he stated that Jovo Radočaj was thrown into room 4, that he was stabbed with a knife and that he died as a result of it. This witness also saw Jovo Radočaj's body that, according to him, was taken out of room 4 to the garbage dump where the dead bodies were being laid down. Edin Ganić also witnessed the beating of Jovo Radočaj and said that he heard him being called out and then heard blows and screams, and that in the morning he saw Jovo Radočaj's body, hence this witness also fully confirmed the statements of the aforementioned witnesses that Jovo Radočaj was beaten to death. The Court could not establish beyond any reasonable doubt that the guard Predrag Banović committed the relevant killing, given the fact that no witness identified him explicitly as the perpetrator of Jovo Radočaj's beating. One witness said that he heard Kajin's voice, where mentioned the Banović brothers, hence it was not established with certainty which guards participated in the incident. Likewise, the Court was not able to establish

the adduced evidence with which implements Jovo Radočaj was beaten up, that is, whether a baseball bat was used on that occasion, as the factual part of the Indictment reads. Therefore, a correction was made with respect to the perpetrator and the implements used in the beating. The Court left a possibility that the relevant event happened on 23 June 1992, as witness K09 said, and made a correction with respect to the time too, hence it is stated in the operative part of the Verdict that Jovo Radočaj was beaten up in the second half of June 1992, which was confirmed by witness Edin Ganić, who closely linked the calling out of Jovo Radočaj time-wise with the beating up of Drago Tokmadžić.

A number of witnesses testified about the beating of an ethnic Albanian named Jasmin "Zvezdaš", as they either saw or heard the beating and some were eyewitnesses to the consequences of the beating, that is, this detainee's death. According to witness Anto Tomić, when Drago Tokmadžić was being beaten up, "Zvezdaš", a pastry-shop worker from Prijedor, and some other Albanians who were called out on that occasion were also beaten up. Witnesses K09 and K015 also mentioned the calling up and beating up of a group of Albanian men, and witness K015 confirmed the assertions of witness Anto Tomić that "Zvezdaš" was among the called ones and that they beat him up after it had been ordered: "All Šiptari, get out". It also follows from the statements of witnesses K016 and K043 that the worker of the "Zvezda" pastry shop in Prijedor named Jasmin was beaten to death. According to witness K043, "Zvezdaš" was held with him in the same room, room 4, so the witness saw when Jasmin was taken back to the room. Witness K043 also saw in the morning that Jasmin vomited some yellow substance, whereupon one detainee, who was a medical worker, said that his bile ruptured and that he would not survive, which, according to the witness, happened indeed since Jasmin died and his body was taken out to the dump. Witnesses K09 and K015 also saw the consequences of the beating of Jasmin, the Albanian, as they were held in the same room, and they confirmed witness K043's statement that Jasmin was bedridden for two-three days having been beaten up, that he vomited something yellow and that he passed away. This was also indicated by the testimony of witness K08, who had known Jasmin, the Albanian, son of the "Zvezdaš" pastry shop owner. This witness stated that he personally saw Jasmin lying physically impaired and beaten up and that he died. Witness K08 also saw Jasmin's body and he personally laid it down into a tin coffin, whereupon a vehicle came and drove the victim's body. Based on the evidence given by the aforementioned witnesses, the Court established beyond doubt that Albanian Jasmin, nicknamed "Zvezdaš", was beaten up in the Keraterm camp and that he died as a result thereof. However, as for the identity of the perpetrators of the beating, the Court could not consider it established that the beating was perpetrated by Predrag Banović. That is to say, the factual part of the Indictment reads that Jasmin "Zvezdaš" was beaten up by Predrag Banović and others, which leaves room for a possibility that the guards and outsiders alike participated in the killing. Therefore, a correction was made with respect to the relevant allegations in the Indictment, as stated in the operative part of the Verdict, as Predrag Banović's name was omitted since no witness mentioned him as a participant in this event. With respect to the time of the relevant event, the Court accepts the assertions that it happened in late June or early July 1992 when, according to the witnesses, the major part of the beating happened, especially given the statement of witness Anto Tomić, who said that the beating happened at the time

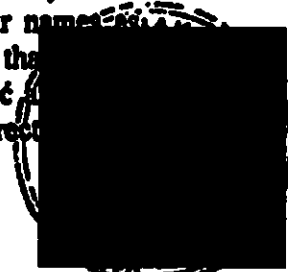
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\* Derogatory name for Albanians; translator's note

**Tokmadžić's beating, and that of witness K016, who linked the said event time-wise with the beating of Jovo Radočaj and other detainees.**

**According to the facts in the Indictment, in July 1992, Džemal Mešić was beaten to death having been taken out of the room by camp guard Predrag Banović. According to the presented evidence, that is, testimonies of witnesses K010 and K029, who had known Džemal Mešić from the village of Čela, he was called out one evening. According to witness K029, who was a roommate of detainee Džemal Mešić, Mešić was called out, whereupon he stood up and went out and after a certain period of time he returned or was thrown into the room. The witness did not see the beating, but saw Džemal Mešić's condition when he was returned to the room, and stated that Mešić could not speak, that he lay down saying "Oh, mother, I am done with", whereupon he no longer showed any signs of life and ceased breathing, that is, died. Witness K010 also confirmed the taking away of Džemal Mešić, as, having been placed next to the door, he heard Mešić's name being called out. On the following day, the witness saw Džemal Mešić dead, stressing that he saw Mešić's body in front of room 1 when it was being laid in a coffin. Although the witnesses did not see the beating of Džemal Mešić, which is logical given that it was night and that all detainees were held in their rooms, and as the beating took place outside, the Court considers it established that Mešić was beaten up the relevant night, given the fact that the witnesses heard him being called out and witness K029 saw him going out, that is, returning in bad condition. After that, the witness also saw the very moment of Džemal Mešić's death, which is also confirmed by the statement of witness K010, who saw Mešić's lifeless body the following day. In accordance with the results of the adduced evidence, the Court made a correction with respect to the allegations in the Indictment concerning the name of the person who called Džemal Mešić out. In other words, witness K029 stated that Džemal Mešić was called out by Banović, and as two Banović brothers were guards in the camp, and as the witness did not specify the name, the Court allowed for a possibility that it could be either one of the Banović brothers. In addition to this, it was not established with certainty in the course of the evidentiary proceedings whether Džemal Mešić was killed in July 1992, as the Indictment reads, so a correction to the time of the killing was made, indicating that the event could happen either in June or in July 1992. The death of detainee Džemal Mešić is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that Džemal Mešić was found in the Pašinac pit and identified (PC-17-001B).**

**A huge number of witnesses were examined about the circumstances surrounding the event that took place on or about 25 July 1992 when approximately 20 men, including Ismet Bajrić, Behzad Behlić, a person named Šolaja, Mesud Karupović, Ismet Karupović, Azir Hopovac, Serbo Musić, Adim Habibović, and the three Žerić brothers, were called out, taken away and shot dead. On the basis of the witnesses' testimonies, the Court concluded beyond any reasonable doubt that on the relevant occasion approximately 20 men, including Ismet Bajrić, Behzad Behlić and a person named Šolaja, were taken out and killed. This follows from the examined witnesses' statements, as they mentioned the number of the detainees killed on this occasion, but only Ismet Bajrić, Behzad Behlić and the man named Šolaja were identified by their names as having been among the 20 killed detainees. Since none of the witnesses said that Karupović, Ismet Karupović, Azir Hopovac, Serbo Musić, Adim Habibović and the Žerić brothers were in the group of the men taken out, the Court made a correction**



respect to the facts in the Indictment and omitted the names of the said persons from the operative part of the Verdict. The Court based its belief that approximately 20 men were taken out on the occasion concerned, including the three persons mentioned above, and that they were shot dead afterward, primarily on the testimony of witness Enes Crljenković, who was held in the same room with the said men and who saw them being taken away. According to witness Enes Crljenković, the camp staff members entered the room and ordered Ismet Bajrić to select 20 men telling him: "Damn you, balija\*, what are you waiting for?" After that, they took them out and killed them. According to the witness, 19 more people were taken out in addition to Ismet Bajrić, Bajrić being the last detainee who was taken out of the room. After these persons were taken out, witness Enes Crljenković heard a burst of gunfire which lasted 5 minutes, to his estimate. He stressed that he did not see anything, which is logical given the fact that the door of room 3 was always locked. However, the witness was categorical that the men taken out were killed, as he saw them being taken out, and shooting began 5 minutes later, after which he never saw these men again. The court fully accepts these assertions by Enes Crljenković considering the logical sequence of events from the moment of taking out the said persons and the shooting that was heard, moreover as it follows from the witnesses' statements that the men were taken out because of the alleged escape of some persons from the camp, which could be related to some kind of retaliation for escape. According to witness Enes Crljenković, in addition to Ismet Bajrić, also being taken out and killed were Behzad Behlić and the man named Šolaja. The Court accepts this witness' assertions, because the witness saw the persons' whom he knew by name or last name being taken out. Witness K013 also said that in the night of 25 July 1992 he heard shooting, both individual shots and bursts, and that he saw dead bodies the following morning loaded onto a truck and taken in an unknown direction. The witness stated that, prior to the loading, the bodies were scattered across the pista and that noise and cries for help were heard during the shooting at night. This witness estimated that there were between 30-50 bodies, which the other detainees could only guess about, as the witness himself said. Therefore, the Court accepted the statement of witness Enes Crljenković that there were 20 men, because this witness was the only eyewitness to the taking out of the detainees. Witness K016 also mentioned the shooting on the night concerned and stated that there were around 25 bodies, to his knowledge. The differences in these three witnesses' respective testimonies concern the kind of shooting that the witnesses heard during the night, since witness K016 heard individual shots, witness K013 heard automatic rifle bursts, while witness Enes Crljenković heard bursts from a heavy machine gun. In the opinion of the Court, the inconsistency in the witnesses' respective testimonies in this part did not call into question their statements regarding the decisive fact that the killings indeed happened. In this respect, different perceptions of each witness should be borne in mind, as should also be the great distance in time, since the witnesses described the event that had taken place 16 years ago. For the same reason, the Court did not find the differences concerning the number of the killed persons or the time the bodies were taken away to be serious. Witnesses Enes Crljenković and K013 stated in unison that the bodies were loaded onto a truck and taken away, and it is irrelevant for the case at hand whether it happened immediately after the shooting started or in the morning. The Court established beyond doubt that the relevant event happened on or about 25 July 1992, considering the fact that on that occasion people

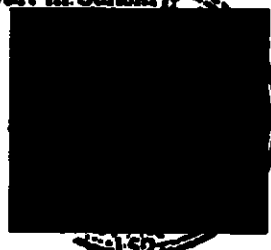
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\* Derogatory name for B-H Muslims; translator's note



from room 3, who had been brought in late July 1992, were killed. Witness K013 was precise about the time, stating that the date of the event was 25 July 1992.

The following incident quoted in the Indictment by the Prosecutor's Office of B-H concerns the beating to death of Avdić ("Cacko") by Predrag Banović and others. According to the Indictment, the beating happened between 9 June and 24 July 1992. With respect to this event, the Court made certain corrections to the allegations in the Indictment, as stated in the operative part of the Verdict, which is a result of the contents of the evidence from the witnesses who testified about the circumstances surrounding the said incident. In other words, when testifying about the killing of the person whose last name was Avdić, witnesses K013, K010 and K043 stated that he was beaten up and killed, but did not say who killed him, which is why the operative part of the Verdict states that he was beaten up and killed, but not by whom. The Court accepted the period from 9 June to 24 July 1992, as indicated in the Indictment, taking into consideration that it covered a wide period within which the majority of the beatings took place, and especially taking into consideration the fact that witness K013, who testified about the relevant event, was brought to the camp on 12 June 1992 and that it follows from the statements of all the witnesses who were detained in the Keraterm camp that after 24-25 July 1992 there were no individual beatings to death in the camp. Although the Indictment does not state the first name of the person whose last name was Avdić and who was killed on the relevant occasion, which is mirrored in the operative part of the Verdict as well, the testimonies of witnesses K013, K010 and K043 indicate that it was Fikret Avdić, a.k.a. "Cacko", who was a waiter, which was confirmed by witnesses K010 and K043. All the aforementioned witnesses knew this person and stated that they saw him in the Keraterm camp. Witness K043 remembered this person's full name and nickname, while witness K013, asked by the Prosecutor whether he knew Fikret Avdić, answered yes, while witness K010 stated that, as far as he could remember, that person's name was Samir Avdić but allowed that he might be mistaken about the first name. According to all examined witnesses, Avdić was killed in the Keraterm camp, and witness K010, who shared the room with him, saw when Avdić was brought to room 2 following a beating, whereupon he died. This witness claimed that Avdić's body was taken out of the room afterward, which leads to the conclusion that he actually saw it. Avdić's killing was also corroborated by the testimonies of the other two witnesses, as witness K013 said that he personally saw his dead body thrown out in front of room 2, which confirms the statement of witness K010 that Avdić was held in room 2. Witness K043 also personally saw Avdić's dead body when he was brought in room 2, stating that Avdić had first been called out and that in the morning, before dawn, he was brought dead in a blanket. The difference between the respective statements of this witness and witness K010 is that witness K010's statement indicates that Avdić died in the room. However, in the Court's opinion, the said discrepancy between the two witnesses' statements is not relevant to the decisive fact that the victim died, particularly as detainee Avdić must have been in a very bad condition following the beating, moreover as he died very soon afterward, hence it is possible that witness K043 gained an impression that Avdić was brought dead. The death of detainee Avdić is also confirmed by Nicolas Sébire's Additional Report of 28 August 2002, indicating that the said person was declared dead officially by a decision of the Municipal Court in Sanski Most.



According to the Indictment, in July 1992, Dževad Karabegović was beaten up, having been called out by guard Predrag Banović, as a result of which he died. The Court established beyond any reasonable doubt that this incident also happened at the time and in the manner described in the factual part of the Indictment, which follows from the testimonies of the examined witnesses K044 and Ismet Dizdarević. According to witness K044, Dževad Karabegović was called out one night by Banović, who told him to go with him, and 45 minutes later the witness saw the door opening and "something collapsing". Having been told that it was Dževad Karabegović, the witness took him and brought him to his pallet. Witness K044, who was by Dževad Karabegović's side after the beating, said that he saw under the light of a cigarette lighter that Karabegović's back was black as coal and, since he felt blood on his hands, he tried to find a wound on Karabegović's body and ultimately found out that Karabegović was slit below his elbow. This witness said that he personally saw when Dževad Karabegović died one hour later. The beating and death of Dževad Karabegović was also confirmed by witness Ismet Dizdarević in his statements before the Hague Tribunal on 4 November 1995 and 2 February 2002. Upon the motion of the Prosecutor's Office of B-H and pursuant to Article 273(2) of the Criminal Procedure Code of B-H, these statements were admitted as exhibits at the main trial under No. 206, since the Death certificate No. 04-202-1-6920/2007 of 29 November 2007, issued by the Registry Office of the Prijedor Municipality, indicates that Ismet Dizdarević died on 6 June 2005, so it was not possible to examine this witness before this Court. In his statement of 4 November 1995, witness Ismet Dizdarević confirmed the statement of witness K044 that Banović called out Dževad Karabegović, while in the statement of 2 February 2002, he specified that it was Čupo Banović, which leads to the conclusion that it was Predrag Banović, a.k.a. "Čupo", because it follows from the testimonies of all examined witnesses that the witnesses referred to him by the nickname of Čupo. This witness also confirmed Dževad Karabegović's physical condition after he was returned to the room, stating that he was black and blue from the blows, that he bled from his mouth and nose and that he could not speak. Witness Ismet Dizdarević also confirmed the assertion of witness K044 that Dževad Karabegović died after a short while and the Court accepted this assertion given the fact that both witnesses were in the immediate proximity of Karabegović when he died. Therefore, the Court based the conclusion that Dževad Karabegović, having been called out by Predrag Banović, was taken out and beaten up, which resulted in his death, on the evidence of the said two witnesses who were present when Karabegović was called out by Banović, that is, by Čupo Banović, according to witness Ismet Dizdarević. This witness, although saying he did not see anything, stressed in his 2002 statement that he heard Dževad Karabegović's moaning, whereupon Karabegović was taken back to the room in the condition described previously by both witnesses and then died. That Karabegović was beaten up having been taken out can also be concluded from the fact that the Banović brothers returned to the room "after a completed job" and asked for two volunteers to bring Karabegović into the room, which also confirms that Dževad Karabegović was beaten up to the extent that he could not move on his own but had to be brought in. Although no witness could see the beating, the Court finds that it can be clearly concluded that Karabegović was beaten to death based on the fact that, following the call-out, the victim walked out on his own feet but that he was later returned in a difficult physical condition and with bruises all over his body and that he succumbed to the injuries shortly afterward. The Court finds it established that the killing Karabegović happened in July 1992, primarily considering the statements Ismet Dizdarević, who specified that the event took place in early July 1992.

also confirmed by witness K044, whose evidence indicates that Karabegović was killed 8-9 days upon his arrival in the camp. Witness K044 saw the bringing of Dževad Karabegović into the camp and claimed that it happened approximately one month into his detention in the Keraterm camp. Given the fact that this witness stated that he was brought there on 31 May 1992, it follows that Dževad Karabegović was brought to the camp in late June or early July and that he was killed in the early or the first half of July 1992.

The beating of detainee K05 is also classified in the group of the beatings and other forms of physical violence against the detainees committed directly and personally by the Accused Duško Knežević or in his immediate presence with discriminatory intention. According to the Indictment, Duško Knežević, Zoran Žigić, Predrag Banović and a person called "Sahadžija" were the perpetrators of the several instances of beating with a metal rod, fists and feet in the period from 30 May to 5 August 1992. Witness K05, the victim of the said beating, was examined and gave a detailed statement on the said events. It ensues from his statement that he was brought to the Keraterm camp on 30 May 1992, when, upon getting off the bus, he and the other detainees ran a gauntlet made up of the guards, during which they were beaten with different implements. The beatings relevant to the Indictment took place, according to witness K05, prior to the arrival of a group of inmates on 14 June 1992, during which period a group of nine detainees, including the witness, was taken out and mistreated every day. This witness' testimony indicates that the group of nine detainees was being taken out regularly by Dušan Knežević and Žigić. In addition to these persons, the witness also identified Čupo as a person who beat him, this nickname being linked to guard Predrag Banović, and a person called "Sahadžija". Describing the beatings and mistreatment that, according to witness K05, were a daily occurrence, the witness said: "We were being abused every day, we would be taken outside, beaten, mistreated, called derogatory names, there is hardly a method that they did not use on us." The witness said that the perpetrators used rubber sticks, rods and feet for the beating. In accordance with the witness' statement, a correction was made to the allegations in the Indictment in that respect, as stated in the operative part of the Verdict. The witness also described the incident when the aforementioned group of detainees was forced to take off their underwear and sit on glass bottles placed on the pista. The Court considered this witness' statement to be true and credible and it found that it was fully established that the relevant event happened in the afore-described manner, as the Indictment reads, too, irrespective of the fact that only the said witness testified about it, as the Court considered that, given the large number of described killings and beatings, all the detainees could not see each individual event. However, it follows clearly from the totality of their testimonies that such events happened on a daily basis.

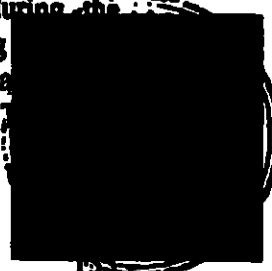
A large number of witnesses were also examined concerning the beating of detainee Fajzo Mujkanović, as they were eye-witnesses to his beating by Duško Knežević, whereupon Knežević cut this witness' neck with a knife, due to which the witness had to go to hospital. The Court made a correction with respect to the factual description of this event in the Indictment, specifically with respect to the time of the event and the duration of the beating, so, in accordance with the witness' statement, June or July 1992 is indicated as the time of the beating in the operative part of the Verdict, while the allegation from the Indictment that the beating lasted for three consecutive days is out. The evidence of witness K016 indicates that, upon being brought to the



"Fajzo" was mistreated by Duća, who requested from him to admit the killing of his brother, that Duća beat him and cut his neck with a knife and that Duća was the only one who mistreated him. Witness K05 also described the incident when Duško cut Fajzo Mujkanović's neck with a knife asking him if it hurt him and Mujkanović answered: "You just do your job." Witness K043 fully confirmed the previous two witnesses' statements as he, too, said that Fajzo's neck was cut with a knife, as did witness Abdulah Brkić, who stated that he saw the moment when Duća came to the camp and asked where Fajzo was, whereupon Fajzo was taken out. Since the rooms' doors were open, this witness saw Fajzo being pushed to the ground, Duća taking a knife out and making an incision across Fajzo's neck requesting from Fajzo to tell him who had killed his brother. Therefore, all examined witnesses stated in agreement that Duća, that is, the Accused Duško Knežević made an incision with a knife in Fajzo Mujkanović's neck on the relevant occasion, and witness K016 also saw Duća beating Fajzo, which the Court finds to be completely established as it was daytime and the room's doors were not closed, so the witness could see what was going on. There is only one witness who identified Zoran Žigić as the perpetrator of the aforesaid injuring instead of the Accused Duško Knežević, but all the other witnesses confirmed positively and in accord that it was done by Knežević, and some of them connected the event to Knežević's brother's death. Witnesses K05 and K043 confirmed in accord that Fajzo Mujkanović was taken to hospital following the said incident and said that they saw a bandage afterward, that is, a plaster strip on his injury, that is, that he was taken to hospital. Witness K05 said that Fajzo was taken to hospital together with Emsud Bahunjić. The Court made a correction with respect to the time indicated in the Indictment, setting the event timeframe to June or July 1992. It is more realistic that the beating of Fajzo Mujkanović took place in June 1992 since, according to witness K05, he saw Fajzo for the first time in the camp on 14 June 1992 and said that he was taken to Omarska on 20 June 1992, while witness K016 stated that the incident with Fajzo happened 4-5 days following the killing of "Car", which was established having taken place in June 1992.

With respect to the beating of K039, Mehmed Jakupović and Muhamed Elkazović by Duško Knežević and Zoran Žigić, which, according to the Indictment, happened on or about 14 June 1992, the Prosecutor's Office of B-H did not present a single piece of evidence in the course of the evidentiary proceedings concerning the said incident. Therefore, the Court did not find it proven that the incident happened at all, which the Prosecutor also stated in the closing argument. Accordingly, the incident is omitted from the operative part of the Verdict.

As the Indictment reads, on or about 16 June 1992, Duško Knežević, together with Zoran Žigić, beat up detainees Ilijas Jakupović and K033 so hard that their faces became swollen and bloody, and witness K033 was beaten up by Duško Knežević 10 more times after that. The Prosecutor's Office of B-H offered the exhibits confirming that the incident happened indeed, but, in accordance with the results of the evidentiary proceedings, the Court made corrections with respect to the allegations in the Indictment, as stated in the operative part of the Verdict, primarily concerning the consequences of the beating and the number of the instances of beating of witness K033 by Duško Knežević. Witness K033 was examined before this Court during the evidentiary proceedings and he testified in detail about his and the beating Jakupović by Duško Knežević. The testimony of witness K033 indicates that he was taken to the Keraterm camp mid-June 1992, that he had been detained in the



camp for some 15 days prior to it, having been arrested in late May 1992. Describing his first day in Keraterm, the witness said that Duća came, lined up the detainees, including the witness, and kicked them and beat them with various implements and ordered them to kneel whereupon he beat them. With respect to Duća's visits and beating of K033 and Ilijaz Jakupović, the witness stressed that Zoran Žigić perpetrated the beatings together with Duća, that he and Duća practically took turns, and that the witness had an impression that these persons were in charge of the beating. The witness stressed that, in addition to him, Ilijaz Jakupović would also be beaten, as he would be taken out together with the witness and also beaten by Duća. According to witness K033, Duća beat him 7-8 times in a group of 8-10 detainees and that, among other things, he forced the detainees to beat themselves and he once personally hit him with a pistol, so the witness' face started bleeding. The witness also stated that Duća used to push a pistol into people's mouths, and, to his recollection, he would beat them with rubber sticks, rods, feet and hands, mostly with sticks behind a truck parked at the camp entrance. Such detailed account of witness K033 of his own and the beating of Ilijaz Jakupović by the Accused Duško Knežević and Zoran Žigić confirms the allegations in the Indictment concerning the relevant event, except that the Court indicated in the operative part of the Verdict that the beating happened several times, instead of 10 times, since the witness indicated in his evidence that he was beaten 7-8 times. The statements of witness K033 were corroborated by the statement of witness K016, who indicated that K033 and his brother were being taken out together with Emsud Bahonjić, that they were beaten up every time and then returned into the room, and who stressed that sometimes he would see the very beating and sometimes the consequences of the beating.

With respect to the beating of K015, which, according to the Indictment, happened in late June 1992 by Duško Knežević, who beat this detainee with a stick against his head and body, the Court based its conclusion that this beating also happened at the time and in the manner described in the factual part of the Indictment primarily on the evidence of witness K015. In the opinion of the Court, witness K015 gave a sufficiently convincing statement on the basis of which the aforementioned conclusion was made. According to this witness' testimony, the beating of K015 is linked time-wise with the killing of Drago Tokmadžić, which happened in late June 1992, and the beating of Esad Islamović when, as witness K015 stated, he personally was ordered to take the beaten Drago Tokmadžić and Esad Islamović inside, which is also confirmed by witness K09, who said that K015 went out in order to bring Drago and Eso in. Witness K015 was explicit that Duško Knežević, a.k.a. Duća, who had no official role in the camp, beat him up on that occasion. This witness saw him again in the camp two days later. According to witness K015, he was beaten up by a soldier who had worked in Tomašica before the war and he heard his name from the other camp inmates, who said that he was a professional butcher and that he was coming often with his gang to Keraterm. Witness K015 used to see the Accused Knežević in Keraterm and recognized him as the person who beat him, which the Court fully accepted, moreover as, according to the witness, it was daytime and he could remember that soldier's face. Describing the beating that he was subjected to on the relevant occasion, witness K015 stated that he received a punch to his temple, when others approached and started punching him, while the person, who he later learned was called Duško Knežević, a.k.a. Duća, beat him with a stick. According to the witness, he received such a strong blow that his nose started bleeding, while the others kicked him in his kidneys, with Duća saying "100 more times" and he started feeling dizzy from the blows, so when he lay down on the pallet, he either

consciousness or fell asleep. The Court fully believed witness K015 in this respect too, as it could realistically be expected that the witness lost consciousness given the description of the blows he received to his head. The foregoing is completely confirmed by witness K016, too, who stated in his evidence that K015 was called out after Eso Islamović and that he was all beaten up when he returned to the room.

As has already been stated, the beating of K015 is connected time-wise with the beating of Esad Islamović and Drago Tokmadžić, when Drago Tokmadžić died as a result of the injuries he sustained. Given the fact that it is one and the same event, the witnesses who testified about the beating and death of Drago Tokmadžić also testified about the brutal beating of Esad Islamović which, as the Indictment reads, happened in June 1992. The Court made a correction with respect to the allegation in the Indictment concerning the identity of the persons who beat up Esad Islamović, since it established with certainty that the beating was committed by the Accused Duško Knežević and that there were other co-perpetrators with him on that occasion, but it did not establish that the witness was also beaten by Predrag Banović. That is why the name of Predrag Banović is omitted, as was the case with the beating to death of Drago Tokmadžić, referred to in the section of the operative part of the Verdict dealing with the killings in the Keraterm camp committed by Duško Knežević. Witnesses K015, Edin Ganić, K09, K016, Anto Tomić and K044 stated in accord that Esad Islamović, whom the witnesses referred to by the nickname of Eso, was beaten up together with Drago Tokmadžić. Having in mind the fact that the Court, as explained above, established that the beating of Drago Tokmadžić took place in late June 1992, it was accepted that the beating of Esad Islamović happened in June 1992, as stated in the Indictment, the timing being set broader than that of the beating of the other persons beaten up on that occasion. Witness K015 stated in his testimony that one evening he heard Drago Tokmadžić being called out, when a group of people was heard and came and told Drago to get out, whereupon Esad Islamović was also called out. Witness K015 heard the beating of Esad Islamović, whereupon he heard the order that four men should get out and bring Drago Tokmadžić and Esad Islamović inside, which was done. Witness K09 also links the beating of Esad Islamović with the beating of Drago Tokmadžić, and, just like witness K015, he also heard the order that four detainees should bring inside the two beaten detainees. In the Court's assessment, these assertions by the witnesses undoubtedly lead to the conclusion that Esad Islamović was so severely beaten that he was not able to return to the room on his own, but had to be carried in by someone else. Finally, the description of Esad Islamović by witness K09, who saw him following the beating, confirms the allegations in the Indictment that the beating was severe, since this witness claimed that Esad Islamović was black-and-blue and that his fingers were broken. Witness K016, in accord with the preceding witnesses' statements, described the beating of Esad Islamović and Drago Tokmadžić as a single event and also stated that Drago and Eso were literally thrown into room 4, whereupon Drago died. According to witness Anto Tomić, who was brought to the Keraterm camp on 14 June 1992, one night Esad Islamović and Drago Tokmadžić were called out, taken out and beaten in such a way that the perpetrators counted blows: "20 more, 50 more, 50 more". This witness, in addition to confirming that Drago Tokmadžić died as a result of the sustained injuries, also stated that Esad Islamović could not be recognized from the beating, that his nose was broken, that he was swollen and black-and-blue all over his body and around the eyes. This also indicates the severity of the beating he was exposed to. Witness Edin Ganić was also beaten on that occasion, confirmed the preceding witnesses' statements

Islamović's beating. This witness was the only one present when the beating took place, but he did not give a detailed account of Esad Islamović's beating, which is logical given the fact that he, too, was a victim of beating at the same time. In addition to the testimony of this witness, who saw Esad Islamović, the testimonies of the witnesses who testified about the calling out of Esad Islamović and his condition after being thrown into the room, also lead to the conclusion that Esad Islamović was severely beaten on the relevant occasion, despite the fact that many witnesses did not see the very act of beating. Witness Edin Ganić, who was being beaten at the same time, stated that the beating was perpetrated by a group comprising Duća, Zoran Žigić, Vokić, Laić and the Banović brothers, while the participation of the Accused Knežević in this beating was also confirmed by witness Anto Tomić, who heard Duća and Žigić counting the blows together and beating people. The participation of the Accused Knežević in the beating of Esad Islamović was also confirmed by witness K015, who described his own beating by Duško Knežević, as these were obviously the beatings that occurred simultaneously when a group of perpetrators beat up several detainees. Since it follows from the examined witnesses' evidence that several persons participated in the beating, including the Accused Knežević with a group of outsiders, and some of the guards, such as the Banović brothers, and considering the statements of witnesses Edin Ganić and K016, the Court made a correction to the allegations in the Indictment in that respect by omitting the name of Predrag Banović, since no witness identified him as a person who beat up Esad Islamović.

It follows from the evidence of witness Edin Ganić, who described the beating of Drago Tokmadžić and Esad Islamović, that the witness was beaten up on the same occasion when these two detainees were beaten up. In the factual part of the Indictment, the Accused Duško Knežević is charged with beating up Edin Ganić, together with Zoran Žigić, using a baseball bat and smashing both his knees in late June 1992. As has been indicated earlier, Edin Ganić stated in his evidence that he was beaten up at the same time as Drago Tokmadžić, for whom it was established that he succumbed to the injuries of the beating in late June 1992. That is why the Court has found it established that the beating of Edin Ganić also happened in late June 1992, given all the aforementioned circumstances leading to the conclusion that these beatings happened simultaneously. In his statement before the Hague Tribunal, Edin Ganić described the relevant event stating that he was called by Predrag Banović while Zoran Žigić and Duća were waiting outside, whereupon Zoran Žigić ordered him to sit "the Turkish way". According to witness Ganić, Zoran Vokić, Laić and the Banović brothers were also present there. Žigić asked the witness about the motorbike and some other belongings, the witness having told him he had no money, and then started kicking and hitting him with a stick all over his body. According to the witness, no spot on his body was spared from Žigić's blows, while one person from the group of perpetrators hit him on his head, and the witness remembered having fainted from the blows a few times. Witness Edin Ganić described the participation of the Accused Duško Knežević in the beating as follows: "Duća came; Dušan Knežević is his real name. He had a baseball bat and he broke my leg with it." Testifying further, witness Ganić said that his every bone was broken from that strong blow and that his lower jaw was fractured at several places. The witness then said that Zoran Vokić took him to room 1, where the other detainees administered aid to him by punting wooden slabs around his broken leg, and afterwards he was taken to the hospital. Witness K029, who was held in room 1, Edin Ganić, did not personally see the beating of this detainee, but heard Žigić

him whereupon he heard blows and voices. On the basis of that, witness K029 concluded that Žigić was not alone on that occasion, whereby he confirmed witness Edin Ganić's assertion that several persons did the beating. The statement of witness K029 also fully confirmed the statements of witness Ganić about his own condition after he was returned to room 1, as this witness also stated that Ganić's leg was broken and he personally saw that Ganić had no knee joint, that a part of his leg was hanging on a piece of skin and that his knee was broken. Witness K029 also confirmed witness Edin Ganić's statement that he was taken to the hospital over the sustained injuries, which is fully in accord with the statement of witness K013. That is to say, witness K013 stated that Edin Ganić was taken to the hospital together with him and he described Ganić's injuries as a broken knee and other bodily injuries, stressing that the group comprising Žigić, Duća, Vokić and others inflicted these injuries on Ganić. Since witness Edin Ganić was resolute in his testimony that Zoran Žigić and Dušan Knežević beat him on the relevant occasion, which is fully confirmed by witness K013 and partially also by the other witnesses, the Court considers established the allegations in the Indictment regarding the identity of the perpetrators who beat up and inflicted injuries to Edin Ganić, especially the injuries to his knee inflicted with a stick by Knežević, as well as the injuries to his body and head. Accordingly, the Court made the relevant corrections, as stated in the operative part of the Verdict.

The Indictment also charged the Accused Duško Knežević with the beating of Jasmin Ramadanović, who was beaten up several times by Duško Knežević, Zoran Žigić and Predrag Banović in June or July 1992 and who had to be hospitalized due to the injuries sustained. Witnesses K014 and K016 confirmed in their testimonies that Jasmin Ramadanović was beaten up several times. Witness K016 stating that Jasmin Bajramović "Šengin" was called out together with Emsud Bahunjić and the Ališić brothers. Witness K016 obviously made a mistake in the last name of Jasmin Ramadanović saying that his last name was Bajramović. However, it is clear that it was Jasmin Ramadanović, given that witness K014, who had known him well before the war, identified him as Jasmin Ramadanović, giving the identical nickname for him as witness K016, that is, "Šengin". Witness K014 also stated that Žigić called out Jasmin Ramadanović and beat him against his head and that he was also beaten by Predrag Banović and Dušan Knežević. The witness confirmed the allegations in the Indictment that Ramadanović was then taken to the hospital, stressing that it happened 5-6 days later. The witness also stated that Jasmin was beaten several times by Žigić and Knežević, whom the witness called Dušan, not Duško Knežević, as witnesses K015 and Edin Ganić also called him. However, it is clear from the testimonies of the other witnesses who testified about the beatings by the Accused Knežević that he was Duško, not Dušan Knežević, which indicates that the witnesses called the Accused Dušan, obviously because of the similarity of the said two names. Witness K043 also stated that Jasmin, nicknamed "Šengin", was beaten up by Duća, and the witness also heard that Duća was accusing Jasmin of having killed his brother. Given the fact that witness K016 connected Jasmin Ramadanović's beating time-wise with the beating of Emsud Bahunjić and the Ališić brothers, it is clear that this beating also happened in late June 1992, which corresponds to the timeframe set in the Indictment of the Prosecutor's Office of B-H which reads "in June or July 1992".

According to the Indictment, in late June or July 1992, Duško Knežević beat detainees Amir Karačić, Josip Pavlović, Džadž Sivas and several other un-

detainees, due to which they had bruises all over their bodies. The Court examined witness K08 on the beating of the said persons, as the witness knew all the persons named above and personally saw the beating incident. According to witness K08, he was brought to the Keraterm camp on 14 June 1992 and the beating of Amir Karačić, Josip Pavlović and Dijaz Sivac happened two or three days upon his arrival, that is, in the second half of June 1992. In accordance with this, the Court made a correction to the allegations in the Indictment concerning the time of the relevant incident. The witness personally saw Duća Knežević, who entered room 3 where the above-named persons and the witness were held, and heard when Knežević started asking each detainee about their respective belongings, particularly targeting Amir Karačić, Josip Pavlović and Dijaz Sivac. Witness K08 also personally saw when Knežević started beating them, since the beating started already in front of the other detainees, while the witness did not see the continuation of the beating, but heard the developments outside. As in the majority of the other situations in which the detainees were being beaten outside, the other detainees could not see it as they were in their rooms, so the Court did not find the witnesses' assertions on the beating of the detainees to be disputable in this case, just as it did not in the other previous cases, irrespective of the fact that the witness did not personally see the beating. The fact that this witness saw the call-out and the beating of the aforementioned detainees prior to their being taken out, the sounds he heard during the beating and the physical condition of the beaten detainees upon their return to the room are sufficiently reliable for the Court, which leads to the undeniable conclusion that the detainees were beaten outside by the Accused Duško Knežević. This is particularly so because the witness saw when Knežević called them out and started beating them in front of the other detainees and because he heard the sounds coming from the outside "Kill, beat, slaughter, strangle" and the moaning of the beaten detainees. Finally, the witness described absolutely convincingly these persons' condition when they returned to the room, stating that they were in a very difficult physical condition, that the other detainees had to carry them to their respective places, and that they saw their eyes only the following day, at daylight, the eyes being closed and black-and-blue from the injuries and their backs black, which leads to the conclusion that the beaten detainees had bruises all over their bodies, as the Indictment of the Prosecutor's Office of B-H reads. With respect to the facts in the Indictment, the Court omitted the assertions that several other unknown detainees were also beaten up on the same occasion, since witness K08 did not give any information about it, except stating that Duća once hit Amir's brother Hasan. This witness also called the Accused Duško Knežević by the name of Dušan, but he also mentioned the nickname of "Duća", by which the Accused was better known with the detainees, from which it follows beyond doubt that it was actually a reference to the Accused Duško Knežević.

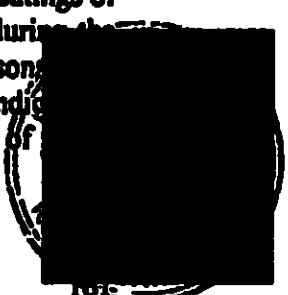
With respect to the beating of Ahmet Dizdarević, which, according to the Indictment, was perpetrated by Duško Knežević in June or July 1992, the Prosecutor's Office of B-H did not provide a single piece of evidence, which the Prosecutor also indicated in his closing argument, hence this incident is omitted from the operative part of the Verdict.

As for the beating of witness K013, committed by the Accused Duško Knežević, Zoran Žigić and three soldiers known as "Vokić", "Timarac" and "Karlica", the Court, on the basis of the examined witnesses' testimonies, primarily witness K013, established beyond any reasonable doubt that the said group of perpetrators beat up detainee K013, but it made a correction with respect to the Indictment of the Prosecutor's Office of B-H.

in the part concerning the implements with which the beating was conducted, in accordance with the testimony of witness K013. Witness K013 said that he was beaten up around 5 July 1992, connecting that date to an important date in his life. Taking into account the statement of witness K013 concerning the time of his beating, the Court accepted the timeframe indicated in the Indictment for the beating, on or about 5 July 1992, which allows for a possibility that witness K013 was beaten up in the period from late June to early July 1992. Testifying about the said event in the Keraterm camp, witness K013 was resolute as to which persons participated in his beating, stating even who inflicted a particular bodily injury to him. The witness said that the perpetrators of the beating were Žigić and Knežević, as well as Timarac, Vokić and Karlica, stressing that Žigić called him out whereupon he was beaten, by Duća with a baseball bat, by Žigić with a police baton, and by the other three persons with automatic weapons. According to the witness, the result of the beating was a broken arm, broken by the Accused Knežević, broken nose, the injury inflicted by Zoran Žigić, while the other bodily injuries and bleeding from his mouth were the result of the beatings by all the perpetrators. This witness' testimony was corroborated by the testimonies of witnesses K029 and K016, who saw the said person being called out and confirmed that he was beaten up. Although the witnesses did not see the beating, just like in the preceding cases the Court believed the examined witnesses, since they heard voices and sounds coming from the outside during the beating, while witness K029 described K013 following the beating, stating that he was black and blue, beaten up and unable to move one arm, so he assumed it was broken, which corroborates the assertion of witness K013 that Duća broke his arm. Witness Edin Ganić also confirmed the statements of the previous witnesses, stressing that K013 was called out by Zoran Žigić, beaten up and that his right arm was broken, but this witness did not see who beat up K013.

With respect to the beating of Uzeir "Zejro" Čaušević by Predrag Banović in the presence of Zoran Žigić and Duško Knežević, the Court, on the basis of the presented evidence, could not establish reliably that Predrag Banović beat up Uzeir Čaušević in the presence of Zoran Žigić and Duško Knežević. Accordingly, the said incident is omitted from this section of the operative part of the Verdict. In other words, witnesses K044, K05, K016, K043 and K013, who mentioned the beating of Uzeir Čaušević, did not state that he was ever beaten up in the presence of Duško Knežević and Zoran Žigić. Since the presented evidence confirm that Uzeir Čaušević was beaten up during his detention in the Keraterm camp under different circumstances, the beating up of this detainee was mentioned in the section of the operative part of the Verdict listing the beatings and other forms of physical violence against the detainees committed personally and directly by other persons, except Duško Knežević, but with the goal of improving the system of abuse and persecution in the camp in which he also participated.

Under the Indictment, the combination of the beatings and other forms of physical violence against the detainees committed personally and directly by other persons, except Duško Knežević, but with the goal of improving the system of abuse and persecution in the camp in which he also participated, primarily includes the beatings of Zejro Čaušević, Katlak, Ismet Kljajić and Mesud Terarić, which happened during the period from 24 May to 6 August 1992 in the Keraterm camp, when these persons were brutally beaten by the camp guards, including a man called "Tomica". The Indictment reads that Zejro Čaušević was exposed to multiple beatings, the consequences of



were injuries to his head and body that became infested with worms due to lack of medical care. In the course of the evidentiary proceedings, the Court examined witnesses K013, K044, K05, K016 and K043 about the said incidents, and their respective testimonies indicate that these were separate incidents. It was also established that only detainee Zejro Čaušević, who was beaten up a couple of times, was once beaten up by a camp guard called "Tomica". In accordance with the said results of the evidentiary proceedings, the Court made a correction with respect to the Indictment, as stated in the operative part of the Verdict. Since the timeframe of the said beatings given in the Indictment was very broad, that is, extended from 24 May to 6 August 1992, which practically coincides with the period in which the Keraterm camp was operational, in the Court's opinion, there is no doubt that the relevant incidents happened indeed during the indicated period. With respect to the beating of detainee Zejro Čaušević, the Court based its conclusion that he was beaten up several times, out of which once by guard Tomica, on the testimonies of witnesses K044, K05, K016, K043 and K013. According to witness K044, he saw Zejro Čaušević in the Keraterm camp and claimed that Zejro was held in room 2 when he was once called out by a camp guard called Tomica, whereupon Zejro got out. Witness K044 stated that he did not personally see the beating, but saw the results thereof, since Zejro Čaušević entered his room after the beating, which was absolutely sufficient for the Court, just like in the previous cases, to establish that the beating happened indeed, particularly as the witness saw detainee Zejro Čaušević being called out and then his physical condition upon being returned to the room. Moreover, it follows from this witness' statement that Zejro Čaušević personally told him what they had beaten him with, stating that they used a board full of attached nails during the beating. Witness K044's statement was also corroborated by the witness' description of Zejro Čaušević, whose injuries he saw the following day, stressing that Zejro was full of holes and that in the night of the beating, when the witness could not see the injuries because of the dark, he noticed that Zejro could not stand on his feet and that he was bleeding. Witness K044 explicitly claimed that the wounds that Zejro Čaušević sustained in the beating meanwhile became poisoned and worm-infested. Zejro Čaušević's difficult physical condition caused by the beating was also confirmed by witness K016, who had known Čaušević before and who saw that Zejro was in a very bad shape, beaten up and covered in wounds that became infested with worms. This was also confirmed by witness K043, who stated that Zejro Čaušević was heavily beaten and that he heard that some parts of his body started becoming worm-infested. In agreement with the statements of the preceding witnesses, witness K013 also stated that Zejro Čaušević, whom he personally got to know in room 1, was beaten up and that he personally saw the consequences of the beating, manifested as poisoned and worm-infested wounds. This witness stated that Zejro Čaušević was beaten up a couple of times. Finally, the statements of the witnesses who described Zejro Čaušević's post-beating physical condition were also corroborated by the statement of witness K05, who confirmed that Zejro Čaušević was taken to the kiosk between the camp and the road and then beaten up by guard Predrag Banović, a.k.a. Čupo. This witness identified the guard Predrag Banović as the perpetrator of Zejro Čaušević's beating that happened in the afternoon, while witness K044 testified about the beating of Zejro Čaušević after he was called out by guard Tomica, which happened at the time when it already became dark, so the statements of these witnesses lead to the conclusion that detainee Zejro Čaušević was beaten up a couple of times at least, and these were obviously two separate beatings. Witness K05 also confirmed the preceding witnesses' statements that a part of Zejro Čaušević's body became infested with worms.




and, according to this witness, that part was his leg. Witness K044 confirmed that medical care was not provided to Zejro Čaušević. Zejro Čaušević personally asked this witness to ask for medical assistance for him and the witness requested it three times, but it was never administered. The Court also finds the foregoing to be established beyond doubt, since this witness was by Zejro's side for eight days after the beating, so he must have been aware of Zejro Čaušević's health condition during the said period.

Witness K044 testified about the beating of a person called Katlak. The witness stressed that he did not see the person who beat up Katlak and did not see the beating either, but Katlak, this being that person's last name, according to the witness, personally told him: "They beat me up, I was off to the toilet." Witness K044 saw him before he got out of the room and warned him not to go out at that moment, which indicates that the witness, having evaluated certain circumstances in the camp at that moment, sensed that Katlak might be beaten up, should he decide to get out of the room. Finally, in addition to having been told by Katlak personally that he had been beaten, the witness also saw the consequences of the beating, since Katlak was covered in blood when he returned to the room and his eyes could not be seen from the blood.


Witness K044 also testified about the beating of detainee Ismet Kljajić, whom he knew personally. He explained in detail the events surrounding the call-out of Kljajić and Kljajić's condition after the beating. This witness' statement indicates that Ismet Kljajić was called out around midnight one night, that he was ordered to take off all of his clothes, to lie down and roll around, whereupon the witness heard beating by batons. The further course of witness K044's testimony indicates beyond doubt that Ismet Kljajić was beaten up during the mentioned call-out. According to the witness, one acquaintance told him the following day, referring to Ismet Kljajić: "They kicked the hell out of Kljaja". The witness then personally saw it as he saw him in bad shape. Describing Ismet Kljajić's condition, witness K044 stated that Kljajić's head was swollen, that he sighed, and when a detainee called Adil turned him around, the witness saw that Kljajić's skin was cracked from the blows. Witness K016 also confirmed witness K044's statement that Ismet Kljajić was beaten up, linking the time of his beating to the time of the beating of Drago Tokmadžić and Esad Islamović.

With respect to the beating of detainee Mesud Terarić, as in the majority of the previous cases, witness K044, who stated in his evidence that Terarić was beaten up, did not see the beating itself, but confirmed that the said detainee was called out, whereupon he returned all bloody and beaten up. Therefore, the Court finds the said beating to be established. In the cases when the witnesses testified on individual instances of beating without describing the very act of beating, but describing the call-out and then the consequences of the beating, the Court found the witnesses' testimonies to be credible and convincing, given the chronology of the events described in the testimonies. The impartiality of the testimonies stems from the fact that the witnesses in such situations were not describing the events they actually had not seen, which leads to the conclusion that their intention when giving evidence was not to blow a certain event out of proportion or accuse someone without grounds. Given the consequences of the beating of the aforementioned detainees, described by the witnesses who saw the detainees following the beating, the Court concluded beyond doubt that these detainees were beaten brutally indeed.



The Indictment of the Prosecutor's Office of B-H reads that on or about 13 June 1992, detainees K05, Ziko Krivdić and Suad Bajrić were beaten up, and that detainee Suad Bajrić was also wounded by a bayonet. As the Indictment reads, these detainees were beaten up immediately upon arriving from Kozarac by the Keraterm camp staff that used cables for the beating to inflict severe bodily injuries on the detainees. Certain facts in the Indictment related to the relevant incident have been corrected in accordance with the testimony of witness K05, who, in addition to having been beaten up on that occasion, also saw the beating of Ziko Krivdić and Suad Bajrić. The Court primarily omitted the allegations from the Indictment that the aforementioned detainees sustained severe bodily injuries on the relevant occasion, considering the fact that it was a legal name of a certain criminal offense whose existence must be proved by an appropriate expertise, which was not done in the case at hand. In addition to this, also omitted are the allegations from the Indictment that K05, Zijad Krivdić and Suad Bajrić were beaten up together immediately upon their arrival in the Keraterm camp from Kozarac, as it follows from the testimony of witness K05 that he personally had been brought to the Keraterm camp earlier, not on or about 13 June 1992, as the Indictment reads. According to witness K05, on whose testimony the Court based its conclusion that the event concerned indeed happened, Suad Bajrić and Zijad Krivdić were brought to the Keraterm camp on 14 June 1992 from the village of Sivci (a village close to the place of Kozarac), which corresponds to the time indicated in the Indictment of the Prosecutor's Office of B-H. Furthermore, it follows from the evidence of this witness that Suad Bajrić and Zijad Krivdić were "capped" with a cable with a screw on top of it. Since all detainees who were within the perpetrators' reach were beaten by the cable, according to the witness, he also received a blow to his head. Witness K05 also claimed that the wound on his head became worm-infested from the unwashed blood and he afterward also saw that Ziko Krivdić had a worm-infested wound as a result of the beating. With respect to detainee Suad Bajrić, the witness saw when Bajrić's feet were pierced by a bayonet. Since witness K05 was 4 meters away from Suad Bajrić and Zijad Krivdić, it is absolutely beyond doubt that he could see the said beating and inflicting of injuries on Suad Bajrić by a bayonet, since it is a distance at which every man of average eye-sight would be able to see such an event. The Indictment reads that one of the detainees beaten on that occasion was called Ziko Krivdić and witness K05 called him Zijad and Ziko Krivdić, which indicates that he referred to one and the same man, as it is obvious that the incident concerns Zijad Krivdić.


Also, according to the Indictment, on or about 14 June 1992, Predrag Banović and others beat up new detainees who arrived that day from the village of Sivci. The Court has found that this event was also established beyond any reasonable doubt, given the fact that witness K08 was examined about the said circumstances as he was in the group of captives, so he described the events following their bringing to the Keraterm camp. This witness stated that he was arrested on 14 June 1992 and brought to the Keraterm camp, which is also confirmed by the statement of witness K05. Witness K05 testified about the beating of Suad Bajrić and Ziko Krivdić and stated that on 14 June 1992 three buses of people from Sivci arrived, which indicates that he was referring to the same group of detainees. As it follows from witness K08's testimony, the said group of detainees was met by persons in military uniforms and reserve police uniform. The witness claimed that the said persons were the camp guards who then pushed the detainees off the buses, beat individuals and took their personal belongings. Describing the event, the witness said that the guards searched and beat certain detainees, that



every guard would beat whomever he could get hold of. The statement of witness K08 was corroborated by the statement of witness K05, who described the arrival of the detainees from the village of Sivci, stressing that the members of the shift on duty on that occasion made a gauntlet and beat the detainees when they were getting out of the buses. Witness K08 also described the first night of the detention in the Keraterm camp, stating that, in addition to having been beaten upon his arrival, these detainees, himself included, were also beaten in the evening, having been placed in their respective rooms. The witness said that the perpetrator of these beatings was a person nicknamed "Čupo", which points to the guard Predrag Banović, who, according to the witness, came in that evening and beat the people up asking them: "Has anyone harmed you?" When the detainees answered in the negative, Čupo cursed their mother and told them: "You'll see what will happen to you here." According to this witness, Čupo then beat up 3-4 detainees from the room where the witness was held, whereupon he went from one room to another and beat the detainees. Since the witness was in the group of persons brought to the camp on the said occasion, and having in mind that his evidence indicates that he saw some detainees from his room being beaten the first night upon the arrival, the Court did not find this witness' statement to be disputable regarding the described event, since he practically was in the immediate proximity of the scene and could clearly see what was going on.

It ensues from the facts in the Indictment and the testimony of witness K010 that he was beaten up a couple of times during his detention in the Keraterm camp. The first beating, indicated in the Indictment, happened on the night of 16-17 June 1992, when Dragan Kondić beat witness K010 with a pistol against his chest and then continued beating him with others at a different location. According to witness K010, he was brought to the Keraterm camp on 11 June 1992 and was interrogated on 16 June or July 1992. Since the witness linked his first beating to the day of his interrogation, saying that the beating happened in the evening of the same day, the Court, in accordance with this witness' statement, made a correction to the allegations in the Indictment with respect to the time, stating that the event concerned happened on 16 June or July 1992. Describing further the event, the witness stated that he was called up by guard Kondić who started beating him with a stick in front of the room. Given the fact that the witness did not mention that Kondić beat him with a pistol against his chest, but by a stick, the Court made a correction to the relevant allegation in the Indictment, as indicated in the operative part of the Verdict. In addition to this, according to witness K010, Kondić continued beating him at a different location, that is, in room 5, with several other persons, which makes the relevant allegations in the Indictment established. Although the witness could not state who else, in addition to Kondić, participated in his beating, he explicitly stated that several persons participated in the beating and that he was beaten up in room 5 and that, on that occasion, the beating of his body, notably the back and the kidneys, continued, whereupon he was thrown out of the room. Describing the consequences of the beating, witness K010 stated that he was black-and-blue, that he could not move, that he even lost consciousness, and that he was only able to walk the second day after the beating.

With respect to the beating of detainee K016, which, according to the indictment, happened mid-June 1992, when two men, one being a military policeman from Sarajevo, clubbed and kicked him in the presence of Dušan Fuštar, the Court found the event to be established beyond any reasonable doubt and made certain cor



which were a result of the evidentiary proceedings, with respect to the Indictment of the Prosecutor's Office of B-H, as stated in the operative part of the Verdict. In addition to this, a correction was made as to the time of the relevant beating, since the Court could not establish with certainty from the testimony of witness K016 whether the witness was beaten up mid-June 1992, but the testimony of witness K016 indicates that the beating certainly happened in June 1992. As witness K016 stated, he was beaten up by the military policeman from Sarajevo and one other person, after he failed to give them the names of two "extremists" among the detainees, which is when the military policeman told him: "If you do not want to find them, I will beat you." Witness K016 described the beating in the following way: the military policeman beat him with a stick, while the other person who the witness said was shorter kicked him in his stomach, and both of them beat him against his back and head, from which he got bruises over his back. On the basis of witness K016's statement, the Court established that two persons beat him on the said occasion, one being a military policeman from Sarajevo, who introduced himself to the witness as a military policeman from Sarajevo, and they both used sticks, while the other person also kicked the detainee. The witness' statement also corroborated the allegations in the Indictment that Dušan Fuštar, too, was present during the beating and that he watched the beating all the time just saying: "Don't beat him in the head."

With respect to the beating of Hamed Karabasić, Zijad Krivdić and his son Suad nicknamed "Mitraljezac", which, according to the Indictment, happened on 24 June 1992, the Prosecutor's Office of B-H did not offer a single piece of evidence in the course of the evidentiary proceedings to corroborate these allegations, which the Prosecution stressed in its closing argument anyway. The Court, therefore, omitted this event in the operative part of the Verdict, as it inferred that the Prosecution did not prove it.

The Court based its belief that in June or July 1992, detainee Faruk Hrnčić was brutally beaten and kicked by Predrag Banović and his brother Nenad Banović, on the statement of witness Ismet Dizdarević given to the Office of the Prosecutor of the ICTY on 2 February 2002. Since witness Ismet Dizdarević meanwhile died, which is obvious from the aforementioned Death Certificate, the Court, pursuant to Article 273(2) of the Criminal Procedure Code of B-H, admitted this witness' statement as an exhibit at the main trial, given the fact that this witness' attendance and testimony about this event before this Court were impossible due to his death. Witness Ismet Dizdarević said in the statement that he remembered well when "Čupo", referring to the guard Predrag Banović, called out Faruk Hrnčić from room 2 and took him between two parked trucks where the other Banović was waiting, according to the witness. This statement of witness Ismet Dizdarević leads to the conclusion that brothers Predrag and Nenad Banović, whom all the detainees identified as the Banović brothers, took part in Faruk Hrnčić's beating. The witness personally heard the Banović brothers beating detainee Faruk Hrnčić, who was moaning in pain, which is a fact that led the Court to conclude that the beating was brutal, given that the detainee's moaning was heard although the scene of the beating was around 4-5 meters away from the rooms, according to the witness. Witness Ismet Dizdarević also stated that he did not see the beating, was taking place between two trucks, but that he clearly heard what was going on. However, when Faruk Hrnčić fell, the witness stressed that he saw both Banović brothers kicking him, and the Court finds this statement to be true and convincing.

finds that the witness could see beneath the truck Faruk Hrnčić lying on the ground while being kicked by the persons whom the witness had earlier identified as the Banović brothers. The very fact that Faruk Hrnčić was returned to room 2 after some 15 minutes by Čupo, who had called him out, also leads to the conclusion that Predrag Čupo Banović participated in Hrnčić's beating. The factual part of the Indictment reads that Faruk Hrnčić was beaten up in June 1992, which realistically is an accurate timeframe, as witness Ismet Dizdarević mentioned the beatings during the first 15 to 20 days of the detention, which indicates that the witness was referring to the month of June 1992. Since the witness did not give the exact time of Faruk Hrnčić's beating, the Court, nevertheless, corrected the time of the beating and allowed for a possibility that it could happen in July 1992 as well, given the fact that all the killings and beatings of the detainees happened during these two months.

According to the Indictment, the following incident happened in late June 1992 and it concerns the beating of the three Ališić brothers, Armin, Edo and the third one whose nickname was "Jama", with a baseball bat by Predrag Banović. Witnesses Edin Ganić, K09 and K029 testified about the beating of the three Ališić brothers. The fact that the relevant event happened in late June 1992 primarily arises from the testimony of witness Edin Ganić, who stated that he was called out on the same day as the Ališić brothers. It was established earlier that this witness was called out and beaten up in late June 1992. Witness Edin Ganić stated that the names of the Ališić brothers, who were detained in the Keraterm camp and beaten up on the relevant occasion, were Edin, Armin and Fehim. At the moment when he was being taken out to the beating, he personally saw the said persons beaten up next to the wall at the end of the Keraterm camp compound, stating that they were lying or sitting on the concrete floor, that they were beaten up and that they were crying, that is, making strange sounds. Witnesses K09 and K029, who heard the three Ališić brothers being called out, confirmed witness Edin Ganić's statement. According to witness K09, firstly one of the Ališić brothers was called out, and, as nobody responded, it was ordered that all the Ališić brothers should go out. However, it follows from the testimony of witness K029, who stated that three of the four Ališić brothers were in the Keraterm camp, namely Armin, Edin and Fehka (which could be a nickname for Fehim), that the three Ališić brothers were called out as "Jama's brothers". The statements of witnesses Edin Ganić and K029 lead to the conclusion that the three Ališić brothers, that is, Armin, Edin-Edo and Fehim-Fehka, were detained in the Keraterm camp and beaten up on the occasion concerned. It also follows from the evidence of witness K029, who had known the Ališić family before, that the fourth Ališić brother was known by the nickname of "Jama" and that he was not detained in the camp. In that respect, an alteration was made with respect to the factual description in the Indictment concerning the relevant event, where it reads that one of the Ališić brothers nicknamed "Jama" was called out and beaten up. The Court did not establish this from the presented evidence, hence the operative part of the Verdict reads "the three Ališić brothers", as it is absolutely certain that there were three brothers. The beating of the Ališić brothers was also described by witness K09, who, admittedly, only heard what was going on outside, describing that he could hear the noise and shouting, the voices of the guards saying: "He's so huge, I can't hit him in the head" and "Hit him in the knees." Witness K029 also heard the three Ališić brothers being called out, but he did not see the beating. However, the following day this witness saw the injuries the three Ališić brothers had sustained in the beating, that is, he saw open wounds on their heads and that they had been beaten up. According to this witness, he personally

talked with Armin, one of the Ališić brothers, who described to him the manner of the beating, saying they were ordered to kneel and bow their heads whereupon they were beaten by sticks. Despite the fact that witnesses K029 and K09 did not see the beating of the Ališić brothers, the Court, having evaluated the statements of these witnesses who heard, that is, saw the consequences of the beating, and correlating them to the testimony of witness Edin Ganić, who saw the Ališić brothers outside beaten up, established beyond doubt that these three brothers were beaten up after having been called out. The Court particularly took into account the statement of witness K029, who directly heard the details of the beating from one of the Ališić brothers. With respect to the persons who beat up the Ališić brothers, the Court could not establish beyond any reasonable doubt that it was done by Predrag Banović, given the fact that only witness K09 identified him as the perpetrator. Hence, alterations were made with respect to the Indictment allowing for a possibility that it was done by any of the guards or outsiders visiting the camp, even the Accused Duško Knežević himself, whom witness K029 pointed to. Considering the beating of Edin Ganić, when the Ališić brothers were also beaten up, it is absolutely certain that guards, including Predrag Banović, as well as the outsiders, including the Accused Duško Knežević and Zoran Žigić, were also present on the occasion concerned. It follows from the Prosecutor's closing argument that he classified the relevant event in the group of beatings committed by the Accused Duško Knežević, but the Prosecutor did not specify the charge pursuant to Article 275 of the CPC B-H, instead he only classified this beating as being perpetrated by the Accused Knežević.

According to the Indictment, Enes Crljenković was beaten up several times between 20 and 24 July 1992, namely, in the night of his arrival in the camp on 20 July 1992 by camp guards, then the following morning when, together with other detainees, he was beaten up by the guards, including Predrag Banović, Nenad Banović and Dragan Kondić, at the time they were lying on a 30-meter-long concrete path called the pista, and the morning after that, when he was forced again to lie on the pista and when he was beaten up by the guards, including Dragan Kondić, who beat him with a stick. The Court made a correction to the allegations in the Indictment with respect to this incident, too, given the presented evidence, primarily the testimony of witness Enes Crljenković, who described in detail the events upon his bringing to the Keraterm camp and during his detention. According to witness Enes Crljenković's testimony, he was arrested in the village of Rakovčani and brought to the Keraterm camp on 20 July 1992, together with the other villagers from the region of Brdo, to which the village where the witness lived belongs as well. Witness K08 confirmed witness Enes Crljenković's statement in general terms, witness K08 having been brought to the camp earlier, but leaving room 3 between 20 and 25 July 1992 together with the other detainees, to which the inhabitants of the Brdo region were then brought. According to witness Enes Crljenković, immediately upon being brought to the camp, the detainees were beaten by the guards and the first day, a Monday to the witness' recollection, the detainees were forced to lie prone with hands raised above their necks on the "pista". The witness stated that if any of the detainees moved or changed position, he would be beaten by the guards, including Predrag Banović, Nenad Banović, and a person called Faca. With respect to these allegations in the Indictment, the Court finds it completely established that Crljenković was beaten up on 20 July 1992, when he was brought to the camp. Indictment reads, at the time while he was lying on the "pista". With respect to identities of the persons who beat him, the Court fully believed this witness.

witness was resolute when naming them, moreover as he had known Predrag and Nenad Banović since before, and considering the other witnesses' statements, which indicate that the Banović brothers were generally inclined to beating the detainees. The Court omitted Dušan Fuštar, who was also identified as a person who beat up the newly-arrived detainees on the said occasion, having been guided by the Agreement on the admission of guilt that this Accused entered with the Prosecutor's Office of B-H, as well as by the amended Indictment. The Court also omitted the allegations from the Indictment that Enes Crljenković was beaten up in the night upon his arrival in the camp, since it follows from this witness' testimony that he was not beaten then. That is to say, Enes Crljenković testified about certain call-outs and beatings of the detainees from the Brdo region the first night upon their arrival, but did not say that he was personally taken out and beaten up, so the Court is of the opinion that these allegations from the Indictment have not been proven. Describing the following days of his detention in the Keraterm camp, witness Enes Crljenković stated that the detainees who were held in room 3 were taken out to the "pista" every following day and forced to lie there. The testimony of witness Crljenković, the other witnesses' testimonies and the photographs of the Keraterm camp attached as exhibits in the case file indicate that the "pista" was a concrete strip in front of the building with the rooms. However, the Court did not find it established from the presented evidence that the concrete strip was 30-meter long, hence a correction was made with respect to this, that is, these allegations were omitted from the operative part of the Verdict. In the part of the testimony where the witness was describing the incidents when he was forced to lie on the sun together with other detainees on the "pista" in the following days, he stated: "We were being beaten up every day. They beat us with arms, butts, sticks, pistols against our legs, arms and heads." This statement leads to the conclusion that, in addition to witness Enes Crljenković, the other detainees were also beaten up on the occasion concerned, as the facts in the Indictment indicate. In addition to this, it follows from this witness' statement that he was beaten up on the first day, when he was forced to lie on the "pista", but the witness did not state that the beating was conducted by guard Dragan Kondić on that occasion. Witness Enes Crljenković mentioned guard Kondić only in reference to the beatings that followed in the coming days, mentioning him in the group with the Banović brothers and Željko Radinović, which was indicated in the factual part of the Indictment. According to witness Enes Crljenković, he was not particularly beaten by a certain guard, but he described a situation in which all the detainees were being beaten arbitrarily by the present guards, in which respect the Court also made an alteration to the allegations in the Indictment, as stated in the operative part of the Verdict. The Prosecution tried to prove that the witness was deliberately beaten up by the guards, guard Dragan Kondić included, which, in the opinion of the Court, the witness' statement did not confirm. The Defense pointed to the witness in the cross-examination that, in addition to Dragan Kondić, there was also a Dušan Kondić and a Miliwoje Kondić, or that it was the same person with a different name, but the witness was clear in the direct examination that it was guard Dragan Kondić, who was also mentioned in reference to the beating of detainee K010. That the said beatings lasted from 20 July 1992 to 24 July 1992 also follows from the testimony of witness Enes Crljenković, who stated that he was being taken out from Monday, 20 July 1992, through Friday, 24 July 1992, when a massacre in room 3 took place.

The beating of Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković who were beaten up between 20 and 24 July 1992, was also established beyond doubt.

the evidentiary proceedings, in the opinion of the Court, but a certain alteration was made to the description of facts in the Indictment as was with the previously described incidents. The Court established the beating of the said persons on the basis of the testimony of witness Enes Crljenković, who provided a complete account of the events that followed in the night after the bringing of the detainees from the Brdo region. Witnesses K08, K043, K044 and K016 stated in accord that the detainees from the villages in the Brdo region, having been brought in, were detained in room 3 after the room had been vacated. The same is also confirmed by witnesses Enes Crljenković and K07, who were in the group of detainees who were placed in room 3. Witness Enes Crljenković described the event that happened in the night following their arrival when a group of detainees were taken out and beaten up. According to him, the group was made up by Ismet Bajrić and Nuriya Crljenković. The witness saw them being called out and then followed the events outside the room and on that occasion he heard blows and moans and finally saw the condition of these detainees following their return to the room. He said that they were in a very bad shape and had bruises all over. Asked by the Prosecutor, witness Enes Crljenković stated that on the first night, he referred to the night of 20/21 July 1992, the following detainees were also taken out and beaten up: Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković. The Court fully believed this witness, exactly because he was in the same room with the persons who were called out the relevant night, and, as the witness had known all the said detainees well since they had lived in a territorially connected part of the Prijedor outskirts called Brda, it was established beyond doubt that the witness could not make a mistake as to the identity of the called detainees. In addition to this, witness stated that Mirsad Crljenković, who was taken out the same night, was his cousin, which is an additional circumstance indicating that the witness quite certainly saw him being taken out. The time of the beating of the said persons completely corresponds to the timeframe cited in the factual description provided in the Indictment, given that witness Enes Crljenković's testimony, on which the Court based its conclusion that the relevant event indeed happened, indicated that the said persons were taken out and beaten up on the night of 20/21 July 1992. Since the Court could not establish in a reliable way which of the guards called out and beat up Besim Fazlić, Mehmed Avdić, Muharem Sivac and Mirsad Crljenković, it made the relevant correction with respect to the facts given in the Indictment. Also omitted is the description of the injuries that the said persons sustained on the occasion, as the witness did not testify about it. Also omitted from the operative part of the Verdict are the charges from the Indictment that the said persons were beaten up several times, since it follows from witness Enes Crljenković's evidence that they were taken out and beaten up only once, not several times, in the night of 20/21 July 1992, as explained above.


The Court omitted from the operative part of the Verdict the beating that, according to the Indictment, took place on or about 25 July 1992, when detainees Mirsad Crljenković, Nuriya Crljenković and eight others were taken out of room 3 and beaten up, the detainees not been able to walk afterward as a result of the beating, since no presented evidence led to the conclusion that this incident really happened, which the Prosecutor also stressed in his closing argument.

It follows from the facts in the Indictment that during his detention in the Kerat camp, witness K010 was beaten up several times by Dragan Kondić, that is, in the after the day when this detainee was interrogated by an interrogator, this beating



been described earlier; on 12 July 1992, when he was beaten up again by Dragan Kondić; on 20 July 1992, when he was beaten up by Zoran Žigić and Dragan Kondić, and, finally, on 23 July, when he was beaten up by Zoran Žigić. However, on the basis of witness K010's testimony, the Court established beyond any reasonable doubt that this witness was actually beaten up twice, in addition to receiving one blow when being taken to interrogation, which incident was not included in the Indictment. The first beating, which the Court established happened on the night of 16/17 June or July 1992, when witness K010 was beaten up by Dragan Kondić and then on another location and by other persons who joined Kondić in the beating, is described in the part of the Verdict pertaining to the said incident. In addition, the Court did not find in the presented evidence, primarily witness K010's testimony, the grounds to conclude that the witness was beaten up again by Kondić only, since the contents of his testimony indicated that he was beaten by Kondić and Zoran Žigić together on that occasion. Finally, the Prosecutor's Office of B-H did not offer a single piece of evidence in the evidentiary proceedings to corroborate the allegations in the Indictment that Zoran Žigić alone beat up witness K010 on 23 July 1992, which the Prosecutor himself also stated in his closing argument. As follows from the foregoing, in addition to the beating of the night of 16/17 June or July 1992, this witness was also beaten up by Dragan Kondić and Zoran Žigić on another occasion, hence the Court accordingly made an alteration to the allegations in the Indictment, as stated in the operative part of the Verdict. The other incident when witness K010 was beaten up happened, according to the witness, on 23 July 1992. However, the witness himself expressed reservations about the date during his testimony stating: "It was 23 July, I think." In view of the foregoing, the Court indicated in the operative part of the Verdict that the incident concerned happened in the second half of July 1992. In making this conclusion, the Court was led by the fact that the motive for the second beating of witness K010 was an event related to the detainees in room 3, who were locked in there without food and water, which the witness described in his evidence and which indicates that these were the detainees brought from the Brdo region around 20 July 1992. The witness described in a way clear and convincing for the Court the event when, asked by the detainees in room 3, he collected bread together with other detainees and threw it through the window into room 3. According to witness K010, this gesture of his served as a pretext to Kondić to beat him up as he saw or heard from someone that bread was thrown through the window of room 3, whereupon K010 was beaten up. The witness stated in his evidence: "Then I was beaten up by Kondić. I was also beaten by Žigić. This happened at daytime. On that occasion Žigić was kicking me and Kondić beat me with his hands and a stick. The beating took place in front of rooms 2 and 3." As this witness described in detail the events surrounding his beating on that occasion, and given the fact that his testimony was not seriously called into question, the Court found it established that the said event happened in the above-described way and made the corrections in accordance with it, as explained already.

The beating of Ismet Bajrić, mentioned in the context of testimony of witness Enes Crljenković, happened, as stated in the Indictment, on or about 20 July 1992, after Bajrić was brought to the Keraterm camp. When establishing the time of the event, the Court fully accepted the testimony of witness Enes Crljenković, who was also brought to the camp on 20 July 1992 and according to whom Ismet Bajrić was called same night together with Nuriya Crljenković, which is practically linked to the out and beating of Besim Fazlić, Mehmed Avdić, Muharem Sivas and



**Crljenković.** The witness was specific as to the time when the said persons were taken out, stressing that they were beaten from 22.30 to 02.00 hrs, during which the witness heard screams but could see nothing, which is logical given the fact that the door of room 3, where he was held, was locked. Finally, the fact that the witness saw the condition of these persons when they were returned from the beating, describing that they had bruises over their bodies and were in a bad condition, clearly leads to the conclusion that they were beaten up during their absence from the room from 23.00 to 02.00 hrs. Contrary to this, the Court did not find it established beyond any reasonable doubt that Nenad and Predrag Banović kicked and beat up the said person with fists, rifles and karate chops, and especially that the beating took place after the victim arrived in the camp by bus. In other words, it follows beyond doubt from Enes Crljenković's statement that the said person was beaten up in the night upon his arrival, but the witness did not testify about the circumstances and the manner of the beating itself, since he was not an eyewitness to it.

The bringing of the detainees from the Brdo region to the Keraterm camp, which happened on or about 20 July 1992, and their beating by the guards and their keeping without food and toilet facilities, have already been partially described in the previously quoted incidents. First of all, witness Enes Crljenković testified about the relevant incident, the witness belonging to the said group of detainees, as established earlier, and explained that all detainees were being beaten by the guards on arrival in the camp, on which occasion his father and brother were also beaten up. Witness K07, who was brought in the group of people from the Brdo region, described the incident when they arrived in the Keraterm camp stating that, when they were getting out of the buses, they were all being kicked and beaten with sticks, rifle butts, cables and wire cables, whereby he fully confirmed witness Enes Crljenković's statement about the beating upon the arrival. As witness K07 stated, he was beaten up on the occasion concerned, when he was hit on his back, head and legs. Witness K043 also described the beating of the newcomers from Brdo and remembered their arrival in the camp. He said that, upon the arrival of the buses, when the detainees started getting off, some 10 detainees were singled out and ordered to slap themselves, which the witness saw personally. Witness K043 claimed that the detainees from Brdo were beaten by the regular guards, and, as it follows from all the witnesses' testimonies that the event happened during the day, it is absolutely certain that this witness could see the said beating and identify the guards as the perpetrators of the beating, given the fact that the witness had been held in the camp for a certain period and could distinguish between the camp guards and the visitors. According to witness K043, the bringing and beating of the detainees from the Brdo region took place 15-20 days prior to his departure from the camp, which generally corresponds with the time indicated in the indictment, given the fact that the detainees from the Keraterm camp were taken out on 5 or 6 August 1992. The testimonies of the aforementioned witnesses were also corroborated by the testimony of witness K044, who saw the buses with the detainees from the Brdo region arriving. These detainees were then forced to pray the Muslim way with prostrations and were simultaneously being searched and beaten with rifles, rifle butts, sticks and cables. This witness also confirmed that the said detainees were beaten and abused sadistically by the regular guards of the Keraterm camp. Finally, witness K08 also confirmed that the people from the Brdo region were searched, beaten and forced to kneel having been brought to the camp. His assertions are in complete agreement with the statements of the aforementioned witnesses. The timeframe of these detainees' arrival given by

K08 corresponds to the timeframe indicated in the Indictment, since the group of detainees in which he was a part of had to leave room 3 and move to room 2 in order for the detainees from the Brdo region to be held in room 3, which happened between 20 and 24 July 1992. The statements of the aforementioned witnesses also corroborate the allegations in the Indictment that the detainees from the Brdo region were held for some three days without food and access to toilet facilities. That is to say, witness Enes Crljenković said in his testimony that he, as well as the other inhabitants of the Brdo region, was detained in room 3, which is also confirmed by witness K016 and witness K07, who was personally held in this room, then witness K044 and witness K08. As has been established above, the said detainees were brought to the Keraterm camp on or about 20 July 1992. The Court based its conclusion that the detainees from Brdo were held in room 3 for around three days without food and access to toilet facilities primarily on the testimony of witness Enes Crljenković, who determined the detention as lasting from the arrival on 20 July 1992 until the night of a massacre in which a huge number of detainees were killed, that is, until 24-25 July 1992. The other witnesses also indicate that the detention of the detainees from Brdo in room 3 lasted from their arrival until the massacre in the night of 24-25 July 1992, which is indicated by the statements of witnesses K08, K044, K043, as well as the other detainees who confirmed that the massacre happened in the night of 24/25 July 1992. Witness Enes Crljenković testified in detail about the conditions in which these detainees were held in room 3. His testimony indicates that the detainees were locked up and that "there were no meals for [room] 3", except that some bread was "thrown in" Friday evening. This witness' statement was also confirmed by witness K016, who stressed that the detainees from this room enjoyed special treatment, that they did not go to lunch and that they were closed all the time, that is, that they could not go out and that only once two "small tubs" of bread were brought to them. Witness K044 also testified about the conditions in which the detainees in room 3 were held and said that these detainees were not allowed to go out and that the door was even closed, and that they did not get food or water, except once when the other detainees brought them three bottles of water. The statement of witness K08, who said that the other detainees did not have contact with the detainees in room 3, also leads to the conclusion that these detainees were not allowed to go out and that they enjoyed a particularly unfavorable treatment in the Keraterm camp. The statements of the aforementioned witnesses, which indicate that the detainees in room 3 were held without food and were not allowed to leave the room, lead the Court to the conclusion that they were equally forbidden from going to the toilet, especially since they were locked up all the time so they could not get out. Finally, witness K010 also confirmed the foregoing when describing his second beating, since he stressed that he was beaten up because he threw bread through the window to the detainees in room 3 having heard them pleading for some water and bread. According to witness K010, this event took place around 23 July 1992, which roughly corresponds to the period in which these detainees were held in room 3. Witness K07 also testified about the difficult conditions in room 3, as he was held in it, too. He stated that the room was so full that everybody had to stand on one foot, that it was like being in a gas chamber and that the detainees did not have access to water. Only the statement of witness K08 is partially contrary to the statements of all the aforementioned witnesses, as this witness said that he thought that these detainees perhaps went to the toilet and that they were given bread only at the door. However, in the opinion of the Court, the statement of witness [REDACTED] not call into question the assertions of all the other witnesses, who described the extremely difficult position of the said detainees. That is to say, the Court belie

this witness might have thought that the detainees were receiving bread on a regular basis because he saw bread being brought to them on one occasion only, since it can be concluded beyond doubt from the other witnesses' testimonies that the detainees were held without food in general and that the bread was brought to them only once, which was an exception. With respect to this event, the Court made some corrections, as indicated in the operative part of the Verdict, given the evidence presented on the said circumstances.

With respect to the incident related to detainee Meho Kapetanović, the Court also found it established that he, too, was beaten up during his detention in the Keraterm camp. According to the Indictment, the beating happened in the period from 31 May 1992 to 5 August 1992, the timeframe within which the camp was operational. The Court fully accepts such a broad timeframe, since it is a period in which all the beatings and killings of the detainees took place, so the timeframe is not called into question in any serious way. The Court based the conclusion that the said beating happened indeed on the testimony of witness K044, from which it primarily follows that this witness had known Meho Kapetanović before and that he saw him in the camp. According to witness K044, Meho Kapetanović was beaten up by the guard Banović, who was once telling him, while beating him with a shovel: "Professor, this is for that old fail grade?" As the witness stated, Banović also beat a *hodja* who was close by. Since witness K044 did not state in his evidence whether Meho Kapetanović was beaten by Predrag or Nenad Banović, the Court could not establish reliably which of these two guards perpetrated the relevant beating, hence the Court accordingly made a correction to the allegations in the Indictment by omitting the name Predrag in the operative part of the Verdict and identifying guard Banović as the perpetrator.

With respect to the beating of Enver "Žuti" Modronja, which, according to the Indictment, happened in the period from 3 June to 5 August 1992, when this detainee was beaten on several occasions by Predrag Banović and others, and when Predrag Banović once forced him to lie on the ground and beat him on his head with a baseball bat, the Court also made a correction to the allegations in the Indictment, as indicated in the operative part of the Verdict, in accordance with the testimony of the witness who testified about the said circumstances. The Court indicated in the operative part of the Verdict the decisive facts concerning the beating of Enver Modronja, stating also the time of the beating and the perpetrator, while omitting more detailed circumstances surrounding the beating (forced him to lie on the ground and beat him on his head), which did not affect the determining whether or not the event took place. Witness K043, who testified about the beating of Enver Modronja, stated that he knew the man and that he knew his nickname "Žuti". According to the witness, Enver Modronja was called out by Banović who said: "Let the blond waiter get out," after which Modronja was beaten up. The witness actually saw the moment when detainee Enver Modronja was called out, as well as his condition when he returned to the room where they were held. Describing Enver Modronja's injuries, witness K043 stated that Modronja struck him as being dead, that he was beaten up and that blood leaked from his head. According to the witness, he personally heard from Enver Modronja what happened outside, as Modronja told him: "That guy Cupo stomped on my neck and hit me with a stick upon my head, I am now feeling dizzy." When, in addition to the foregoing, one also takes into


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\* The blond one; translator's note

the fact that, following the calling of this detainee, the witness heard noise from the outside, all the circumstances lead beyond doubt to the conclusion that Enver Modronja was beaten with a stick upon his head by Predrag Čupo Banović on the said occasion, as witness K043 stated. In the operative part of the Verdict, the Court omitted the allegations from the Indictment that Enver Modronja was beaten up several times by Predrag Banović, since witness K043 described one instance of beating only, and it also omitted the allegations that others, in addition to Predrag Banović, beat him up, since Enver Modronja mentioned to the witness only the person nicknamed "Čupo". For the same reasons mentioned in the previous case, the Court here also found it established that Enver Modronja was beaten up in the period from 3 June to 5 August 1992, which is the period when the majority of the beatings took place.

The next event described in the Indictment of the Prosecutor's Office of B-H concerns the beating of detainee Šaban Elezović by Predrag Banović and others, which happened during the period from 9 June 1992 to 5 August 1992. The beating was done in such a way that his one arm was broken or dislocated. Witness K08 testified about this event in the evidentiary proceedings and it is on that testimony that the Court based its belief that detainee Šaban Elezović was beaten up at the time and in the manner described in the operative part of the Verdict. It follows clearly from the testimony of witness K08 that the said beating happened in the indicated period, as the witness said that it happened approximately around 15 July 1992. Witness K08 stated that he remembered the incident when Šaban Elezović, whom he had known before, was beaten up. The witness said that Elezović was beaten heavily, that his arm was dislocated, and that he was told to find money, otherwise they would kill him. As the witness described, Šaban Elezović went from one hall to another asking for money. Witness K08 personally saw detainee Šaban Elezović's arm hanging, on the basis of which the Court concluded beyond doubt that when he was being beaten, his arm was either broken or dislocated, which is also indicated by the witness' testimony that Šaban Elezović was transported to the hospital the following day and that his injured arm was placed in a cast. The Court also found the allegations in the Indictment that Šaban Elezović's beating was perpetrated by Predrag Banović and others to be established, since witness K08 stressed that the voices of the perpetrators could be heard, primarily the voice of "Čupo", which points to guard Predrag Banović, and that by the voices the witness gained an impression that there were several perpetrators of this beating, that is, four or five in his estimate.

The beating of Mirsad Karagić which, according to the Indictment, took place in the period from 18 June to 5 August 1992, when this detainee was beaten up by a police baton, follows from the testimony of witness K029, who personally saw the said event. However, given the fact that when describing the beating, witness K029 stated that a guard Banović beat up Mirsad Karagić, without specifying that it was Predrag Banović, the Court made a correction with respect to the relevant allegations in the Indictment. According to this witness, a guard Banović called out Mirsad Karagić and took him to a weigh station within the camp compound, whereupon the witness watched the guard beating the detainee with a police baton, which lasted for about 15-20 minutes, in his estimate. Describing further developments, the witness stated that shift leader Kajin came and yelled at Banović, whereupon Mirsad Karagić was released and taken back to the room. As it stems from the testimony of witness K029, the beating of Karagić happened at daytime and he was within the camp compound, which circumstances lead the Court to the conclusion that the witness could

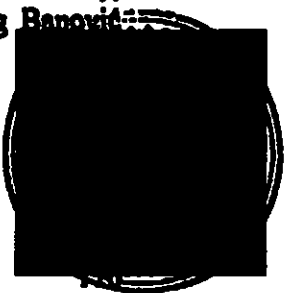


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beating as well as the perpetrator, that is, the implement with which the beating was carried out. Finally, when showed the Keraterm camp photographs, the witness pointed at the room in which he was held, as well as the spot within the camp compound where Mirsad Karagić was taken and beaten, that is, the weigh station and the booth, the photographs being tendered as the Prosecution exhibits Nos. 13A, 13B and 13C.

The Indictment of the Prosecutor's Office of B-H reads that in late June 1992, Predrag Banović severely beat a person whose last name was Mešić. The Court did not find this allegation to be proven, since no evidence was presented in that respect, that is, no witness testified about it. Given also the Prosecution's closing argument, stating that there was no evidence of this event, the Court omitted this allegation in the operative part of the Verdict.

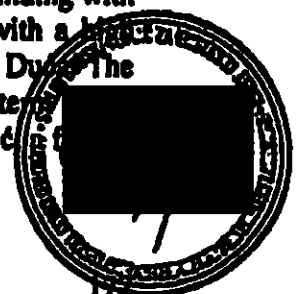
The following event described in the Indictment of the Prosecutor's Office of B-H concerns the beating of Suad Halvadžić, who, as stated, was brutally beaten several times during a night in July 1992 by Predrag Banović and others who broke his ribs, while Predrag Banović also tried to cut off Suad Halvadžić's left ear. Corrections were also made with respect to the allegations in the Indictment concerning this event, too, primarily regarding the time of the event. In other words, the Court could not establish with certainty that Suad Halvadžić's beating happened in July 1992. Witness K029, who described the event, stressed that Suad Halvadžić was called out a couple of days after Džemal Mešić. As it was established that Džemal Mešić was beaten to death in June or July 1992, the time of the calling and beating of detainee Suad Halvadžić was indicated in accordance with it. According to witness K029, Suad Halvadžić was called out during the night and this witness heard the call and saw detainee Halvadžić leaving. Witness K029 also described the events upon Suad Halvadžić's return to the room, when Halvadžić said that he was beaten by several persons and that, after they had stopped beating him, Čupo Banović noticed that there was no blood, saying: "Look, the damn *balija* hasn't started bleeding." He then took out a knife and cut off a piece of Suad Halvadžić's ear. In addition to this, witness K029 stressed that Suad Halvadžić complained of pain in his chest for days after the incident and that his ribs were probably broken. Therefore, the witness heard about Suad Halvadžić's beating, followed by Predrag Banović tearing off a piece of his ear, from Halvadžić himself, and he saw it directly as he saw him being covered in blood and missing a piece of his ear. The foregoing leads the Court to conclude that the detainee Suad Halvadžić was first beaten by Predrag Banović and others, whereupon a piece of his ear was torn off by Predrag Banović, of which the fact that Suad Halvadžić complained of chest pain for days afterward is another indication. With respect to the circumstances of this event, the Court made a correction by omitting the allegation that Suad Halvadžić was beaten up several times, since witness K029 described one beating only, which, in his estimate, lasted for half an hour. Also omitted are the allegations in the Indictment that Suad Halvadžić had his ribs broken on the said occasion, since the Prosecutor's Office of B-H did not offer a single reliable and corroborating piece of evidence in that respect. Also omitted from the operative part of the Verdict is the name of Nenad Banović as a perpetrator of this beating, since witness K029 did not mention him in his testimony, while it was established with certainty that several persons, guard Predrag Banović included, participated in the incident.



The last event described in the factual part of the Indictment regarding the Keraterm camp concerns Uzeir Zejro Čaušević, whom, as the Indictment reads, on or about 21 July 1992, Predrag Banović shot in the leg, whereupon the detainee was taken out of the camp in a military truck as of when he has been unaccounted for. The Court based its belief that the incident really occurred primarily on the testimony of witness K05, who personally saw what happened on that occasion. According to witness K05, Zejro Čaušević was brought to the Keraterm camp together with the other detainees from the Brdo region around Prijedor. The Court based its belief that the said event happened about 21 July 1992 on the said witness' statement. Witness K05 was an eyewitness when Zejro Čaušević was singled out by camp guard Predrag Banović, a.k.a. "Čupo", and taken to the kiosk between the camp and the road, whereupon he was beaten up by the said guard who, according to the witness, "took a pistol and fired putting a bullet through his leg." Witness K05 also stated that he personally saw this incident and that Zejro was driven away in a truck, whereupon he did not return nor did the witness see him ever again. The taking of Zejro Čaušević was also confirmed by witnesses K013, K044, K016 and K043. The Court fully believed witness K05, as it considered his testimony to be impartial and convincing and in agreement with the other witnesses' statements with respect to certain facts. That is to say, the statement of witness K016 that Zejro Čaušević wore a bloodied pair of long johns at the time he was loaded onto the truck and driven away, additionally leads to the conclusion that he had injuries to his leg originating in the aforesaid manner. Witness K013 also confirmed the assertions of witnesses K05 and K016 that Zejro Čaušević was taken in an unknown direction, as well as of witness K044, who stated that Zejro Čaušević was taken in a truck with the other injured detainees and that he never returned. The Court made a correction concerning this event by omitting in the operative part of the Verdict the allegations that Zejro Čaušević was shot in the lower part of his leg, since witness K05, who described the event, said in his testimony "in his leg". In addition to this, also omitted are the allegations that Čaušević was taken in a military truck, since no other witness, except witness K05, stated that it was a military truck, which is, anyway, irrelevant to the said incident. The witnesses called Uzeir Zejro Čaušević in their testimonies by the nickname Zejro, which is a logical nickname for the name of Uzeir, so it is absolutely clear to the Court that it was a reference to the aforementioned person.

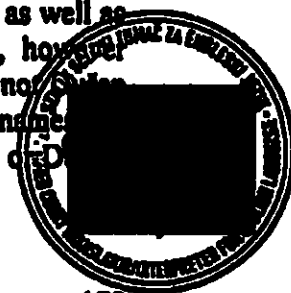
#### **Identity of the accused Duško Knežević**

The defence for the third accused Duško Knežević attempted to challenge the identity of the third accused both in the course of evidentiary proceedings and in its closing submissions, indicating that the third accused Duško Knežević, as indicated in the Indictment of the Prosecutor's Office of BiH, is not the person who visited the Omarska and Keraterm camps where he committed killings and beatings as presented in the foregoing section of the Reasoning of the Verdict. The beatings and killings in the Omarska camp charged against the third accused in the Indictment of the Prosecutor's Office of BiH, as described above, were committed by a person named Duško Knežević aka Duća whom all the witnesses, on whose testimonies the Court based its finding with reference to the commission of the aforesaid criminal actions, identified with a degree of certainty as Duća or Duća Knežević, that is, Duško Knežević aka Duća. The witnesses who used to see the named afore during their detention in the Keraterm camp also used this name to refer to the third accused. Thus, witness Abdulah Brkić



detainees of both Keraterm Camp and Omarska Camp, identified this person as Duća Knežević, the man who visited the camp together with Zoran Žigić, which was corroborated by other witnesses who, depending on what camp they were detained in, testified that they used to see Duća both in Omarska and Keraterm. Besides, a number of witnesses confirmed that Duća Knežević visited the camps together with Zoran Žigić, which entirely supports Abdulah Brkić's evidence with reference to this section of the Verdict.

A number of arguments stemming from the presented evidence both by the prosecution and defence indisputably lead to the Court's conclusion that Duća Knežević, whom the witnesses referred to in their testimonies as the person who visited the Omarska and Keraterm camps, is exactly the third accused Duško Knežević. Witness K022, who testified in the evidentiary proceedings about the killings and beatings committed in the White House by Duća Knežević, indicated in his testimony that a group of three-four camouflage-clad soldiers visited the White House, of whom the witness recalls two, including Duća Knežević whom he had previously seen in the barracks in Prijedor, where the witness had been taken to after his arrest, and Zoran Žigić. Witness K022 who, as he indicates in his testimony, was particularly intrigued by the person named Duća, given his cruel treatment of the detainees in the White House, so from the detainee named Samir "Ešefin" who knew Duća very well since before the war, this witness learned that this person is Duća Knežević from Orlovci, that his father's name is Milan and that he was born in 1967. The Court assesses that the witness had a strong enough motive to memorize the personal information of the person who visited and beat the detainees given that Duća Knežević killed his close relative in one of the beatings, including the detainee Samir, who gave him the information about Knežević, begging him to memorize as much as he is able to as he sensed that he would not survive his detention in the camp. Another witness who described the events in the White House is Emir Beganović who also identified the same group of soldiers as the perpetrators who had no official function in the Omarska Camp, including Nikica Janjić, Šaponja, Zoran Žigić, Dragan and Duća who the witness confirmed wore a camouflage uniform, which corroborated Witness K022's testimony. Witness Ažedin Oklopić also testified that Duća, whom he knew by the last name Knežević, visited the White House and committed the killings and beatings in the aforesaid manner. Witness Ažedin Oklopić closely connects Duća's visit to the camp to the visits of Zoran Žigić and Timarac who, according to the witness's testimony as well as the testimony of Emir Beganović, had no official function in the camp. The Court found further corroboration of the fact that the accused visited the Omarska Camp on the evidence submitted by witnesses K03, Fadil Avdagić, Izet Đešević, K036 and K042. According to witness Izet Đešević, he knew the accused Knežević from before, pointing out that everybody referred to him as Duća, that he used to work as a waiter, that he resided in the Orlovci village and that his father was Mile. Witness K042 in his testimony also mentions the person named Duća Knežević, indicating that he knew him from before, and that he used to see him in Omarska where he would come with a group of persons who also were not camp guards, including Zoran Žigić. Witness Fadil Avdagić also stated that he saw Duća in the Omarska camp, and he later heard his last name was Knežević. This witness, as well as a number of other witnesses, refers to this person as Dušan Knežević, however, numerous other pieces of evidence indicate that this in fact refers to Duško, not Dušan Knežević. Therefore, the Court finds that the very resemblance of these two names create a dilemma on the part of the witness as to whether the person is Duško or Dušan





which does not substantially change the confirmation of the identity of the accused, particularly given the fact that the accused was better known among the detainees by the name of Duća than by his full first name. Witness K036 fully corroborated the previous witnesses' claims that he saw Duća (whose first name he learned from other detainees and whose last name Knežević he learned following his release from the camp) in the camp together with Zoran Žigić. This witness also indicated that Nikica and Šaponja were also in Duća's company on the said occasion, which is further corroborated by Witness K03 who stated that Duća was in the group of persons who were beating the detainees, including Zoran Žigić, Nikica and Šaponja. Witness K03 heard from other camp detainees that this was Duća whose last name was Knežević. The witnesses who were former detainees of the Keraterm Camp also mentioned Duća in their testimonies and some of them stated that this was the person named Duća Knežević. As previously indicated, witness Abdulah Brkić refers to the named above by his nickname Duća, with the last name Knežević, which witness Edin Ganić also confirms, allowing the possibility that the person's name is either Duško or Dušan, as well as witness K015 who heard from other detainees that the person's name was Duća Knežević, then witness Anto Tomić, who in his testimony mentions a person named Duća, then witness K013 according to whom the person was mostly referred to as Duća and the witness pointed out that the person's last name was Knežević, then witness K044 who saw the person nicknamed Duća in Keraterm together with Zoran Žigić, and witness K029 who also mentioned a person named Duća. Witness K016 said he had heard about Duća Knežević (whom he had not known from before) in the Keraterm Camp. This witness confirmed the testimonies of the previous witnesses that the person was mostly called by his nickname Duća, adding that this was how both the guards and Zoran Žigić called him. The person nicknamed Duća who visited the Keraterm Camp is also mentioned by witness K043 and Witness K033, then K014 who supports the evidence of witness K016 that both Zoran Žigić and the guards called him by the nickname of Duća, and that the person in question was Duća Knežević, and witness K05 who had known Duća Knežević from before. Finally, witness K08 identified the said person as Duća Knežević, stating that his full first name was Dušan, which, for the foregoing reasons, did not shake the Court's belief that this person in fact is Duško, not Dušan Knežević. None of the witnesses who referred to the accused solely by the nickname of Duća and not by some other nickname expressed even a slightest suspicion that there may have been more than one person called Duća Knežević who visited the Omarska and Keraterm camps, which clearly indicates that there was only one Duća Knežević who visited both camps, which also results from Abdulah Brkić's testimony who was a detainee in both camps and who saw Duća Knežević in both places. Some of the witnesses who had been detained in Omarska and Keraterm camps even knew Duća Knežević from before and some even knew him personally and/or by sight. This is how witness Izet Đešević saw the aforesaid person when he went to the shop where Duća had worked, then witness K042 who was a patron of the café that Duća also frequented, as well as witness K055 who played football together with Duća. All of these witnesses unanimously confirmed that this Duća Knežević whom they had known from before visited the Omarska Camp. Witnesses K05, K013, K044 and K056, who had been detained in the Keraterm Camp and who had known Duća Knežević from before unanimously stated that this person visited the Keraterm Camp. Witness K056 stated that he used to see Duća Knežević in the Keraterm Camp together with Zoran Žigić and he had known him before the war as he regularly saw him on the bus he commuted to work on. Witness K044 had also known Duća from before and he used to see him

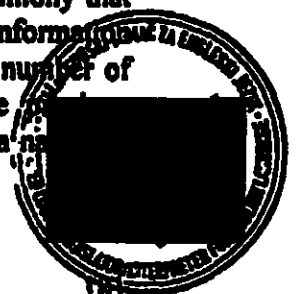


Keraterm Camp, in the company of Zoran Žigljć and other persons, as well as witness no. K013 who recognized in the Keraterm Camp some people whom he had known by sight, including Duća Knežević whose name he learned in the camp, then witness K05 who knew that the person was Duća Knežević. Therefore, all the witnesses mention a person nicknamed Duća, relating him to the surname Knežević, which indisputably indicates that they are referring to Duća Knežević. For the aforesaid reasons, the Court did not accept the assertions of the defence witness Boško Matijaš who points out in his statement that Duško Knežević's nickname was Čufo. To be precise, this witness's statement given in Slavica Bajić's law firm in Prijedor on 14 Feb 2003, which was admitted as prosecution exhibit no. 202 indicates that the witness himself referred to the person by the nickname Duća, not by the nickname Čufo, on several occasions, so it is not objectively possible that there were so many typographical errors in recording the statement, all with reference to the nickname. Besides, the witness stated in the said statement that he was 10 years older than Duško Knežević whom he spent time with as friends. As the witness was born in 1957, and Duško Knežević in 1967, the age of the accused closely matches the age, as estimated by the witnesses, of the person who visited the camps.

As for the position of the accused Duško Knežević in the Omarska and Keraterm Camps, the Court indisputably concluded that the above named had no function in the camps, that is to say, that he had no official position there and that he visited the camp as an outsider. The testimonies of the witnesses given with respect to the aforesaid events that the accused took part in indicate that he visited the camp exclusively to beat the prisoners, which is supported by the witnesses who stated that the camp detainees would be in great fear when they heard or saw that Duća Knežević was coming, such as, for example, K042 who stayed in the Omarska Camp and who testified that the camp detainees were in a state of great fear and that they did not dare even look when they heard that Duća and Žigljć were coming. This was also supported by witness K029 who was a Keraterm Camp detainee and who testified that people would run to their dorms when Duća visited, pointing out that Duća would come and beat people and that people tended to remember such persons. According to witness K029, when Duća would come the detainees would be saying "Duća's coming, let's run!" which meant that the arrival of the accused in both camps was followed by the detainees' fear for their life and safety. These witnesses' claims were further corroborated by witness Anto Tomić who used to see Duća in the Keraterm Camp and who saw Duća the first day upon his arrival in the camp, when other detainees said "Duća's coming" and ran inside. Witness K03's testimony supports the assertion from the Indictment that Duća held no position in the camp who also stated that Duća, together with Žigljć and Šaponja, visited the camp from time to time, which witness K042's testimony also supports. This witness stated that Duća Knežević was not a guard and that he visited the camp with his group, as well as witness Emir Beganović who indicated that Duća was not a camp guard and that he visited Omarska from time to time. Furthermore, witness Ažedin Oklopčić, whose testimony reveals that he saw Duća in the camp on 5 or 6 occasions, pointed out that the guards particularly enjoyed the times when Duća visited the camp together with Žigljć as they knew that the detainees were not going to fare well. All the cited witness testimonies also lead one to conclude that the accused Knežević visited the Omarska Camp only to beat the detainees. The witnesses who were the Keraterm Camp detainees who mentioned Duško Knežević in their testimonies unanimously stated that he had been employed in the Keraterm Camp as a guard or any other official, and

accounts of the events indicate that the accused visited the Keraterm Camp exclusively to beat up the detainees. This is how Witness K014 stated in his testimony that Duća and Žigić visited the Keraterm Camp at will and Witness K08 stated that Duća visited the Keraterm Camp a number of times, which leads one to infer that he was not a camp guard. Witness K044 indicated in his testimony that Duća visited the Keraterm Camp in order to beat people whereupon he would leave the camp; when he was coming, the word would spread among the detainees: "Duća's coming!" which also supports the claims that Knežević had no position in the camp and that the sole purpose of his visits to the camp was to beat the detainees. Testifying about the beatings that occurred in the Keraterm Camp and indicating that these beatings were committed by Žigić, Knežević, Timarac and others, the Witness K013 stated that the persons visiting the camp would come and beat the detainees and that Duća held no position in the camp. This further corroborates the claim from the Indictment that the accused Knežević was not assigned to the camp as a guard and that the sole purpose of his visits to the camp was to beat the detainees, which witness K015 confirms, as well as witness K016 who stated that Duća Knežević did not work in the camp as a guard at all but that he visited the camp in order to beat the detainees. All witnesses who mentioned the accused Duća Knežević in their testimonies stated that he only visited the camp, but was not a guard, whereas most of the witnesses draw a connection between the visits of the accused and those of Zoran Žigić. In the defense witness's capacity, the accused Željko Mejakić also stated in his testimony that there was a group of individuals from Prijedor, including Zoran Žigić, who visited the Omarska Camp, to beat up and kill detainees, which happened frequently, stating: "Once they come, it is too late", as it was difficult to intervene. So, the accused Mejakić in his testimony confirmed prosecution witnesses' testimonies as to the fatal consequences of the Prijedor group's visits for the detainees whose members the guards in effect never prevented from doing their evil deeds. Željko Mejakić did not mention the accused Knežević as a member of the group, but testimonies of the aforesaid witnesses – detainees of the Omarska Camp and Keraterm Camp clearly indicate that Zoran Žigić was in the company of Duško Knežević, which leads the Court to conclude that the accused Knežević was a member of the group that visited the camp and beat the detainees, in which direction the afore described incidents in which these persons participated also point to.

The characteristics of the accused stemming from the testimonies of the witnesses who were heard in court lead to the conclusion that Duško Knežević aka Duća is exactly the person who visited Omarska Camp and Keraterm Camp where he used to beat the detainees. It is undisputable that the accused Duško Knežević was born in 1967 in the village of Orlovci. A great number of witnesses who were heard in court stated that Duća Knežević who visited the camps was a native of the Orlovci village, near Prijedor, or a village that is a neighbouring village of Orlovci but not from the Prijedor proper or any other place. The most specific information with reference to the accused was given by Witness K022 who stated that he made inquiries about the identity of Duća who used to visit the White House and beat him and other detainees, which was understandable, as previously indicated, as this witness lost a close relative in the camp who was beaten to death by none other than Duća Knežević. This witness indicated in his testimony that this was Duća Knežević, born in 1967 in the Orlovci village. This personal information about the accused was confirmed by witnesses Izet Đešević and K055. A number of witnesses who were detained in the Keraterm Camp also supported the prosecution witnesses' claims that Duća Knežević who visited the Keraterm Camp was a



Orlovci village or one of the villages of the Prijedor municipality which are near Orlovci. So, witnesses K08 and K056 unanimously stated that the named above was from Orlovci, witnesses K014 and K015 that he was from Ćirkin Polje which is next to Orlovci and witnesses K013 and K016 that he was from Orlovača which is another village next to Orlovci. All of the afore specified witnesses' claims are fully unanimous with reference to the fact that this person was Duća Knežević, that is, Duško or Dušan Knežević from the village of Orlovci or one of the surrounding villages such as Ćirkin Polje or Orlovača, whereas the witnesses never mentioned in their testimonies that he was from any other place or Prijedor proper nor did they ever mentioned any other name.

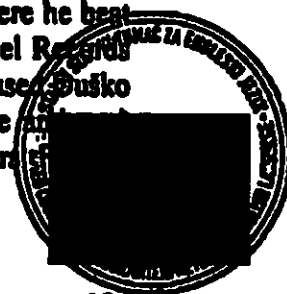
As for the age of the accused, as one of the elements to be used to confirm his identity, the Court finds that the Prosecutor's Office of BiH offered sufficient evidence to that effect to prove that this person is Duško Knežević born in 1967, which is a fact that primarily results from the personal information and documents of the accused. Furthermore, most of the witnesses, in describing the physical appearance of the accused, stated that at the time of the events, the accused was 20 to 30 years old, and only a small number of them claimed that he was over 30. Witness K022 indicated that he knew the exact year of birth of the accused for the aforesaid reasons, indicating that Duća Knežević was born in 1967, whereas witness K055 who was born in 1968 stated that Duća was one or two years his senior. Bearing in mind the fact that the witnesses were unable to precisely establish the age of the accused as the ability to guess one's age varies from person to person and depends on different circumstances, it indisputably follows from the witnesses testimonies that the witnesses gave sufficiently reliable information to conclude that Duško Knežević was around 25 or 26 years old. Witness Izet Đešević who was 42 years old in 1992, stated that the accused Knežević was 10 to 15 years younger than him, which means that the accused, in this witness's estimate, could have been anywhere between 27 and 32 years old, which generally matches the information provided by witnesses K022 and K055. Also, witness K016 confirmed the evidence of previous witnesses claiming that Duća was 25 years old at the time, while according to witness K013, Knežević was approx. 27 - 28 years old, which again generally corresponds to the actual age of the accused, as well as witnesses Azedin Oklopić and Fadil Avdagić who indicated that Duća was around 30 years old. Truth be told, few witnesses stated that Knežević was over 30, but this categorization can be attributed to a general impression that the accused appeared older than his actual age due to his strong built, which the witnesses indicated in his physical description. It is also clear that most of the witness testimonies lead one to conclude that at the critical time, the accused Duško Knežević was neither very young nor middle-aged but somewhere in between. As objective evidence indicates that at the relevant time the accused was 25 years old, the Court fully admits the witness claims who judged him to be between 26 and 30 years old, given that this age span matches the actual age of the accused. Another indisputable confirmation of the accused Duško Knežević's identity comes from his occupation and the fact that before the war he played football for a local football club, to which both prosecution and defence witnesses testified in court. According to the unanimous testimonies of witness Izet Đešević and K055, who both knew the accused Knežević before the war, Duća Knežević was a bar tender/waiter which is another relevant factor in the accused Knežević's identification, particularly given the fact that both of the witnesses used to see Knežević at the time he worked as a waiter. Although a number of witnesses, that is, K015, K014, K013, K016, K022, K055, K056, K057, K058, K059, K060, K061, K062, K063, K064, K065, K066, K067, K068, K069, K070, K071, K072, K073, K074, K075, K076, K077, K078, K079, K080, K081, K082, K083, K084, K085, K086, K087, K088, K089, K090, K091, K092, K093, K094, K095, K096, K097, K098, K099, K100, K101, K102, K103, K104, K105, K106, K107, K108, K109, K110, K111, K112, K113, K114, K115, K116, K117, K118, K119, K120, K121, K122, K123, K124, K125, K126, K127, K128, K129, K130, K131, K132, K133, K134, K135, K136, K137, K138, K139, K140, K141, K142, K143, K144, K145, K146, K147, K148, K149, K150, K151, K152, K153, K154, K155, K156, K157, K158, K159, K160, K161, K162, K163, K164, K165, K166, K167, K168, K169, K170, K171, K172, K173, K174, K175, K176, K177, K178, K179, K180, K181, K182, K183, K184, K185, K186, K187, K188, K189, K190, K191, K192, K193, K194, K195, K196, K197, K198, K199, K200, K201, K202, K203, K204, K205, K206, K207, K208, K209, 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K044 stated that Duća Knežević was a butcher by occupation, the court deems that these witness testimonies did not shake the testimonies of witness Izet Đešević and K055 to a considerable degree, even more so considering that witnesses K015, K014, K016 and K044 stated that they had only heard from others that Knežević was a butcher, whereas witnesses Izet Đešević and K055, who claim that he was a waiter, which corresponds to the actual profession of the accused, directly knew this, instead of having learned this from somebody else. The defence for the accused Duško Knežević tendered as an objective piece of evidence the Employment Booklet of the accused, which reads that in 1990, that is, until 6 April 1992, the accused worked in Hidrogradnja d.d. Sarajevo Company, which is supported by the evidence given by witness Boško Matijaš from 2003 which was admitted as prosecution documentary evidence. The aforesaid statement indicates that Duško Knežević worked in Iraq with Hidrogradnja until August 1990 when he returned to the Prijedor Municipality. Given that prosecution witnesses Izet Đešević and K055 used to see Duško Knežević from Orlovci immediately before the war broke out, it is clear that this was sometime during the time period from August 1990 to May 1992, which is the time after the accused had returned from Iraq, which leads to the conclusion that this is the same Duško Knežević aka Duća whom the witnesses later saw in the Omarska Camp. Besides, the fact that witnesses Boško Matijaš and K055, who knew Duško Knežević well from before the war unanimously stated that before the war Knežević used to be a goalkeeper in the local football club, which constitutes another important element leading to the conclusion that this is one and the same person i.e. the accused Duško Knežević. Further on, objective documentation indicates that the accused Duško Knežević had a brother named Igor who was killed early in the war, as the Death Certificate no. 04-202-7899/2006 dated 29 Dec 2006 shows. The documents lists 30 May 1992 as the date when Igor (Milan) Knežević from Orlovci died, whereas the personal data of the deceased i.e. father's name and place of residence indicate that this is the accused Duško Knežević's brother. Defence witness Boško Matijaš stated in his testimony that Duško Knežević attempted to find out the name of the person who killed his brother and that a person surnamed either Mujkanović or Crnić was under suspicion. These witness claims were supported by prosecution witness Abdulah Brkić, who was an eye-witness of the event when Duća Knežević, during one of his visits to the Keraterm Camp, cut detainee Fajzo Mujkanović's throat insisting that he tell him who killed his brother, as confirmed by witness K016 who, while giving his account of the incident concerning detainee Fajzo, said that Duća Knežević demanded that he confess to him that he had killed his brother. From witness K043's testimony it results that Duća who visited the Keraterm Camp had had a brother who was killed as this witness stated this in relation to an incident concerning a person named Jasmin. The assertions of witness K043 do not match the testimonies of witnesses K016 and Abdulah Brkić with reference to the name of the person that Duća Knežević "accused" of having been involved in his brother's killing, which does not cast a lot of doubt on the two previous witness's evidence, given that the testimonies of all three witnesses unequivocally indicate that the accused Duško Knežević had a brother who was killed and for whose death he sought the culprit among the detainees. Finally, this is also corroborated by Witness K055 who was detained in the Omarska Camp and who was an eye-witness to the incident when the detainee whose last name was Mujkanović was taken out and beaten by Duća. The Panel deems that the fact that Duško Knežević beat the members of the Mujkanović family both in the Keraterm Camp and in Omarska Camp is not a coincidence but attests to



that Duško Knežević wanted to locate among the members of this family the person who killed his brother.

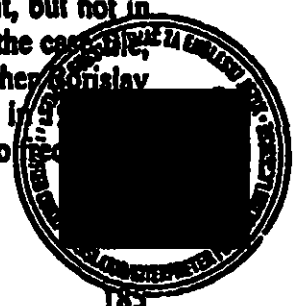
As previously stated, witness Abdulah Brkić saw the accused Duško Knežević also in the Omarska Camp, that is, in the White House, when he was beating Bećir Medunjanin to death, as well as in the Keraterm Camp, when he stabbed the detainee Fajzo Mujkanović in the neck. This witness claimed that this was one and the same Duća Knežević, excluding the possibility of there being more visitors to the camp with that same name. Independently from witness Abdulah Brkić's evidence, Witness K022 also mentioned Duća Knežević as the person who beat up Bećir Medunjanin in the White House, listing all the personal information for this person which corresponds to the actual personal data of the accused, primarily the fact that he was born in 1966 or 1967, that he is a native of Orloveci or its environs and that his father's name is Milan. Besides, witnesses Fadil Avdagić, Azedin Oklopčić and Emir Beganović who testified about Bećir Medunjanin's being beaten to death in the White House, unanimously stated that this beating, as described above, was committed by Duća Knežević. In addition to these witnesses, Witness K036 and witness Asmir Baltić also testified about the White House beatings by Duća Knežević. If we add the fact that all witnesses to the beatings by Duća Knežević relate these beatings to the group of people who, the same as the named above, were not camp guards, including Zoran Žigić, Željko Timarac, Šaponja and Nikica Janjić, describing these beatings as extremely brutal, with the use of different implements, such as, batons, or a bat with a metal ball attached, it is clear that the aforesaid beatings in both camps (which would sometime result in detainees death) were committed by the same person, that is, Duško Duća Knežević, born in 1966 or 1967, from Orloveci, whose father's name is Milan and who lost a brother before the events in the camps, and that this is one and the same person, not more persons with the same first and last name. Another element indicating that this person is the accused Duško Knežević is that Knežević was a member of the army, which results from the statements of witnesses who confirmed that Duća wore a uniform. This is how witness Emir Beganović stated that the above named wore a military uniform, Witness K055 stated that Duća wore a uniform, witnesses Fadil Avdagić and K022 stated that he wore a camouflage uniform, and witness K042 stated that he wore an olive-drab uniform. The witnesses who were detained in the Keraterm Camp during the relevant events also stated that Duća wore a uniform when he visited the camp. According to Witness K015, Duća wore an army uniform, which Witness K043 also confirms, whereas Witness K016 stated that Duća wore an army blouse; witness K014 stated that Duća wore a camouflage uniform, whereas, according to Witness K013, Duća wore different uniforms. Witness Anto Tomić pointed out that Duća wore a military olive-drab uniform. Therefore, it results from all the aforementioned witness testimonies that the accused Duško Knežević wore an olive-drab or camouflage or military uniform during his visits to the Omarska Camp and Keraterm Camp, which supports the prosecution claims that the named above was in the army. The said prosecution claim is supported by witness K022 who had previously seen the accused Knežević both in the barracks and in Prijedor, as well as Witness K014 and K05 who had heard directly from the detainee Emsud Bahunjić that Knežević visited the barracks in the camp where he beat this detainee. Documentary evidence fully support these claims i.e. Personnel Records of the 43<sup>rd</sup> Motorized Brigade from Prijedor wherefrom it results that the accused Duško Knežević was a member of the said brigade (the only person of this name and surname which corresponds to the person who visited the camps and beat the prisoner).



testimonies of witnesses K043 and Boško Matijaš indicate that Duća Knežević was in a military unit under Zoran Karlica's command, which additionally supports the claim that Knežević was in the army.

The description of the person who visited both camps in the said period of time, in addition to the person's age, which the witnesses indicated in general terms, indisputable points to the conclusion that this person is the accused Duško Knežević aka Duća. All witnesses who mentioned the accused unanimously described a person of dark complexion, which is indicated in the evidence of witness Izet Đešević, then witnesses K055 and K056, Abdulah Brkić, Fadil Avdagić, Mustafa Puškar and Witness K044. Besides, the witnesses who testified consistently stated that Duća Knežević whom they described was of strong physical built and "stocky", as indicated in the testimonies of witnesses K036, K03, Azedin Oklopčić, K042, Fadil Avdagić, Mustafa Puškar, K055, Abdulah Brkić, K013, K014, K08. According to these witnesses, Duća was sort of chubby. Witness K029 stated that Duća was corpulent, witness K015 said that he was stout, while witness Anto Tomić said that Duća was big and strong; Witness K016 according to whom the named above was rather big, and according to Witness K044 and K056, who describes him as a big man "like a boxer". Further on, a number of witnesses stated that Duća Knežević was of average or median height, which is also indicated by testimonies of witness Emir Beganović who says that the accused was as tall as he is, saying that he was 181 or 182 cm tall, then witness Azedin Oklopčić who stated that Duća was between 175 and 180 cm tall, which witness Anto Tomić also confirms, then witness Mustafa Puškar and witness Abdulah Brkić. Witness K029 stated that Duća was around 170 cm tall as well as Witness K08 according to whom Duća was between 170 and 180 cm tall, or witness K016 who when describing the accused person's height stated that he was "neither tall nor short" and witness Izet Đešević who says that he was of average height. Furthermore, none of the witnesses who had been detained in either Omarska Camp or Keraterm Camp stated that Duća Knežević was fair-skinned or that he was extremely tall or short, or that he was thin. Instead, all witnesses fully agree in describing him as a person of dark-complexion, strong built and medium height.

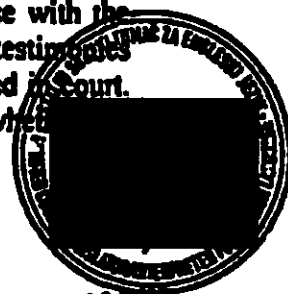
Both in the course of evidentiary proceedings and in the presentation of closing arguments, the defence tried to impose the conclusion that the accused Duško Knežević is actually not the Duća Knežević who visited the Omarska Camp and Keraterm Camp where he used to beat up detainees, indicating that this was done by a different person with the same first and last name. The defence particularly reflected upon a person named Duško Knežević, son of Stevo, born in 1967. Challenging the defence claims in this part, the Prosecutor's Office of BiH moved the Court to hear as a witness Borislav Knežević, the only brother of Duško Knežević's, son of Stevo, born in 1967. This witness testimony indicates that Duško Knežević, son of Stevo, used to live in Prijedor proper instead in one of the villages around Prijedor (Orlovci, Orlovača, Čirkin Polje), that he passed away on 1 July 1993, that he was called Duško or Dule, but not Duća, that he was unemployed i.e. he did not work as a waiter and that he was a soldier in a Banja Luka unit, in the Kozara barracks in Banja Luka, in the Supply Unit, but not in the Prijedor Brigade, which is also supported by documentary evidence in the case file, that is, the person's Military Booklet. Besides, Duško Knežević whose brother Borislav Knežević testified before this Court, had only one brother who did not die in 1993, that is, Milan or Mile, as is the case with the person who



the Omarska and Keraterm camps. In fact, no prosecution witness ever stated that Duća Knežević who visited the camps had a father by the name of Stevo or by any other name; instead they all claimed that the name was either Milan or Mile, which is indicated primarily in the testimonies of witnesses K022 and Izet Đešević. Finally, no other person from the territory of Prijedor Municipality named Duško or Dušan Knežević has a father named Milan or Mile, as is the case with the accused, and their identity does not match in any other detail with the identity information of Duća Knežević who visited the camps, such as the year of birth, occupation or place of residence.

The fact that only witness K013 successfully identified the accused Duško Knežević in the courtroom does not diminish the probative value of arguments that the Prosecutor's Office of BiH reached based on the presented evidence in proving their assertion that the accused is the right person. In fact, the lapse of time of 15 - 16 years after the incidents, as well as the inevitable change in physical appearance that such a long time involves constitutes an additional circumstance which makes courtroom identification more difficult. When we add the fact that all the witnesses conducted identification from their witness stand without any movement in the courtroom and that, when giving evidence about these incidents after such a long time they once again had to face their fears and traumas that resulted from these incidents, therefore it is logical that such type of identification cannot be successful. This was also what the witnesses themselves pointed out during the identification process, leaving room for mistakes, as is the case with witnesses Fadil Avdagić, K055 and K056 whereas witness Azezin Oklopčić stated that he did not believe he would recognize the accused, the same as witness Izet Đešević who stated that he was unable to recognize the person. With regard to the fact that he was unable to identify Duća Knežević on the photographs shown to him in September 1998, the witness stated that the photographs were unclear and that it was difficult to make anybody out on these photos, which served as the witness's safeguard from misidentification of the perpetrator. What also needs to be borne in mind is the fact that at the critical time the accused Knežević had hair, which witnesses Azezin Oklopčić, K014, K015, K016, K055, K056, Boško Matijaš and others corroborate (these are prosecution witnesses, detainees in both camps and one defence witness) whereas now the accused does not have hair, so one cannot realistically expect the witnesses to recognize the accused in the courtroom. The Court attaches more relevance to the fact that all aforesaid witnesses who described the accused gave a unanimous description of his physical appearance from the time when they used to see him in Omarska and Keraterm camps as this is the appearance they remember him by.

Therefore, the issue with witnesses' identification of the accused did not shake the high degree of the Court's conviction, which is that the person in question is without any reasonable doubt the accused Duško Knežević, more so given that all other reliable facts clearly point to the accused. This position is particularly supported by the position of the ICTY that a failed identification of the accused in court does not annihilate any argument which could otherwise be proved in oral evidence, especially in case of the accused person's apparent change of physical appearance, which is the case with the accused Knežević, and that the Court was entitled to rely on the witness testimony regardless of the failure on the part of those witnesses to identify the accused in court. Besides, the ICTY jurisprudence, the right question that need be asked is whether





prosecution arguments contain sufficient body of other evidence to indicate that the accused is the person in question, disregarding the failed courtroom identification.

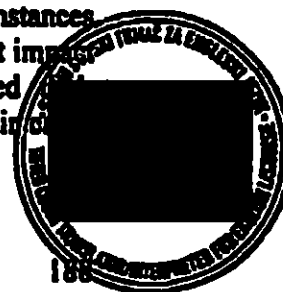
Given the foregoing, the court finds that the failure on the part of prosecution witnesses to identify the accused in the courtroom, with the exception of Witness K013 does not diminish the relevance of other circumstances resulting from the presented evidence which establishes a connection between the accused and visits to the Omarska and Keraterm camps, that is, prisoner beatings in these camps. All the foregoing circumstances, as indicated above, indisputably lead one to conclude that this person is Duško Knežević, son of Milan, born on 1967, from the village of Orlovci, waiter by profession, who used to play football in a local club; this person had a nickname Duća, not any other nickname derived from the first name Duško, who lost a brother early in the war, who at the critical time was a member of the army, more specifically, a Prijedor army unit, and, finally, that there was no other Duško Knežević with these same characteristics. It is true that there were more persons named Dušan or Duško Knežević, however other characteristics that witnesses testified about in court and the information regarding other persons who had the same surname or with a similar name exclude the possibility that the person in question was some other Duško or Dušan Knežević. Witness K055's testimony especially needs to be borne in mind as he personally knew the accused Duško Knežević before the war. He claimed that Knežević was from Orlovci, that everybody called him Duća, that he was a waiter and that they played football together and that Duća was a goalie. This witness, who was born in 1968, claimed with certainty that Duća was a year or two his senior. Finally, the witness personally saw the very same Duća Knežević beating the prisoners in the Omarska camp, on which occasion the witness greeted him by referring to him as Duća after which the accused recognized the witness and refrained from hitting him.

Challenging the assertions from the Indictment with reference to the role of the accused in certain events, specifically speaking the killings of Sead Jusufović "Car" and Drago Tokmadžić, the defence offered objective evidence i.e. Official Note no. 33-6-92 dated 7 June 1992 and Official Note no. 125-6-92 dated 21 June 1992 where it was not indicated that the accused was one of the assailants. Witness K054, however, who authored the said official notes, stated in his oral evidence that he personally did not witness these killings and did not even conduct an investigation in that respect, that is, that he never heard any detainee or a camp guard as a witness, nor interviewed the suspects. The assertions of the Prosecutor's Office of BiH correctly imply that this was unreliable evidence given how the Notes were made, whereby no direct evidence was collected, but information was obtained indirectly. The witness who compiled these notes stated in his statement that he subsequently learnt that Željko Timarac was another perpetrator in these incidents although he was not mentioned in the Notes, also there is no mention in the Notes of Zoran Žigić who was factually involved in these incidents. Therefore the Court's position is that the contents of these Notes is unreliable, particularly given the fact that they contradict many prosecution witnesses' evidence given in court, which indisputably indicates that the accused took part in the beatings and killing of the two aforesaid detainees.

As previously indicated, the Court fully admitted all aforesaid prosecution witness evidence as truthful and credible as the witnesses observed certain events each from their own perspective and described the events in the manner that they gave their account.



personal observations with reference to this evidence. Besides the fact that some testimonies are discordant with reference to some information, such as the date and place of incidents, it is obvious that the witnesses are unanimous regarding decisive facts related to a person's beatings or death, for instance. Certain discrepancies in witness testimonies with reference to a certain event are understandable given the time distance, that is, the time span that passed between when the incident occurred and the date of testimony, as well as a person's individual ability to place a certain event in a certain timeframe, as well as the ability to perceive and memorize the details of secondary importance that are related to a specific event. A number of events in the Omarska and Keraterm Camps occurred on a daily basis, especially in the Omarska Camp, where a number of detainees were detained in several facilities in the camp, so one could not realistically expect every detainee or more of them to see each particular beating and murder, as is the case with the beatings that occurred in many detainees' plain sight, e.g. the killing of Rizah Hadžalić's or that of Mirsad Crnalić. Analogous to that, the beatings and killings that occurred in the Keraterm Camp which occurred in an open space in front of the dorm were the focus of attention of a number of detainees, e.g. Sead Jusufović aka Car's killing, or the abuse of detainees from Brdo upon their arrival at the camp. In evaluating each witness evidence, both in isolation and in their mutual connection, the Court primarily had in mind the probative value of each particular witness, not the number of witnesses who testified about an incident. The Court thus considered as proven even those facts on the incidents charged in the indictment that only one witness testified about. In all that, the Court evaluated the contents of a witness's testimony and its credibility, bearing in mind that witness's testimony with reference to some other event that other witnesses testified about, and the congruence of decisive facts in that witness testimony with other witness testimonies with reference to the same events. If a witness testimony is congruent in decisive facts with other witness testimonies with reference to the same event, the Court had no realistic reason not to give credence to the witness testimony in those cases when the witness testified about an event as a sole eye witness of the event. This is particularly true in case of those events that occurred in locations where there could not have been more than one person at the same time such as e.g. beatings during visits to the sanitary facilities or during interrogations. The witnesses presented so many specific details with reference to some events which indicate that these persons were truly the eye witnesses of these events, which lead the Court to conclude that it was simply impossible that a great number of witnesses who testified in court and who live in different parts of the world colluded to give corresponding testimonies. The Court was under the impression that all witnesses truly gave an objective account of what they saw or heard in their testimonies presented in a fair manner during the main trial, without attempting to lay blame on the accused without any grounds or to base their testimonies on the information they learnt about in the ICTY proceedings, as the defence tried to present. Testimonies of all the witnesses who testified in court are congruent (with minor deviations) and they support one another in decisive facts such as, e.g. evidence about the bodies they used to see around the White House, accused Međakić's and Gruban's roles in this camp, beatings during lunchtime etc. on which the Court bases its conviction on the credibility and authenticity of their contents. The Court finds the discrepancies in the witness testimonies understandable and insignificant, especially in those instances when several witnesses testified about one and the same incident, which does not impair a particular witness's authenticity. Besides, some of the witnesses showed appreciation of some of the accused for the help they offered them during their



detention and some witnesses who saw their relatives being taken away only stated that Omarska was the last place where they were seen, without asserting that they were killed in the camp. This is another indicator of the witness's objectivity and the veracity of their testimonies in the presentation of their knowledge of certain facts. Finally, the prosecution witnesses also testified in this Court about the events that did not concern the ICTY criminal proceedings before the ICTY, so they could not have learnt anything about these events from the proceedings held before the ICTY. Multiple congruous testimonies of the prosecution witnesses, whose entirety paints a realistic picture of the living conditions in the Omarska Camp, as well as the events that occurred during the time of their detention, were not seriously shaken by the defence evidence, especially not by the defence witnesses, even those witness testimonies who themselves were camp detainees, such as Witness K050 and K051. The defence witnesses gave a diametrically different account of the events pertaining to a number of killings in the camp. Contrary to a great number of prosecution witnesses who testified about killings and bodies they used to see in the camp on a daily basis, especially around the White House, the defence witnesses stated that they saw neither killings nor dead bodies in the camp, that is, that they saw only a small number of bodies of killed detainees such as, for example, the testimony of Stevo Petoš, a former camp guard, who stated that he saw only one killing, that is, he saw only one body lying on the grass and that he saw no beatings or killings. Witness K050, a former camp detainee, stated that he was unaware of the killings of a great number of people who had been brought to the camp from Brda, with an explanation that he would have known about this had this truly happened, which also clearly contradicts the testimonies of a number of prosecution witnesses who testified about the said event. Witness K052 stated that there was medical aid in the Omarska Camp that one could ask for if needed, contrary to the prosecution witness testimonies who unanimously stated that they did not even dare seek aid for fear of ill fate that would befall them. Besides, witness Branko Starčević indicated that he used to see beaten, injured and bloodied detainees only during the first days of the camp's existence, that is, during the presence of the Banja Luka Special Unit men, and that, following these Special Unit's departure (who stayed in the Camp only for 15 days) no violence occurred over the detainees and that he never heard moans and screams, asserting that the detainees were never beaten after the Special Unit left. Such drastic contradiction between the testimonies of defence and the authentic and credible accounts of testimonies of prosecution witnesses with reference to all the events and occurrences in the Omarska Camp leads the Court to conclude that the defence witnesses did not portray the situation in the Omarska Camp in a realistic and reliable manner. What is also symptomatic is the fact that defence witnesses refer to only a small number of fatalities which the defence does not challenge, for example, the murder of Mehmedalija Nasilć, the death of Ismet Hodžić and others.

In its closing arguments and in the course of the proceedings, the Defence drew attention to some events, pointing out that the accused Željko Mejakić was absent when a particular event occurred. It is however indisputable that somebody who visited the Omarska Camp on a regular basis, such as the accused Željko Mejakić, as he confirms in his testimony, had to be aware of the widespread beatings and killings in the camp, and he had to be aware of the consequences of those beatings and killings. Even if it were so that the accused had not been an eyewitness to the killings or beatings, that is, even if he had been absent at the time of a particular event, he could have seen the consequences of such events in a great number of bodies that lay on a daily basis



open view in the camp compound, beaten and injured detainees, their exhaustion and poor shape, traces of blood and consequences of beatings.

The defence also attempted to dispute the credibility of prosecution witnesses, indicating the discrepancies between their testimonies in the main trial and their previous statements. The Court however believes that such a position of the defence is ill-founded, as it clearly results both from witnesses' previous statements and their trial testimonies that their testimonies were directed at particular events that were the subject matter of their examinations given that the witnesses mostly responded to the questions put to them so they did not have an opportunity to present everything they knew about the events that occurred during their stay in the camp. Besides, the statements given during the time of war, immediately following the detainees' release from the camp, are mostly general in nature and do not comprise accounts of many events that the witnesses had an opportunity to testify about before this Court. Furthermore, the defence arguments indicating that there were no eyewitnesses to some incidents also proved to be unfounded as every incident was described by at least one witness who was a direct witness of that incident, having either seen or heard about the course of event, having recognized the perpetrators' voices, wherefrom one can clearly conclude that the event truly happened.

The Court could not sustain the defence's objection with reference to the incident in which a large group of Brdo residents was killed as one could not expect the witnesses to recognize one of the persons at night, but the witnesses did see the people falling and they heard their cries. Besides, the Indictment did not include the names of the persons who were killed on the critical night, given that it refers to them as "a great number of unidentified detainees," the same as with the St. Peter's Day's incident. The defence tried to portray Emir Beganović's beating as a consequence of unresolved relationship from the past between this detainee and Nikica Janjić, who beat him up. However, from the testimonies of the witnesses who gave evidence in court with reference to this incident, it stems that on the critical night Emir Beganović was not beaten up alone but in a group of other detainees, and the very state of helplessness that the detainee was in and his position in the camp was only an additional motive for the perpetrator to beat him. Besides, Nikica Janjić was not the only person who beat the detainee Beganović, nor was Janjić present at every beating. Allegations of the accused Željko Mejakić's defence alleging that Emir Beganović had not seen Hankin in the camp at all although they had known each other very well was also declared inadmissible by the Court as the said fact cannot cast shadow on the fact that Emir Ramić was killed in the camp, given the fact that a great number of detainees was kept in the Omarska Camp at the time so it was not very likely for all the detainees to meet one another during their stay in the camp, particularly given the fact that they were kept in separate rooms and taken to have their meals in separate groups. The defence assertions seeking to prove that Safet Ramadanović Ćifut's and Mehmedalija Sarajlić's deaths were not the consequences of beatings and abuse, given the fact that the Court had reliable evidence wherefrom it established that the named above were beaten to death, which was also confirmed in the case of Azur Jakupović's beating who was subsequently killed, as presented evidence relevantly and reliably showed. In case of Abdulah Puškar's being beaten to death, the Court also heard reliable and substantial evidence indicating that the same



happened here as in the case of beating Silvije Sarić, whereas witness Mustafa Puškar who had neither heard nor seen the said beating stated that he had not seen his cousin Abdulah Puškar after the night when he was called out and taken away. The Court does not admit the assertions that Miroslav Šolaja went missing, as the presented evidence pertaining to the killing of the name above clearly shows that the witnesses saw his dead body in the camp after he was beaten up. Further on, the defence's claim that Muhamed Čehajić was detained in Banja Luka following his detention in Omarska does not refute the witness testimonies referring to this witness being beaten and abused by the camp guards. In the foregoing Reasoning of the Verdict, the Court provided detailed reasons as to whether and why it finds a particular incident proven or not, therefore the objections that the defence filed with reference to certain events were deemed unconvincing and ungrounded.



### Applicable Law

The Court had in mind arguments according to which the application of the CC BiH would constitute a breach of fundamental legal principles. Specifically, the Defense for all the accused alleged that a conviction on the basis of Article 172 CC BiH would be in breach of the principles of *nullum crimen sine lege* and that a sentence exceeding the maximum prison term provided for by the CC SFRY in force at the time the crimes were committed would also violate the *lex mitior* principle. The Defense relied on Articles 3 and 4 of the CC BiH proper for their arguments, claiming that Crimes against Humanity were unknown in SFRY law and that after the abolition of the death penalty, the old Yugoslav law provided for a more lenient sentence than the new CC BiH.<sup>1</sup>

The Prosecution opposed these arguments throughout the proceedings, stating that Crimes against Humanity were recognized under international law as well as – in its essence – in the CC SFRY by the time relevant to the indictment.<sup>2</sup> Also, with regard to the *lex mitior* principle, the Prosecution is of the opinion that the CC BiH appears to be the more lenient law if compared with the CC SFRY which until recently provided for the application of the death.<sup>3</sup>

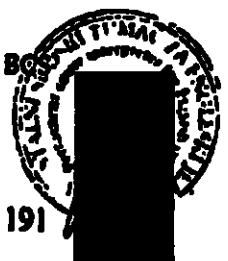
The Appellate Panel of the Court of BiH, in its first War Crimes case against Abduladhim Maktouf, confirmed the CC BiH being the applicable law, and stated that its application was in line with the legal principle of *nullum crimen sine lege*, while the principle of *lex mitior* was to be disregarded in connection with acts that were contrary to general rules of international law.<sup>4</sup> This conclusion of the Court of BiH was upheld by the Decision of the Constitutional Court of BiH in the case of Abduladhim Maktouf, according to which the application of the CC BiH in cases dealing with crimes against humanity and values protected under international law is in line with the European

<sup>1</sup> See *inter alia*: Joint Preliminary Objections against the Form of the Indictment, raised by the Defense for Željko Mežaković and Dušan Purić, 24 August 2006, section II.

<sup>2</sup> Prosecution Response to Defense Joint Preliminary Motion, 7 September 2006, paragraphs 19-23.

<sup>3</sup> Prosecution Response to Defense Joint Preliminary Motion, 7 September 2006, paragraph 9.

<sup>4</sup> Maktouf Court of BiH Appeal Judgment (KPŽ-32/45), 4 April 2006, pages 17-18 (pages 20-21 in BCS version).



Convention on Human Rights and Fundamental Freedoms (ECHR) as well as with the Constitution of BiH.<sup>31</sup>

The question concerning the applicability of the criminal offense of Crimes against Humanity pursuant Article 172 CC BiH which as such was not expressly provided for in the CC SFRY was decided by the Court of BiH in the Trial Judgment against Dragoje Paunović, which was confirmed on appeal.<sup>32</sup> The Panel agrees with the established case law of the Court of BiH.

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### **The Elements of Crimes against Humanity**

The Court, through the evidentiary procedure, found all the Elements of Crimes against Humanity as being fulfilled.

As Article 172 CC BiH was copied from the provision for Crimes against Humanity in the Statute of the International Criminal Court (ICC), the Panel, after analyzing the legal provisions within the Bosnian law itself and its interpretation by the case law of the Court of BiH, will turn to the legal definitions elaborated in ICC documents, before turning to the analysis of ICTY case law on the issues in question.

### **Existence of a Widespread or Systematic Attack against the Civilian Population**

The following so-called chapeau, or general, elements of Crimes against Humanity need to be established first, namely:

- 1) the existence of an attack directed against a civilian population;
- 2) the attack was either widespread or systematic;
- 3) the acts of the Accused formed part of the attack, and the Accused knew about this link.<sup>33</sup>

As regards the definition of these general prerequisites for the criminal offense of Crimes against Humanity, this Panel relies on the reasoning of the Court of BiH first instance verdict in the Nikola Kovačević case, which is based on the analysis of the relevant ICTY case law.<sup>34</sup> Thus, this Panel accepts the following:

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<sup>31</sup> Constitutional Court of Bosnia and Herzegovina Decision on Admissibility and Merits in the case of *Abdeladhim Makrouf* (AP 1785/06), 30 March 2007, see paragraphs 11, 60-79 and 80-89.

<sup>32</sup> First Instance Verdict in the case against *Dragoje Paunović*, Ref. number: X-KR-05/16, dated 26 May 2006, pgs. 22-26 (pgs. 19-23 in BCS version); Second Instance Verdict, Ref. number: X-KR2-05/16, dated 27 October 2006, pgs. 7-9 (pgs. 8-10 in BCS version).

<sup>33</sup> See also the recently rendered *Todošević and Radević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, pages 39-42 (pages 37-42 in BCS version).

<sup>34</sup> *Kovačević* Court of BiH Trial Judgment (X-KR-05/40), 3 November 2006, pgs. 22-23 (pgs. 20-21 in BCS version), upheld by the Appeal Judgment (X-KR2-05/40), 22 June 2007, pgs. 5-6 (pgs. 5-6 in BCS version).

- (a) That an attack, which is generally understood as conduct during which violence occurs, need not necessarily take place as part of an armed conflict;
- (b) That as factors of the widespread character of the attack the following should be taken into consideration: the consequences of the attack on the targeted population, the number of victims, the nature of the acts and the cumulative effect of a series of inhumane acts or the single effect of one act of a large scale;
- (c) As indicators for a systematic attack the following facts should be taken into consideration: regular repetition of the offense which is not accidentally similar in character, or mutual organization of a series of acts and small probability that the perpetration of those acts was random;
- (d) Article 172 (2) (a) of the CC BiH names the additional element, not required by ICTY case law, that the attack be committed "pursuant to or in furtherance of a state or organizational policy", which can be interpreted as an additional differentiation between the actions of individuals and the actions undertaken as part of a larger organizational unit, only as such gaining the security significance which requires a specific criminalization at the international level and within Chapter XVII of the CC BiH;
- (e) As regards the issue of determining the character of the group which would be targeted by such an attack, the Court accepts the position expressed, inter alia in the ICTY Trial Judgment in the Radoslav Brđanin case, according to which it is not required that every single member of that targeted group be a civilian, but sufficient if the group is predominantly civilian in nature, including individuals hors de combat.<sup>35</sup>

As regards the existence of a "widespread or systematic attack", the Panel was guided by the facts that had already been established in the ICTY judgments in the cases against Duško Tadić, Miroslav Kvočka et al, Milomir Stakić and Radoslav Brđanin, which facts, following the Prosecutor's Office of BiH Motion, were partially accepted by this Court.<sup>36</sup> In addition to that, in the introductory sections of their testimonies, most of the examined witnesses provided the Panel with a fairly broad picture and overview of the events in the Prijedor Municipality at the time period covered by the amended Indictment.

The examined witnesses unanimously stated that, with the take-over of power in Prijedor Municipality by the Serb Democratic Party on 30 April 1992, the conditions of life of the non-Serb population began to change. Following the outbreak of the armed conflicts in certain parts of the Prijedor Municipality in late May 1992, the situation worsened in terms of freedom of movement<sup>37</sup>, dismissals from companies and public institutions<sup>38</sup>, and the security situation of the non-Serb population<sup>39</sup>. The said situation,

<sup>35</sup> *Brđanin* ICTY Trial Judgment (IT-99-36-T), 1 September 2004, paragraph 134.

<sup>36</sup> See: *Decision on Established Facts*, number: X-KR-06/200, 22 August 2007, accepted facts number: 41-47, 49-54, 66-101, 103-132 and 135-137.

<sup>37</sup> See for example: Testimony of witnesses K041 who pointed out that already in May 1992 families that tried to leave the Prijedor area by bus were returned. Witness Said Bešlić testified that Serb checkpoints were erected in Prijedor municipality. Witness Fadil Avdagić said in his evidence that from 19 May 1992 on he was prevented from driving to work from Kozarac to Prijedor and sent back at a checkpoint as was witness Zlata Cikota. Witness K09 also testified about restrictions for movement and special necessary documents in order to pass checkpoints.

<sup>38</sup> Witness Kerim Mešanović was sent home at the end of April, as were his six other Muslim colleagues and one woman married to a Muslim. As his skills as a computer specialist were needed, he was given a special laissez-passez by the Serb authorities in order to get back to work until he was arrested and brought to Omarska. Witness K027 was fired immediately after the Serb takeover. Witness Azedin



eventually, culminated in artillery and infantry attacks, which has been established by accepted facts included in the Court Decision of 22 August 2008, and by testimonies of examined witnesses survivors of those attacks, followed by organized mass-arrests of the non-Serb population and their imprisonment in several locations including the Omarska and Keraterm camps.<sup>40</sup> In addition to that, the subjective and objective evidence in the case file shows that the non-Serb population was imprisoned also in the Trnopolje Camp that had been set up. The testimony of Witness K033 shows that, after the attack on the place where he lived, together with his family, he was taken first to the Trnopolje Camp, wherefrom he was later transferred to the Keraterm Camp, while K017 stated in his testimony that some members of his family too had been placed in the Trnopolje Camp, which leads to the conclusion that the Trnopolje Camp existed already at the time of the first arrests of civilians in the Prijedor Municipality. Finally, according to their testimonies, some of the prisoners from the Omarska and Keraterm camps were transferred from these camps to the Trnopolje Camp in early August 1992, for example those are witnesses Asmir Baltić, K023, K03, K014, K042, Nusret Sivac, K037, K013, K010, K029 and others. The existence of the Trnopolje Camp is also clear from the Decision on Established Facts of 22 August 2007 (fact No. 140, and facts No. 291 – 299, 301 – 304, 306 – 310). The existence of this Camp is supported by a body of objective evidence in the case file that mention the Camp together with the Omarska and Keraterm camps, including the Prijedor PSS Dispatch No. 11-12-2169 dated 1 August 1992, also Prijedor Public Security Station Information Paper No. Strictly Confidential 11-12-38 dated 4 August 1992 sent to the Banja Luka Security Services Centre (Exhibit No. 23), Prijedor Public Security Station Report (Exhibit No. 26), and Banja Luka Security Services Centre Report (Exhibit No. 27). The above objective documentation from the case file indisputably leads to the conclusion that the Omarska, Keraterm and Trnopolje camps were established by the Crisis Staff of the Prijedor Municipality, which issued directives for their operation. This is primarily shown by the Prijedor PSS Report (Exhibit No. 26), and the Report on the situation and issues concerning prisoners, collection centers, resettlement and the role of the Public Security Service and the connection with these activities (Exhibit No. 27). Based on everything described above, it was concluded that the first three of the previously described prerequisites for a situation to be characterized as a widespread or systematic attack were met.

The treatment of the non-Serb population as described above was established and organized by the Serb authorities, more precisely the Crisis Staff of the Prijedor Municipality, established by the Prijedor Municipal Assembly at the session held on 20 May 1992 (Exhibit No. 35), whose decisions were subsequently verified by the Prijedor Municipal Assembly on 24 July 1992 (Exhibit No. 80). The established Crisis Staff issued orders and administrative directives to the administration, police forces and also

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Oklopčić testified that only one of his Muslim colleagues and two Croat colleagues that were married to Serbs managed to keep their positions as elementary school teachers.

<sup>39</sup> Witness Emir Beganović said to have sent his family to Croatia after the Serb takeover of Prijedor as the situation became dangerous. Witness K041 also testified to have sent his family abroad once the political battle became more and more hostile. Witness K023 pointed out that in 1991 the tensions in Prijedor increased after the multi-party elections, as there was no compromise possible around the partition of power. The war in near Croatia and the presence of soldiers fighting on that battlefield caused further tensions. Witness K037 also testified to have sent his family away as he was feeling changes in Prijedor.

<sup>40</sup> See *Decision on Established Facts*, accepted facts number: 15-26 and 29-36.



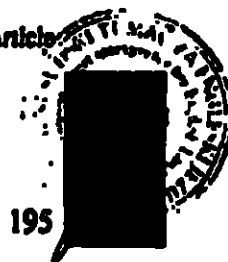
directly to the citizens of Prijedor<sup>41</sup>, cooperated with the command of the Army and the Territorial Defense in connection with the operations described above<sup>42</sup>, and harmonized its policy with the Banja Luka regional leadership<sup>43</sup>. All these facts confirmed that the attack was carried out in furtherance of a policy adopted by the Serb authorities in that area.

Although a certain number of former camp inmates, who testified in this case, confirmed that, prior to their arrest, they were members of the Territorial Defense, or professional or reserve police, the statements of all witnesses show that the Serb forces, having rounded up the population in certain locations in the Prijedor town, only separated men from women, children and the elderly, then taking the entire group of non-Serb men to camps without further checking on their possible involvement in combat activities. So, mainly the prisoners who obviously exclusively had the civilian status, such as groups of intellectuals, business and political leaders as well as wealthy citizens from the Prijedor Municipality including doctor Osman Mahmuljin, doctor Eniz Begić, doctor Esad Sediković, doctor Jusuf Pašić, Abdulah Puškar, Ermin Striković, Fadil Avdagić, Zlata Cikota, K027, Esad Mehmedagić, Zijad Mahmuljin, Ago Sadiković, Zlatan Beširević, also political leaders such as Muhamed Čehajić and Silvije Sarić, and successful businessmen and wealthy citizens Rezak Hukanović, Asaf Kapetanović, Emir Beganović, K036, the Kapetanović brothers and others were imprisoned in camps. Evidence in the case file indicates that about 7,000 non-Serb civilians from the Prijedor Municipality area were at some point held in the Omarska, Keraterm and Trnopolje camps. The Court bases this conclusion on the fact that approximately 3,000 civilians were detained in the Omarska Camp, and according to the data from the objective documentation the number is 3,334 individuals, then between 1,000 and 1,500 civilians in the Keraterm camp, and also a large number of civilians in the Trnopolje Camp including women and children (the established fact No. 292 states that there were thousands of prisoners in the Trnopolje Camp, mainly the elderly, women and children). The report on the operations of the Prijedor SJB during the last nine months of 1992, written in January 1993 (Exhibit No. 32) shows that several thousand people were at some point held in the Omarska, Keraterm and Trnopolje camps, and that approximately 6,000 interviews were conducted with them. Since an undetermined number of women, children and the elderly were detained in the Trnopolje Camp, for whom there is no information showing that they were interviewed, and also since there were prisoners in the Omarska and Keraterm camps too who did not give any statements to the investigating authorities (for example individuals who were killed after they were brought to the camp), then, bearing in mind the 6,000 conducted interviews, the number of approximately 7,000 prisoners in these three camps is, in the Court's opinion, perfectly realistic and objective. Camp inmates were classified into three groups following their interrogation, the first group being considered dangerous because they allegedly took part in armed resistance against the Serb power, or because they were leading figures of the Muslim or Croat communities, a second group which for some other reason was unsuitable, and a third group which was considered security-

<sup>41</sup> See: Crisis Staff Order to terminate employment with all workers who (...) are currently detained in Omarska and Keraterm, of 02 July 1992, Documentary Evidence No. 19.

<sup>42</sup> See: Decision on the organization and work of Prijedor Municipal Crisis Staff, of 20 May 1992, Article 9, Documentary Evidence No. 35.

<sup>43</sup> Decision on Established Facts, accepted facts number: 38, 132 and 140.



wise uninteresting, the latter enjoying a milder treatment.<sup>44</sup> This differentiation in the treatment indicates that the camp staff was also aware of the fact that the majority of those persons had in no way been involved in military activities or political challenge of Serb supremacy in the region. Everything described above lead the Court to conclude that an attack on the non-Serb civilian population was carried out in a way as stated in the introduction of the operative part of this judgment.

The witnesses are also unanimous concerning the fact that throughout the entire period of the existence of the Keraterm and Omarska camps, new individuals were brought in as inmates. To the Panel's mind this proves that the attack against the non-Serb civilian population was ongoing not only through the situation at the camps itself but also through the steady stream of new arrests of non-Serb citizens, which ceased only when the non-Serb families finally left the Prijedor area. Namely, testimonies of all Prosecution witnesses that have been examined, and those are non-Serb citizens of the Prijedor Municipality area, show that, following their release from the Camp, they left their pre-war places of residence, or in other words that, after they left the Camp, none of them went on living in the area of this municipality; the testimonies even show that they signed statements leaving their property to the Serb Republic, and these statements were not voluntary in nature. Permanent exodus of Croat and Muslim population from the Prijedor Municipality area during 1992 is also described by objective evidence presented by the Prosecution, primarily the Prijedor PSS Report prepared following a request of the Banja Luka Security Services Centre dated 14 August 1992 (Exhibit No. 26), and the Banja Luka Security Services Centre Overview regarding the citizens who have moved out and into the area covered by the Banja Luka Sector (Exhibit No. 43).

Based on the facts mentioned above, the Court found that, at the relevant time, there was a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality.

With regard to the legal qualification of the single incidents listed in the above factual part of this judgment, the Court concluded the following:

#### **Murder**

The act of Murder has been defined equally by the case-law of the Court of BiH and the ICTY as:

- (1) An act or omission; by which the
- (2) Perpetrator intentionally causes; the
- (3) Death of the victim.<sup>45</sup>

<sup>44</sup> Some of these detainees were placed into the so-called glass house inside the administrative building where the living conditions were considerably better. Witness K017 testified that some detainees that previously fought together with Serbs on the frontline in Croatia were placed there. Witness Kerim Mešanović confirmed this information and stated that he was told by Brk, the Driver of Mejakčić at one point in time that "a good horse would cost 100.000,- German Marks. The witness inferred from this that he was offered to pay for staying alive. See also, Report of the Commission in charge of visiting municipalities and PSS Prijedor, Bosanski Novi and Sanski Most dated 18 August 1992 (Exhibit No. 27).

<sup>45</sup> Jelisić ICTY Trial Judgment, 14 December 1999, para. 35; see also: *Todočić and Radević* Court of BiH. Trial Judgment (X-KR-06/275), of 28 February 2008, page 61 (page 64 in BCS version).

As to the level of intent necessary, further ICTY case law states that it is sufficient if the perpetrator had "intention (...) to kill, or inflict serious injury in reckless disregard of human life"<sup>46</sup>, which corresponds with the level of intent required by Article 35 paragraph 3 CC BiH.

With regard to the Omarska camp, the above described factual situations concerning victims; Asaf Muranović and Avdo Muranović; Abdulah Puškar and Silvije Sarić; Emir ("Hanki" or "Hankin") Ramić; Mehmedalija Nasić; Safet ("Čifut") Ramadanović; Bećir Medunjanin; "Dališa" Hrnčić; Slavko ("Ribar") Ećimović; Mehmedalija Sarajlić; Velid Badnjević; Amir Cerić and another man named Avdić; Mirsad ("Mirso", "Asim", "Kera") Crnalić; Huseln Crnkić; Rizah ("Riza" or "Rizo") Hadžalić; Jasmin ("Jasko") Hrnčić, Enver ("Eno") Alić, and Emir Karabasić; Miroslav Šolaja; Azur Jakupović and Edvin Dautović; Gordan Kardum; a large number of unidentified detainees including at a minimum 50 detained villagers of the Hambarine village; and Ismet ("Ico") Hodžić all correspond with this legal definition of murder, as all the victims of these incidents were actually killed by the respective perpetrators.

The incidents concerning the death of victim Ahil Dedić was left out by the Panel due to the lack of evidence concerning the involvement of any of the accused, as already described in the factual part of the judgement.

With regard to the incident involving a number of about 12 victims with the surname Garibović, the Court was not convinced beyond reasonable doubt that this evidence proved the murder of these detainees at the camp. Therefore, in a strict application of the principle *in dubio pro reo*, as indicated in the above factual part of the judgment, the Court changed the factual description of this incident in the way that it describes these persons to have disappeared from the camp at a certain point in time.

Already the indictment lists the following detainees as having disappeared from the Omarska camp: Dr. Osman Mahmuljin, Dr. Eniz Begić, Zijad Mahmuljin and Ago Sadiković; Esad ("Eso") Mehmedagić; Nedžad Šerić; Burhanudin Kapetanović and a person by the last name of Badnjević; and at least 7 detainees including Emsud Baltić and several men surnamed Mešić. With regard to cases in which the indictment itself alleged the disappearance of detainees from either of the two camps, the Court holds that the formal scope of the indictment with regard to these incidents bars the Panel from concluding that the victims were actually killed in or in the vicinity of the camp with the participation or the knowledge of the accused, even if the evidence presented in trial could lead to such a conclusion. The Court is bound by the scope of the indictment and can only legally interpret the facts within this scope. Therefore, the incidents concerning the detainees named above are not legally qualified as murder, but will be dealt with under other paragraphs of the legal reasoning.

The Court remarks that the criminal conduct of causing the "enforced disappearance of persons" as specified under item i), para. 1 of Article 172 CC BiH is not applicable due

<sup>46</sup> *Mučić et al.* (also known as the *Celebići* case) ICTY Trial Judgment (IT-96-21), 16 November 1998, para. 439.

to the different value protected by this provision, and therefore cannot serve as a fallback option.<sup>47</sup>

With regard to the Keraterm camp, the Court legally qualified as murder the above described factual situations concerning victims: Emsud ("Singapurac" and "Snajperista") Bahunjić; Drago Tokmadžić; Sead ("Car") Jusufović; Jovo Radočaj; Jasmin ("Zvezdaš"); Džemal Mešić; approximately twenty men including Ismet Bajić, Behzad Behlić and a person called Šolaja; a man called Avdić ("Čacko"); Dževad Karabegović; Besim Hergić.

With regard to the subjective elements of the criminal offenses, there is no evidence in any of the single incidents accepted under the legal qualification of murder that would cast doubt on inferring the existence of the necessary intent with each of the direct perpetrators, other than the accused themselves, from the factual circumstances described in the respective part of this judgment. The issue of the intent on the part of the accused themselves shall be separately evaluated in the second part of the legal analysis.

### **Imprisonment**

Imprisonment is described according to Article 172 paragraph 1 item e) CC BiH as:

- (1) A severe deprivation of physical liberty, which is
- (2) In violation of fundamental rules of international law.

The ICTY case law asks for the deprivation of liberty to be "(...) imposed arbitrarily, meaning that no legal basis for the justification of this deprivation of liberty can be invoked (...)"<sup>48</sup>

With regard to the necessary intent, the same ICTY case law requests that:

- (3) The act depriving the victim of liberty must be done with the intent to deprive that person arbitrarily of physical liberty, or in the reasonable knowledge that the act is likely to cause arbitrary deprivation of physical liberty.

In order to determine if an act of "imprisonment" constitutes a violation of fundamental rules of international law, the specific regulations of the Fourth Geneva Convention, especially its Articles 42 and 43, have to be taken into account. Even if these Conventions relate to War Crimes, the prerequisite of "unlawful confinement" within

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<sup>47</sup> The crime of "enforced disappearance of persons" according to the legal definition given in Article 172 para. 2, item b) CC BiH "means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with an aim of removing them from the protection of the law for a prolonged period of time" (emphasis added).

<sup>48</sup> *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 115; see also: *Todočić and Radošević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, page 66 (pages 70-71 in BCS version).

the enumerated criminal acts of War Crimes corresponds largely with the ones of "imprisonment" under the regime of Crimes against Humanity.<sup>49</sup>

International humanitarian law, as expressed in the Fourth Geneva Convention, recognizes that the detention of civilians may be necessary during time of war, but places strict substantive and procedural limitations on such confinement of civilians. Article 42 provides that protected persons may only be detained or interned where "the security of the Detaining Power makes it absolutely necessary". Article 43 details the minimum procedural guarantees such protected persons are entitled to if detained: "Any protected person who has been interned or placed in assigned residence shall be entitled to have such action reconsidered as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose. If the internment or placing in assigned residence is maintained, the court or administrative board shall periodically, and at least twice yearly, give consideration to his or her case, with a view to the favorable amendment of the initial decision, if circumstances permit."

The fact that the mass arrests and detentions actually started with the break out of armed hostilities between Non-Serb forces and the RS army in the municipality of Prijedor, first in the Brdo-region from 22 May 1992 onwards and then on 30 May 1992 in the town of Prijedor itself, could lead to the conclusion that the temporary detention of the non-Serb male population was initially justified by security concerns of the Serb political and military leaders. The camps also seem to have initially been set up to serve for a limited amount of time until those persons among the detainees who could constitute a security threat to the Serb power would have been identified. The statements of camp guards and superiors among themselves and towards the detainees according to which the detention would last only for 10 days or so confirms this view<sup>50</sup>, as does the initial order of 31 May 1992 in which Simo Drljaca asks for interrogations to be carried out in the Omarska camp around the clock according to a 24-hour-schedule.

However, the indiscriminate mass detention of civilians just on the basis of ethnicity and gender are not a basis to make the actions a lawful.<sup>51</sup> At the camp itself, even detainees which were categorized into the so-called group 3 and thereby regarded as not being of any security interest, were not released immediately but kept in confinement until the closure of the camps in August 1992. Those detainees who were released at the beginning of the existence of the camps shortly after their interrogation were then often re-arrested and brought back to the camps.<sup>52</sup>

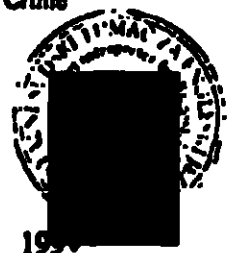
Already the cruel manner in which these interrogations were generally carried out precludes any possibility to regard them as a due process designed to preserve the rights of the detainees in accordance with Article 43 Fourth Geneva Convention. Only in single cases, legal procedures were initiated against specific detainees, but these

<sup>49</sup> *Kordić and Čerkez* ICTY Appeals Judgment (IT-95-14/2-A), 17 December 2004, paras. 114-115, noting that the existence of an international armed conflict is not required for "imprisonment" as a Crime against Humanity.

<sup>50</sup> *Mejakić*, Trial Testimony of 28 January 2008.

<sup>51</sup> See: *Mucić et al. (Čelebići)* ICTY Appeals Judgment (IT-96-21-A), 20 February 2001, para. 327.

<sup>52</sup> See for example Trial Testimony of witnesses Senad Kapetanović and Nusret Sivas.



procedures did not appear to lead to any legal conclusion as to the guilt of the person in question.<sup>43</sup>

With regard to the required intent it can be pointed out that by "deprivation of liberty" not only the actual arrest of the person is covered but also the ongoing detention. Therefore, the argument raised by the Defense in this regard is without merit. Equally, the intent to keep the camp inmates in detention has to be differentiated from any motive that the perpetrators might have had for their actions or omissions. The fact that the camp personnel might not have had the formal power to release detainees which were arrested and brought to the camp by others, does not have any impact on the question of intent.

Therefore, the acts of mass-detention of civilians, as described above in the paragraphs dealing with the overall situation at the Omarska and Keraterm camps, fulfill the elements of the underlying offence of "imprisonment" as a Crime against Humanity. The Court would like to stress that also the imprisonment the detainees had to endure which later disappeared from the Omarska camp was taken into consideration under this legal qualification.

The Court notes that the act of "imprisonment", as stated in the above definition, only encompasses the deprivation of the physical liberty of a person as such. It will also have to be elaborated in the further course of this judgment if the conditions under which this imprisonment actually took place constituted another criminal act under Crimes against Humanity.

## **Torture**

The act of "Torture" is legally defined in Article 172 paragraph 2 item e) as:

- (1) The intentional infliction; of
- (2) Severe pain or suffering, whether physical or mental;
- (3) Upon a person in the custody or under the control of the Accused.

The case-law of the ICTY adds a fourth requirement to these elements according to which:

- (4) "(T)he act or omission must aim at obtaining information or a confession, or at punishing, intimidating or coercing the victim or a third person, or at discriminating, on any grounds, against the victim or a third person".<sup>44</sup>

According to the ICTY interpretation, this requirement was forming part of customary international law with regard to the act of torture at the time the crimes in question were perpetrated.<sup>45</sup> The requirement of a prohibited purpose was then left out in the Statute of

<sup>43</sup> See documentary evidence No. E-43, 44, 45, 46, 47, 48, 49 and 50, in relation to the criminal proceedings launched against the former Head of Municipality Muhamed Cehajić and four other Muslim residents.

<sup>44</sup> Kunarac et al. ICTY Appeal Judgment (IT-96-23/1), 12 June 2002, para. 142.

<sup>45</sup> The ICTY thereby accepted the *United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Torture Convention) of 1984, 1465 U.N.T.S. 85, which entered

the International Criminal Court (ICC) that the Article 172 CC BiH is copied from. The case law of the Court of BiH adds this requirement to the list of elements, thus accepting the ICTY findings with regard to the applicable customary international law at the time relevant to the indictment.<sup>56</sup>

According to the definition above, the consequences caused by the prohibited act need to meet a certain level of severity in order to constitute an act of torture. The case law of the ICTY indicates that the decision has to be taken on a case-by-case basis, taking into account all circumstances of the case such as "the nature and the context of the infliction of pain, the premeditation and institutionalization of the ill-treatment, the physical condition of the victim; the manner and method used, and the position of inferiority of the victim"<sup>57</sup>. A mistreatment over a prolonged period of time is also a factor that can indicate the existence of the act of torture according to the same case-law.

After a legal analysis of the above factual descriptions, the incidents concerning victims Durat Duratović, Emir Beganović, K017, K022 and K042 with regard to Omarska camp and victims Suad Bajrić, Enes Crijenković (and the other detainees from the Brdo region), Šaban Elezović, Edin Ganić, Suad Halvadžić, Fajzo Mujkanović, Jasmin Ramadanović, K010, K013, K015, K033 with regard to Keraterm camp, have been considered by the Panel as meeting the level of severity that makes them an act of torture. Out of these acts, the acts against victims Emir Beganović Enes Crijenković (and the other detainees from the Brdo region), Jasmin Ramadanović, K010, K022, K033, have been deemed to constitute torture due to the repetition of the maltreatment the victims had to endure. The incidents involving victims Suad Bajrić, Durat Duratović, Suad Halvadžić, Fajzo Mujkanović have been considered as acts of torture due to the particularly cruel methods used for inflicting severe pain on the victims. With regard to the incidents concerning victims Šaban Elezović, Edin Ganić, K013, K015, K017, K042, the Panel concluded from the grave consequences the acts of maltreatment had for these victims, that it was in fact an act of torture that was perpetrated.

The prohibited-purpose element, in any event, has been fulfilled in the present case as the maltreatments amounting to torture all were carried out with the aim to intimidate the victims and the other camp inmates as well as with the aim to obtain confessions during the brutal interrogations, to punish them and to discriminate against them. These conclusions the Panel drew from the fact that the maltreatments were usually carried out in a way that other camp detainees could see or at least hear everything that was happening to their fellow inmates. Even if there are witness statements to the effect that detainees were not allowed to watch the maltreatments, the evidence is overwhelming that they were carried out in a manner that, as pointed out in most of the witness evidence analyzed in the factual part of this judgment, a large number of detainees were

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into force on 26 June 1987, as presenting the standard of customary international law at the time the crimes in Former Yugoslavia were perpetrated.

<sup>56</sup> *Goran and Zoran Damjanović* Court of BiH Trial Verdict (X-KR-5/107), 18 June 2007, pages 15-16; *Gajko Janković* Court of BiH Trial Verdict (X-KR-05/161), 16 February 2007, pages 53, 59; see also the analysis in: *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, pages 47-49 (pages 47-51 in BCS version).

<sup>57</sup> *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 179. For a list of treatments that have to be qualified as torture, see: *Report of the UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, E/CN.4/1986/15, 19 February 1986, para. 35. These examples can be used as a guideline in order to determine if an act is of such gravity that the legal definition of torture applies.

actually forced to at least listen to the noises. The interrogations of detainees were sometimes followed by the signing of "confessions" by the camp detainees as to their involvement in actions against the Serb authorities.<sup>58</sup> With regard to the aim to punish and to discriminate against the detainees through the maltreatments, the Court found these prohibited purposes as applicable to the case because apart from the fact that nearly all camp inmates already were detained according to their ethnicity or political affiliation, most of the detainees that were subjected to maltreatments amounting to torture were chosen on the basis of either their alleged role in the armed uprising against the Serb supremacy in the region,<sup>59</sup> or because of their leading positions in the non-Serb communities of Prijedor municipality.<sup>60</sup>

The Panel also considered the living conditions itself in some of the camp premises as amounting to torture; the factual description is illustrating the detainee's suffering:

Specifically, the conditions in the so-called "Garage" in the Omarska camp, into which the detainees were crammed in a manner that did not allow them even to sit, let alone to lay down and in which the temperatures reached such a degree that according to a witness' testimony, "the color was dripping from the walls",<sup>61</sup> so that detainees frequently fainted as a result of the conditions in this premise.<sup>62</sup> In addition, the detainees from this premise were not allowed out of their room during daytime, and therefore could not catch fresh air or fill up their water supplies themselves, but completely relied on the goodwill of their immediate guards who often asked them to sing Serb nationalistic songs in exchange for a bottle of water.<sup>63</sup>

At Keraterm camp, the situation was similar with regard to "room 3" at the point in time when the group of detainees from the Brdo region was detained there preceding their mass-execution in late July 1992. Here as well, the detainees were not given any food or water over a number of days and the water that finally was provided did not have drinking quality but caused reactions of poisoning with the detainees that drank from it.<sup>64</sup> Other detainees in the camp were prevented from helping this particular group locked up in room.<sup>65</sup>

The prohibited purpose with regard to these specific detention rooms can be established by the fact that it was a group of detainees that was regarded as "extremists" which were placed there or as a population stemming from a particularly rebellious part of Prijedor municipality. The specifically cruel treatment of these detainees, not only through frequent maltreatments, call outs and psychological abuses as already elaborated in the

<sup>58</sup> See testimony of witnesses Sakib Jakupović and K018.

<sup>59</sup> See for example the detainees from the Brdo region like Enes Crjenković, or witnesses K041 and Fadil Avdagić who were regarded as "extremists" and therefore placed into the Omarska garage, or witness K022.

<sup>60</sup> See for example witness Emir Beganović who was one of the wealthy citizens of Prijedor, witnesses Senad and Enes Kapetanović stemming from a well known Muslim family, or witness K027, holding an important office.

<sup>61</sup> Statement of witness K041, already elaborated in the factual analysis of this judgment.

<sup>62</sup> See above, statement of Witnesses Fadil Avdagić, Emir Beganović and K034.

<sup>63</sup> Statement of witness K041.

<sup>64</sup> Statements of witnesses Enes Crjenković, K010, K016, K07.

<sup>65</sup> Witness K010 testified to have been maltreated after the guards saw him throwing bread through a window in room 3.



factual part of this judgment, but also by the mere conditions in which they were kept in the "garage" and "room 3" can only be explained against the background of their categorization as specifically dangerous or problematic for the Serb supremacy. Thereby, their treatment can be concluded to have served as a punishment of these specific groups of detainees for their alleged military or political activities against the Serbs, and also as a means to intimidate them and the other inmates that were witnessing their fate. Finally, again, the Court is convinced that all the detainees held in these particularly harsh living conditions were treated in this way with the aim to discriminate against them.

There is also no doubt about the existence of the subjective elements for the specific perpetrators of maltreatments as also for the detention conditions amounting to torture. The issue of the intent on the part of the accused themselves shall be separately evaluated in the second part of the legal analysis.

### **Rape / Sexual Violence**

The act of rape is described in Article 172 paragraph 1 item g) CC BiH as:

- (1) Coercion "by force or threat (...);
- (2) To sexual intercourse or an equivalent sexual act (...)"

The ICTY case law describes the required intent as:

- (3) "The intention to effect the sexual penetration, and the knowledge that it occurs without the consent of the victim".<sup>66</sup>

In the same provision of Article 172 CC BiH, examples for other acts of sexual violence are given, naming "sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or another act of sexual violence of comparable gravity".

Case law of the Court of BiH confirms these legal definitions.<sup>67</sup> The relevant ICTY jurisprudence cites the definition found by the Rwanda-Tribunal in the Akayesu case, describing rape and sexual violence as "a physical invasion of a sexual nature, committed on a person under circumstances which are coercive. (...) Sexual violence is broader than rape and includes such crimes as sexual slavery or molestation".<sup>68</sup>

The Court found in accordance with these definitions that acts of rape were perpetrated in the above factual descriptions concerning victim K019 while it saw the incidents concerning victims K027 and K040 as constituting sexual violence. The severity of the acts of sexual violence is established by the specific circumstances of coercion and helplessness experienced by the victims in the camp situation as well as by the level of harassment they had to endure.

<sup>66</sup> *Kunarac et al.* ICTY Appeals Judgment (IT-96-23/1), paras. 127-129.

<sup>67</sup> See: *Samardžić* Court of BiH Trial Judgment (X-KRN-05/49), 07 April 2006, page 21 (pages 16-17 in BCS version).

<sup>68</sup> *Kvočka et al.* ICTY Trial Judgment (IT-98-30/1), 02 November 2001, paras. 175, 180, citing: *Akayesu* ICTR Trial Judgment (ICTR-96-4), 02 September 1998, para. 688.



Also the subjective requirement also for these offences has been met. The Court is convinced beyond reasonable doubt that each of the perpetrators intended the action he took aware of its coercive character.

#### **Other Inhumane Acts**

Article 172(1)(k) of the CC of BiH defines "Other inhumane acts" as a crime against humanity as: "Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to physical or mental health." There is no clear definition of the notion of "other inhumane acts" as it would be contrary to the catch-all-character of this provision. The requirements that are legally defined in item k) of Article 172 paragraph 2 CC BiH are that:

- (1) The action is of a character similar to the ones' described in items a) to j); and that
- (2) Great suffering or serious injury to body, physical or mental health is caused; by the
- (3) Intentional perpetration of these acts.

In the present case, the provision covers those acts described above as not fulfilling the necessary legal elements for torture. It also includes a legal assessment of the general conditions of detention in the two camps. As pointed out in the definition, also the acts under this item need to reach a certain level of severity either concerning the manner of perpetration or the results caused. The Court notes that beatings and other acts of violence have been determined to be acts of sufficient gravity to constitute a crime of "other inhumane acts" under customary international law at the relevant time.<sup>69</sup> Confinement in inhumane conditions has similarly been determined to be an act of sufficient gravity under customary international law.<sup>70</sup>

Based on the corresponding incidents from the factual part of the judgment, the Court found that the incidents concerning the maltreatments of all victims in Omarska and in Keraterm camp, which were not qualified as acts of torture in the respective section above, meet the requirements for constituting "other inhumane acts". Equally, the confinement at the two camps in the conditions as described in the introductory part of the judgment, constitute "other inhuman acts" as far as they do not amount even to torture as elaborated above. Again, the Court would like to stress that also the inhuman living conditions the detainees had to endure which later disappeared from the Omarska camp was taken into consideration under this legal qualification.

As in the previous cases, the Court has no doubt about the existence of the required level of intent on the part of the direct perpetrators of individual incidents of maltreatment, and about the knowledge of all camp personnel and visitors about the living conditions and the presence of the necessary intent in this regard. The issue of the

<sup>69</sup> See, e.g.: *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 176; *Kvočka et al.* ICTY Trial Judgment (IT-98-30/1), 02 November 2001, paras. 208, 209; *Tadić* ICTY Trial Judgment (IT-94-1-T), 07 May 1997, para. 730.

<sup>70</sup> *Krnjelac* ICTY Trial Judgment (IT-97-25), 15 March 2002, para. 133; *Kvočka et al.* ICTY Trial Judgment (IT-98-30/1), 02 November 2001, paras. 190-192.

intent on the part of the accused themselves shall be separately evaluated in the second part of the Legal Reasoning.

### **Persecution**

Article 172 (2) (g) CC BiH clarifies that "persecutions" means "the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity."

Taking this legal definition of the term "persecution" into account, the elements of the criminal offense pursuant to Article 172 (1) (h) CC BiH are identifiable as:

- (1) An intentional and severe deprivation of fundamental rights;
- (2) Contrary to international law;
- (3) Against any identifiable group or collectivity;
- (4) On political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law;
- (5) In connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of BiH.

As recognizable from these elements, the intent required for this crime includes a special element – the so-called specific discriminatory intent. The perpetrator need to have not only the intent to commit the act described under element no. (5) itself, but also has to show the specific intent under no. (4) to commit this act against a group or a collectivity of victims due to their distinct character based on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law.

The Panel interprets the crime of persecution as standing in line with the acts of murder, imprisonment, torture, rape and sexual violence and the "other inhumane acts". Instead of forming a legal umbrella under which all other crimes are to be grouped if committed with the specific intent described above, the Panel, for the sake of simplicity, regards persecution as being on the same level as those other acts constituting the underlying offenses of Crimes against Humanity. However, the offenses of murder, imprisonment, torture, rape and sexual violence and the "other inhumane acts" described in the previous parts of this judgment as being elevated to acts of persecution if committed with the specific discriminatory intent described above. As the specific discriminatory intent needs to be present with each of the Accused in question, the assessment concerning this specific intent will be made within the following chapter dealing with each Accused' personal criminal responsibility.

### **Criminal Responsibility of the Accused**

According to the Panel, each of the Accused is to be charged with the criminal offenses mentioned above in the factual analysis, based on different forms of criminal responsibility.



## **A) Željko Mejakić**

### **I) Liability as a Direct Perpetrator**

First, the liability of the Accused Željko Mejakić with regard to his own direct involvement in criminal acts is to be analyzed. In this regard, Article 180 paragraph 1 and Article 21 paragraph 1 CC BiH have to be taken into account.

#### **Article 180 (1) CC BiH states:**

A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of a criminal offence referred to in Article 171 (Genocide), 172 (Crimes against Humanity), (...) of this Code, shall be personally responsible for the criminal offence. (...)

#### **Article 21 (1) CC BiH prescribes:**

A criminal offence can be perpetrated by an act or an omission to act.

Pursuant to Articles 180 (1) and 21 (1) CC BiH, the Panel holds an accused liable, based on his responsibility as direct perpetrator, with the criminal acts he was personally actively involved in. In the case of Željko Mejakić this is related to one act of active involvement in the maltreatment of the detainee Saud Bešić during his interrogation.

The Court was convinced beyond reasonable doubt that the alleged maltreatment of this victim happened as described in the part of the Verdict dealing with the analysis of individual cases and did not hesitate to infer the necessary intent for the action itself from these factual circumstances. The fact that the Accused was already present during the interrogation and maltreatment of witness Bešić by the investigators and that the Accused threatened the witness to make his confessions quickly, in the eyes of the Court do not leave any other explanation but that the Accused had the necessary intent when carrying out this maltreatment himself.

### **II) Command Responsibility**

The second ground for criminal responsibility for the Accused Željko Mejakić was established by the Court based on his role in the Omarska camp. Namely, based on the presented evidence, the Panel established that the accused held a certain position at the Omarska camp and had certain authority over and supervised the actions of subordinates based on which his criminal responsibility as a superior is established pursuant Article 180 (2) as read with Article 21 (2) CC BiH, which prescribes as punishable a superior's failure to act in case of the commission of criminal offenses by his subordinates.

#### **Article 180 (2) CC BiH reads:**

The fact that any of the criminal offences referred to in Article 171 through 175 and Article 177 through 179 of this Code was perpetrated by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take

the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

**Article 21 (2) CC BiH stipulates:**

A criminal offence is perpetrated by omission when the perpetrator, who is legally obliged to avert the consequence of a criminal offence defined by law, fails to do so, and such failure to act is tantamount in its effect and significance to the perpetration of such an offence by an act.

As established in detail by recent case-law of the Court of BiH, the concept of Command Responsibility was deeply rooted in customary international Law at the time the crimes in question have been perpetrated.<sup>71</sup>

Additionally, this Panel deems it worth noting that the obligation of a superior, primarily to prevent crimes being committed by his subordinates, to a large extent can also be seen as having been part of the Yugoslav legal system at the relevant time. The provision of Article 21 (2) CC BiH, as cited above, has the same ratio as Article 30 (2) CC SFRY, which was in force in 1992<sup>72</sup>, providing for criminal liability on the basis of omissive behavior. The obligation to act, which would have to be disregarded in order to prompt criminal liability, could arise from a legal duty to act or from a contractual take-over of responsibility. Also, the Yugoslav legal system accepted the obligation to act due to previous personal behavior creating the danger that materialized afterwards.<sup>73</sup>

Based on Article 180 (2) CC BiH, which was copied from Article 7 (3) of the ICTY Statute, and the interpretation of the provision by the relevant ICTY case-law, the following prerequisites for criminal liability on the basis of Command Responsibility have been elaborated<sup>74</sup>:

- 1) A criminal act of the type incurring jurisdiction of the relevant court needs to have been perpetrated.
- 2) A superior-subordinate relationship between the Accused and the perpetrators who carried out the criminal act must exist.
- 3) The superior knew or had reason to know that the subordinate was about to commit the crime, or that the subordinate had committed the crime.
- 4) The superior failed to take reasonable and necessary measures to prevent the crime, or to punish the perpetrator of the crime.

In the interpretation of this Panel, the concept of Command Responsibility is to be understood in a broader sense, including not only those acts that were perpetrated by

<sup>71</sup> *Todović and Rašević* Court of BiH Trial Judgment (X-KR-06/275), 28 February 2008, pages 146-159 (pages 167-184 in BCS version). See also *Čelebić* ICTY Trial Judgment, (IT-96-21), 16 November 1998, first elaborating in detail the concept of Command Responsibility, paras. 333-343, confirmed on Appeal (IT-96-21-A), 20 February 2001, paras. 186-314.

<sup>72</sup> Criminal Code of the Socialist Federal Republic of Yugoslavia, Official Gazette of the SFRY No. 35/92.

<sup>73</sup> Commentary on the Criminal Code of the Socialist Federative Republic of Yugoslavia, *Savremena administracija*, Novi Sad 1978, *Bačić/Bavcon/Dordević and others*, Novi Sad 1978, pp. 159-161.

<sup>74</sup> ICTY Trial Judgment in the *Čelebić* case (IT-96-21), 16 November 1998, paragraph 333-343.

subordinates of the Accused, but as encompassing all omissive behavior from the Accused side, leading to crimes being committed by subordinates and also by other perpetrators he could have stopped by using his authority over the camp security service in an effective manner. The Panel deems this approach being the more appropriate one as it wants to stress the principal guilt of the superior arising from his intentional neglect of duty and the omission to use the powers conferred to him in order to prevent crimes and to improve the conditions. The Panel regards the superior's guilt for his active participation in the camp system, often only recognizable through his mere presence at the camp, as being secondary.

Based on material and subjective evidence, the Panel established beyond reasonable doubt that Željko Mejakić held the formal position of the Chief of Security at Omarska camp and that he de-facto acted as the camp commander. His formal position made him the highest ranking person present at the camp at any time of day and night, or who would come to the Camp whenever this proved to be necessary. This permanent state of duty at Omarska camp distinguishes the Accused Željko Mejakić from other persons who held the same or even higher positions, but who, like for example the interrogators from various security services, stayed at the camp only during working hours and restricted themselves to specific areas inside the camp.

As proof of the position held by Željko Mejakić, the Panel had at its disposal numerous material evidence tendered by both the Prosecution and the Defense, which included the Order of the Chief of Prijedor Public Security Station, Simo Drijača, for the establishment of the Omarska Camp<sup>73</sup>, the Security Plan Proposal for the organization of the Omarska Camp drafted by the Accused Mejakić<sup>74</sup>, documents which indicate the position held by Željko Mejakić in the Omarska police unit which unit was given the primary duty to provide for the camp security<sup>75</sup>, and video footages which show the Accused answering questions from the media about the Omarska camp<sup>76</sup>.

In addition to that, the witnesses who testified at the main hearing described the Accused Željko Mejakić as a person holding a high position in Omarska camp, which they concluded based on their own observations during their detention in the camp, through various situations and incidents that occurred during the relevant period. The witnesses stated inter alia, that the Accused behaved like an authority figure who supervised the work of the guards walking around the entire camp area without any clear guarding position being assigned to him<sup>77</sup>, who the guards referred to as the commander, boss or warden<sup>78</sup> and who issued them orders and instructions<sup>79</sup>, or who

<sup>73</sup> In this order, the Camp's Chief of Security is not named, but it follows from the order that there is only one single person with this title, Documentary Evidence no. 17.

<sup>74</sup> Documentary Evidence no. E-127.

<sup>75</sup> *List of workers providing security for the Omarska Collection Centre who need to be issued special passes*, dated 21 June 1992, signed by Željko Mejakić in the capacity of the Commander of the War-time Police Station Omarska, Documentary Evidence no. 18; Recommendation by Simo Drijača of Željko Mejakić for Promotion to the Rank of Lieutenant, stating that Mejakić exercised the role of Commander of war-time Police Station Omarska from April 1992 until July 1993, dated 23 October 1993, Documentary Evidence no. 66.

<sup>76</sup> Documentary Evidence no. 82A and 82B, 86A and 86B, and 89.

<sup>77</sup> See testimonies of witnesses Asmir Bahić, Nusret Sivac, Ermin Sufković, and K041.

<sup>78</sup> Witnesses Kerim Mešanović, Zlata Cikota, K034, K035, and K027.

<sup>79</sup> Witness K017, K035, and K040.

directed the work of the guards and was respected by them as their superior<sup>83</sup>. All witnesses who mentioned the accused Željko Mejakić and his role in the Omarska Camp in their statements did not leave any possibility of somebody else holding that position. Some of the witnesses based their knowledge about that on the information they obtained from other prisoners, for example witnesses K022, Anto Tomić, K019 and others, but most of the witnesses formed their inference on the role of the accused Mejakić based on specific situations when they were in a position to observe the behavior of the accused. Mejakić would also often be present upon the arrival in and the departure of detainees from the camp, personally controlling these movements and reception or release of the prisoners, when he had lists of prisoners with him.<sup>84</sup> Finally, the Court had an opportunity to hear the evidence of some witnesses who stated at the main hearing that, in some situations, they went to Željko Mejakić just because they considered him the Camp Commander.<sup>85</sup> Witness K015, who supports the allegations of other witnesses according to which Mejakić was the Camp Commander, said in his testimony that it was easy to conclude so based on his conduct and the orders he issued. Witness Zlata Cikota based her belief that Mejakić was the Camp Commander on the fact that Mejakić was in the Camp both day and night, that he was the one with the most responsibility and left an impression of someone who was a manager, also that he was able to transfer prisoners from one room to another, which she saw for herself when, following her request, the accused transferred her husband Sead from a room called "hangar" to the "garage", where other prisoners from Prijedor were detained. That the accused Željko Mejakić had authorizations to independently decide about the accommodation of prisoners, which represents one of the indicators of his managerial position, is also confirmed by Witness K040, whose husband was also, on her request, transferred from one room to another following Željko Mejakić's order, and the witness stated that she had decided to ask the accused for that favor because she thought he was the Camp Commander. Witness Nusret Sivac described an occasion when the prisoner Omer Kerenović had addressed Mejakić and said: "Commander, sir, may I speak with you?", and this witness drew his inference that Željko Mejakić was the Camp Commander from the conduct of the accused and stated that there were numerous situations from which it was possible to conclude that Mejakić was superior to everyone. According to this witness, the accused Mejakić controlled the guard shifts, coordinated the work of the guards and the guards addressed him as a person with authority.

Testimonies of witnesses Kerim Mešanović and K017 are explicit with regard to the display of authority by the Accused Željko Mejakić. The clearest example indicating the leading position held by the accused is the situation with prisoner Kerim Mešanović, who had certain family ties with the Accused. According to this witness, he learned from a camp guard called Bajo that Mejakić was "the boss at the camp", and that same guard told him: "Come on, the boss wants to see you". The communication between Kerim Mešanović and Željko Mejakić, when they met in the office of the accused on the first floor of the administration building, leads to the conclusion that the accused himself, without any particular reserves, behaved as the Commander of the entire camp. Namely, having seen the signs of beating on Kerim Mešanović, Mejakić asked him who had done that to him and when he told him that he had been beaten at the Prijedor

<sup>83</sup> Witness K027.

<sup>84</sup> Witnesses Sakib Jakupović, K023, K037.

<sup>85</sup> Witnesses Nusret Sivac, Zlata Cikota, K034, K040.

Secretariat of Internal Affairs, the accused said: "So, it wasn't my men". Mejakić then personally and without approval by any other person transferred prisoner Kerim Mešanović from the "White House" to the area in the administrative building called the "Glasshouse" and told him to address one of the three other persons who used that same office on the first floor of the administrative building in case something would happen to him and Mejakić himself would not be present at the camp. As another example, witness K017 saw the Accused giving the order to camp guards to immediately transfer a minor detainee from Omarska to Trnopolje camp, which order was carried out. The witnesses who were imprisoned in the Omarska Camp at the relevant time period and who saw the accused in the Camp every day at all times were, thus, based on specific situations, able to conclude that the accused held the position of the Camp Commander. Witness Saud Bešlić testified before the Court that Željko Mejakić was in charge of the Camp, that others complied with his instructions and that they were afraid of him, and according to witness Ažedin Oklopčić, Željko Mejakić had power in the Camp and everybody listened to what he said. The fact that the accused had his own office and especially that he had a security guard with him, also led the witnesses to conclude that the accused held the position of the Commander of Omarska Camp. Witness testimonies show that the accused used the office on the first floor of the administrative building, which was stated by witness Kerim Mešanović and witness Sifeta Sušić, who was taken by the accused to his office for an interview and there she heard the guards addressing him as a commander, then also witness Zlata Cikota, witness K035, and witness K027. In addition to that, witnesses stated that the accused Željko Mejakić had his driver and security guard, and their statements show no one else from the management of the Camp, except Mejakić, had their personal drivers. According to witness Zlata Cikota, the accused Mejakić, who according to her observations left an impression of a manager, which was not the case with other staff, had a driver who went by the nickname of "Brk". This is also supported by witnesses K041, Ažedin Oklopčić and K027. So, the belief of the prisoners about Željko Mejakić being the head of the Camp comes from different situations when Mejakić acted as a commander. According to Witness K017, the accused supervised his interview with the journalists who visited the Camp in August 1992, while Witness K037 described a situation when he saw Željko Mejakić taking over prisoners brought to the Camp and assigning guards and making arrangements with guards, while witness Sakib Jakupović was present when Željko Mejakić addressed the inhabitants of the Kevljani village following their arrest – all these situations lead to the conclusion about the role of the accused Mejakić in the Omarska Camp.

In addition to these examples, in situations when political delegations<sup>65</sup> and foreign media<sup>66</sup> would visit the camp, it would be the Accused Mejakić who would take them around, who would explain the situation, and who would present the camp to them. There was an event that the prisoners remember clearly and it undoubtedly shows the leadership role of the accused in the Camp: the visit of a political delegation to the Omarska Camp, which, according to witness Kerim Mešanović, comprised politicians from Banja Luka, and according to the witness, the Camp Commander, Željko Mejakić, took them around the Camp. The visit of the political delegation to the Camp was also described by witness Nusret Sivac in his testimony, who stated that it was Željko

<sup>65</sup> Witnesses Kerim Mešanović, K027, Nusret Sivac, and Zlata Cikota.

<sup>66</sup> See video evidence and transcripts above, see also testimony of witness K017.



Mejakić himself who briefed the members of the delegation; this was also described by Witness K027, who pointed out that Željko Mejakić welcomed the members of the delegation and saluted them on that occasion, which the witness was able to see because she was in the restaurant, wherefrom she had an unobstructed view of this event.

The testimony of the Accused Željko Mejakić confirmed the view the Court gained through the Prosecution case. Although the Accused pictured himself as a person lacking most of the alleged authority inside the camp, one particularly striking example conveyed in direct examination proved the opposite. The Accused told the Court about an escape incident during which only Prać was at the camp as a senior staff. When guards at the camp and also the soldiers belonging to the second line of security started shooting, Prać called Mejakić via radio-communication. The Accused jumped into his car, drove to the camp, was given a short report by Prać and then calmed down the situation as within the camp, so also regarding the military who he informed about the incident.<sup>87</sup>

Based on the presented Prosecution and Defense evidence, the Panel concluded that the Accused Željko Mejakić held a position of high authority inside the Omarska camp. The attempts by the accused himself and the Defense witnesses<sup>88</sup> to describe his position as a role that did not offer significant possibilities to influence the operation and functioning of the Camp were not sufficient to persuade the Court of the insignificant role of the accused in the Camp. So, for example, in direct examination, Nada Markovski first denied that she was familiar with the role Mejakić had had in the Omarska Branch Police Station, whereas, in cross-examination, she confirmed that in her previous testimonies before the ICTY she had testified about his role as a Commander of that Branch Police Station and the chief of security in the Omarska Camp. Witness Pero Rendić worked in the kitchen, which was about 2 kilometers away from the Camp itself, so he was unable to testify about the events taking place in the Camp, but only about the circumstances surrounding the quantity and quality of food that had been shipped to the Camp. The only thing witness Mirko Kobas could say about the issue of commanding officers in the Camp was that he himself had been sent to the Camp by Simo Drljača and that during his rare visits he did not see the accused Mejakić in the Camp. Witness Željko Grabovica, who worked as a guard in the Camp and who mentioned Simo Drljača by name as the most important person in the Camp, at the same time said that he had not heard of a person by the name of Gruban or Čkalja in the Camp and that he did not see prisoners with visible signs of maltreatment, which, according to the Court's opinion, represented a sufficient reason to doubt the credibility of his testimony.

The examples given above and throughout the factual part of the judgment enabled the Court to also conclude that the Accused had effective control over the work and conduct of all guards at the Omarska camp proper, regardless of whether they were active or reserve police officers or members of the Territorial Defense. The Panel inferred that the Accused in his capacity had the ability to prevent unauthorized persons from visiting the camp and committing criminal offenses.

<sup>87</sup> Testimony given by the Accused Mejakić on 29 January 2008.

<sup>88</sup> See testimonies of Defense witnesses Boro Vučenović, Rajko Marmat, Milorad Stupar, Pero Rendić, Mirko Kobas, Radovan Kečan, Nada Markovski and Željko Grabovica.



Despite his knowledge of the situation in the Omarska camp, which regularly culminated in severe violence and killings, the Accused failed to take the necessary and reasonable measures to prevent the perpetration of the criminal offenses by his subordinates or by unofficial visitors whom he could have banned from coming to the Omarska camp had he used his guards adequately. The Court had ample evidence at its disposal on the basis of which it could determine that the Accused Mejakić was well aware of the high level of violence dominating the lives of the detainees at the Omarska camp. Apart from the Accused's frequent presence at the Omarska camp, during which he must have seen<sup>89</sup>, heard<sup>90</sup> and smelled<sup>91</sup> the situation surrounding him, there are also examples for Mejakić having directly having witnessed maltreatments or the results thereof.<sup>92</sup>

As regards groups of interrogators who would stay at the camp during working hours and conduct interrogations during which criminal offenses would also be committed, the Panel has not been able to establish a relationship of superiority on the part of Željko Mejakić. Also, the group of soldiers or police officers who exclusively assisted the interrogators and who, on the orders of the interrogators, would maltreat the persons who were being interrogated was not under the authority of the Accused. Finally, the Panel does not see the Accused having had effective control neither over the so called "Special Forces from Banja Luka" who were stationed at the camp during the first period of its existence, nor over the maintenance staff who worked at the Omarska Mine. The crimes which were committed by unknown perpetrators inside the camp are also not included through this form of criminal responsibility. It is also to note, that based on this form of criminal responsibility, the Accused is not charged with the inhumane living conditions in the Omarska Camp, resulting from lack of space, food, water, sanitary conditions and medical care in general.

### **III) Liability as Member of a "Joint Criminal Enterprise"**

As a third form of liability applicable in this case, the Court identified the criminal responsibility of the Accused Željko Mejakić as a participant in a "Joint Criminal Enterprise".

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<sup>89</sup> See the above witness evidence about the constant movements of the Accused Mejakić through the whole camp.

<sup>90</sup> See the extensive evidence of heavy maltreatments happening during interrogations which took part in the offices right next to the one of the Accused Mejakić on the first floor of the administrative building.

<sup>91</sup> See for example the testimony of Defense witness Mito Kobas.

<sup>92</sup> Witness K027 testified to have seen Mejakić and the shift leaders walking pass the dead bodies at the camp. Witness K042 testified about an incident where Mejakić and other senior camp personnel made fun of two visibly maltreated detainees that they knew personally, asking them about how they were feeling. K034 gave evidence with regard to dead prisoners being taken out of the garage, Mejakić being present in the near surrounding of the scene. See also the multiple witness evidence concerning the order to lay on the Plaza for hours in the plain summer sun, see *inter alia* testimonies of witnesses Asmir Bahić, Sakib Jakupović and Mustafa Puškar.

### **Legal Definition of the System at Omarska and Keraterm Camps as a "Joint Criminal Enterprise"**

The Court accepts the concept of "Joint Criminal Enterprise" as a mode of criminal responsibility included in the provisions of Articles 180 (1) and 29 CC BiH, according to which the entire situation in the Omarska Camp can be legally defined as a system of organized co-perpetration that lasted throughout the entire existence of the camp.<sup>93</sup> Such an organized (or systemic) form of co-perpetration within a detention camp is a variation of the basic form of co-perpetration, called "Joint Criminal Enterprise" in the ICTY terminology.<sup>94</sup>

However, the Panel considers this form of responsibility to be third in order, only applicable in case neither the direct criminal responsibility nor command responsibility is established. In this way, double-jeopardy is avoided, that is the danger of punishing the Accused twice for the same criminal behavior.

The systemic variant of the "Joint Criminal Enterprise" or the co-perpetration within detention camps, is recognized as a mode of criminal responsibility by international jurisprudence since the processing of the crimes committed in the Nazi concentration camps before and during the Second World War.<sup>95</sup> In these early judgments, the tribunals had to find an answer to specific issues related to the establishment of personal responsibility of individuals in situations of mass-crimes perpetrated in concentration camps.<sup>96</sup>

These judgments established that any support to the functioning of a camp, which exists for the purpose of the commission of mass- criminal offenses, entails criminal responsibility. When a camp is established for the purpose of unlawful detention, maltreatment and killing of people, none of the camp staff can use for their defense the argument that they were "just performing their duty".<sup>97</sup>

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<sup>93</sup> ICTY decisions refer to this mode of co-perpetration or "Joint Criminal Enterprise" as "JCE 2" or "Second Category JCE".

<sup>94</sup> ICTY decisions refer to the basic form of co-perpetration as "JCE 1", or First Category JCE". The ICTY system also uses a third category of the "Joint Criminal Enterprise" ("JCE 3" or "Third Category JCE"), where a participant in the "Joint Criminal Enterprise" can also be held responsible for the excess criminal offenses of other participants of the enterprise, if such offenses which are outside the scope of the joint enterprise were foreseeable to the accused. In this Verdict, the Court does not go into the discussion on the applicability of this third category of the "Joint Criminal Enterprise" in the BiH legal system.

<sup>95</sup> See judgments and information on crimes committed in the concentration camps Auschwitz, Bergen-Belsen, Dachau and Mauhausen, collected by the official rapporteurs for the *United Nations Law Reports* during the trials in English language, archived by the UN, on the website: <http://www.ess.uwa.ac.uk/WCC>.

<sup>96</sup> See description of situations which had to then and have to now be considered when processing cases of war crimes in the context of the provision of Article 180 of the CC of BiH, *Commentary to the Criminal Code of SFRY*, Savremena Administracija, Novi Sad 1978, Bošk/Bavcon/Dordević et al., pgs. 593-594.

<sup>97</sup> This conclusion, according to which *actus reus* is met by the mere fact that the accused intensified the criminal plan, is supported by the fact that in a system of co-perpetration of a larger scale, such as for example the functioning of a concentration camp, it is impossible to establish whether the contribution of an individual was decisive in terms of *condictio sine qua non*. On the other hand, it is perfectly clear that only through the joint action of co-perpetrators it is possible to maintain the functioning of a concentration camp in a designated manner. The organization of a camp depends on day to day performance of duties.

This is the foundation in international customary law on which the ICTY bases its legal interpretation relative to the incorporation of "Joint Criminal Enterprise" into Article 7 (1) ICTY Statute which regulates the modes of personal criminal responsibility. Following the ratification of the Geneva Conventions and the Protocols thereof in 1977, international customary law as laid down in these legal bodies, also became part of the legal system of the former SFRY and continued to be in effect after the proclamation of the independence of Bosnia and Herzegovina.<sup>99</sup>

Article 180 (1) CC BiH represents a verbatim copy of Article 7 (1) ICTY Statute, which the legislator incorporated into national law bearing in mind the interpretation of this provision as including "Joint Criminal Enterprise" as already established by the ICTY jurisprudence. Based on this fact, the Panel is satisfied that the BiH legislator had the intention to also make the ICTY interpretation of Article 7 (1) ICTY Statute applicable to war crimes cases processed before the Court of BiH.<sup>99</sup>

The Court finds an additional argument for the application of "Joint Criminal Enterprise" in Article 26 of the former Criminal Code of the SFRY that was in effect at the time of the commission of the respective criminal offenses.<sup>100</sup> Article 26 CC SFRY prescribes criminal responsibility of anybody „(...) creating or making use of an organization for the purpose of committing criminal acts (...), responsible for all criminal acts resulting from the criminal design of these associations and shall be punished as if he himself has committed them (...)". Contrary to the argumentation presented by the Defense already at the preliminary motions stage,<sup>101</sup> the Court does not see Article 26 CC SFRY as an example of an inchoate criminal offense, since the cited text of this provision clearly implies that the organizer is criminally responsible for the offenses committed within the group established by him, and that his responsibility does not incur with the mere establishment of the group.<sup>102</sup> Therefore, the Court finds that Article 26 of the CC SFRY does not represent a mode of criminal responsibility that could be compared with the concept of "conspiracy", according to which the establishment of a criminal group, or the planning of criminal offenses is penalized. The existence of special provisions in Articles 136, 145 and 254 CC SFRY which criminalize conspiracy against the national security (Article 136), for the purpose of

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on various positions within the system of the camp, see: *Kvočka et al* ICTY Appeals Judgment (IT-98-30/1-A), 28 February 2005, paragraph 80.

<sup>99</sup> The Geneva Conventions themselves do not include the modes of criminal responsibility, but the so called *Martens Clause*, for example Article 2 of the Protocol I Additional to the Convention prescribes that international customary law shall be integrated in the legal system of the ratifying state in case significant humanitarian law issues are left unresolved by the Conventions.

<sup>100</sup> According to the principles of the international law, when it is incorporated into the national law, national courts must take into consideration the provisions of the international law based on which the national law was created and their interpretation by the international courts, *Principles of International Criminal Law*, Gerhard Werle, Asser Press 2003, pg. 80.

<sup>101</sup> See a detailed analysis of the issue of the applicable national law in BiH during the war in the first Instance Verdict of the Court of BiH in the case against *Momčilo Mandić* (X-KR-05/58), 18 July 2007, pgs 162-163 (pgs 155-156 in BCS version).

<sup>102</sup> *Joint Defense Preliminary Motion Challenging the Form of the Indictment*, 24 August 2006, paragraph 31.

<sup>103</sup> This interpretation was also supported in the commentary on Article 26 of the CC SFRY, *Commentary to the Criminal Code of SFRY*, Savremena Administracija, Novi Sad 1978, Bačić/Bavcon/Dordević et al., pgs. 143-144.

instigating the commission of genocide and war crimes (Article 145), or for the purpose of committing criminal acts carrying a penalty of five years imprisonment or more (Article 254), indicates the correctness of the position taken by the Panel with respect to the interpretation of Article 26 CC SFRY. It can therefore be considered that a concept of co-perpetration, close to the one of "Joint Criminal Enterprise" was recognized in Yugoslav pre-war legislation.

The common knowledge about the Nazi crimes committed in concentration camps during World War II and the evolution of the International Customary Law as a reaction thereof on one hand and the existence of the aforementioned provisions in the CC SFRY on the other, show that the principle of legality under Article 3 (2) of the CC BiH is not violated by the application of this concept of personal criminal responsibility. Co-perpetration in the form of "Joint Criminal Enterprise" is objectively established through the International Customary Law and the cited provisions of the CC SFRY, and subjectively the perpetrators of criminal offenses within a "Joint Criminal Enterprise" such as the Omarska or Keraterm Camp, could foresee that their conduct entailed personal criminal responsibility.

Previous case law of the Court of BiH with respect to the issue of applicability of the concept of "Joint Criminal Enterprise" supports this position taken by the Panel.<sup>103</sup> Thus, the requirements for establishing personal criminal responsibility on the basis of "Joint Criminal Enterprise" in its systemic form are:

- (1) The existence of an organized system to ill-treat the detainees and commit the various crimes alleged;
- (2) The Accused's awareness of the nature of the system; and
- (3) The fact that the accused in some way actively participated in enforcing the system, i.e., encouraged, aided and abetted or in any case participated in the realization of the common criminal design.<sup>104</sup>

The ICTY Appeals Chamber elaborated with regard to the intent that "(...) there is no specific legal requirement that the accused make a substantial contribution to the joint criminal enterprise." But then stating that: "(...) the significance of the Accused's contribution will be relevant to demonstrating that the accused shared the intent to pursue the common purpose".<sup>105</sup> Thus,

- (4) a significant contribution to the system of ill-treatment by virtue of the Accused' rank within the system, the undertaking of increased responsibilities within the system after its criminal purpose has become obvious, the length of time an Accused remains a part of the system, the importance of his tasks to maintaining the system, the efficiency with which he carries out his tasks, verbal expressions regarding the system, or any direct participation in the *actus reus* of the

<sup>103</sup> Trial Judgment in the *Todović & Radović* case (X-KR-06/275), dated 28.02.2008, pp. 118-148. (pp. 116-144. in English translation); *obiter dictum* in the Trial Judgment in the *Momčilo Mandić* case, (X-KR-05/38), dated 18.07.2007, p. 133. (p. 162. in English translation).

<sup>104</sup> *Tadić* ICTY Appeal Judgment (IT-94-I-A), 15 July 1999, para. 202, citing the summing up of the Judge Advocate in the World War II *Belsen* case, of the adopted the three requirements identified by the Prosecution as necessary to establish guilt in each case.

<sup>105</sup> *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/I-A), 28 February 2003, para. 97.

underlying crimes, needs to be established in order to prove the existence of shared intent.<sup>106</sup>

### **The Accused' Participation in the "Joint Criminal Enterprise"**

The Court agrees with the argumentation according to which the knowing participation of Željko Mejakić in the mere maintenance of the functioning of the Omarska Camp, an organizational unit which is to be legally qualified as a "Joint Criminal Enterprise", implies his criminal responsibility with respect to all criminal offenses committed as part of this criminal plan. As has already been mentioned, based on this form of criminal responsibility, the Accused is charged only with those criminal offenses with which he has not been already charged based on direct personal criminal responsibility or command responsibility.

As already elaborated above through the paragraphs dealing with Command Responsibility as a form of criminal liability, the Accused Željko Mejakić had the position of chief of security, which is the head of the guard service at Omarska Camp, and was the de-facto commander of the camp, being present or on call for 24 hours, around the clock. As also elaborated above, he exercised this role through a wide range of organizational and supervisory functions and demonstrated his authority towards the guards, the guard shift leaders and visitors to the camp in a visible manner.

Although the majority of witnesses stated that the Accused Željko Mejakić was not seen to have personally maltreated any of the detainees or that he committed killings, most of the witnesses accused him of not using his authority as the chief of security in order to stop maltreatments and killings, but to have approved the abuses through his behavior.

As the Panel considers this form of responsibility to only be applicable in case the incidents described in the operative part of the verdict can be qualified neither as the direct criminal responsibility nor command responsibility, Željko Mejakić, based on his contribution to the maintenance of the criminal system of the Omarska Camp, is charged only with the criminal offenses committed by the interrogators and their assistants, the so called "Special Forces from Banja Luka", the staff of the Omarska Mine, and for the cases in which the specific perpetrators, committing crimes inside the camp, could not be identified as belonging to one of the specific groups due to a lack of evidence in this regard. In addition to that, the general inhumane living conditions at the Camp also have to be included in the criminal responsibility of the Accused Mejakić on the basis of his participation in the "Joint Criminal Enterprise."

### **Subjective Elements of the Criminal Offense**

The evidence presented to the Panel also indicates that, at the critical time, the Accused's behavior displayed the presence of all subjective elements of the criminal offense enumerated above as Crimes against Humanity applicable to this case:

<sup>106</sup> See: *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, para. 243; *Kvočka Trial Judgment* (IT-98-30/1-T), 02 November 2001, para. 311.

**Željko Mejakić was aware of the existence of a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality as listed in the operative part of the judgment and in the analysis of the umbrella elements of Crimes against Humanity. The Accused confirmed his knowledge of the general situation of non-Serbs in Prijedor municipality in his own testimony.<sup>107</sup>**

**He was equally aware that the system of Omarska Camp represented an integral part of this widespread and systematic attack. The citizens that were arrested in the course of the attack on the non-Serb population were often directly brought to the camp, often showing the signs of prior maltreatments.<sup>108</sup>**

**Mejakić also knew about the discriminatory character of the attack as such and more specifically the camp system, detaining nearly exclusively non-Serb citizens because of their ethnicity. The vast majority of which had never actively fought or even politically agitated against the Serb rule in Prijedor.<sup>109</sup> He also must have witnessed the guards' constant curses and insults of the detainees' ethnicity,<sup>110</sup> the maltreatments that frequently occurred if detainees would not show the Serbian three-finger salute,<sup>111</sup> and detainees being forced to sing Serbian nationalistic songs.<sup>112</sup>**

**With regard to the incident of direct personal involvement in the maltreating of Saud Bešić, the Court was convinced beyond reasonable doubt that the alleged maltreatment of this victim happened as described in the factual analysis and did not hesitate to infer the necessary discriminatory intent for the action itself from these factual circumstances.**

**Being the chief of the guard service at the camp, the Accused was in a position of trust in relation of the detainees and his duty was to use all his authority and influence in order to protect the inmates. He had sufficient power stop maltreatments from the side of his own guards or unofficial visitors to the camp, either by intervening personally or by instructing his guards in an appropriate way. Being aware of all these circumstances but not preventing the above described crimes from being perpetrated leaves no doubt about the existence of the necessary intent on the part of the Accused.**

**The Accused was also aware of the fact that by exercising his role at Omarska Camp he contributed to the continuation of its functioning, but regardless of his knowledge of the entire situation, he decided to remain on his position in the camp and thereby knowingly furthered the organized system of ill-treatment. The Accused played a senior role in the functioning of the camp system, so that his contribution must be described as significant, establishing his shared intent to further the "Joint Criminal Enterprise" at Omarska camp.**

<sup>107</sup> See testimony of Željko Mejakić in Direct examination on 29 January 2008.

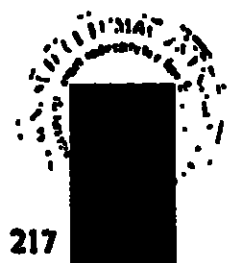
<sup>108</sup> See for example the evidence provided by witness K022.

<sup>109</sup> Željko Mejakić, testimony on 29 January 2008.

<sup>110</sup> Testimony *in utro* of witnesses Ermin Striković, K015, and K022.

<sup>111</sup> See testimony of witnesses K044 and K034.

<sup>112</sup> Witnesses Nusret Sivec and K027.



## **B) Momčilo Gruban**

The general legal analysis elaborated in the section related to the Accused Željko Mežakić concerning the different modes of liability equally applies to the two other Accused, Momčilo Gruban and Duško Knežević.

### **1) Liability as a Direct Perpetrator**

As the Accused Momčilo Gruban did not personally and actively take part in the perpetration of an actus reus of any of the specific underlying offences, this basis for criminal liability needs no further analysis.

## **II) Command Responsibility**

As regards the Accused Momčilo Gruban, criminal responsibility as a superior at Omarska Camp under Article 180 (2) CC BiH is established only after he took over the role of the leader of one of the shifts at Omarska Camp in early June 1992.

The Panel bases or rather emphasizes its conclusion that the Accused Gruban held the position of a shift leader on the fact that a large number of witnesses, who spent a certain period of time in the camp, stated that everyone had referred to this particular shift as "Čkalja's shift", which is the nickname that Momčilo Gruban goes by, which is why they considered him the Shift Leader.<sup>113</sup> The other two shift leaders were Mlado Radić a/k/a Krkan and Miloje Kos a/k/a Krie. The Prosecution provided a number of arguments showing that the camp security was organized in three guard shifts, and that one of the shift leaders was Momčilo Gruban a/k/a Čkalja. The shifts rotated and were approximately 12 hours long, so normally one shift would arrive between 6 and 8 a.m., spend 12 hours on duty and would be relieved sometime between 6 and 8 p.m. One of the arguments based on which the Court infers that there were three guard shifts and that one of them was led by the accused Momčilo Gruban is a fact that, during guard change, shift leaders would perform some sort of guard-change ceremony. Some of the witnesses stated that they had eye-witnessed the guard change, or more precisely the moment when one shift would relieve the other. So the testimony of witness Senad Kapetanović shows that he was able to observe the guard change while he was on the "pista", then also Nusret Sivac, who in his testimony confirmed that there had been a small guard-change ceremony; his allegations are also supported by the testimonies of witness Azedin Oklopčić, who stated that the guards would line up in front of the flag pole when they arrived and when they left, and Witness K042, who personally saw Čkalja lining up the guards, which is also confirmed by witness Izet Đešević. Describing Momčilo Gruban's role as a shift leader, Witness K015 stated that he had seen Čkalja talking to the guards, after which the guards would leave and based on that the witness concluded that Čkalja had issued them assignments. The Accused Momčilo Gruban, according to witnesses, would move freely around the Omarska Camp, while the other guards had fixed posts next to certain premises or buildings in the camp.<sup>114</sup> The fact that Momčilo Gruban did not have a fixed guard post like other guards in the

<sup>113</sup> See testimonies *inter alia* of witnesses Asmir Bahić, Enes Kapetanović, Kerim Mešanović and Mustafa Puškar.

<sup>114</sup> Testimony of witnesses Asmir Bahić, K017, K042 and K035. Confirmed by Defense witnesses Sveto Petro, K051, and K052.



camp also leads to the conclusion that his position was different from the position of the other guards. Witnesses who spent more than two months in the camp, during that period certainly had an opportunity to observe who of the members of the camp staff moved around the camp compound freely and who was present on a specifically designated guard post all the time. According to witness Asmir Baltić, Čkalja was free and moved around the camp and based on that the witness concluded that he was the leader of one of the guard shifts. These allegations made by witness Asmir Baltić are also confirmed by Witness K017, whose testimony shows that shift leaders, including Čkalja as well, did not have their guard posts, instead they walked around and performed roll-calls, while according to witness Mustafa Puškar, Čkalja was giving assignments to the guards, and this witness observed that Čkalja was always on the move. According to Witness K027, guards in the camp addressed Čkalja with "boss", he would show them things around the camp, issue them instructions, assign them to posts in the camp, which led this witness to conclude that Čkalja was the shift leader. Defense witnesses also in this part confirm the testimonies of the Prosecution witnesses, who stated that Momčilo Gruban was not tied to one particular guard post, but instead freely moved around the camp, like for example, witness Sveto Petoš, who stated that Gruban had more free time than other members of the security; and Witness K052, who stated that he had seen Gruban talking to prisoners, while walking down the "pista". In addition to that, the accused Momčilo Gruban used one of the offices on the first floor of the "administrative" building in the camp, which, besides him, was used by the two Shift Leaders mentioned above. According to one of the witnesses-inmates, he was told by Željko Mejakić, whom he knew from before, that in case of any problems he should go to the persons in this room.<sup>115</sup> There are numerous situations when the witnesses addressed the accused Gruban with a plea for some sort of help, which also leads to the conclusion about him acting as a shift leader in the camp and being a person who, to a certain extent, had power to help the prisoners. One witness supported this position when he stated that the guards would go to Gruban, Krlje or Krkan when Mejakić was not there and said that based on how Gruban treated the guards the witness concluded that Čkalja was the person to go to.<sup>116</sup> Witnesses Senad Kapetanović, who claimed that Momčilo Gruban was referred to as "Sergeant", and Enes Kapetanović were also convinced that Čkalja was the leader of one of the shifts in the Camp and that people went to him to ask for certain help, with requests to transfer them to a room called the "Cloakroom" and he did so. The described event, as well as other similar events when Momčilo Gruban made some concessions to the prisoners clearly show his authority and power to help in a certain situation. In that regard, Witness K051 stated that Čkalja had helped him and his brother, who used to work with Momčilo Gruban before the war, to be placed in the same room, which is also confirmed by witness Izet Đešević, who stated that K051 had gone to Čkalja with a request to get his brother out of the "White House" and he had done that. In addition to that, according to Witness K09, prisoners from Ljubija also used their previous acquaintance with Gruban and asked him for some favors regarding accommodation, which Gruban granted. Another situation showing the authority of the accused Gruban is clear from the events described by witness Ažedin Oklopić. According to this witness, on one occasion when prisoners were being picked to go and take out the beaten prisoners, Čkalja showed up, whom according to the witness he had gotten to know very well in the camp, who said that "Učo" (referring to

<sup>115</sup> Witness K017, Metanović.

<sup>116</sup> Witness K035.



Azedin Oklopić) would not go, and that someone else should be taken, while on another occasion, when 5 people were singled out, who remain unaccounted for, Čkalja again said that "Učo" would stay on the "pista", and he did, so the witness was not taken on that occasion. Even witness Emir Beganović, who called Čkalja an ordinary guard, had gone to Čkalja himself when he had been taken to the "White House" by Nikica Janjić, which indicates that this witness too considered Čkalja's position different from the position of other guards and addressed him hoping that he would help him. In addition to that, according to witnesses, Momčilo Gruban registered new detainees upon their arrival to the camp.<sup>117</sup>

The logical necessity for some level of structure and hierarchy in a system of such proportion as the Omarska Camp is also supported by material evidence, such as a document of 21 June 1992, titled „List of workers providing security for Omarska camp (...)“, which indicates in its last paragraph the organization of the guard service into three shifts and that the guards would only be allowed to enter the camp in an organized manner after a completed roll-call.<sup>118</sup>

In relation to the position held by Momčilo Gruban, the Panel specifically notes that most of the witnesses pointed out that the guards' shift supervised by the Accused was the best one for the detainees.<sup>119</sup> In addition to that, Prosecution witnesses even thanked Momčilo Gruban in the courtroom for the fair treatment they had received from him during their detention.<sup>120</sup> As regards the comparison of the situation on the different shifts, according to witnesses, the shift of Momčilo Gruban was the best for the detainees at Omarska camp. In terms of improvement of conditions in the camp, he did much more than the other shift leaders. He made more use of his authority in order to prevent guards and visitors from maltreating detainees; he gave the detainees greater freedom of movement both outside and inside the rooms and allowed them more frequent access to the toilets. In Momčilo Gruban's shift the singling out and the beatings during the nighttime were less frequent and the detainees could eat their meals mostly undisturbed, without physical and psychological provocations.<sup>121</sup> However, individual incidents, for which it has been established that they occurred on Čkalja's shift, show that killings, beatings and the taking of people occurred on all three shifts, although this witness labeled Krkan's shift as the worst one. The testimony of Witness K034 shows that none of the shifts in the camp was absolutely free of incidents, but this witness indicated Krkan's shift as the worst one. In addition, for witnesses Ermin Striković, Nusret Sivar, K041, K017, K037 and other numerous witnesses, Krkan's shift was the worst one, while witnesses including K037, Azedin Oklopić, Senad Kapetanović, Zlata Cikota and others characterized Čkalja's shift as the best one, which is also supported by the Defense witness K053, former camp inmate, whose testimony shows that, when Čkalja's shift was on duty, the prisoners had more rights, and witness K050, who stated that Čkalja had made it possible for the prisoners to get food. So, all the Prosecution witnesses, and partly Defense witnesses too, mentioned Čkalja's, Krkan's and Krlje's shifts, and Prosecution witnesses classified these shifts saying that

<sup>117</sup> Witness K015.

<sup>118</sup> Documentary Evidence no. 18.

<sup>119</sup> See *inter alia* testimony of Prosecution witnesses Asmir Balčić, Enes Kapetanović, Senad Kapetanović, Zlata Cikota and Azedin Oklopić.

<sup>120</sup> Witness K017.

<sup>121</sup> See *inter alia* witnesses K037, Azedin Oklopić, Senad Kapetanović and Zlata Cikota.

Krkan's shift, led by Mlado Radić a/k/a Krkan, was the worst for them personally, because that is when most of the violence took place, and that Čkalja's shift was the best, the safest and calmest. Based on the presented evidence the Court has found that the accused Momčilo Gruban was not a violent man, nor was he directly involved in the maltreatment of prisoners, but instead he displayed fairness and in a way attempted to improve their situation. The above inference is not disputed by the Prosecution either, so the Court did not find it necessary to give a special elaboration on these circumstances.

The Panel finds that the correlation between Momčilo Gruban's personal attitude towards the detainees in the camp and the conduct of the entire shift of guards who were on duty at the same time, clearly shows the authority he had in directing his subordinate guards. Based on all these indices, the Panel concludes that the Accused Momčilo Gruban had effective control over the guards on his shift, whether police officers or members of the Territorial Defense, and that, based on his position, he had the possibility to prevent the perpetration of criminal offenses by the guards, which occurred on his shift too, as well as to ban all unofficial violent visitors from entering the camp and from committing criminal offenses.

Contrary to that, Defense witnesses, who in their attempts to convince the Court that Gruban had not been a shift leader, obviously attempted to help the accused by their testimonies, which is why the Court could not consider those testimonies reliable and objective. Finally, the accused Željko Mejakić confirmed in his testimony that Momčilo Gruban (like Krkan and Kos) had spent more time walking around the camp, visiting members of security and communicating with them, and that Gruban briefed him on some information when he would be absent, which also partly supports the allegations of the Prosecution witnesses on the role the accused Momčilo Gruban played in the organization of the camp security and on his superior position in relation to the guards on that particular shift. Although he entirely denied the allegations of the Prosecution that Gruban was one of the shift leaders, the accused Željko Mejakić stated in his testimony that Gruban had enjoyed respect of both prisoners and guards in the camp.

The Accused Momčilo Gruban too, despite his knowledge of the situation at the Omarska Camp, failed to take reasonable measures to first of all prevent the commission of criminal offenses by his subordinates or by unofficial visitors to the camp on his shift. Apart from the evidence to this effect already cited in connection with the Accused Mejakić but valid for everybody working at Omarska camp, Momčilo Gruban personally witnessed the injuries Emir Beganović had already sustained before being called into the White House for another beating, he saved Enes Kapetanović as he knew about the fate of the detainees that were called out on this occasion, he also used the office next to the interrogator's rooms and must therefore have heard the constant maltreatments, and he frequently spoke to detainees, passed on food-packages sent by their relatives and could thereby observe first hand their hunger, fear and desperation.

As regards the interrogators and their assistants, the group of "Special Forces from Banja Luka" and the staff of the Omarska Mine, the Accused Momčilo Gruban did not have effective control, as has already been elaborated for the accused Željko Mejakić. In addition to that, the accused Gruban had no authority over the guards that were on the other shifts at Omarska Camp. Whenever the actual perpetrators of the crimes could not be qualified in the factual part of this judgment as members of a particular group, the

Accused Gruban, as in the case of Željko Mejakić is not held responsible under this mode of liability. Finally, Momčilo Gruban was not found as being in control of the generally inhumane camp conditions.

### **III) Liability as Member of a "Joint Criminal Enterprise"**

As elaborated above in connection with the accused Željko Mejakić, the knowing participation in the mere maintenance of the functioning of Omarska Camp triggers the criminal responsibility also of the Accused Momčilo Gruban with respect to all criminal offenses committed as part of the „Joint Criminal Enterprise“. According to the Panel's interpretation, based on this form of criminal responsibility, the Accused is liable only for those criminal offenses which he has not been already based on his criminal responsibility as a command, that is as a shift leader.

As elaborated in the paragraphs dealing with his responsibility as a superior, the Accused Momčilo Gruban held the position of a shift leader at Omarska Camp, in charge of a 12-hour guard shift that took turns with two other shifts. As concluded above, he exercised this role through a range of supervisory functions and demonstrated his authority towards the guards and visitors to the camp in a visible manner.

Momčilo Gruban, based on his contribution to the maintenance of the criminal system of the Omarska Camp, is liable only for the criminal offenses committed by the interrogators and their assistants, the co-called "Special Forces from Banja Luka", the staff of the Omarska Mine, and the crimes that were perpetrated during the two other shifts he was not in charge of. Also, the crimes perpetrated by unidentified perpetrators within the Omarska camp fall under this mode of liability. In addition to that, the general inhumane living conditions at the Camp also have to be included in the criminal responsibility of the Accused on the basis of his participation in the "Joint Criminal Enterprise." Since this mode of criminal liability requires that the co-perpetrator holds a senior position in the camp, whereby he could make a significant contribution to the maintenance of the system of the Joint Criminal Enterprise and thus show the existence of the necessary intent, the accused Momčilo Gruban can be charged with participation in the Joint Criminal Enterprise only after his promotion to the position of a shift leader. In his capacity as an ordinary guard without any specific role in the camp and without direct involvement in the commission of the criminal offenses, he could not have made a significant contribution to the strengthening of the camp system that could serve as proof of his intent to maintain the camp system.

### **Subjective Elements of the Criminal Offenses**

The evidence indicates that, at the critical time, the Accused met all subjective elements of the criminal offense enumerated above as Crimes against Humanity. Momčilo Gruban was aware of the existence of a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality. The escalation of the overall situation was the reason for him to be mobilized as a reserve police officer. As the Accused Mejakić, he was also aware that the system of Omarska camp represented an integral part of this widespread and systematic attack, and he also must

have realized the discriminatory character of the attack as such and more specifically the camp system.

Being the leader of one of the three guard shifts at the camp, the Accused had sufficient authority to stop maltreatments from the side of guards that were on his shift or unofficial visitors coming to the camp during his duty. Being aware of these circumstances but not preventing the above described crimes from being perpetrated proves the existence of the necessary intent on the part of the Accused.

The Accused Momčilo Gruban was also aware of the fact that, by acting according to his role as a guard shift leader at Omarska Camp, he contributed to the continuation and of its functioning, but regardless of his knowledge of the entire situation, he decided to remain on his position in the camp. The Accused thereby, from the time on he became a shift leader, played a senior role in the functioning of the camp system, so that his contribution must be described as significant. In this way the existence of his shared intent to further the "Joint Criminal Enterprise" within Omarska camp is established. The Panel deems worth noting that the necessary intent is different from the motive the accused might have for his behavior. The latter is legally irrelevant as "shared criminal intent does not require the co-perpetrator's personal satisfaction or enthusiasm or his personal initiative in the contribution to the joint enterprise".<sup>122</sup>

### **C) Duško Knežević**

#### **D) Liability as a Direct Perpetrator**

Pursuant to Articles 180 (1) and 21 (1) CC BiH, the Panel holds the Accused Duško Knežević liable primarily based on his responsibility as a direct perpetrator. This form of criminal responsibility is reflected in a series of criminal acts of murder and maltreatment the Accused was personally involved in.

As elaborated first in the factual description with regard to the situation in Omarska Camp and then also in the legal analysis of this judgment, the Accused Duško Knežević under this mode of liability has to be held liable for his direct participation in the murders of Amir Cerić and a man called Avdić, „Dališa“ Hrnić, Bećir Medunjanin, Slavko „Ribar“ Ećimović, and Emir „Hankin“ Ramić.

Apart from this, he has also been a direct participant in the maltreatments, legally qualified as torture and "other inhumane acts" of victims Emir Beganović, witness K036, Rezak Hukanović, Asaf Kapetanović, Abdulaha Brkića, witness K022, and Fadil Avdagić.

With regard to the crimes committed in the Keraterm Camp elaborated in the factual part of the judgment, the Accused Duško Knežević has to be held liable as a direct perpetrator or co-perpetrator for the murders of Emsud „Singapurac“ Bahojić, Drago Tokmadžić, and Sead „Car“ Jusufović. He has also been a direct participant in the maltreatments of witness K05, Fajzo Mujkanović, Ilija Jakupović, witnesses K033, K015, Esad Islamović, Edin Ganić, Jasmin Ramadanović, Amir Karačić, Josip Pavlović, Dijaz Sivac and witness K013.

<sup>122</sup> *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, paras. 105-106.



## **II) Command Responsibility**

Duško Knežević did not hold any official role neither in the Omarska camp nor in the Keraterm camp. As the Court also did not establish that he exercised any de-facto authority towards the camp guards or other un-official camp visitors, the question of Command Responsibility with regard to this Accused needs not to be discussed any further.

## **III) Liability as Member of a "Joint Criminal Enterprise"**

Regardless of the fact that Duško Knežević he had no official role either in the Omarska or in the Keraterm camp, the Court found that the notoriety of his violent behavior in both camps make him a member in both "Joint Criminal Enterprises".

The ICTY case law requests in the case of so-called "opportunistic visitors" who use the situation at a detention camp for the maltreatment of inmates, that their contribution to the system of ill-treatment be a "substantial" one in order to make them a member of the "Joint Criminal Enterprise".<sup>123</sup> The reason for the differentiation between such visitors who only through the substantive nature of their contribution become members of the "Joint Criminal Enterprise" and the camp staff in which case the level of contribution just serves as indicia for their intent, can be seen in the nature of the systemic form of "Joint Criminal Enterprise" liability; the official role of a person inside the camp-system makes this person automatically a member of the "Joint Criminal Enterprise" while an outsider needs to "prove" his membership in the Joint Criminal Enterprise through a substantial furtherance of the system he is not an official part of.

The visits<sup>124</sup> of the accused Duško Knežević to the Omarska and Keraterm camps and the cruel acts he committed on these occasions created such an atmosphere in the camps that the very information of him coming to the camp was sufficient to create fear and panic among the camp inmates.<sup>125</sup> His violent behaviour was welcomed by the camp guards who knew that something bad would befall the inmates whenever Knežević was around.<sup>126</sup> His perpetuated violence against the detainees prompted one witness to assume that it was some kind of duty for Duško Knežević to maltreat detainees; it was as if he was "in charge of the beatings".<sup>127</sup>

This Panel is satisfied that a person, although without any official role in a camp system, who as direct perpetrator stands out in a way that his name becomes a synonym for the suffering of the detainees, as was the case with the name Duća for the inmates at the Omarska and Keraterm camps, did make significant contribution to the maintenance of the "Joint Criminal Enterprise". For that reason the accused Knežević is to be held responsible for the entire system of the two camps and thereby for all the crimes committed in them, based on this mode of individual criminal responsibility. Based on the presented evidence, it has been established beyond doubt that the accused Duško

<sup>123</sup> *Kvočka et al.* ICTY Appeal Judgment (IT-98-30/1-A), 28 February 2005, para. 599.

<sup>124</sup> Witnesses Anto Tomić, Azedin Oklopčić, K05, K08, K09, K013, K014, K016, K029, K033, K042 and K044.

<sup>125</sup> Testimony of witnesses Anto Tomić, K016, and K042.

<sup>126</sup> Witness Azedin Oklopčić.

<sup>127</sup> Witness K033.

Knežević did visit the Omarska and Keraterm camps in order to maltreat the prisoners. Those camps functioned as a joint criminal enterprise and the accused played a significant role within that enterprise.

#### **Subjective Elements of the Criminal Offenses**

Again, the evidence indicates that also the Accused Knežević met all subjective elements of the criminal offense enumerated above as Crimes against Humanity.

Duško Knežević was aware of the existence of a widespread or systematic attack against the non-Serb civilian population of the Prijedor Municipality and he was also aware that the system at the Omarska Camp represented an integral part of this widespread and systematic attack. He knew about the discriminatory character of the attack as such and more specifically of the camp system, as he was himself an integral part of the system, maltreating and killing the mostly non-Serb detainees on a regular basis, keeping the level of fear and helplessness felt not only by his immediate victims but by all detainees on a high level.

With regard to the numerous cases of direct personal involvement in the maltreating and killing of detainees by the accused Duško Knežević, the Court did not have any difficulty to infer the necessary intent to commit the crimes from these factual circumstances.

Duško Knežević was aware of the fact that by visiting the camps and perpetrating numerous violent acts against the detainees, he contributed to the continuation and intensification of the camp system of ill-treatment, by keeping the inmates under a constant fear for their lives. Regardless of the fact that he was familiar with the entire situation, he decided to carry on with his visits to both of the camps. His contribution must be clearly described as significant, establishing first his membership in the "Joint Criminal Enterprise" at both camps and second also his intent to further the system.

The Court is convinced beyond reasonable doubt that the Accused himself had the requisite intent to discriminate against the non-Serb detainees and their few Serb co-inmates. His acts speak for themselves. He committed crimes characterized by grave physical and psychological violence against the non-Serb detainees in the camp, aware of the fact that those were mainly individuals who had been detained in the camp on the basis of their religion, their political affiliations or their ethnicity. Specific evidence in this regard can, for example, be seen in Knežević's particularly cruel treatment of detainees who played important roles in different walks of life in the Prijedor Municipality area.

#### **Sentencing**

In terms of the criminal offence per se, namely the commission of crimes against humanity as described in the reasoning above, one should bear in mind Article 2 CC BiH which provides that the types and the range of criminal sanctions shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, human rights and other basic values which determines the purpose of criminal justice, namely the protection of

certain individual and general values, and defining the ways of achieving that protection. In that context one should take under consideration the elements relative to this purpose, in other words, the suffering of direct and indirect victims of the instant criminal offences, that is, the detainees of the Omarska and Keraterm camps, their families and members of their community, as well as the participation of the accused persons in the commission of these criminal offences.

The general purpose of prescribing and imposing criminal sanctions, which is to suppress unlawful conduct violating or endangering fundamental general or individual values, is reflected in preventative influence upon others so that they obey the legal system. At the same time it deters the perpetrator himself from committing criminal offences and encourages his re-education, in accordance with the provisions of the Law providing for the special purpose, or in this case the purpose of punishment under Article 39 CC BiH. According to Article 39 CC BiH, the purpose of punishment is to express the community's condemnation of a perpetrated criminal offence; to deter the perpetrator from perpetrating criminal offences in the future; to deter others from perpetrating criminal offences; and to increase the consciousness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators, in order to raise public awareness of the need to abide by the Law. Meting out a punishment to the perpetrator of a specific criminal offence is in connection with the purpose of punishment.

Having in mind the aim of general and specific deterrence, in sentencing the accused persons the Court took under advisement all the circumstances bearing on the type and duration of the criminal sanction within the limits provided by law for the committed criminal offences. The Court had in mind the degree of criminal liability of the perpetrator, the degree of danger or injury to the protected object, the circumstances in which the offence was perpetrated, personal and other circumstances of the perpetrator.

#### **Accused Željko Mejakić**

As explained in the reasoning of the Verdict above, the Court is satisfied that the accused Željko Mejakić performed the duty of the chief of security and de facto commander of the Omarska camp, where around 3,000 non-Serb civilians were interred. At least a hundred of them were killed or died, due to the aforementioned conditions in the camp. In that role, the accused Mejakić was responsible for the detainees and their daily treatment. As mentioned already, the conduct of the accused, as described above, shows that he demonstrated determination in furthering the system and functioning of the camp. He participated in the joint criminal enterprise, of which he was aware. He was not an insignificant player in the structure of the camp, but rather a person who was the chief of security responsible for the security of the interred civilians. He was engaged and constantly present in the Omarska camp from its establishment until its closure, which is almost three months in total. All of that leads to the conclusion that the accused Mejakić, throughout the functioning of the camp, supported the crimes that happened in the camp and demonstrated determination and persistence in the commission of the criminal offence, given that he did not decide firmly at any one time to leave the camp, despite his knowledge of the incidents in the camp.



In addition to that, bearing in mind the degree of danger and injury to the protected value, in this case the life and limb of around 3,000 detainees, who were under the jurisdiction of the camp security whose commander was Željko Mejakić during the functioning of the camp, it is indisputable that the detainees were endangered on a daily basis to such an extent that a large number of detainees during their internment in the camp were killed or died. The circumstances of numerous murders, tortures, beatings, mental abuse of the detainees illustrate the helpless position of the detainees and the difficult situation they were in, which the perpetrators of certain criminal acts used to commit the offense. The accused agreed with such conduct without reservations. The accused Mejakić not only supervised the system that involved inhumane living conditions in the camp, but also participated actively as a direct perpetrator (the beating of Saud Bešlić) of the criminal offence of which he was found guilty. Before the commission of the offence at issue, the accused Željko Mejakić had an exemplary career in the police force and years of professional experience. That implies that the accused was aware of his duties as a police officer and the chief of security in terms of providing security to the detainees. Therefore, by accepting the function of the chief of security he was obliged to accept special duties to protect the detainees by applying applicable regulations.

In deciding on the type and magnitude of the criminal sanction, pursuant to Article 48 CC BiH, in terms of aggravating factors for the accused Željko Mejakić, the Court has considered the long duration of the difficult position of helplessness and fear of the detainees in the camp where the accused was regularly present; a large number of victims; the circumstances in which the direct perpetrators committed the criminal acts and their cruel treatment of victims abusing their helplessness and fear; extremely serious consequences the detainees and their family members have suffered; the duration of the accused's term in the camp, whereby he demonstrated determination and persistence in the commission of the criminal offence; as previously explained, his earlier experience as a professional police officer due to which he had a special public duty to enforce the law, which he failed to do.

In terms of the mitigating factors for the accused Željko Mejakić, the Court has considered the fact that the accused is a family man, a father of two children and has no prior convictions. The Court has also considered as mitigating that the accused helped certain detainees in a few situations, as well as his proper conduct before the Court.

#### **Accused Momčilo Gruban**

In sentencing the accused Momčilo Gruban, the Court has considered the degree of his criminal liability regarding the criminal offences he committed and found that the accused Gruban was aware of all incidents in the Omarska camp and participated actively in the camp system. Likewise, the Court considered the fact that the accused Momčilo Gruban as a guard shift leader in the Omarska camp contributed to and furthered the functioning of the camp, which facilitated further spreading of the crimes. The accused Gruban contributed by his presence in the camp to sustaining the camp's system, performed an important role in its functioning and was engaged in the camp throughout its existence, during which time he had the option to leave, but he did not attempt it. This demonstrates his persistence in the commission of the criminal offence he was found guilty of. As a result of his regular presence at the Omarska camp,

throughout its existence, the accused Momčilo Gruban must have known of the mass crimes committed within the camp compound by the perpetrators who abused the difficult situation and helplessness of the civilians detained in the camp. The accused Momčilo Gruban did not in any way demonstrate his willingness to oppose the crimes committed which were repeated within the Omarska camp over a long period of time, during which a large number of detainees were killed or beaten up, or maltreated in another way.

Therefore, the duration of the presence of the accused Gruban in the Omarska camp and his determination in the commission of the instant criminal offence, his consent to the mass criminal acts committed in the camp and a large number of victims who were helpless and afraid in the camp, subjected to everyday tortures and maltreatments, are, in the opinion of the Court, aggravating factors affecting the sentencing of the accused Momčilo Gruban.

The Court did consider as mitigating the fact that a certain number of witnesses mentioned that the accused had helped some detainees and was not violent towards them. However, the Panel finds that the mentioned circumstances are not of a decisive nature, given that those were sporadic cases, because the help was limited to the detainees the accused was in a way connected to as a friend or work colleague, or the people with whom the accused established a relationship during their internment in the camp. Furthermore, exactly these circumstances indicate that the accused Momčilo Gruban, considering his position in the camp, namely that of a head of one of the three shifts, demonstrated that he could have exerted greater and more important influence on the overall living conditions of the detainees and contributed to making his overall conduct and that of the guards in his shift in line with the applicable regulations.

Quite the contrary, the accused selectively resolved specific situations, either on a personal basis or based on another relationship, knowing that the unlawful treatments in the Omarska camp were numerous and widespread. Thus, he demonstrated determination not to oppose such conduct openly and leave the camp, despite his awareness of the incidents. As for other mitigating factors for Momčilo Gruban, the Court has considered the fact that he has no prior convictions, that he is a family man and a father of two children and that his conduct before the Court was proper.

#### **Accused Duško Knežević**

As already explained, the accused Duško Knežević was not a regular employee at the Omarska and Keraterm camps, but visited the camps and entered them freely, exclusively to maltreat the detainees in those camps. In the course of evidentiary proceedings, the Court has found that the accused Knežević committed a number of serious crimes of murders, beatings, torture that resulted in the death of a certain number of people, which indicates a high degree of gravity of the criminal acts the accused Duško Knežević committed. The descriptions of the individual incidents in which the accused Duško Knežević participated illustrate the persistence and determination of the accused in the commission of criminal offences, which was so high that while maltreating the victim, he would not be satisfied until the victim died of beating. There are many examples of Duško Knežević's brutal treatment of detainees, during which the accused together with his perpetrators treated the detainees cruelly, abusing their fear

and helplessness. In addition to that, the accused Duško Knežević's motive for the commission of a rather large number of crimes he was found guilty of was revenge for the death of his brother. A certain number of witnesses testified to that in the course of the main trial (witnesses K016 and Abdulah Brkić). His crimes were coupled with obvious hatred and verbal insults (witnesses Edin Ganić and K015). The aforementioned facts show the degree of criminal liability of the accused. They include in particular the persistence and determination in the commission of the crimes at issue, a large number of beatings resulting in the deaths of victims and the duration of the period over which the accused committed the acts charged in two separate camps, his motives for the crimes as well as the circumstances in which he committed the crimes, treating the victims with utmost violence, abusing their helplessness, as well as the consequences he caused by the commission of criminal acts. Seen as a whole, these circumstances constitute a body of aggravating factors affecting the sentencing of the accused Duško Knežević.

On the other hand, the Court has considered as mitigating for the accused Duško Knežević that he is a family man and a father of one child, has no prior convictions and that his conduct before the Court was proper.

Considering the established state of facts and the consequence that ensued, as well as the causal relationship between them, the Court found the accused persons guilty and sentenced them as follows: accused Željko Mejakić to long term imprisonment of 21 years, accused Momčilo Gruban to the prison sentence of 11 years and the accused Duško Knežević to long term imprisonment of 31 years. In sentencing the accused, the Court has been guided by Article 39 CC BiH and the belief that the sentences imposed are in proportion with the gravity of the criminal offences committed and the degree of criminal liability of the accused persons. As the subject of this case is the severest form of serious criminal offences, committed with intent, the Court imposed long term imprisonment sentences on the accused Željko Mejakić and Duško Knežević. The Court believes that the longest regular prison sentence would not be adequate, given the gravity of the offence and the degree of perpetrator's criminal liability. Furthermore, the Court finds that these sanctions will sufficiently deter all accused persons from committing criminal offences in the future, and that general deterrence will thus be achieved too. Finally, the Court is satisfied that the sentence imposed will influence public awareness of the gravity of criminal offences and fairness of punishing the perpetrator. The Court is also satisfied that the magnitude of sentences imposed will influence the consciousness of citizens of the danger of criminal offences and of the fairness of punishing perpetrators and also achieve the purpose of expressing the community's condemnation of the perpetrated criminal offence.

Pursuant to Article 56 CC BiH, in conjunction with Article 2(4) of the Law on Transfer of Cases from the International Criminal Tribunal for the former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina (Law on Transfer of Cases), the accused persons will be credited the time they spent in custody pursuant to the Decision of the International Criminal Tribunal for the former Yugoslavia (ICTY) and Court of BiH, as of 1 July 2003 onwards for the accused Željko Mejakić; from 2 May 2002 until 17 July 2002, and then as of 21 July 2003 onwards for the accused Momčilo Gruban; as of 18 May 2002 onwards for the accused Duško Knežević.

### Decision on costs of the criminal proceedings

The decision on costs of the criminal proceedings was rendered pursuant to Article 188 (4) CPC BiH. The accused persons were relieved from the duty to cover the costs of the proceedings, which will be covered from the budget. The Court has relieved the accused persons from the payment of the costs of criminal proceedings bearing in mind that they have been in custody for quite some time already and are indigent, so that the payment of costs would jeopardize the support of the accused and of persons whom the accused are required to support economically.

### Decision on property law claims

Since the information obtained in the course of the criminal proceedings does not provide a reliable basis for decision on property law claims, and that the instant criminal proceedings would be substantially prolonged by the determination of the amount of the claims, the injured parties Asmir Baltić, Fadil Avdagić, Emir Beganović, Said Bešić, Saud Bešić, Zlata Cikota, Enes Crljenković, Izet Dešević, Enes Kapetanović, Senad Kapetanović, Kerim Mešanović, Azedin Oklopčić, Mustafa Puškar, Nusret Sivac, Ermin Striković, Anto Tomić, K01, K03, K05, K07, K08, K09, K010, K015, K016, K017, K018, K019, K022, K023, K027, K033, K034, K035, K036, K037, K040, K041, K042, K043 and K044, K055 and K056 are referred to take civil action to pursue their property law claims, pursuant to Article 198 (2) CPC BiH.

Minutes taker:  
Legal Officer  
Manuel Elsing

PANEL PRESIDENT  
JUDGE  
Šaban Maksumić

### **INSTRUCTION ON APPEAL:**

This Verdict may be appealed with the Appellate Panel of the Court of BiH within 15 (fifteen) days as of the day of receipt of the written Verdict.

*We hereby confirm that this document is a true translation of the original written in Bosnian/Serb/Croat.  
Sarajevo, 2.12.2008*

*Certified Court Interpreters for English*

