



**Number: X-KRŽ-05/42**

**Sarajevo: 19 August 2008**

### **IN THE NAME OF BOSNIA AND HERZEGOVINA**

The Court of Bosnia and Herzegovina, Section I for War Crimes, in the Panel of the Appellate Division composed of Judge Azra Miletić, as the President of the Panel, and Judges Doctor Miloš Babić and Robert Carolan, as the Panel members, with the participation of the Legal Officer Neira Kožo as the Record-taker, in the criminal case against the accused Nikola Andrun for the criminal offence of War Crimes against Civilians, in violation of Article 173(1)c) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the CC BiH), in conjunction with Article 29 of the CC BiH, deciding on the Indictment of the Prosecutor's Office of Bosnia and Herzegovina number: KT-RZ-28/05 dated 12 August 2008, following the trial in the presence of the Prosecutor of the Prosecutor's Office of BiH, Vesna Budimir, the accused Nikola Andrun and his Defense Counsel, lawyer Hamdo Kulenović, rendered and on 19 August 2008 publically announced the following:

### **VERDICT**

**THE ACCUSED NIKOLA ANDRUN**, son of Drago and mother Zora nee Nikolić, born on 22 November 1957 in the place of Domanovići, Municipality Čapljina, JMBG 2211957151130, permanent place of residence in Čapljina at St. Fra Didaka Buntića bb, of Croatian ethnicity, merchant by occupation, unemployed, married, a father of four, citizen of Bosnia and Herzegovina and the Republic of Croatia, prior conviction by the Verdict of the Basic Court in Stolac number: Kž-2/94 of 15 March 1994 to imprisonment for a term of 5 (five) months, 2 (two) years on probation and a ban on driving „B“ category motor vehicles for a period of 8 (eight) months for the criminal offence in violation of Article 185(1) and Article 181(1) of the Criminal Code of the Republic of Bosnia and Herzegovina, detained in the Correctional Establishment “Kula” since 30 November 2005,

### **IS GUILTY**

## **Because:**

During the June – September 1993 period, during the war in Bosnia and Herzegovina, and during the armed conflict between the HVO and the Army of the RBiH, in the Camp „Gabela” located in the place of Gabela, Municipality Čapljina, in the capacity of Deputy Camp Commander, he acted in violation of the provision of Article 3(1)a) and c) of the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949, by doing the following:

1. On 30 September 1993, during the morning hours, in the Camp „Gabela“, in the building located on the right side from the direction of the entrance gate, the third one in the line, together with Marinko Marić, the SIS investigator and guard Almir Kudra a.k.a. “Hogar“, he questioned the detainee Mirza Čolaković, punching and kicking him all over his body with his military boots on, due to which he fell down, whereupon Nikola Andrun took out a belt from a table drawer, put it around the neck of Mirza Čolaković, pulled it through the buckle, having made a loop in that manner, climbed up on the table, lifting him up tied in such manner together with Marić and Kudra by dragging the belt which kept tightening around the neck, because of which Mirza Čolaković fainted due to the loss of air, and after he regained consciousness, Marinko Marić and Almir Kudra took him out to another room with a washstand and a tap, placed him with his head turned toward the tap, whereupon Nikola Andrun covered his face with a towel, and Marinko Marić and Almir Kudra opened the tap and directed water to fall on his nostrils, because of which, unable to breathe, Mirza Čolaković fainted; when he regained consciousness, they took him to the solitary cell in the basement of the building which the detainees used to call the “Administration building”, which is located immediately next to the entrance gate on the left side from the direction of the entrance to the Camp, and told him that they would come again during the night to question and torture him.

2. On an undetermined date, in late September or early October 1993, during the evening hours, together with the SIS, HVO investigator Marinko Marić, he took out from the Camp „Gabela” the detainee Enes Bratić and brought him to the Police Station Čapljina, took him into a room in which Vlado Rajić, the investigator in this Station, kicked him strongly several times all over his body but mostly in the chest area with his shoes on; after a while Marinko Marić came into the room and twisted his right hand finger and broke it, put a pistol on his mouth and cocked it, hit his head strongly several times with the chair handle, while Nikola Andrun was sitting and watching him being kicked, whereupon Nikola Andrun, when leaving the room, kicked Enes Bratić with his military boots in the part of the chest below the heart, due to which Enes Bratić suffered strong pains;

3. On an undetermined date, in September 1993, in the afternoon hours, in the Camp „Gabela”, after Nikica Pehar, the camp guard, informed him of having heard that the detainee Mirsad Žujo had said “This is the corridor for Neum”, he came to the hangar number 3, called up the detainee Mirsad Žujo a.k.a. „Šile“, telling him “Come on, Žujo, come out, they will get to the other side once, but you never will”, and took him out from the hangar to which he never came back again; however, the mortal remains of Mirsad Žujo were exhumed and identified in 1996, and the examination and autopsy of the mortal remains showed that his skull was shot through with clearly noticeable entrance hole behind

the left ear which was caused by the dynamic action of a bullet fired from a fire arm which was aimed at the back of the head, thus causing the violent death;

4. On an undetermined date in October 1993, in the evening hours, in the “Gabela” Camp, after the detainee Alija Šuta, who was in front of the hangar number 3, refused to comply with his order to take out from the hangar the detainee Alija Čolaković, he entered the hangar together with the HVO member known to him, and having called out Alija Čolaković, took him out of the hangar, whereupon several unknown members of the HVO, in the presence of Nikola Andrun, kicked him with their feet wearing military boots and with rifle butts all over his body; thereupon they dragged the lifeless body of Alija Čolaković in the direction of the hangar number 2;

5. In early September 1993, in the evening hours, in the “Gabela” Camp, he took out from the hangar number 2 the detainee Mirsad Omanović, brought him to a room in the “Administration building” located immediately next to the entrance gate, where Marinko Marić, the SIS investigator, waited for him, and who, having asked the detainee where his money was, started kicking him with his feet in military boots and beating him using fists and baton all over different parts of his body, while Nikola Andrun during all that time was sitting on the table and watching Marinko Marić beat Mirsad Omanović, whereupon both of them took him to the hangar number 2, threatening him that they would come again the next evening to pick him up and that they would kill him if he did not surrender the money to them then; the following night, he came to the hangar number 2 and took out Mirsad Omanović and brought him to a room in the “Administration building” in which Marinko Marić waited for them; after they asked him whether he brought the money, and while Nikola Andrun was sitting and watching, Marinko Marić started punching him in his face and beating him with a baton all over different parts of his body, and then he hit him in his head with the baton, due to which Omanović fell and lost his consciousness; in the moment of regaining consciousness, Omanović saw Marić above him kicking him in the face with his military boots on; he ordered him to stand up and to go to a corner of the room facing the wall, whereupon he started shooting over his head, and at one moment, hit him in the head with the pistol handle due to which blood gushed from his head; after that they took him back to the hangar number 2 threatening that they would come to pick him up again on the following evening;

6. On an undetermined date, in August 1993, in the „Gabela” Camp, he came to the hangar number 1, and having called out the detainee Hivzija Dizdar a.k.a. „Učo“, took him out of the hangar, where he had not returned ever since; in 1996, the mortal remains of Hivzija Dizdar were exhumed and identified, and the examination and autopsy of the mortal remains revealed the spot where the skull was shot at, caused by the dynamic action of a bullet fired from a fire arm in his head thus having caused his violent death;

7. On 13 June 1993, in the “Gabela” Camp, from the cellar located in the “Administration building”, he took out the detainee Džemal Topić, brought him to his office in the same building, where together with Marinko Marić, the SIS investigator, he beatg him with a baton and a hose of the fire extinguisher due to which Džemal Topić suffered strong pains;

8. In late July 1993, he took several detainees from the "Gabela" Camp to the military barracks in Čapljina, including Džemal Topić, to collect pine-tree needles and acorns, surrendering them to members of the HVO known to him, who beat him up on two occasions in a bathroom using the hose of the fire-extinguisher, while Nikola Andrun was sitting on a bench in the immediate vicinity and watching them take him into the bathroom for the first time and take him out later all covered in blood, and when he was taken to the bathroom the next time and beaten up with the hose of the fire extinguisher, the detainee Džemal Topić lost his consciousness;

9. On an undetermined date in August 1993, in the „Gabela“ Camp, in the office located in the "Administration building", having questioned the detainee Džemal Topić, he hit his head and bare back several times with a baton, due to which Džemal Topić suffered cuts on his back and head;

10. On an undetermined date in September 1993, in the „Gabela“ Camp, together with the Head of the Camp, Boško Previšić, he took out from the hangar number 1 several detainees, including the detainee Kemal Balavac, and surrendered him to the HVO soldiers Mato Brajković, Mile Nogulica and others telling them „Here they are, do with them whatever you want“, whereupon the group of these soldiers beat his back several times with the pike holder while he was pulling thorns with his bare hands, due to which Kemal Balavac suffered strong pains;

11. On an unidentified date in August 1993, in the „Gabela“ Camp, he took out from the hangar number 2 the detainee Selim Gagula, brought him to the gate next to the "Administration building", where a group of the HVO members known to him stood; he sat on a bench and watched them beating Selim Gagula with rifle butts, who lost his consciousness due to this beating and remained unconscious for several days;

12. On two occasions, in August and September 1993, from the „Gabela“ Camp, together with the Head of the Camp, Boško Previšić, intending to prevent the employees of the International Committee of the Red Cross to perform their humanitarian role and make a list of all the detainees with a view to enabling them to be exchanged in that manner, to depart for third countries and to make contacts with their families, he moved a group of Bosniaks whom they kept detained in the Investigation Section of the Administration building directly near the entrance gate, among whom Alaudin Veledar, Ramiz Leta, Enver Bojčić, Halil Turajlić, Bajro Pizović, Ahmet Cernica, Huso Marić, to the „Silos“ Camp near Čapljina, thus preventing them to be registered by the employees of the International Red Cross; due to that, the detainees suffered strong mental pains;

### **Consequently,**

during the war in Bosnia and Herzegovina, at the time of the armed conflict between the HVO and the R BiH Army, violating the rules of international law, he participated in the killing of the detained civilians, tortured and participated in the torture of the detained civilians and treated them inhumanely,

**Whereby,**

he committed the criminal offence of War Crime against Civilians in violation of Article 173(1)c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 29 of the Criminal Code of Bosnia and Herzegovina, which criminal offense was committed by:

- Section 1 of the operative part of the Verdict – torture,
- Section 2 of the operative part of the Verdict – participation in torture,
- Section 3 of the operative part of the Verdict – participation in killing,
- Section 4 of the operative part of the Verdict – participation in torture,
- Section 5 of the operative part of the Verdict – participation in torture,
- Section 6 of the operative part of the Verdict – participation in killing,
- Section 7 of the operative part of the Verdict – torture,
- Section 8 of the operative part of the Verdict – participation in torture,
- Section 9 of the operative part of the Verdict – torture,
- Section 10 of the operative part of the Verdict – participation in torture,
- Section 11 of the operative part of the Verdict – participation in torture,
- Section 12 of the operative part of the Verdict – inhuman treatment.

Therefore, pursuant to the above-mentioned legal regulations and pursuant to Articles 39, 42 and 48 of the Criminal Code of Bosnia and Herzegovina, the Court hereby

### **SENTENCES HIM**

### **TO 18 (EIGHTEEN) YEARS OF IMPRISONMENT**

Pursuant to Article 56 of the CC BiH, the imposed sentence shall include the time the Accused spent in custody commencing on 30 November 2005, until his committal to serve the sentence.

Pursuant to Article 188(4) of the CPC BiH */the Criminal Procedure Code of BiH/*, the Accused shall be relieved of the obligation to reimburse the costs of the criminal proceedings.

Pursuant to Article 198(1) of the CPC BiH the injured parties: Mirzo Čolaković, Mirsad Omanović and Džemal Topić are hereby instructed to take civil action in order to pursue their claims under property law.

Contrary to that:

**The accused Nikola Andrun is hereby**

### **ACQUITTED OF THE CHARGES**

(Article 284 Subparagraph c) of the CPC BiH)

### **That:**

At the beginning of July 1993, in the „Gabela” Camp, he took out several detainees from the hangar number 1, including Ramiz Kurtović, drove them by car to the Police Station in Čitluk, where they were questioned by policemen known to him in his presence, whereupon they tied their hands behind their backs, and tied in such manner, took them escorted by Nikola Andrun, to the military barracks in Čitluk, while gathered citizens were throwing stones at them, kicking them and spitting on them; later on the same day, after they returned to the “Gabela” Camp from the barracks in Čitluk“, together with the Camp ”Gabela” Head, Boško Previšić, ordered this group of detainees, including Ramiz Kurtović, to lie down on the hot asphalt, let water running from the nearby tap without allowing them to drink it although they were thirsty.

By the above-described actions – participation in inhuman treatment and inhuman treatment, he would have committed the criminal offence of War Crimes against Civilians, in violation of Article 173(1)c) of the Criminal Code of Bosnia and Herzegovina, in conjunction with Article 180(1) and Article 29 of the Criminal Code of Bosnia and Herzegovina.

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

In the Indictment of the Prosecutor’s Office of Bosnia and Herzegovina number: KT-RZ-28/05 dated 21 April 2006, which was amended on 11 December 2006 and 12 August 2008, the accused Nikola Andrun was charged with having committed the criminal offence of War Crimes against Civilians, by the actions described in Counts 1 through 13 of the Indictment, in violation of Article 173(1)c) of the CC BiH, in conjunction with Article 180(1) and Article 29 of the CC BiH.

In the Verdict of the Court of Bosnia and Herzegovina number: X-KR-05/42 dated 14 December 2006, the accused Nikola Andrun was found guilty of having committed the criminal offence of War Crime against Civilians by the actions described in the operative part of the above-mentioned Verdict under Sections: 2, 4, 5, 9, 11, 12 and 13, in violation of Article 173(1)c) and e), in conjunction with Article 180(1) and Article 29 of the CC BiH. The First-Instance Panel sentenced him to 13 (thirteen) years of imprisonment for the abovementioned criminal offense.

Pursuant to Article 56 of the CC BiH, the imposed sentence included the time the Accused spent in custody, commencing on 30 November 2005, whereas pursuant to Article 188(4) of the CPC BiH, the Accused was relieved of the reimbursement of the costs of the proceedings.

Under the same Verdict, the accused was acquitted of the charges that he committed the act of torture in the manner described under Sections 1, 6, 8 and 10 and the act of killing in the manner described under Sections 3 and 7, which constitute the criminal offence of War

Crime against Civilians in violation of Article 173(1)c) and e), in conjunction with Article 180(1) and Article 29 of the CC BiH.

Under the Decision of the Appellate Panel number: X-KRŽ-05/42 dated 20 August 2007, the appeals filed by the Prosecutor's Office of Bosnia and Herzegovina and the Defense Counsels for the accused Nikola Andrun were granted, whereby the Verdict of the Court of Bosnia and Herzegovina number: X-KR-05/42 dated 14 December 2006 was revoked and a hearing was ordered before the Panel of the Appellate Division, Section I for War Crimes, of the Court of Bosnia and Herzegovina.

Pursuant to Article 317 of the CPC BiH, the hearing was held before the Appellate Panel of the Court of BiH and, during the evidentiary proceedings, the Appellate Panel again presented the pieces of evidence that had been presented during the first-instance proceedings, namely replaying audio-video footages of the statements of the following Prosecution witnesses: Mirzo Čolaković, Enes Bratić, Alija Šuta, Eldin Vujinović, Senad Šetka, Hadžo Klarić, Kemal Balavac, Zlatan Zaklan, Hamza Penava, Alaudin Veledar, Ramiz Leto, Enver Bojčić, Halil Turajlić, Bajro Pizović, Ahmet Cernica, Huso Marić, Mirsad Omanović, Džemal Topić, Aziz Selimović, Hasan Tucaković, Ramiz Kurtović, Selim Gagula, Meho Zele and the Forensic Expert, Doctor Ilija Dobrača, as well as the following Defense witnesses: Rezalija Lizde, Ćamil Klepo, Ramiz Torlo, Omer Torlo, Enver Šabanović, Safet Peco, Osman Turajlić, Dževad Pajo, Jasminka Šunjić, Boško Buntić, Mirsad Šuta, Pero Putica, Vlatko Vego, Nikica Pehar, Mile Čemeraš, Darko Križanović, Ljubo Đikov, Jusuf Elezović, Pavo Pree, Nikola Vuletić, Zvonko Jurkić, Božo Buntić, Ivica Bačić, Zlatko Bošnjak, Ivan Raguž, Salih Kupusija, Smajil Sablić and the accused Nikola Andrun as a witness. The witness Mirzo Čolaković was again heard directly before the Court.

On 3 July 2008 an on-site investigation was carried out, as well as a partial reconstruction of the events at the scene, that is, at the location of the former "Gabela" Camp in Čapljina. On that occasion, photo-documents, video footages and a sketch of the scene were made and they were admitted as evidence adduced by the Court.

The Appellate Panel rendered a decision to admit all the pieces of documentary evidence that were presented and admitted during the first-instance proceedings, so the following Prosecution evidence was admitted: Record on the hearing of the Forensic Expert Doctor Ilija Dobrača and certified copy of the findings and opinion dated 12 and 13 November 1996, Original Autopsy Record (Reexhumatio) number 27-196/2003, which was received by the Cantonal Prosecutor's Office of the Herzegovina-Neretva Canton Mostar, Certified copy of the Order of the Higher Court in Mostar, number: Kri. – 41/96 dated 11 November 1996, ordering an expert evaluation to be carried out by a forensic expert, Certified copy of the On-site investigation record of the Higher Court in Mostar number: 341/96 dated 12 November 1996, Certified copy of the Information of the Ministry of Interior, Security Services Center Mostar on the course of the identification of 26 bodies which should have been delivered for the identification on the basis of the agreement between the representatives of the IV Corps and the HVO, Certified copy of the Findings and Opinion of the ballistic experts Borislav Stanković and Zijah Šalaga, number: 02/5-233-1058 of 12 April 1997, Certified copy of the Order of the Higher Court in Mostar, number 341/96 of 13 November 1996, ordering the conduct of an expert evaluation by a ballistic expert with

regard to the type and caliber of the weapon from which a bullet was shot which was found in Hivzija Dizdarević's skull, Certified copy of the Order of the Higher Court in Mostar, number: 341/96 of 23 April 1996, ordering an expert evaluation of the soil samples taken from the bodies delivered on 9 November 1996 by the Croatian side, Certified copy of the Report on research of soil samples taken from the corpses delivered by the Croatian side, the Institute for Agropedology Sarajevo from June 1997, Decision of the Presidency of the Republic of Bosnia and Herzegovina Proclaiming the State of War ("Official Gazette of RBiH", number 7/92), Decision of the Presidency of the Republic of Bosnia and Herzegovina Terminating the State of War ("Official Gazette of RBiH", number 50/95), Original cover letter of the ICTY in the Hague, number: OUR REF: RU20051219- 02 of 16 January 2006, Decision of the Government of the Croatian Republic Herzeg-Bosnia number: 01-I-728/93 of 22 December 1993 annulling the Decision on Establishment of the District Military Prison and the District Prison in Gabela, number: 01-I-350/93 of 8 June 1993, which was registered in the ICTY in The Hague under number 00570909. The authenticity of this Decision is confirmed by the ICTY seal and signature in The Hague, Report on the Sanitary Inspection in the Center for Preventive Isolation and the Detention Center in the location of Gabela, drafted on 29 September 1993 by the Infectologic-Epidemiologic-Toxicologic Service of the Croatian Republic of Herzeg-Bosnia, the HVO Defense Department, the Health Sector, which was received on 2 October 1993 by the HVO, Defense Department in Mostar and registered under number: 02-1-/355/93. This Report was registered in the ICTY in The Hague under numbers: 01519982, 01519983 and 01519984. The authenticity of three pages of this Report is confirmed with the seal and signature of the ICTY authorized person in The Hague, Information of the HVO, Defense Department, Security Sector, number: 02-4-1-1126/93 of 17 August 1993, which is registered in the ICTY in The Hague under numbers: 01505896 and 01505897. The authenticity of two pages of this Information is confirmed by the seal and signature of the ICTY authorized person in The Hague, Information marked with "A" drafted by the HVO, Defense Department, Security Sector under number: 02-4-1-1351/93 of 20 September 1993, concerning the security situation and the conditions of placement of arrested persons in the Military Remand Prison "Gabela". This Information is registered in the ICTY in The Hague under numbers: 0150580 and 01505807. The authenticity of two pages of this Information is confirmed by the seal and signature of the ICTY authorized person in The Hague, Report of the Sector for SIS and Military Police concerning the work of the POW Accommodation Facility "Gabela" and "Heliodrom", number: 02-4-2-93-10 of 18 November 1993, which is registered in the ICTY in The Hague under numbers: 01026832, 01026833, 01026834, 01026835, 01026836, 01026837. The authenticity of all six pages of this Report is confirmed by the seal and signature of the ICTY in The Hague, Information on Conditions in the Gabela Military Remand Prison drafted by the SIS Center Čapljina under number 02-4/2-3-089/93 on 7 December 1993. This Information is registered in the ICTY in The Hague under numbers: 01546110, 01546112 and 01546111. The authenticity of all three pages of this Information is confirmed by the seal and signature of the ICTY authorized person in The Hague, Order of the Croatian Republic Herzeg-Bosnia, the Ministry of Defense, Security Sector number: 02-4-1/93-143 of 13 December 1993, which is registered in the ICTY in The Hague under number: 01550478. The ICTY in The Hague confirmed the authenticity of this Order by the seal and signature of a person authorized by it, the HVO Report of the Čapljina Military Police, the Crime Prevention Department Čapljina of 15 December 1993, which is registered in the ICTY in The Hague under number: 01550477. The authenticity of this Report is confirmed by the seal and signature of the authorized



person of the ICTY in The Hague, Activity Report of the coordinator for prisoners of war in the territory of the Croatian Republic Herzeg-Bosnia for the period from 22 July 1993 to 25 December 1993, which was received by the Croatian Community Herzeg-Bosnia, the Defense Department, Security Sector Mostar, on 6 January 1994. This Report was registered in the ICTY in The Hague under number: 01566990. The authenticity of two pages of this report is confirmed by the signature and seal of the authorized person of the ICTY in The Hague, Report of the Croatian Republic of Herzeg-Bosnia, the Service for Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia number: 01-IP-2049/96 of 11 November 1996, which was registered in the ICTY in The Hague under numbers: 01543803 and 01543804. The authenticity of two pages of this Report is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, Information of the BiH Ministry of Defense to the Prosecutor's Office of BiH number: 08-04-65-3/06 of 13 April 2006 about the way the Publication HVO camps in Herzegovina was made and about its authors, as well as the Publication "HVO Camps in Herzegovina" which is registered in the ICTY in The Hague under numbers: 02064768 through 02064790. The authenticity of twenty three pages of this Publication is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, Report on the Living Conditions in the Centers for Preventive Care, made by the Commander of the IET Service GSS CR H-B, Chief Physician Dr. Mr. Sci. Ivo Curić on 24 November 1993, which is registered in the ICTY in The Hague under number 01040293. The authenticity of this document is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, List made by the Service for Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia under number: 01-IP-229/93 on 15 December 1993, which is registered in the ICTY in The Hague under numbers: 01538807, 01538808, 01538809, 01538810 and 01538811. The authenticity of this list is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, List made by the Municipality Jablanica, the Jablanica Reporting Center, number: Sl. of 20 October 1993, concerning 551 camp detainees, who came to Jablanica from the "Gabela" Camp. This list is registered in the ICTY in The Hague under numbers: 107895, 107896, 107897, 107898, 107899, 107900, 107901 and 107902. The authenticity of this list is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, Report of the Service for Exchange of Prisoners and Other Persons of the Croatian Republic of Herzeg-Bosnia number: 01-IP-2/94 of 3 January 1994, with the tabular survey of the detainees released from the prisons of the CR H-B, which is registered in the ICTY in The Hague under numbers: 01570126, 0157027 and 01570128. The authenticity of this Report is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, Photo-documentation of the mortal remains of Hivzija Dizdar a.k.a. "Učo", number: 226/98, identification number 331, which is registered in the ICTY in The Hague under numbers: 03619069, 03619070, 03619071, 03619072, 03619073 and 03619074. The authenticity of all six pages of this photo-documentation is confirmed by the seal and signature of the authorized person of the ICTY in The Hague, CD with a map, photographs and video records of the Camp „Gabela“, which the Prosecutor's Office of BiH submitted to the ICTY in The Hague under number: Ref: RU 20051219-02, Certified copy of the Certificate of the International Committee of the Red Cross (ICRC) number: BAZ-316361 issued in Zagreb on 19 July 1994 to the name of Kemal (Osman) Balavac, Certified copy of the ICRC Certificate number: BAZ-373591 issued in Zagreb on 2 August 1994 to the name of Aziz (Munib) Selimović, Certified copy of the ICRC Certificate number: BAZ-371406 issued in Zagreb on 11 July 1994 to the name of Mirsad (Ibro) Omanović, Certified copy of the ICRC

Certificate number: BAZ-370642 issued in Zagreb on 31 October 1994 to the name of Zlatan (Bećir) Zaklan, Certified copy of the ICRC Certificate number: BAZ-370539 issued in Zagreb on 6 October 1994 to the name of Hamzo (Ibro) Penava, Certified copy of the ICRC Certificate number: BAZ-316319112 to the name of Osman Turajlić, Certified copy of the ICRC ID card number: 369119 to the name of Selim Gagula, Certified copy of the ICRC ID card number: 373620 to the name of Mirza Čolaković, Certified copy of the ICRC Certificate number: BAZ-370580 issued in Zagreb on 21 June 1994 to the name of Alija (Ibro) Šuta, Certified copy of the ICRC Certificate number: BAZ-369593 issued in Zagreb on 7 July 1994 to the name of Hasan (Halil) Tucaković, Certified copy of the Certificate of the Association of Camp Detainees of Bosnia and Herzegovina number: 1798/2001 of 11 May 2001, issued to the name of Alaudin Veledar, Certified copy of the ICRC Certificate number: BAZ-370339 issued in Zagreb on 22 July 1994 to the name of Senad (Halil) Šetka, Certified copy of the ICRC ID card number: 370340 to the name of Eldin Vujinović, Certified copy of the ICRC ID card number: 300208 to the name of Ahmet Cernica, Certified copy of the message of Miradeta Cernica sent to Ahmet Cernica to the address of Gabela Čaljina through the ICRC, Certified copy of the ICRC Certificate number: BAZ-368263 issued in Zagreb on 12 July 1994 to the name of Ahmet (Huso) Cernica, Certified copy of the Certificate of the State Commission for Exchange of Prisoners of War of the Republic of Bosnia and Herzegovina number: 05-107/94 of 7 April 1994, confirming that Bajro (Omer) Pizović was registered as the detainee from 23 April 1993 to 19 March 1994, Certified copy of the Association of Camp Detainees of the Municipality Čapljina-Hotanjan in which Ramiz (Velija) Kurtović is registered under an ordinal number, Certified copy of the Association of Camp Detainees of Bosnia and Herzegovina of the list of camp detainees of the Municipality Čapljina-Oplići, Certified copy of the List of Camp Detainees of the Municipality Stolac, made by the Association of Camp Detainees of Bosnia and Herzegovina, which includes Hadžo (Salko) Klarić registered as the detainee in the Camp „Gabela”, Certified copy of the ICRC ID card number: 316374 to the name of Džemal Topić, Original excerpt from the Register of Deaths to the name of Alija Čolaković, Original excerpt from the Register of Deaths to the name of Hivzija Dizdar, Certified copy of the Notice of Death to the name of Hivzija Dizdar, Original excerpt from the Register of Deaths to the name of Mirsad Žujo, Certified copy of the Notice of Death to the name of Mirsad Žujo, Original Report of the Federal Ministry of Defense, Security and Intelligence Sector number: 06-01/6-4.4-816-5/05 of 19 December 2005 with a copy of the Report with the ZZFF document number: 27-10-02-I-09-I-12-253-5/05 of 14 December 2005 and a copy of the document of the Čapljina Defense Department number: 22-3-I-03-22-15/05 of 5 December 2005, Copy of the Scheme of the Location of the „Gabela“ Warehouse in Čapljina, submitted by the Federal Ministry of Defense, the Security and Intelligence Sector, to the Prosecutor’s Office of BiH on 29 December 2005 under number: 06-01/6-4.4-816-4/05, Original excerpt from the criminal record of the Police Administration Čapljina, number: 02-02/6-2768/05 of 12 December 2005, Document of the Office of the Prosecutor of the ICTY in The Hague, number: 015167/GB/RR/436 of 28 November 2001, Decision of the Court of BiH, number: X-KRN/05/42 of 26 August 2005 on the Take-over of the Criminal Case, Judgment of the ICTY in The Hague “Jelisić” case, number: IT-95-10 of 19 October 1999, which took legal effect on 5 July 2001-paragraph 54, Certified copy of the Peace Agreement and Annex to the Peace Agreement of 23 February 1994, Order of the HVO Headquarters number: 02-2/1-01-616/93 of 17 April 1993, Proclamation of the 4<sup>th</sup> Corps of the R BiH Army, Report of the Glorious 41<sup>st</sup> Motorized Brigade of the R BiH Army of 24 April 1993, Report of the HVO First Brigade

“Knez Domagoj” number: 1100-11-17-93-92 of 18 July 1993, Report of the HVO First Brigade “Knez Domagoj” number: 1100-11-17-93-82 of 15 June 1993, Order of the HVO Headquarters number: 02-1-438/93 of 25 April 1993, Daily Report of the Čapljina Military Police number: 02-4/3-13/3-217/93 of 5 December 1993, Daily Report of the Čapljina Military Police number: 02-4/3-13/3-188/93 of 21 November 1993, Order of the Commander - Nedeljko Obradović - the HVO First Brigade “Knez Domagoj” number: 1100-01-01-93-521 of 28 July 1993, the HVO First Brigade “Knez Domagoj” - Command - Document number: 1100-01-01-93-318 of 23 April 1993, Order of the Commander - Nedeljko Obradović - the HVO First Brigade “Knez Domagoj” number: 1100-01-01-93-480 of 8 July 1993, Order of the Commander - Nedeljko Obradović - the HVO First Brigade “Knez Domagoj” number: 1100-01-01-93-497 of 6 July 1993, Agreement on the Cessation of Hostilities in Bosnia and Herzegovina signed between General Milivoj Petković and General Sefer Halilović on 12 May 1993, Joint Statement by Mr. Alija Izetbegović and Mr. Mate Boban on 27 January 1993, SDA, Islamic Religious Community, Cultural Society “Preporod”, and “Merhamet”, Foundation for Structuring Current Political Relations between the Croats and the Muslims, the Headquarters of the Armed Forces of the CR-HB – Front-lines Status Report for the Previous 24 Hours number: 02-2/1-02-3183/93 of 26 October 1993, the Headquarters of the Armed Forces of the CR-HB – Front-lines Status Report for the Previous 24 Hours number: 02-2/1-02-3168/93 of 25 October 1993, the Headquarters of the Armed Forces of the CR-HB – Front-lines Status Report for 20/21 October 1993 number: 02-2/1-02-3109/93 of 21 October 1993, the HVO Headquarters – Extraordinary Report number: 03-485/93 of 11 June 1993, the HVO Headquarters – Order number: 02-2/1-01-646/93 of 17 April 1993, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours, number 02-2/1-02-2227/93 of 30 August 1993, the HVO Headquarters – Front-lines Status Report for 28/29 August 1993, number 02-2/1-02-2224/93 of 29 August 1993, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours, number: 02-2/1-02-2194/93 of 28 August 1993, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours, number: 02-2/1-02-2034/93 of 19 August 1993, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours number: 02-2/1-02-1998/93 of 17 August 1993, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours number: 02-2/1-02-1930/93 of 16 August 1993, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours number: 02-2/1-02-1862/93 of 13 August 1993, the HVO Headquarters – Operational Report for the date of 5 August 1993 number: 01-279/93, the HVO Headquarters – Front-lines Status Report for the Previous 24 Hours number 02-2/1-02-1523/93 of 24 July 1993, the HVO Headquarters – Situation Overview upon Reports number: 02-2/1-02-1363/93 of 15 July 1993, Order of the Chief of the Military Police Administration Valenin Ćorić number 02-4/3-02-321793 of 14 January 1993, Official note of the Čapljina Military Police – Crime Prevention Department Dretelj number: 02-4/3-06/2-104/93 of 19 October 1993, the authenticity confirmed by the seal and signature of the ICTY in the Hague, Official note on the verification of personal details of a person issued by the Ministry of Defense, Security – Intelligence Service number: Ur.br. 02-08-3-344/95 of 30 May 1995, the authenticity confirmed by the seal and signature of the ICTY in the Hague, Information of the Čapljina Police Administration – the Stolac Police Station from the criminal record of Dževad Pajo (Defense witness), Information of the Čapljina Police Administration from the criminal record of Mirsad Šuta, Ramiz Torlo, Emir Šabanović and Osman Turajlić (Defense witnesses).

The Court also admitted the following pieces of documentary evidence of the Defense: Military ID of the Herzeg-Bosnia issued to the name of Nikola Andrun; Military ID of the Herzeg-Bosnia, the Croat Defense Council number: 14733 issued to the name of Nikola Andrun; Military ID of the Herzeg-Bosnia, the Croat Defense Council number: AA2088 issued to the name of Nikola Andrun; Certificate of the Čapljina Police Administration number 02-02/6-102706 of 20 April 2006 that Nikola Andrun son of Drago is not registered as a convicted person; Certificate of the “Bregava” d.d. Čapljina company number 363/06 of 26 September 2006 that Nikola Andrun son of Drago was employed in this company from 1 January 1993 until 15 July 1993; Four electricity bills issued to the name of Nikola Andrun, a utility services bill issued to the name of Srećko Marić (Andrun) and a water bill issued to the name of Srećko Marić (Nikola Andrun); Excerpt from the Register of Deaths to the name of Lutka Pavlović; Certificate of the Mostar Defense Administration, the Čapljina Defense Department, number: 22-3-1-49-1-419/05-01 of 12 December 2005, that Nikola Andrun son of Drago was a member of the HVO during the period from 20 September 1991 until 31 March 1996 as a soldier; Munevera Knežević’s letter from Germany, Amateur-photographs of the hangar in the “Gabela” prison; the Indictment of the Mostar Higher Court number KT-9/95 of 7 August 1995 against Jackie Banny, the Verdict of the Mostar Higher Court number K9/95 of 8 September 1995 and the Verdict of the Supreme Court of the Federation of BiH number KŽ 259/95 of 23 February 1996 against Jackie Aklof Banny; Slobodna Dalmacija newspaper of 20 August 1993.

The Court has also admitted the pieces of documentary evidence adduced by the First-Instance Panel which were made on the occasion of the on-site investigation of the identification of the crime scene in the region of the Čapljina Municipality – the former Camp “Gabela”, more precisely the Record, as well as the video-footage, photo-documentation and the sketch of the scene made by the State Investigation and Protection Agency (SIPA) number: 17-02/8-04-1-1459/06.

The Appellate Panel took into account all proposals and objections of the Defense raised in the course of the trial before this Panel. In that regard, the Panel will provide explanations of its decisions below.

On 17 June 2008 the Defense of the Accused submitted a list of pieces of documentary evidence it wished to present before the Appellate Panel, namely: Submission of the Federal Ministry of Defense – Security Sector of 19 December 2005, Submission of the Federal Ministry of Defense – Security Department of 14 December 2005, Decision annulling the Decision on the Establishment of the District Military Prison in Gabela of 8 June 1993, Information of 17 August 1993, Official note of 30 May 1995, Information on the conditions in the Military Remand Prison Gabela of 7 December 1993, Information with the marking “A” of 20 September 1993, Certificate that Mirzo Čolaković was registered by the ICRC in the “Dretelj” Camp, the Official Gazette of the Čapljina Municipality No. 4 of 18 July 1993, the HVO Official Gazette of the Čapljina Municipality No. 5 of 17 November 1993. In addition, the Defense also proposed the following additional witnesses: Zvonko Jurković, Hilmo Čolaković, Ivan Vrankić, Velimir Popović and Boško Buntić, who were supposed to testify about the circumstances of the transfer of the accused Nikola Andrun from the HVO Operational Unit to the “Gabela” Camp, his status in the organizational structure of the employees and his stay, work and treatment of the detainees of the Camp, as

well as about the circumstances of the commission of the criminal offence he is charged with.

On 1 July 2008, the Accused and his Defense Counsel Hamdo Kulenović filed a specified submission in which they proposed that the following witnesses should be heard: Mirzo Čolaković – about the circumstances of the place where the actions under Count 1 of the Indictment occurred, Enes Bratić – about the circumstances of his being brought and returned back to “Gabela” and about the breaking of his finger, which, in the opinion of the Defense, should be x-rayed, Alija Šuta – about the circumstances of the taking away of Alija Čolaković from the hangar, since, in the opinion of the Defense, his testimony before the Court was not consistent with the testimony of Doctor Ilijas Dobrača and Kemal Balavac – about the circumstances of his being taken outside the hangar, because, in the opinion of the Defense, the dates of his taking outside were inconsistent, since the witness claims that it occurred in the month of July, whereas in the Indictment it was noted that it was in the month of August, while it was pointed out that the witness is in possession of an injury sheet dated 4 July 1993.

The Appellate Panel rendered a Decision dismissing the above-mentioned motions of the Defense as unfounded for the reason that the majority of the proposed witnesses Mirzo Čolaković, Enes Bratić, Alija Šuta, Zvonko Jurković and Boško Buntić have been already heard, while the new witnesses proposed by the Defense such as Hilmo Čolaković, Ivan Vrankić and Velimir Popović would also testify about facts that have been sufficiently determined and based on which the Panel could reach a conclusion on the factual and legal questions.

In the opinion of the Panel it was not necessary to present the proposed pieces of documentary evidence, majority of which have been already presented, so that this motion was also dismissed as unfounded.

As for the objection regarding the absence of jurisdiction, it was dismissed as unfounded, since the Court of BiH rendered the final Decision number X-KRN-05/42 of 26 August 2005 on the takeover of this criminal case, pursuant to the provisions of the Criminal Procedure Code of Bosnia and Herzegovina.

After the completion of the evidentiary proceedings, on 12 August 2008 the Prosecutor’s Office amended the Indictment, to which the Defense filed a written “objection” moving that the Appellate Panel render a decision dismissing the Indictment.

The Appellate Panel dismissed the above-mentioned “objection” as unfounded, since the Criminal Procedure Code of Bosnia and Herzegovina does not recognize an objection against an amended indictment, nor is such an indictment subject to confirmation pursuant to Article 275 of the CPC BiH. Accordingly, the Law does not provide for a possibility to dismiss an amended indictment as proposed by the Defense.. In this specific case the Indictment was merely made more specific and consistent with the presented evidence whereas the Defense was given additional time to state its position regarding the specified Indictment. Thereby, the abovementioned legal provision was fully complied with.

Having reviewed all the pieces of evidence presented, both individually and in their correlation, the Appellate Panel has decided as stated in the operative part due to the following reasons:

According to the Specified Indictment of the Prosecutor's Office, the Accused is charged with having committed the criminal offence of War Crimes against Civilians in violation of Article 173(1)c) of the CC BiH, which provides:

*"Whoever in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts:*

- c) Killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health;*

*shall be punished by imprisonment for a term not less than ten years or long-term imprisonment."*

The following **general elements of the criminal offense** of War Crimes against Civilians, which needed to be established, follow from the cited legal definition:

- The act of the perpetrator must be committed in violation of the rules of international law,
- The violation must take place in time of war, armed conflict or occupation,
- The act of the perpetrator must be related to war, armed conflict or occupation,
- The perpetrator must order or perpetrate the act.

The elements of this criminal offense, primarily various underlying acts, confirm that the legislator ensured a full protection of the values protected under international law. It is for those very reasons that within War Crimes against Civilians, there is no distinction between armed conflicts of international and non-international character, nor is there any classification of the international law violations, such as grave violations of Geneva Conventions and other ones not amounting to grave violations.

For this criminal offense to be found, the underlying acts need to amount to violation of the rules of international law, which indicates that this is a blanket offense.

The above-mentioned legal provision is, *inter alia*, based on the Geneva Convention on the Protection of Civilian Persons in Time of War of 12 August 1949. The Indictment charges the accused with having acted contrary to Article 3(1)(a) and (c) of the mentioned Convention, and the rules included in this Article are considered to be customary law and they represent the minimal standard that should never be disregarded by the parties to the conflict and they stipulate that:

*"In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:*

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

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

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

*(b) Taking of hostages;*

*(c) Outrages upon personal dignity, in particular humiliating and degrading treatment;*

*(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.*

2. *The wounded and sick shall be collected and cared for.*

***An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.***

*The Parties to the conflict should further endeavor to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.*

*The application of the preceding provisions shall not affect the legal status of the Parties to the conflict."*

Hence, it is necessary to first establish the application of the international rules during the relevant period. The following is stated in the ICTY case Prosecutor v. Tadić, number IT-94-1 (Appeals Chamber): "International humanitarian law applies from the initiation of armed conflicts and extends beyond the cessation of hostilities..."

Interpreting the very provision of Article 173 of the CC BiH, it is clear that it is not necessary (it is not a requirement for the existence of the offense itself) that the perpetrator knows or intends to violate an international norm (it is not necessary that the perpetrator be aware of the violation of blanket rules) but it is sufficient that his conduct objectively constitutes a violation of the rules of international law, while concerning the perpetration of specific individual criminal acts, the subjective attitude of the perpetrator towards the offense must certainly be assessed.

In order to establish the violation of the rules of international law, it is necessary to establish against whom the criminal act was directed, that is, whether the act was directed against a specific category of population protected under Article 3(1) of the Geneva Convention, which is applied in BiH in accordance with Annex 6 to the Dayton Peace Agreement for

BiH, which is regarded as being part of customary international law also in accordance with the ICTY case law (Kunarac, Kovač and Vuković – Appeals Chamber, Judgment of 12 June 2002, paragraph 68).

According to the definition of the **protected category** under Article 3(1) of the Geneva Convention, civilians are persons not taking part in hostilities, including members of armed forces who have laid down their arms and/or persons placed hors de combat (ICTY Blagojević and Jokić – Trial Panel, 17 January 2005, paragraph 544), including also persons incapacitated to fight.

Based on the evidence presented, the Court established that all the detainees in the Gabela Camp, including the injured parties mentioned in the operative part of this Verdict: Mirzo Čolaković, Enes Bratić, Mirsad Žujo, Alija Čolaković, Mirsad Omanović, Ramiz Kurtović, Hivzija Dizdar, Džamal Topić and Selim Gagula, were persons protected by the Geneva Convention on the Protection of Civilian Persons in time of War and that they were deprived of liberty as civilians.

The Court has reached this conclusion, among other things, on the basis of the testimony of the witness Mirzo Čolaković, who stated that he had been arrested as a civilian. In the early morning hours, the witness heard clamor and shooting, so he took shelter some 100 meters away from the house, where he was arrested by HVO members. Then, the witness Enes Bratić pointed out that he was in his house when he was arrested, that he was wearing civilian clothes and had no weapons. Hadžo Klarić and Zlatan Zaklan were arrested in the same manner, and all of them were taken to the camp after the arrest.

Eldin Vujinović also testified about these circumstances. At the time of arrest he was underage and, therefore, he was not a member of any military unit. Also, he was in civilian clothes and had no weapons, which indisputably indicates that he was a civilian.

Unlike the abovementioned persons, Ahmet Cernica, Bajro Pizović and Kemal Balavac were members of the “Bregava” Brigade of the Army of RBiH at the moment when they were deprived of liberty. Thus, the witness Kemal Balavac said completely honestly in his testimony that he was a member of the “Bregava” Brigade of the Army of RBiH and that he wore a military uniform and was armed. The witnesses Bajro Pizović and Ahmet Cernica also confirmed in the same way their status of soldiers at the time of deprivation of their liberty.

However, they were not involved in military activities when they were captured, and they were incapacitated to fight by the very act of the deprivation of their liberty and all the weapons they had were seized from them. Accordingly, they could not have had the status of prisoners of war, but the one of civilian persons, at the time when the criminal acts were committed, and it has been established that in the present case they fall under the category of persons protected by international law, that is, the Geneva Convention on the Protection of Civilian Persons in time of War.

In the opinion of the Court, persons who do not participate or are no longer able to participate in hostilities are entitled to respect for their physical and mental integrity. Such persons must be protected in all circumstances and they should be treated humanely,



without any adverse distinction. They were deprived of all the foregoing in the “Gabela” camp, which was managed, in addition to the warden Boško Previšić, by his deputy, the accused Nikola Andrun, and they are responsible for the inhuman treatment of the detainees.

The protection of civilians during armed conflict, regardless of whether the conflict is international or internal, constitutes the basis of the modern humanitarian law. Violence to life and bodily integrity, such as murder of all kinds, mutilation, cruel treatment and torture are particularly prohibited, so it is evident that the criminal acts stated in the Indictment, for which it was established that they were committed by the accused, were contrary to the rules of international law, namely Article 3(1)(a) and (c) of the Geneva Convention.

The next element of the criminal offense is that a **violation of international rules must take place in time of war, armed conflict or occupation**. An armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State. In terms of Common Article 3, the nature of this armed conflict is irrelevant. It is irrelevant whether a serious violation occurred in the context of international or internal armed conflict if the following conditions are met: the violation must constitute an infringement of a rule of international humanitarian law; the rule must be customary in nature or, if it belongs to treaty law, the required conditions must be met; the violation must be serious, that is to say, it must constitute a breach of a rule protecting essential values, and the breach must involve grave consequences for the victim, and the violation of the rule must entail individual responsibility of the person breaching the rule. The Criminal Code of Bosnia and Herzegovina does not differentiate between international and non-international armed conflicts, either, wherefore international law directly and fully applies.

In the present case, the Court determined the existence of an armed conflict, as one of the general elements of this criminal offense, based on the documentary evidence in the case file, namely: the Decision on Proclaiming the State of War in the Republic of BiH, according to which the state of war was proclaimed in the Republic of BiH on 20 June 1992, and on terminating the state of war, too, by the Decision Terminating the State of War in the territory of R BiH of 20 June 1995. The existence of the facts of the armed conflict during the war in Bosnia and Herzegovina, namely between the units of the Army of the Republic of BiH and the HVO during the second half of 1993 in the region of the Čapljina and Stolac municipalities, which was terminated on 23 February 1994 by the signing of the Peace Agreement and Annex to the Peace Agreement in Zagreb, is indisputable in these proceedings. The Peace Agreement states that both parties agreed about the following: ceasefire, deployment of UNPROFOR in sensitive areas and crucial locations, placing all heavy weapons with caliber larger than 12.7 mm under the UNPROFOR control, and the establishment of a Joint Commission composed of representatives of both sides, under the chairmanship of the UNPROFOR, while Annex to the Peace Agreement explains in more detail measures to be implemented in accordance with the principle of priority.

Some of the witnesses, such as: Mirzo Čolaković, Enes Bratić, Hadžo Klarić, Kemal Balavac, Zlatan Zaklan, Eldin Vujinović and Senad Šetka, stated consistently in that respect that the conflict between the Army of R BiH and the HVO in the area of Mostar affected the entire Herzegovina, and thereby also the municipalities of Čapljina and Stolac.

All the foregoing indicates that the armed conflict between the units of the Army of R BiH and the HVO was ongoing at the relevant time in the territory of the municipalities of Čapljina and Stolac, whereby another element of the criminal offense charged against the accused has been established.

The consideration of the status of the accused during the relevant period is also important from the aspect of another requirement necessary for the existence of the criminal offense, namely that **the act of the perpetrator must be related to war, armed conflict or occupation.**

What is important here is “that the existence of an armed conflict played a substantial part in the perpetrator’s ability to commit the crime, his decision to commit it, the manner in which it was committed or the purpose for which it was committed”. (Prosecutor v. Kunarac et al, case number IT-96-23 and IT-96-23/1-A, Judgment of 12 June 2002, paragraph 58).

Hence, it was necessary to establish in the present case **the status of the accused** at the time when the criminal offense was perpetrated, that is, at the time when the armed conflict between the Army of RBiH and the HVO was ongoing.

In relation to that, it was established on the basis of the presented evidence that at the time of the armed conflict between the units of the Army of RBiH and the HVO in the area of the municipalities of Čapljina and Stolac, the District Military Prison was established in the facilities of the former JNA /Yugoslav People’s Army/ barracks in the place Gabela, Čapljina Municipality, pursuant to the Decision of the Government of the Croatian Republic of Herzeg-Bosnia dated 8 June 1993, while the abovementioned decision was annulled by the Decision of the Government of the Croatian Republic of Herzeg-Bosnia dated 22 December 1993. Based on the latter, a number of prisoners were transferred to the Military Investigative Prison in Ljubuški and to the Military Prison of “Heliodrom”, while some of them were transferred to the territory under the control of the Army of RBiH. The remaining prisoners went to third countries. Numerous Prosecution documentary evidence (Exhibit No. 52) and video-footages of the Gabela camp and photographs which were delivered to the Court by the ICTY in The Hague under number: Ref: RU 20051219 – 02 and the record of the on-site investigation of the identification of the scene with the accompanying photo-documentation, sketch of the scene and CD, speak of the physical appearance of the “Gabela” Camp..

Although the term “Gabela” is used in some documents of the Croatian Republic of Herzeg-Bosnia to refer to the POW accommodation facility and a detention centre, the Court found that this facility represents a camp with all its characteristics. Namely, it is a military facility bordered by barbed wire, with several observation posts, the entrance gate, administrative buildings and with a special zone separated by metal gate in which hangars were located which had earlier been used for storage of military-technical devices, whereas during the relevant period detained Bosniaks were put there. Four hangars where Bosniak civilians were detained were of identical appearance. Surface area of a hangar was approximately 40-500 m<sup>2</sup>, and in each of them around 500-600 Bosniaks were held in detention. All detainees provided such description of the camp, particularly Enes Bratić, Eldin Vujinović and Senad Šetka, as well as the Accused during his testimony.

The witness Eldin Vujinović gave a very detailed description of the external appearance of the “Gabela” camp. According to the witness, the “Gabela” camp was a pre-war military facility with warehouses, in which ammunition was probably stored. Those were solid facilities with insulation and small windows, and everything was fenced off with barbed wire, that is, the wire used to fence off military facilities. Furthermore, there was a “reception station” at the gate, where people were brought and where their personal details were taken. The witness pointed out that all guards at the gate were armed, as well as those who were in front of each warehouse, that is, the hangar.

The witness Senad Šetka described the external appearance of the camp in almost the same way. He said in his testimony that it was a rather small military complex, fenced off with barbed wire. Armed HVO members were at the very entrance to the camp and next to each hangar, and they were armed with long-barreled automatic weapons.

The detention conditions were inhumane, cruel and unhealthy due to over-crowdedness, lack of air, lack of beds, because of which detainees were lying on the floor or on concrete and on rare occasion they were covered with blankets, with no sanitary installations. Detainees had a meal once or twice a day and it was insufficient, consisting of a cooked meal that could hardly be called food, with a thin slice of bread, since a loaf of bread was cut to 14 to 20 slices. The amount of water that was distributed was insufficient, especially bearing in mind that this was a region in Herzegovina during the summer, where the temperature was mostly high.

All the witnesses – detainees in the Gabela Camp, both the prosecution witnesses and the defense witnesses, particularly Enes Bratić, Hadžo Klarić, Kemal Balavac, Zlatan Zaklan, Eldin Vujinović and Senad Šetka, talked about the above-mentioned conditions in the hangar. Their statements were completely consistent and they gave a clear picture about the actual living conditions during the time they were detained. The Report of the Sector for SIS and Military Police concerning the work of the POW Accommodation Facility “Gabela” and “Heliodrom” of 18 November 1993 also describes inhumane conditions in which detained Bosniaks in the “Gabela” camp stayed.

The witness Eldin Vujinović also described in detail the living conditions inside the hangar. In his opinion, there were more than 350 persons in the hangar, who, as he said, were lined up “like sardines”. They were lying on the concrete floor, and the hangar door was opened only when guards entered. There were small windows with bars on the hangar, which could not be opened. They relieved themselves inside the hangar. According to the witness, they received food once a day, and a loaf of bread was cut in 20 slices, and they received two to three spoons of “hogwash”. They received water every third day.

The witness Senad Šetka confirmed the testimony of Eldin Vujinović in the important parts. He said in his testimony that the interior of the hangar resembled a typical military hangar. In his opinion, there were about 500 persons in the hangar, including underage and elderly persons. They were lying on the concrete floor, and during the first three days they received one glass of water daily for four or five of them. They relieved themselves in a can, which was inside the hangar. The hangar was mostly closed, but glass on a couple of windows was broken, so the air came inside in that way.

It is clear, based on the above, that the place was a camp, that it was a detention facility where violence prevailed, done by those who were supposed to guard the detainees as well as by persons who came from outside (members of special HVO Units “Ludvig Pavlović” and “Božen Šimunović”) against the detained Bosniaks who did not receive sufficient food, were provided with scarce, if any medical care, had no the basic hygiene conditions, and in some cases the violence resulted in death of detainees.

As for the role of the accused Nikola Andrun in the “Gabela” camp during the armed conflict in the area of the municipalities of Čapljina and Stolac at the relevant time, the Defense maintained the position that the convicted Nikola Andrun was an “ordinary” guard in the “Gabela” Camp and that he undertook his activities following orders of his superiors. However, based on the evidence presented, the Court established beyond doubt that Nikola Andrun was in capacity of the Deputy Head of the Camp. All the witnesses heard, the detainees of the “Gabela” detention camp, presented their position about this circumstance and the majority of them who had direct contacts with the accused Andrun concluded that he actually had the role of the Deputy Head, that is, Deputy Camp Commander, or they said that they had heard so from other guards or prisoners.

Thus, for example, in his statement the detainee Zlatan Zaklan noted that Boko Previšić had told them that he was the Warden, he sang Ustasha’s songs and forced them to sing them as well, and while he was absent Nikola Andrun, who was in his opinion much wiser, would give orders, call out detainees and take them out of the hangar. Based on what the witness saw and the behavior of both of them, he concluded that Nikola Andrun was far more dangerous than Boko Previšić.

Furthermore, the detainee Eldin Vujinović stated that Boko Previšić would often come to the hangar and give orders to the guards, while Nikola Andrun was his Deputy, as he heard from other detainees, and he himself witnessed this, since Nikola Andrun would determine who should go to perform forced labor, who would be taken out and beaten and who would be taken out from the hangar in general.

The above-mentioned facts were also confirmed by the detainee Senad Šetka who noted in his statement that Nikola Andrun had the real authority in the detention camp and that every time he would enter the hangar something “evil” would happen. He described that in an illustrative manner, saying that when Nikola Andrun appeared, black clouds appeared as well. During the detention and now as well, the witness Šetka sees him as a black bird, and he points out that he was much more afraid of Nikola Andrun than of Boško Previšić.

In addition, the witness Ahmet Cernica in his statement noted that Boko Previšić told the detainees that Nikola Andrun was his Deputy, and Nikola Andrun himself confirmed this on one occasion, which the witness Meho Zele noted in his statement. The witness Bajro Pizović stated that he had found out about Andrun’s post of the Deputy Head of the “Gabela” Camp from the following guards: Nikolić, Vega, Buntić and Prce.

On the other hand, a series of written documents in the form of reports mention the Camp Commander Boško Previšić and his Deputy Nikola Andrun, so the Information marked with “A” of the Defense Department, Mostar Security Sector of 20 September 1993 states that the Camp Commander Boško Previšić and his Deputy Nikola Andrun, who perform

administrative and security control duties, are employed in the administration of the Military Remand Prison "Gabela", the Report of the Sector for SIS and Military Police concerning the work of the POW Accommodation Facility "Gabela" and "Heliodrom" of 18 November 1993 states that the Commander of the POW Accommodation Facility is Boško Previšić, member of the 1<sup>st</sup> Brigade "Knez Domagoj" from Čapljina, and that his deputy is Nikola Andrun, member of the same unit, the Report of the Čapljina Military Police, the Crime Prevention Department – Čapljina of 15 December 1993 shows that the Assistant Commander of the "Gabela" prison Nikola Andrun handed over 414 persons who were sent to the Military Prison "Heliodrom", and the Activity Report of the coordinator for inmates and prisoners of war in the territory of the Croatian Republic Herzeg-Bosnia for the period from 22 July 1993 to 25 December 1993, which was made on 26 December 1993, indicates that the detainee Džemal Dedić was released from the Detention Centre "Gabela" by Nikola Andrun, Deputy Commander of the Detention Centre "Gabela". In addition, the following documents also refer to the position of the accused Nikola Andrun: the Publication HVO camps in Herzegovina, Official note of the Čapljina Military Police, the Crime Prevention Department – Dretelj number: 02-4/3-06/2-104/93 of 19 October 1993, Official note on the verification of personal details of a person (Ivica Andrun) issued by the Ministry of Defense, Security – Intelligence Service, the Čapljina Centre for SIS, file number 02-08-3-344/95 of 30 May 1995. Hence, persons who signed those documents recognized Nikola Andrun as Deputy Camp Warden, and one should bear in mind the fact that at the relevant time these persons did not have any reason to mention the accused as Deputy Camp Warden with the name of the Warden of the "Gabela" Camp if he was an ordinary guard. Also, the defense witness Boško Buntić, in his capacity as the head of the Crime Prevention Department of the Military Police in Čapljina, submitted a report which is certified by the seal of the Croatian Community of Herzeg-Bosnia and in this report he mentioned the name of the accused in the capacity as Deputy Camp Warden. This witness also confirmed all that was mentioned when he testified before this court.

On the other hand, the defense witnesses Rezalija Lizde, Ramiz Torlo, Omer Torlo, Safet Peco, Dževad Pajo, Boško Buntić, Mirsad Šuta, Pero Putica, Mile Čeremaš, Jusuf Elezović and Ivica Bačić claimed in their testimonies that the accused Nikola Andrun was only a guard in the camp during the relevant time. Thus the defense witness Zvonko Jurković stated that he had never heard that Nikola Andrun maltreated anyone, while the witness Mile Čeremaš claimed that Nikola Andrun was only an ordinary guard and that he did not take detainees out of the hangar. However, during the testimony, the mentioned witnesses showed a certain degree of uncertainty and reticence using words such as: "from what I saw, "as far as I am aware" or "from what I heard", which is why those allegation are not convincing as they limit the information regarding such important facts, leaving the possibility that something else might have happened without them knowing that. Accordingly, their testimony is not sufficiently convincing compared to the statements of witnesses – injured parties who personally had lived through all that they stated and who gave a detailed and sincere account thereof before this Court. Therefore, the Court is satisfied that testimony of the aforementioned defense witnesses, regarding these circumstances, cannot bring into question or diminish the importance of the testimony given by the prosecution witnesses, that is, the victims of this criminal offense.

Therefore, although none of the documents officially and formally puts the accused to the post of the Deputy Head of the Prison, which is understandable considering the fact that this

was a period of war operations and that no written traces about posts are left in such circumstances, and even with no visible ranks and insignia on the uniform of the Accused, all the persons who made these documents thought him to be the Deputy Camp Commander, that is, Deputy Head, because of his behavior or because of the fact that they knew him, which was in fact his effective position within the detention camp. This is not challenged even by the information that the accused Nikola Andrun was at the same time registered as a member of the HVO, namely the “Knez Domagoj” Unit, according to the Certificate of the Federal Ministry of Defense, the Sector for Security - Intelligence Affairs number: 06-01/6-4.4-861-5/05 of 19 December 2005, which reads that he was a member of this Unit during the period between 1 September 1992 and 22 April 1996.

Furthermore, Article 173(1)(c) of the CC BiH implies that this criminal offense, with the mandatory existence of the above elaborated general elements, is specifically committed by: killing, torture and inhuman treatment, which will be explained in detail under the sections of the operative part of the Verdict.

The Indictment of the Prosecutor’s Office charges the Accused with **two acts of participation in the murders** of the detainees Mirsad Žujo aka Šile and Hivzija Dizdar aka Učo. Based on the presented evidence the Court reached the indisputable conclusion that the Accused also committed these incriminating acts, as stated in **Sections 3 and 6** of the operative part of the Verdict.

Numerous witnesses testified about the murder of Mirsad Žujo, including the following: Senad Šetka, Eldin Vujinović, Zlatan Zaklan, Kemal Balavac, Huso Marić, Hadžo Klarić, and all of them either directly or indirectly gave very important information related to this event.

They all agree that before his final taking out, he was taken out of the hangar twice just because he said: “This is the corridor for Neum” and just because Nikica Pehar, the camp guard, heard it. The injured party was first beaten up in front of the hangar and when he returned to the hangar he spoke with his best friend Senad Šetka, who described that conversation in detail and openly in his testimony. The witness Šetka stated that at twilight Mirsad was returned to the hangar no. 3 and when he sat next to him he could smell blood. Žujo asked him to light him a cigarette and at the moment when he was lighting it the light of a cigarette lighter illuminated his face so he could see that his face was covered in blood and that his teeth and gums were broken. Then, Žujo told him that Nikica Pehar hit him with a rifle butt and threatened that he would be dead meat. He asked him to tell his mother what had happened to him if he ever got out of “Gabela”.

The witness Šetka stated explicitly that after that the accused Nikola Andrun took the injured party out saying: “They will get to the other side once but you never will”, which was confirmed by other witnesses – Eldin Vujinović, Hadže Klarić, Zlatan Zaklan. The victim Mirsad Žujo never returned and his body was exhumed after the war. His friend, Senad Šetka, identified him by his sweater and shoes that he gave to him when he was taken out of the hangar.

The testimony of the witness Senad Šetka is also confirmed by the testimony of the witness Eldin Vujinović. The witness Vujinović, in his testimony, indicated that prior to the arrival of the Red Cross they had been ordered to set the hangar in order, that is, to make a way. At that moment, Mirsad Žujo said that they would thus make the corridor for Neum, whereupon Nikica Pehar asked who said that and took him out and beat him up, which he repeated once more. Then, Nikola came together with Pehar and Marić and they took away Žujo, who never returned. Andrun said that some of them might be released but that he never would.

The witness sat 10 meters away from the entrance door and he could clearly see what actually happened on that occasion.

It is completely clear that the actions undertaken by Andrun amount to co-perpetration in the murder, primarily because it follows from his conduct that he had the authority to take out the prisoner, to tell him exactly what was going to happen to him, thereby indicating that he knew that the victim would be killed, which eventually happened. Therefore, the Accused decisively contributed to depriving Mirsad Žujo of his life, regardless of who actually killed him. Taking out this prisoner out of the hangar was one of the necessary steps in the sequence of actions that led to the murder.

**Section 6** of the Operative part of the Verdict concerns the participation of the Accused in the killing of Hivzija Dizdar a.k.a. Učo, which was confirmed by the witnesses including Hasan Tucaković, who were in hangar 1 together with the victim. All of them were consistent in their statements that they heard someone outside the hangar calling Dizdar out and that he said that he would but just had to take his T-shirt, while the voice from the outside told him that he would not need it. This incident strikingly resembles the incident when Mirsad Žujo was taken out.

The truth is that the witnesses did not recognise the voice of the individual who called Dizdar out and they stated that they thought it had happened late at night. However, having analysed witness Džemal Topić's testimony in detail, the Court established with certainty that Dizdar was killed in August 1993, the very same night when Džemal Topić was taken out and tortured as was described in Section 9 of the Enacting Clause.

Witness Džemal Topić provided a very detailed account of the mentioned incident. According to him, while he was being taken to the Administration building, he saw the accused Andrun and Hivzija Dizdar a.k.a. Učo standing in front of hangar 1. It was early evening and it was raining. A couple of minutes after that, Nikola Andrun appeared in the Administration building and he, together with others, hit him using their batons around twenty times. The torture lasted for about ten minutes and when he returned to the hangar, he saw dead Hivzija Dizdar's body at the same place where he had earlier seen him standing with Nikola Andrun. The witness was sure that it was Nikola Andrun who killed this man because he was the only person Dizdar saw standing there with the victim when he passed by them. According to this witness, it could not have been anyone else who killed him since there were no other HVO members around at that moment, not even guards and everything happened in only ten minutes. In addition, this witness claimed to have heard a shot, two to three minutes after he had passed by Hivzija and Andrun, so that he concluded that the Accused probably killed him because there was no one else around.

The Court finds the testimony of this witness absolutely credible because his entire testimony was consistent and corroborated the averments of the Prosecution and had no doubt that it was precisely the Accused who committed the criminal offences he was charged with under this Count of the Indictment.

Witness Meho Zele also stated to have heard someone sitting closer to the door saying: "Nikola Andrun has just taken Dizdar away". This confirms, although indirectly, that the accused Nikola Andrun took Dizdar away and that he was then deprived of his life.

On the other hand, the Court could not conclude beyond any reasonable doubt that Nikola Andrun shot Dizdar in the head, but the Court is justified in concluding that the Accused took part in Dizdar's murder by taking him out, knowing at the same time that he would be killed. Andrun was also present when Dizdar was killed, so that he significantly contributed to the commission of the offence in the described manner.

The fact that other witnesses were inconsistent about the time of Dizdar's murder, some of them stating that he was taken out late at night, while witness Topić claimed that it happened in early evening, could not affect the conclusion reached by the Court as to how Dizdar was murdered. It was a summer month when sun sets very late and the prisoners were detained in the hangars for days, many of them never went out, so that it is perfectly possible that the witnesses had lost track of time, even more so that there was no light inside the hangars.

Moreover, almost all the witnesses confirmed that Dizdar was killed by the hangar and that a shot was heard soon after he was taken out. This followed also from the testimony given by witness Ramiz Leto, who stated that Kemal Sikirica, being the tallest in the hangar, saw through the window that the dead bodies of Hivzija Dizdar and Enver Šabanović were taken away.

Having concluded that the mentioned witness testimonies complemented each other in all the crucial facts, that they were objective and convincing, the Court had no reason whatsoever not to trust them and found them to be reliable ground for establishing criminal responsibility of the Accused for his actions, as stated in this Section of the Enacting Clause of the Verdict.

The Accused submitted that according to some information, Dizdar was not killed in *Gabela*. He also raised some issues as to whose was the pistol of specific calibre that was used to kill Dizdar. Notwithstanding that the burden to prove guilt lies with the Prosecution and that the Prosecution presented the mentioned evidence in order to prove guilt, the Accused himself also had the opportunity to contest the Prosecution evidence by presenting his own exonerating evidence, but he did not do so, or at least he did not do it in a proper way. Pure referring to "some" information about this murder certainly did not suffice to prove to the Panel otherwise and to guide the Panel to change its conclusion as to the established account of facts.

Having undertaken the activities specified in Counts 3 and 6, the Accused deprived Hivzija Dizdar and Mirsad Žujo of the fundamental right of every human being – the right to life that is as such protected by the European Convention on Human Rights and Fundamental



Freedoms, which is incorporated in our legislation and directly applied. Article 2 of the above-mentioned Convention also foresees exceptions when a person can be deprived of life, which is certainly not the case here:

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:*

*(a) in defence of any person from unlawful violence;*

*(b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;*

*(c) in action lawfully taken for the purpose of quelling a riot or insurrection.”*

Considering that the accused Nikola Andrun undertook the mentioned activities as a co-perpetrator, the vital elements of the referenced criminal offence of **co-perpetration** have to be defined.

Article 29 of the CC of BiH provides that: *“If several persons who, by participating in the perpetration of a criminal offence or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offence, shall each be punished as prescribed for the criminal offence.”*

It stems from the above-quoted legal provision that co-perpetration represents a form of perpetration that exists when several persons, who satisfy all the conditions that are required for a perpetrator, consciously and willingly commit a criminal offence based on their joint decision in the manner that each of the co-perpetrators gives his contribution which is important and without which the criminal offence would not be committed or would not be committed in the planned way. Therefore, along the joint action of several persons in the perpetration of the criminal offence, it is necessary that they should be aware of the fact that the committed act represents a joint result of their actions.

The Court had no doubt in concluding on the grounds of presented evidence that the accused Nikola Andrun knowingly and wilfully took Žujo and Dizdar out of the hangar, aware of what would happen to them, thereby giving his decisive contribution to the killing

of these people who were killed with no reason whatsoever, being fully aware of his actions and with the intention to do it.

When establishing the criminal responsibility of the accused Nikola Andrun for perpetration or co-perpetration to torturing the inmates of the Gabela camp, the Panel took into account the following provisions of international law and the ICTY practice.

**“Torture”** in times of armed conflict is particularly prohibited by the treaty law, especially by Geneva Conventions of 1949 and Additional Protocols of 1977.

Torture as a war crime was also prohibited at the time of the commission of this criminal offence under Article 142 of the Criminal Code of the Socialist Federal Republic of Yugoslavia (hereinafter: the CC SFRY) and this violation has been made punishable in the Republic of Bosnia and Herzegovina as well by virtue of the Decree Law of 11 April 1992.

This Panel accepts the definition of “torture” that was accepted by the Trial Panel of the International Criminal Tribunal for former Yugoslavia (hereinafter: the ICTY) in the case the Prosecutor vs. Anto Furundžija, which was also confirmed by the Appellate Panel of the ICTY.

The above-mentioned Verdict says: “International humanitarian law, while outlawing torture in armed conflict, does not provide a definition of the prohibition. Such a definition can instead be found in Article 1(1) of the 1984 Torture Convention whereby:

For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Based on the above-mentioned definition of “torture” in times of armed conflict, the following elements stem:

- torture must consist of the infliction, by act or commission, of severe pain, whether physical or mental;
- this act or omission must be intentional;
- it must aim at obtaining information or a confession, or at punishing, intimidating, humiliating or coercing the victim or a third person, or at discriminating, on any ground, against the victim or a third person;
- it must be linked to an armed conflict;

- at least one of the persons involved in the torture must be a public official or must at any rate act in a non-private capacity, e.g. as a de facto organ of a State or any other authority-wielding entity.

All the mentioned elements have been established by the Court in this particular case and analysed in the reasoning of the every Section of the Verdict.

Then, in Section 1 of the Enacting Clause of the Verdict, the accused is charged with punching and kicking the detainee Mirzo Čolaković with his military boots on all over his body, whereupon Nikola Andrun took a belt, put it around the neck of Mirzo Čolaković, pulled it through the buckle, having made a loop, climbed up on the table, lifting him up tied in such manner so that Mirzo Čolaković would lose air, then covered his face with a towel, while Marinko Marić and Almir Kudra opened the tap and directed water to fall on his nostrils, until Čolaković fainted.

When testifying about these facts, Mirzo Čolaković stated that on 30 September, an unfamiliar voice called him to go out of the hangar. When he went out, he found Nikola Andrun and Almir Kudra a.k.a. Hogar waiting for him and he went with them to a *Yugo* vehicle. While driving towards the entrance to the camp, where the camp administration was situated, Nikola Andrun told him go to the room that was opposite of the parked vehicle. According to the witness, there were several stairs in front of the door and the room was divided into two smaller ones. Marinko Marić was standing in one of the rooms and Željko Rodin was lying on the bed. Then Nikola Andrun told him: “Where have you been, I’ve been looking for you for quite some time?”, then he was asked about certain people, his money, cars and whenever they got the answer they did not like, they would start to beat him. They punched and kicked him and then Andrun took out from a table drawer a belt, around 10 cm wide with two pins, or “sponas” as the witness said. Andrun put the belt around his neck and together with Marić and Kudra climbed up the table and chairs and lifted him up. At that moment, he felt some warmth and certain change in his body and the next thing he remembered was that he woke up on the floor. He was ordered to get up, but since he could not do it by himself, Marić and Kudra helped him and took him out to another room with a washstand and a tap, placed him over the washstand, then Andrun brought a towel or a napkin and covered his face. After that they opened the tap and directed water to fall on his nostrils and he lost his consciousness again. This time, he was unconscious longer than the first time, so that they took him to the solitary cell. On the way to the solitary cell, Marić asked him what happened to him, since he saw blood, bruises and scratches on his body and Čolaković, being frightened, told him that he fell. The he told him that they would come again during the night to question him and threatened him not to tell anyone what happened to him.

Having carefully evaluated the testimony of this witness once again and everything he said about the incident and the participation of the Accused in it, the Panel decided to accept this entire testimony as credible and authentic. The witness provided a detailed, consistent, convincing and above all emotional account of facts that leaves no doubt that it was precisely the Accused who tortured him the way this witness described. His testimony was supported also by a partial reconstruction of the events at the crime scene, when all doubts

about the reliability of his evidence the first-instance Panel had were removed. When giving the evidence about his experience, the witness recognised the location where everything happened and described the incident in the smallest details, since according to what he said, when he came back to the crime scene he could recollect all the circumstances surrounding that traumatic and extremely painful incident.

The account of facts concerning this Section of the Enacting Clause of the Verdict was established mainly on the grounds of testimony given by witness Mirzo Čolaković. To that end, the Panel reaffirms the provisions of Article 15 of the CPC of BiH, that stipulates that the right of the Court to evaluate the existence or non-existence of facts shall not be related or limited to special formal evidentiary rules. According to the Panel, if certain piece of evidence is lawful and valid and if it is authentic and credible, it may suffice to establish that certain criminal offence was committed, even if it follows only from testimony of only one witness. When this particular case is concerned, the Panel concluded that there were no inconsistencies in the testimony of witness Mirzo Čolaković as to what happened to him or as to the actions undertaken by the Accused, so that the Court concluded that this testimony proves beyond any reasonable doubt that the Accused participated in the commission of the criminal offence as it was described in Section 1 of the Enacting Clause of the Verdict.

The presence of the injured party in the *Gabela* camp was confirmed by many witnesses – injured parties who were in the camp with him, in the room called the solitary cell. The objection of the Defence that the injured party had not been in the camp at all but in the *Dretelj* camp according to the records of the Red Cross and that not even his brother, who was also the camp detainee, knew about his detention in the camp, is unacceptable.

Except for the fact that the Court reliably established the detention of the injured party in the camp, the fact that according to the report of the Red Cross he was the detainee in the *Dretelj* camp is not challenging his detention in the *Gabela* camp because the witness himself stated that he was brought from the *Dretelj* camp to *Gabela* and during this proceedings it was established that his presence was hidden from the Red Cross, meaning, that this international organisation could not have had the correct data.

The fact that not all the detainees of the *Gabela* camp were registered by the Red Cross is also confirmed by the testimony of the witness Ahmet Cernica when he states that he himself had never been registered by the International Red Cross during his detention in *Gabela* which is proved by the message sent to him by his wife at the address: *Gabela-Čapljina* with the note that he was not in the following prisons: *Dretelj*, *Rodoč*, *Gabela* and *Ljubuški*.

Witness Mirzo Čolaković confirmed the fact that only after he left the camp he learned that his brother had been in the same camp but that he had not met him because the brother had been in one of the hangars while he had been all the time in the solitary cell except for the first night when he was brought. In this matter, one should bear in mind that numerous detainees were in the camp at the same time and mostly they did not meet each other particularly if they were staying in different hangars.

The Court found that the Accused committed the acts of torture of the injured party Džemal Topić on two occasions as stated in **Sections 7 and 9** of the Enacting Clause of this Verdict, which stems from the testimony of Topić himself.

The Court was not in dilemma that the accused Nikola Andrun was in the *Gabela* camp from its establishment including 13 June 1993 when the witness Topić, as stated in Section 7 of the Enacting Clause of this Verdict, indicates that he was brought to *Gabela* from Čapljina and when also both the accused Andrun and Previšić had come even before the establishment of the *Gabela* camp and that the Accused abused him there. The witness is also very convincing when stating that he was arrested on the day of Bairam, on 3 June 1993, and that ten days after that he was transferred to the *Gabela* as well as that the Accused came to *Gabela* at the time.

There are no inconsistencies or discrepancies in the testimony of witness Džemal Topić when he states that Nikola Andrun personally took him out of the cellar that was in the Administration building, telling him that he would have to give statement, and brought him to his office where Marinko Marić had been. The witness had no doubt when he identified the accused Andrun as the individual who tortured him together with mentioned Marić by beating him up all over his back and head using their batons and a hose of a fire extinguisher. He stated that he was hit around ten times, then he fell down on the floor, but he did not lose his consciousness. The witness stated that he had big bruises on his back as a consequence and that his head was cut, but he never received any medical aid. .

At this point, when all the weak points relative to the stay of the accused Nikola Andrun in the *Gabela* camp in the relevant period are explained, this Panel fully believes the testimony of the witness Džemal Topić. The witness gave evidence about his traumatic experience in the camp and about everything that he had been through and survived, his testimony was convincing and it removed any doubt that the event happened exactly in the manner, at the time and at the place as described in the Enacting Clause of the Verdict.

The Panel was guided by already stated reasons when it found entirely credible the testimony given by witness Džemal Topić about the actions of the accused that are described in **Section 9** of the Enacting Clause of the Verdict, where the Accused Nikola Andrun is charged with intentionally torturing the injured party Džemal Topić by hitting his head and bare back several times with a baton, due to which he suffered cuts on his back and head.

In his testimony the injured party describes precisely the manner in which the Accused Andrun tortured him. He stated that he was taken out of the hangar by Tadija Muminović and that he saw Nikola Andrun standing in front of hangar 1 with Hivzija Dizdarević. He was then taken to the office where Marić was and the accused Andrun showed up several minutes afterwards. He stated that he was interrogated about some machine-gun and that he, given that he knew Nikola Andrun from before, asked him about the whereabouts of his father, but Andrun hit him in the head and back with a baton some twenty times due to

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which he suffered nasty cuts on his back and was covered with blood. These blows, as stated by the witness, caused both physical and mental pain.

As it has already been noted, the Court may establish the account of fact solely on the grounds of testimony given by only one witness, provided that the evidence be lawful, valid, credible and authentic, which is precisely the case with the testimony of Džemal Topić. The Court, therefore, finds the testimony of this witness entirely credible because it established without doubt the criminal responsibility of the Accused for the offences he is charged with under this Count of the Indictment.

The Court found that the Accused, by actions described in Sections 1, 7 and 9 of the Enacting Clause of the Verdict, perpetrated the acts of torture. The torture consisted of severe bodily injuries which the Accused consciously and willingly inflicted to the detainees in an extremely cruel manner thus causing severe physical and mental pain and suffering. The Court reached the conclusion on the aforementioned pain and suffering based on the nature of the beatings, that is, the suffered blows, as well as on duration of the beatings and used objects. Also, one should bear in mind that nobody, including the witnesses in this particular case, could explain and describe the pain and suffering the way he/she actually felt it. The victims of the relevant events were Bosniak civilians and only because of their religion and ethnic affiliation they were subjected to beatings and degrading treatment.

In reference to **Section 2** of the Enacting Clause, this Panel found that the Accused, by his acts participated in torture of the injured party Enes Bratić on the premises of the Police Station Čapljina where Vlado Rajić and Marinko Marić tortured him, while the Accused was sitting and watching the torture of the injured party and on his way out he also kicked the injured party with his military boot, causing him severe pains.

The witness Enes Bratić testified objectively and there was no doubt that he was not falsely incriminating the accused Nikola Andrun. That is, the witness sincerely stated that he did not know what was the position of the Accused in the *Gabela* camp. He only confirmed that Nikola Andrun, together with Marinko Marić, took him to the Police Station in Čapljina, threatening to riddle him with bullets on the way, since the witness asked where they were taking him.

Also, the witness described very precisely everything that happened to him during the interrogation in the Police Station in Čapljina when the accused Andrun was sitting and watching his torture, doing nothing to prevent it but also kicking him instead with his military boot right below his heart and the witness was in severe pain as a consequence.

The Appellate Panel fully believed the testimony of the witness-injured party Enes Bratić who testified about these factual circumstances because there is no shred of doubt that everything that he had been through actually did happen in a manner as described by the witness. Witness Bratić also knew the accused Andrun before arriving in the *Gabela* camp, which undoubtedly indicates that the injured party could recognise the Accused in the camp,

so that it was easier for him to remember all the incidents that took place in Andrun's presence.

The Accused Nikola Andrun participated in the torture and thus he committed the criminal actions as described in **Section 4** of the Enacting Clause of the Verdict when he took the detainee Alija Čolaković out of the hangar and surrendered him to the HVO members who, in his presence, were beating him so much that they carried away his almost lifeless body and thereafter Čolaković had never returned to the hangar.

Alija Šuta testified about the circumstances of taking out the detainee Alija Čolaković, stating that he did not remember the date when he was standing with two guards, Jurković and Nikica Pehar, and when Nikola Andrun came, with the uniformed HVO members unknown to the witness for whom he learned later that they were from Konjic. Nikola Andrun ordered the witness to go and get Alija Čolaković which he refused and then Nikola Andrun and Nikica Pehar took Čolaković out of the hangar. Those unknown soldiers were kicking Alija Čolaković and beating him with rifle butts. All the time, Nikola Andrun was standing and watching everything and did not do a thing to prevent further abuse of Alija Čolaković, whose body, "more dead than alive" as stated by the witness, was dragged by two HVO soldiers in the direction of hangar 2. Witness Eldin Vujinović also confirmed that Alija Čolaković was taken for forced labour somewhere around Popovo Polje on the orders of Nikola Andrun and he was beaten up every time. The accused Andrun took the injured party out of hangar 3 and Čolaković never returned. Witness Vujinović claimed that Alija Čolaković was taken out by the accused Andrun and, since the injured party was only 1,5 m far from him, he could clearly see and hear everything that actually happened.

The Court found the testimonies of Alija Šuta and Eldin Vujinović, two direct witnesses, convincing since they were comprehensive, consistent and gave a clear picture of what happened to Čolaković. These two testimonies complement each other because witness Vujinović could see what happened inside the hangar, while witness Šuta described everything that happened in front of the hangar. The Court could, therefore, determine the chain of events and undoubtedly establish criminal responsibility of the Accused for taking out and handing over the victim to other soldiers, who interpreted the actions of the Accused as significant support to everything they did afterwards.

The Accused acted in the same way during the incident described in **Section 5** of the Enacting Clause relative to the detainee Mirsad Omanović. He took him on two occasions for interrogation to Marinko Marić, the SIS investigator, sharing the same intent with Marić, to achieve the common goal, that is, to get the information from him where his money was by inflicting injuries and physical abuse.

Both the injured party Mirsad Omanović himself and witness Aziz Selimović testified about the aforementioned circumstances which the Court fully believed because their testimonies are logical and consistently confirm the factual findings referred to in this Section as stated in the Enacting Clause of the Verdict.

The witness Mirsad Omanović, in his testimony, described in detail what happened to him at the beginning of September 1993 in the *Gabela* camp. In his testimony he indicates that Marinko Marić was hitting him with a baton, kicking him with military boots on and punching him all over his body. That night, Marinko Marić's physical abuse, in the presence of Nikola Andrun, lasted approximately for an hour. The witness states that he does not know who of the two of them told him that they would be back the following night and that they would kill him if he did not give them the money. The following evening, as threatened, around 23:00 hrs, Nikola Andrun came in front of the hangar door, called him out, and the injured party left the hangar and saw the same "team" waiting for him. Marinko Marić was punching him in his face and beating him with a baton all over his body and at one moment he hit him in his head with a baton, due to which he fell and lost his consciousness. When he regained his consciousness, he saw Marinko Marić above him kicking him in the face with his military boots on whereupon he ordered him to stand up and strip naked, that the injured party did, and then he had to go to a corner of the room facing the wall. There was a window next to the corner. After that Marinko Marić, pulled the pistol out and fired several bullets over his head. The bullets were flying through the window and when there were no bullets in the pistol he stopped whereupon he ordered him to turn facing him and said that he left a bullet in for him and he put a pistol into his mouth and fired but there were no bullets in the pistol. All the time, Nikola Andrun was sitting on the table together with the driver and watching what Marinko Marić was doing. He did nothing at any moment to prevent it.

The witness Aziz Selimović also testified about these circumstances, stating that on several occasions Nikola Andrun came to take the detainees out of the hangar, including his brother-in-law Mirsad Omanović and when he would take him out of the hangar he would physically abuse him.

Thus, since the witnesses had no doubt of the role the accused Andrun played in the relevant actions, the Court was convinced that everything actually happened the way it was described.

As described in **Section 8** of the Enacting Clause of the Verdict, the accused Nikola Andrun took several detainees to the military barrack in Čapljina, including Džemal Topić, to collect pine-tree needles and acorns, whereupon the injured party was tortured on two occasions and Nikola Andrun was sitting on a bench watching it.

The injured party Džemal Topić, whom this Panel fully believed, testified about the aforementioned circumstances. In his testimony he indicates that one Croat soldier took them to the bathroom where he first told them to take off their T-shirts and then to pray to God, that is, to "*klanjaju*" (Moslem prayer). According to the witness, they were subjected to severe mistreatment there, while Nikola Andrun was sitting on a bench some 10 meters away, watching everything. The witness was specific that he only saw the bathroom door and the moments when they were taking them out and bringing them to the bathroom. They



were coming out from the bathroom covered with blood and with cuts because they were beaten by a hose of the fire extinguisher. As stated by Topić, when he was taken to the bathroom for the second time, he underwent clinical death due to severe mistreatment.

These statements are also confirmed by the witness Kemal Balavac who stated that people from Džemal Topić and Senad Bilal's group were placed under a tap and beaten by a hose of the fire extinguisher and that it took place in one bathroom. The witness claims that during that time Nikola Andrun saw from the bench on which he was sitting when Džemal Topić, Senad Bilal and Veledar were taken into the bathroom and taken out of it covered with blood. So, this witness described the identical incident that was also described by witness Topić and gave a clear picture of the usual way of torture and the role the accused Andrun played in this specific incident.

This is additionally supported by the outcome of the evidentiary proceedings in case No: K.9/95 of Swedish citizen Jackie Banny Arklof, that was prosecuted in 1995 before the Higher Court in Mostar. It was established that the detainees who were brought from the *Gabela* camp, including Džemal Topić, were tortured, precisely in the manner described in the Enacting Clause and that a fire extinguisher hose was used as the instrument of torture.

The Appellate Panel found that the Accused, in a manner as described in **Section 10** of the Enacting Clause of the Verdict, participated in the torture of the injured party Kemal Balavac. Such a decision of the Panel is primarily based on the testimony of the injured party Kemal Balavac and testimonies of the witnesses Hasan Tucaković and Safet Peco.

The injured party Kemal Balavac stated that Nikola Andrun surrendered him and some other camp detainees to the *Ludvig Pavlović* group and told them to do whatever they wanted to do with them. After that, he had to pluck thorn-bush with his bare hands and at the same time he was beaten by a peeping handle in his back which caused him strong pains. Nikola Andrun was standing aside and watching.

The testimony of Kemal Balavac was corroborated by witness Hasan Tucaković, who stated that he was in the same hangar with him and when Balavac came back after plucking thorn bush, his hands were bloody. Witness Safet Peco, who was imprisoned in hangar 1 together with witnesses Balavac and Tucaković, also confirmed that Kemal Balavac was often taken out of the hangar and that he thought that Kemal was ill-treated.

Since these witnesses were consistent in their testimonies in all crucial elements and provided a clear account of everything they could actually remember, given the circumstances surrounding the incident, the Court concluded beyond any reasonable doubt that the Accused committed the criminal offence the way it was described in Section 10 of the Enacting Clause of the Verdict.

The Accused committed the act of participation in the torture as described in **Section 11** of the Enacting Clause and to the detriment of the detainee Selim Gagula. The Accused did not contest the aforementioned trying, before this Court, by his confession, to show that he made a mistake but that it only happened once and that he was feeling sorry about it. However, it is very important that it was the Accused who, in his testimony relative to this event, stated that after the incident with Gagula he spoke with the warden Previšić telling him that he would not do it anymore which indisputably suggests that the Accused was not forced to act as he acted because he was given a choice. If he had been an “ordinary” guard as he stated, he would have had to execute orders of the superiors although he, possibly, did not agree with them.

Although the Accused confessed to the commission of the aforementioned acts which refer to the detainee Selim Gagula, this Panel also based its decision on the testimonies of the injured parties Selim Gagula, Bajro Pizović and Ahmet Cernica.

In his testimony, the injured party indicated that in August 1993, around 2-3 p.m, Nikola Andrun took him out of the hangar, brought him to the gate next to the Administration building. Andrun moved away and sat on a bench which was some 5 meters away from him. From the bench he could see what was happening. As soon as he left him some people from Konjic started beating him, as stated by the witness, using all “all sorts of things”, primarily rifle butts and after the fifth blow he lost consciousness. It took six to seven days for him to regain consciousness.

In their testimonies, Ahmet Cernica and Bajro Pizović, described the condition of the injured party which was such that they thought he was dead and when the four men wanted to put his body onto the truck and realized that Gagula was actually alive, they returned him back to the room in which he was before.

The Court established that by acts described in Sections 2, 4, 5, 8, 10 and 11 of the Enacting Clause, the Accused participated in the torture of the detainees in the camp. By taking out of the hangar and passive observation of everything they had been through, not taking anything to prevent it as Deputy Commander of the camp, although he not only had the authority but it was also his duty to prevent any inappropriate treatment of the detainees in the camp that he was in charge of, the Accused agreed with all possible consequences. The mere presence of the Accused does not have to be interpreted as his approval of such an act and in reference to other people who were beating up, his presence is encouraging for them as direct perpetrators. The Accused was beyond any reasonable doubt aware of the actions taken by other participants, as well as of his own contribution to the events and of the fact that he willingly co-perpetrated in the torture of detained Bosniak civilians in the *Gabela* camp and in so doing he violated the fundamental principle of humanity.

“Torture” is the standard of the international law that is an absolute and indisputable prohibition even outside the Geneva Convention but it is specially regulated by the Geneva Convention. The fact that the taken acts constitute the acts of torture arises from the

presented evidence because the Accused himself, and together with other perpetrators, intentionally inflicted severe physical pain and mental suffering on the injured parties, that is, victims, to the end of punishing on discriminatory grounds along the ethnic lines, intimidating or obtaining certain information and it is indisputable that he took those acts as the Deputy Commander of the *Gabela* camp..

In **Section 12** of the Enacting Clause of the Verdict, the Accused was found guilty of inhumane treatment because, together with the camp commander Boško Previšić, he removed a group of Bosniaks who were detained in the interrogation part, in the room called solitary, in the Administration building, on two occasions, to the “Silos” camp nearby Čapljina with the intention to prevent registration of these detainees by the ICRC, which caused their severe mental pain.

The Court believes that these acts of the Accused are positively proved because almost all the detainees testified about these circumstances including in particular: Alaudin Veleđar, Ramiz Leto, Enver Bojčić, Halil Turajlić, Bajro Pizović, Ahmet Cernica and Huso Marić, all of whom were considered Bosniaks leaders of that area.

The witness Enver Bojčić testifies about the reasons for transfer to the “Silos” camp. That is, the witness could not say the precise reason for transfer of the detainees from the “Gabela” to “Silos” and later to Ljubuški but the detainees, among themselves, concluded that it could be because the International Red Cross announced its visit to the “Gabela” camp so they thought that they wanted, that is, the camp administration wanted to hide them in order to prevent the Red Cross to register them because they had not been registered before. As stated by the witness, all of them found it painful to realize, including the witness personally, since he knew nothing about his family and if they had been registered by the Red Cross at least he would have been able to get the Red Cross message or sent it.

The witness Ahmet Cernica in his testimony described in details what rights were the detainees deprived of by the transfer to the *Silos* camp and preventing the Red Cross to register themselves. In the opinion of the witness this hiding meant preventing contacts with their families, depriving them of a possibility for exchange and possible departure to third countries, that is, depriving them of a possibility to be released from the “Gabela”. The message sent by his wife to the address: Gabela-Čapljina and with a note that he was not in the following prisons: *Dretelj*, *Rodoč*, *Gabela* and *Ljubuški*, proves that he had never been registered by the International Red Cross during his detention in the *Gabela*.

The witness Huso Marić is also describing how the detainees saw the aforementioned transfers and in his testimony he indicates that they had a terrible psychological shock, when they were taken to the *Silos* for the first time, because there they found photographs, clothes of women and children, small shoes, and everything was covered with blood. The second time when they were hidden from the delegates of the International Red Cross and taken to the *Silos* the thumps and groans could be heard from the room to which the called out persons went.

To be able to reliably establish that the Accused actually prevented the International Red Cross (ICRC) to fulfil their mission, which resulted in severe physical and mental suffering of the hidden detainees, when rendering their decision, the Court first identified usual

activities conducted by the ICRC. The ICRC is the organisation facing the armed violence since its establishment in 1863 and trying to ease the suffering of those affected both physically and mentally, such as:

- a) wounded, sick and former soldiers;
- b) persons deprived of liberty (prisoners of war and civilians prisoners);
- c) people departing to other parts of the country (displaced persons) or other country (refugees);
- d) civilians.

Given that all civilian population has ever increasingly become the target of armed violence the ICRC, therefore, is focused on civilians, trying to protect them from the direct impact of hostilities, from combat and violence directed against them.

The ICRC is using the Red Cross messages to restore the family ties by exchanging news among the family members. The organisation, also, represents family members before the authorities, tracing missing persons and in some cases reconnects them with their families.

This organisation works with the prison authorities in order to ensure the dignity for the prisoners of war, civilian and other prisoners. The be specific, the ICRC registers prisoners, takes steps to prevent their disappearance, and it is engaged in prevention of torture and abuse aimed at improvement of conditions in detention etc. By its visits the ICRC assists to provide protection to them.

The ICRC is visiting the prisoners pursuant to special requirements and conditions, based on discretion: it is required to have the access to all the prisoners, all the places of detention, it has been given with possibility to register all the prisoners as well as to speak with them. The ICRC is submitting its recommendations and reports only to the authorities. These visits can be paid in parallel with some other services such as: sending family messages or aid distribution.

Acting as described in the Enacting Clause of the Verdict, the Accused deliberately and intentionally prevented the International Red Cross in its humanitarian mission in order to cause severe mental suffering to the detainees. The witness Enver Bojčić said that it was psychologically devastating for them and that they saw the act concerned as they were outside the law and that they could be killed by anyone.

The Accused is charged with **Inhumane Treatment** under this Section of the Verdict, that is not defined in our legislation. This notion is outlined in the Statute of the International Criminal Tribunal for the Former Yugoslavia and referred to in Article 2/b/ as Grave Violations of the Geneva Conventions of 1949 and it reads:

The International Tribunal shall have the power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

- (a) wilful killing;

- (b) torture or inhuman treatment, including biological experiments;
- (c) wilfully causing great suffering or serious injury to body or health;
- (d) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (e) compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
- (f) wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
- (g) unlawful deportation or transfer or unlawful confinement of a civilian;
- (h) taking civilians as hostages.”

It follows from the quoted provision that “Inhumane Treatment” constitutes a grave violation of the Geneva Convention of 1949 and that the perpetrators thereof shall be prosecuted. Since it cannot be clearly seen which offences are subsumed under that notion, it can be concluded that the term “Inhumane Treatment” encompasses all other offences that are not specifically prescribed under the criminal offence the Accused is pronounced guilty of, provided that the perpetrator has to perpetrate the offence which gravity and seriousness amount to the gravity and seriousness of other listed offences, with the intention to cause the perpetration of another inhumane act. This wording is both precise and flexible. Flexibility is necessary here given that it is not possible to anticipate all ways of inflicting pain and suffering that will be used by torturers, so that any concretisation would make this wording more restrictive.

The term “Inhumane Treatment” or “Other Inhumane Acts” is taken over from Article 6/c/ of the London Agreement and Article 11/1/c/ of the Control Council Law No. 10.

The Appellate Panel accepts the manner the “Inhumane Treatment” notion was defined in the Judgment rendered by the International Criminal Tribunal for the Former Yugoslavia in the case of Prosecutor vs. Zoran Kupreškić et al. (Judgement of 14 January 2000). The Judgment reads:

“The Statute of the International Criminal Tribunal (Article 7/k) provides a more detailed definition of other inhumane acts that are included in the ICTY Statute: “... other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.” However, not even this provision contains any indirect indication of legal standards that could allow us to identify prohibited inhumane actions.

Less broad parameters for the interpretation of “other inhumane acts” can instead be identified in international standards on human rights such as those laid down in the Universal Declaration on Human Rights of 1948 and the two United Nations Covenants on Human Rights of 1966. Drawing upon the various provisions of these texts, it is possible to identify a set of basic rights appertaining to human beings, the infringement of which may amount, depending on the accompanying circumstances, to a crime against humanity. Thus, for example, serious forms of cruel or degrading treatment of persons belonging to a particular ethnic, religious, political or racial group, or serious widespread or systematic manifestations of cruel or humiliating or degrading treatment with a discriminatory or persecutory intent no doubt amount to crimes against humanity: inhuman or degrading treatment is prohibited by the United Nations Covenant on Civil and Political Rights

(Article 7), the European Convention on Human Rights, of 1950 (Article 3), the Inter-American Convention on Human Rights of 9 June 1994 (Article 5) and the 1984 Convention against Torture (Article 1).<sup>829</sup> Similarly, the expression at issue undoubtedly embraces the forcible transfer of groups of civilians (which is to some extent covered by Article 49 of the 4<sup>th</sup> Convention of 1949 and Article 17(1) of the Additional Protocol II of 1977), enforced prostitution (indisputably a serious attack on human dignity pursuant to most international instruments on human rights), as well as the enforced disappearance of persons (prohibited by General Assembly Resolution 47/133 of 18 December 1992 and the Inter-American Convention of 9 June 1994). Plainly, all these, and other similar acts, must be carried out in a systematic manner and on a large scale. In other words, they must be as serious as the other classes of crimes provided for in the other provisions of Article 5. Once the legal parameters for determining the content of the category of “inhumane acts” are identified, resort to the *ejusdem generis* rule for the purpose of comparing and assessing the gravity of the prohibited act may be warranted.”

The first instance Panel of the International Criminal Tribunal for the Former Yugoslavia in the case of *Delalić et al.* offered another acceptable definition of the notion “Inhumane Treatment”: .. “inhuman treatment involves acts or omissions that cause serious mental or physical suffering or injury or constitute a serious attack on human dignity.”

Having evaluated everything foregoing, the Court established without reasonable doubt that by undertaking the acts described in Section 12 of the Enacting Clause of the Verdict, the Accused satisfied all the important elements that constitute Inhumane Treatment of detained Bosniak civilians in the *Gabela* camp.

Following a detailed analysis of both general and specific elements of the criminal offence, it can be concluded that the criminal offence of War Crime against Civilians encompasses a number of inhumane acts, that include: attacks on civilians, populated areas, individual civilians or those placed hors de combat, indiscriminate attacks inflicting injuries upon civilians, that constitute the gravest violation of human rights and freedoms, attacks on civilians during war, armed conflict or occupation thereby violating the rules of international law.

Considering all the foregoing, the Panel, in an absolutely reliable and indisputable manner, established that the Accused committed the criminal acts in the manner, at the time and the places as stated in Sections 1 through 12 of the Enacting Clause of the convicting part of the Verdict. The offences committed by the Accused were aimed at serious deprivation of the fundamental rights such as the right to life, freedom and security in violation of both domestic laws and international law. It also clearly follows from the presented evidence that beating was a discriminatory measure applied to detained Bosniaks. The Panel concluded that there was no doubt that Bosniaks were victims of the Accused on the grounds of witness testimonies that were found to be credible and consistent. The Panel was, therefore, convinced that it was precisely the accused Nikola Andrun who killed, beat up, insulted and humiliated the detainees, with the intention to discriminate the detained men, to collect information and punish them. In addition, the Accused knew some detainees from before, he knew that they were Bosniaks, some of them even very prominent and rich people, so that they were subjected to even more inhumane treatment. By doing that, the Accused clearly showed his discriminatory intention towards the detainees in the *Gabela* camp.

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Based on everything foregoing, the Panel concluded beyond any reasonable doubt that the actions taken by the Accused satisfy the elements of the criminal offence of War Crimes against Civilians in violation of Article 173/1/c/ of the CC of BiH and that he is held individually responsible for the offences committed in violation of Article 180/1/ of the CC of BiH.

The Appellate Panel took into account all the motions and objections raised by the Defence during the trial before this Panel. The Panel will reason the conclusions they reached to that end at a later stage.

On 17 June 2008, the Defence filed the following of documentary evidence they wanted to present before the Appellate Panel: Letter sent by the Federation Ministry of Security-Security Sector dated 19 December 2005, Letter sent by the Federation Ministry of Security-Security Sector dated 14 December 2005, Decision to Render Out of Force the Decision on the Establishment of the Military Prison in Gabela dated 8 June 1992, Information dated 17 August 1993, Official Note of 30 May 1995, Information on the conditions in the Military Remand Prison in Gabela dated 8 June 1993, Information of "A" marking dated 20 September 1993, Certificate that Mirzo Čolaković was registered by the ICRC in the *Dretelj* Camp, the *Official Gazette* of the Čapljina Municipality number 4 of 18 July 1993, the *HVO Official Gazette* of the Čapljina Municipality number 5 of 17 November 1993. In addition, the Defence also proposed that the following additional witnesses be heard: Zvonko Jurković, Hilmo Čolaković, Ivan Vrankić, Velimir Popović and Boško Buntić, who should testify about the circumstances of the transfer of the accused Nikola Andrun from the HVO Operational Unit to the *Gabela* Camp, his status in the organisational structure of employees and his stay, work and treatment of the detainees in the Camp, as well as about the circumstances surrounding the commission of the criminal offence he is charged with.

On 1 July 2008, the Accused and his Defence Counsel Hamdo Kulenović filed a consolidated submission in which they proposed that the following witnesses be heard: Mirzo Čolaković – about the place where the incident under Count 1 of the Indictment occurred, Enes Bratić – about his taking away and returning to *Gabela* and breaking of his finger, which, in the opinion of the Defence, should be x-rayed at competent medical institution, Alija Šuta – about taking away of Alija Čolaković from the hangar, since, in the opinion of the Defence, his testimony before the Court was not consistent with the testimonies of doctor Ilijas Dobrača, and Kemal Balavac, because, in the opinion of the Defence, the dates when the incident took place are incoherent - the witness claims that it occurred in July, whereas in the Indictment it was noted that it was in August, while it was pointed out that the witness has injury sheet dated 4 July 1993.

The Appellate Panel rendered the Decision dismissing the above-mentioned motions filed by the Defence as unfounded for the reason that the majority of the proposed witnesses were already heard and the new witnesses would also testify about the facts that were sufficiently established and taken by the Panel to reach the conclusion on the factual and legal questions.

In the opinion of the Panel it is not necessary to present the proposed documentary evidence, majority of which have been already presented, so that this motion was also dismissed as unfounded.

As far as the objection regarding the lack of jurisdiction is concerned, it was dismissed as unfounded, since the Court of BiH rendered the final Decision No: X-KRN-05/42 on 26 August 2005 on taking over this criminal case, pursuant to the provisions of the Criminal Procedure Code of Bosnia and Herzegovina and the Law on the Court of Bosnia and Herzegovina, so that any further discussion on the jurisdiction of this Court is pointless.

Following the completion of the evidentiary proceedings, the Prosecutor's Office amended the Indictment on 12 August 2008, from which the Defence filed a written "Objection" on 13 August 2008, moving the Appellate Panel to render a decision to dismiss the Indictment.

On 13 August 2008, the Appellate Panel rendered the Decision dismissing the above-mentioned "Objection" on the ground of inadmissibility, since the Criminal Procedure Code of Bosnia and Herzegovina does not foresee a possibility of dismissing an amended indictment. The Prosecutor's Office is entitled to amend the Indictment pursuant to Article 275 of the CPC BiH and such amended indictment is not subject to confirmation. In this specific case, the Court finds that the Indictment was merely more precisely outlined to conform to the presented evidence and the Defence was also given additional time to present its position on the amended Indictment, whereby the provisions of the mentioned Article were completely satisfied.

As regards the application of the substantive law and legal definition of the offence, considering the principles set forth by Articles 3, 4 and 4a) of the Criminal Code of Bosnia and Herzegovina, the Court found that in the case concerned it applied the Criminal Code of Bosnia and Herzegovina and it also found that by the aforementioned acts the Accused committed the criminal offence of War Crimes against Civilians referred to in Article 173 (1) c) of the Code.

In reference to the application of the substantive law in the case concerned, the Court considers relevant two legal principles: principle of legality, according to which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law (Article 3 of the BiH CC) and principle of time constraints regarding the applicability according to which the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence and if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall be applied (Article 4 of the BiH CC).

The principle of legality is defined also under Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) and Article 15 of the International Covenant on Civil and Political Rights (hereinafter: ICCPR).

Article 7 (1) of the ECHR reads: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or



international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

On the other hand, Article 15 (1) of the ICCPR reads: *"No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby."*

The same exception is foreseen by Article 4a) of BiH CC which sets forth that Articles 3 and 4 of CC BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law. Thus, the provisions of Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR were practically taken over whereby it was provided for exceptional departing from the principle laid down in Article 4 of CC BiH, as well as from mandatory application of a more lenient law in the proceedings for the acts that constitute criminal offences according to international law as are the proceedings against the Accused as they involve an incrimination that includes violation of the rules of international law.

This Court applied the Criminal Code of Bosnia and Herzegovina which is not less favourable to the Accused compared to the law in force at the time of the commission of this criminal offence (hereinafter: SFRY CC), thus the European Convention for the Protection of Human Rights and Fundamental Freedoms is directly applied because it constitutes integral part of laws.

When deciding on the sentence, the Panel was guided by the general rules of meting out punishments referred to in Article 48 of the BiH CC as well as the purpose of punishment referred to in Article 39 of the BiH CC, therefore, it is of the opinion that the foreseen purpose of punishment will be fully achieved by the pronounced sentence considering the level of criminal liability of the Accused and gravity of the consequences thereof.

Hence, the individuals who lost their lives suffered a complete loss, while those who survived face life-long agony. It is, therefore, important that citizens of Bosnia and Herzegovina and the society as a whole be aware that the war crimes, regardless of who committed them and where, have to be sanctioned and may not stay unpunished. Also, the society has to understand that legal solution is the best solution and that it is the only proper way to serve the justice. The purpose of the Geneva Conventions is to outlaw such behaviour during armed conflicts. This purpose will not be achieved if those who perpetrate such offences fail to be imposed such a legal sanction that would clearly show some other soldiers involved in other conflicts that they would pay a high price should they use the war to violate the law and cause suffering of people .

.In this specific case, the Panel considered in particular the type of the criminal offence and the object of protection from the perpetrated criminal offence. The Accused is found guilty of one the most serious criminal offences referred to in the Criminal Code of Bosnia and

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Herzegovina punishable by a term not less than ten years or long-term imprisonment. Bearing in mind the aforementioned and the fact that the Accused was the deputy camp commander which position gives him greater authorities but also bigger responsibility, that he is perpetrator or co-perpetrator of the acts concerned, then the number of the offences and absolutely unnecessary cruelty that the Accused demonstrated, the cruelty with no strategy whatsoever or any logical reason except to hurt the injured parties and to make their already hard life even harder thus his conduct was not only unlawful but also utterly unacceptable for humans. Besides, many detainees were acquaintances or neighbours of the Accused, some of them even members of the HVO until they were arrested, therefore, their detention and cruel treatment against them is even more absurd.

The Court took as extenuating circumstances for the Accused the facts that he is a family man, father of four children as well as that he behaved appropriately before the Court.

In addition, pursuant to Article 56 of CC BiH, the time that the Accused has spent in custody since 30 November 2005 until the time he is sent to serve the sentence shall be credited toward the pronounced sentence of imprisonment, and, pursuant to Article 188 (4) of the BiH CPC, the Accused is hereby relieved of the duty to reimburse the costs of criminal proceedings because payment of the costs would threaten sustenance of the persons that he has to sustain.

Deciding on the claims under property law, pursuant to the provision of Article 198 (1) of the BiH CPC, the Court has instructed the injured parties Mirzo Čolaković, Mirsad Omanović and Džemal Topić, to take civil action with claims under property law, since establishing facts on the amount of claims under property law would require a lot of time, which would prolong these proceedings.

In one Section of the Enacting Clause of the Verdict the Court has acquitted the Accused of the charges in respect to inhuman treatment against the injured party Ramiz Kurtović consisting of the following: the Accused Nikola Andrun took out several detainees including Ramiz Kurtović, drove them by car to the Police Station in Čitluk, where they were interrogated, whereupon with their hands tied on their backs they were escorted by Nikola Andrun to the military barrack in Čitluk and where gathered citizens were throwing stones at them, kicking them and spitting on them, whereupon, on the same day, the Accused and Boško Previšić ordered them to lie down on the hot asphalt, and water was let running nearby without allowing them to drink it although they were thirsty.

This Panel notes that the acquitting part of the Verdict in respect to this action is not the result of the fact that the Court challenges the testimony of the witness Ramiz Kurtović, however, the Prosecutor's Office did not offer a single corroborating piece of evidence for his claim nor could it be corroborated by some existing fact or indication except for the fact that the injured party was a detainee and that the events could happen under such circumstances which is not sufficient for the convicting Verdict.

The Prosecutor's Office could offer the Court additional evidence, possibly, the persons that the injured party mentioned as being abused together with him or some eyewitness of their later treatment when they were returned to the "Gabela" camp. Since the offered evidence

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are insufficient for the Court, without any reasonable doubt, to reach the conclusion that the Accused did take the act as charged by the Prosecutor's Office, therefore, the Court acquitted him of the liability for commission of the acts described in this Count of the Indictment.

Bringing the acquitting Verdict in respect to the accused Nikola Andrun, the Court also took into account the principle *in dubio pro reo*. This principle is applied by the Court when it has doubts with respect to the existence of facts that constitute elements of a criminal offence or when an application of certain provision of criminal legislation depend on certain facts. The Court shall render a decision that is most favourable for accused. The Court brings the acquitting verdict not only when the innocence of the accused is proven, but also when the guilt of the accused is not proven, like it is the case with this Count of the Indictment..

**Record-taker:**

Neira Kožo

**Presiding Judge:  
Judge:**

Azra Miletić

**REMEDY:** No appeal shall be allowed to contest this Verdict.