



Number: X-KR-05/139

Sarajevo, 20 February 2009

IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, in the panel of judges presided by Judge Staniša Gluhajić and the panel members, Judge Mitja Kozamernik and Judge Georges Reniers, in the criminal case against the Accused Marko Radić *et al.*, for the criminal offence of Crimes against Humanity in violation of Article 172(1)h), as read with sub-paragraphs a), e), f), g) and k) of the Criminal Code of Bosnia and Herzegovina (hereinafter: the BiH CC), as read with Article 29 and Article 180(1) of the BiH CC, upon the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number KT-RZ-95/05 of 29 November 2006, confirmed on 1 December 2006, against the accused Radić, Šunjić and Brekalo, as well as the Indictment Number KT-RZ-200/06 of 27 December 2006, confirmed on 3 January 2007, which as a single Indictment was amended at the main trial on 15 May 2008, following the oral, main and public trial, a part of which being held *in camera*, in the presence of the accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, their Defence Counsels Dragan Barbarić, Midhat Kočo, Slavko Aščerić, Petko Pavlović, Rade Golić and Danilo Mrkaljević, and the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Jude Romano, handed down and on 20 February 2009 publicly announced the following:

V E R D I C T

THE ACCUSED:

1. **Marko Radić aka Maka**, son of Franjo, born in the settlement of Livać, Mostar Municipality, on 13 August 1959, Personal Identification Number ..., of ... ethnicity, citizen of ..., teacher by occupation, completed the Faculty for Physical Education, married, no prior conviction, criminal proceedings for the criminal offence against Public Safety of Persons and Property pending before the Cantonal Court in Mostar, served military term in Obrenovac in 1981, arrested by SIPA on 2 June 2006, at 08:05 hours, currently held in custody at the KPZ /*Correctional Establishment*/ Kula under the Decision of the Panel of the Court of BiH Number X-KRN-05/139 of 1 September 2006,
2. **Dragan Šunjić aka Petarda**, son of Boško, born in Bučići on 11 July 1971, Personal Identification Number ..., of ... ethnicity, citizen of ..., machinist by occupation, completed elementary school, married, father of three children, no other known criminal proceedings are pending, previous criminal record ..., served military term between 1992 and 1995, arrested by SIPA on 2 June 2006, at 08:20 hours; currently held in custody at the KPZ-Kula under the Decision of the Panel of the Court of BiH Number X-KRN-05/139 of 1 September 2006,

3. **Damir Brekalo, whose previous name was Emir¹, aka Zingi**, son of Mehmed, born in the place of Livać, Mostar Municipality on 20 March 1964, Personal Identification Number ..., of ... ethnicity, citizen of ..., welder by occupation, completed secondary school, married, father of five children, no other known criminal proceedings against him are pending, previously convicted ...; served military term in Derventa in 1982; arrested by SIPA on 2 June 2006, at 08:12 hours; currently held in custody at the KPZ-Kula under the Decision of the Panel of the Court of BiH, Number X-KRN-05/139 of 1 September 2006,
4. **Mirko Vračević aka Srbin**, son of Teodor, born in Donji Smrtići on 15 March 1945, Personal Identification Number ..., of ... ethnicity, citizen of ..., currently retired, completed primary school, married, with no prior convictions, no other known criminal proceedings against him are pending, served military term, arrested by SIPA on 19 December 2006, at 09:10 hours, prohibiting measures of house arrest currently in effect against him under the Decision of the Panel of the Court of BiH Number X-KRN-06/300 of 22 December 2006

are hereby found

GUILTY

Of the following:

During the period from July 1993 until March 1994, Marko Radić, Dragan Šunjić, Damir (Emir) Brekalo and Mirko Vračević in their capacities as officers and members of the First Bijelo Polje Battalion of the Second Brigade HVO */translator's note: Croat Defence Council/*, within the zone of responsibility where the village of Vojno, Mostar Municipality, was located, as part of a widespread and systematic attack on the Bosnian Muslim civilian population of the Mostar Municipality by members of the army of Bosnian Croats (HVO) and its military police, knowing about such attack aimed at abusing and persecuting the Bosniak population on political, national, ethnic and religious grounds, during which more than seventy Bosniak Muslim women, children and the elderly were unlawfully arrested and detained in inhumane conditions in houses and other facilities in the Vojno village, Mostar Municipality, while Bosniak men from the Heliodrom Camp who were taken there for forced labour were unlawfully detained in the prison facility in the Vojno village, Mostar Municipality, where they were kept in brutal, degrading and inhumane conditions in a garage and a cellar of a house, where the detainees were exposed to physical, psychological and sexual abuse and torture, subjected to daily beatings by guards and soldiers, which resulted in deaths of a number of prisoners, and all of the accused participated in those abuses and persecutions directly and in consultation, which they did in the following manner:

First Accused Marko Radić:

¹ The official decision approving the change of name of Brekalo from Emir to Damir is dated 25 September 1993.

During the period between July 1993 and March 1994, in his capacity as Commander of the First Bijelo Polje Battalion of the Second Brigade HVO, as Commander of the Ivan Stanić Ćićo Sabotage Unit, and later on as Commander of the Second Brigade HVO, Radić was responsible for the whole area of Bijelo Polje, including the village of Vojno, Mostar Municipality; he participated in the establishment of the prison facility in Vojno, ordered the unlawful arrest of Bosniak civilians, women, children and the elderly and their detention in facilities located in the Vojno settlement, Mostar Municipality; he participated in the unlawful detention of men, detainees from the Heliodrom, who were brought to Vojno for forced labour, kept in brutal, degrading and inhumane conditions in a garage and a cellar of a house in Vojno, Mostar Municipality; he was a superior and had responsibility over Commander Mario Mihalj (deceased), his Deputy Commander, Dragan Šunjić, Mirko Vračević and other prison guards and soldiers that worked in the prison, and he had control over the lives and limbs of prisoners; he contributed to and furthered the functioning of the Vojno prison system in ill-treating and persecuting the Bosnian Muslims by ordering, committing, or otherwise aiding and abetting the commission of various forms of physical, mental and sexual violence, whereby the atmosphere of terror was created; considering his position, Radić had the authority and duty to improve conditions in the facility which were brutal, barbaric and degrading for the detainees who were kept there without basic necessities of life such as adequate food, clothing, shelter, drinking water, medical care, living in unhygienic conditions and in small space, subjected to daily beating, torture, harassment, humiliation and psychological and sexual abuse, and living in constant fear for their lives, which resulted in the death of a number of detainees, whereas many detainees suffered severe mental, emotional and physical injuries, and thus:

1. During the critical period, he participated in ordering the unlawful arrest and imprisonment of Bosniak civilians - women, children and the elderly - in the Vojno camp, Mostar Municipality; in that way, the following persons were unlawfully arrested and detained, and kept in degrading and inhumane conditions: 15-year-old Witness X, 16-year-old Witness L, Witnesses A, F, Sadeta Macić, Mustafa Macić, Witness E and her son Witness 153, Rahima Makaš with her daughter, Mediha and her granddaughter Sanela, Witness B, Zejna Mirica with her daughter, Emica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witnesses D, R, AM, K and J together with 73-year old woman, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI and other detainees from Mostar, whereas Bosniak men – detainees from the Heliodrom Camp - who were brought to Vojno for forced labour were unlawfully kept in brutal, humiliating and inhumane conditions in a garage and a cellar of a house.

2. During the same period and in the same capacity, he is responsible for the killings of detainees committed by persons over whom he had effective control and for the killings of detainees committed during the forced labour and killings which were committed within his zone of responsibility, and all of those were committed with the aim of furthering the system of abusing and persecuting the Bosniaks in which Radić willingly and knowingly participated, and thus:

2(a) On an undetermined date in July 1993, Damir (Emir) Brekalo as a member of the First Bijelo Polje Battalion of the Second Brigade HVO and the Ivan Stanić Ćićo Sabotage Unit, beat up prisoners Mustafa Čilić and Rasim Lulić while performing forced labour, that is, digging trenches for HVO members on the front line in Bijelo Polje, Mostar Municipality,

and in the same evening detainees Čilić and Lulić were taken out of a cellar in which they were detained, whereafter they did not return nor have they been seen ever since; their bodies were exchanged and identified on 10 April 1994.

2(b) On an undetermined date in August 1993 or September 1993, Commander of Vojno Prison Mario Mihalj (deceased) and Dragan Šunjić who at that time was Deputy Commander and other HVO soldiers beat severely the detainee Arif Omanović who due to the injuries inflicted died a few days later; his body was exchanged and identified on 5 January 1996.

2(c) On or about 28 August 1993, an unidentified HVO soldier shot dead Mesud Dedajić while he was performing forced labour on the front line in Bijelo Polje, Mostar Municipality; three detainees buried Mesud Dedajić's body near the place where he was killed; his body was exhumed somewhere between the Zalihići houses and the Convent, and was exchanged and identified on 5 July 1994.

2(d) On an undetermined date in September 1993, after an HVO soldier was shot and killed near the front line, unknown HVO soldiers ordered the detainees - Witness AB, Aris Začinović, Enver Kajtazi, Husnija Čorajević and Željko Čakalović to carry his body to the infirmary in the place of Vojno, which they did, but were accused of the HVO soldier's death, allegedly because they did not carry his body quickly enough; afterwards, the mentioned detainees were brought to a garage in Vojno, where they were beaten up by Jure Kordić and Mario Mihalj (deceased), and after detainees Enver Kajtazi and Husnija Čorajević fell down, they were deprived of their lives with a knife; after that, the door of the garage opened and Mario Mihalj and HVO soldiers went out; Witness AB and Aris Začinović, both of them detainees, tried to escape; Witness AB succeeded, but Aris Začinović was caught and deprived of his life in front of the garage in the presence of other detainees; thereafter, 4 dead bodies, including the body of Željko Čakalović, were seen in front of the garage; the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994.

2.(e) On an undetermined date in September 1993, Dragan Šunjić, Mirko Vračević and Mario Mihalj (deceased), all members of the HVO, during the transportation of approximately 50 detainees who were tied to each other, from the Heliodrom Camp, Mostar Municipality, to the Vojno Camp, Mostar Municipality, for forced labour, on their way to the Vojno Camp, Mirko Vračević shot dead Asif Čakrama with an automatic rifle at point-blank range; the same bullet exited Asif Čakrama and hit another prisoner inflicting injuries in his chest; Čakrama's body was exchanged and identified on 25 April 1994. During the same month, Mario Mihalj deprived the life of Salim Halilović, a detainee who was transferred from the Heliodrom Camp, because he could not work due to his heart problems; his body was exchanged and identified on 25 April 1994.

2.(f) In late August or in early September 1993, several dozens of detainees came from the Heliodrom Camp to the Vojno Camp, and Avdo Jelin was among them; many of them were physically abused and beaten up by Mario Mihalj (deceased) and Dragan Šunjić; because of the physical abuse detainee Avdo Jelin died soon thereafter; his body was exchanged and identified on 25 April 1994.

2.(g) In late December 1993 or in early January 1994, Aziz Dautbegović, Džemal Sabitović and Witness 154 were carrying bricks to the Andora warehouse, near the front line, when a bullet hit Džemal Sabitović's head, which caused his death; Aziz Dautbegović, Witness 154 and other detainees were carrying the body of Džemal Sabitović and they passed by the command post where they saw Enes Nurko who was ordered to come with them; in the house next to the garage where they were detained, Dragan Šunjić met them, talked to Enes Nurko and then he came into the house and talked to someone over the telephone; afterwards, Dragan Šunjić shot Enes Nurko in his head and chest with an automatic rifle at point-blank range and killed him on the spot; also, on an undetermined date, in late December 1993, or in early January 1994, an unknown HVO soldier deprived detainee Hamdija Tabaković of life while he was performing forced labour on the front line in Bijelo Polje; the bodies of Džemal Sabitović and Hamdija Tabaković were exchanged and identified on 10 April 1994.

2.(h) On an undetermined date in December 1993, an unidentified HVO soldier nicknamed Roki deprived detainee Mustafa Kahvić of life while performing forced labour near the front line in Bijelo Polje; his body was exchanged and identified on 10 April 1994; on an undetermined date in November 1993, detainee of the Vojno Camp Mensur Salman was killed while performing forced labour near the Zalihići house in Bijelo Polje.

3. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, he is responsible for the physical and psychological abuse, beating and torture of detainees in the Vojno prison facility, in the places where they performed forced labour and in other places, which were committed by persons over whom he had effective control, which are acts committed with the aim of furthering the system of abusing and persecuting the Bosniaks in which Radić willingly and knowingly participated; thus, detainees were tortured and abused by commanders, guards of the prison facility and other HVO soldiers who used police batons and tool handles; they were kicked by boots, hit with pistols, subjected to electric shocks, their heads were hit against a wall; among them there were: Zejna Tihak, Witness 153, Enver Tihak, Witness 152, Witness AA, Witness AI, Witness AB, Ramiz Mačković, Witness AF and other detainees, which resulted in severe physical and psychological injuries and temporary or permanent damage to their health.

4. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, he personally participated in the rape and sexual abuse of female detainees in the Vojno Camp, including underage girls, and thus:

4(a) On or about 23 July 1993, Radić ordered soldiers to bring him the 15-year-old X to a house near the prison facility, and after she was brought to him, Radić ordered the present soldiers to come out of the house, keeping the Witness X and Ivica Kolobara with him; afterwards, he ordered her to take off her clothes and told her that he was going to give her a special pleasure; despite her crying and begging him not to do it, Radić only laughed at the Witness X, ripped off her clothes and ordered her, thus naked, to sit down between him and Ivica Kolobara; then he ordered Ivica Kolobara to leave and when Ivica Kolobara left, Radić told her that she could choose between having sexual intercourse with him or satisfying him orally; but, because of a telephone call which he was to answer, Radić could

not realize his intention and he said to X that she was lucky that time and that next time she would not be that lucky.

4.(b). On or about 15 August 1993, female witnesses A and E were brought to Marko Radić's command post in Bijelo Polje, where the witnesses A and E were separated under the pretext that Witness A needed to clean the room on the first floor of the command post; Radić entered the same room shortly after the Witness A had entered it, and he ripped off a part of her T-shirt by force, raped her, whereafter he ordered a member of the HVO named Ivan to rape the Witness A and said to Ivan: "You can do with her whatever you like." Ivan entered the room where A was and told her that he would not rape her, but that he had to stay in the room so that Radić could think that he raped her; some time later, Ivan left the room and Witness A followed him down to the ground floor, but Radić saw her and ordered her to go back to the first floor where he raped her again; 15 or 20 days later, Witness A was brought again to the command post of Mario Mihalj for the alleged hearing where the following persons were present: Branko Božić, Dario Sušac, Mario Mihalj, Dragan Šunjić and Marko Radić; on arrival, Marko Radić ordered her to go to the other room where he ordered Witness A to get undressed and to imitate the behaviour of a woman in a porno movie which was played in that room, which Witness A refused, and Marko Radić raped her again.

4.(c). On an undetermined date in September 1993, Witness D was brought during the night to the command post of Mario Mihalj and Dragan Šunjić in Bijelo Polje where Witness D was humiliated, whereafter Damir (Emir) Brekalo and Dario Sušac took Witness D to the command post of Marko Radić where Marko Radić abused Witness D, ignored her imploring, pulled her hair, unbuttoned his trousers, and put his sexual organ by force into her mouth and then forced her to sexual intercourse; afterwards he ordered an unidentified HVO soldier to rape her, but he did not do it.

4.(d). After Witness AG was unlawfully detained in the Vojno Camp on 2 September 1993 where she spent three months, she was subjected to daily rapes and sexual abuses, and during that period of time she was spared from rape only for five days, and Radić raped her three times during that period.

5. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, he is responsible for rapes and sexual abuse of female detainees in the Vojno prison facility, which were committed by soldiers over whom he had effective control, which are acts committed with the aim of furthering the system of abusing and persecuting the Bosniaks in which Radić willingly and knowingly participated; thus, guards and soldiers raped and sexually abused the following female detainees: Witness L, who was only 16 years old at the time when Damir (Emir) Brekalo raped her twice; Witness X who was 15 years old at the time when Damir (Emir) Brekalo raped her; Witness E was raped by Mirko Bukara, Witness AG was raped by Dragan Šunjić, Damir (Emir) Brekalo, Mario Mihalj (deceased) and other unidentified soldiers; Witness D was raped by Damir (Emir) Brekalo and a soldier named Dario Sušac; Witness J was raped by Dragan Škobić; Witness C was raped by Damir (Emir) Brekalo and a soldier named Marko; Witness B was raped by Tomo Aničić, Dario Mihalj and soldiers named Babo and Sergej, Witness AM was raped at least three times by Mirko Vračević; Witness F was sexually abused by Damir (Emir) Brekalo and Dario Sušac.

6. During the same period of time and in the same capacity as mentioned in the introduction of the Verdict, Radić is responsible, together with Mario Mihalj, Dragan Šunjić, Damir Brekalo, Mirko Vračević and other soldiers, for forcing female detainees to perform forced labour in the Vojno prison facility and in the surrounding areas, including the cooking of food, washing of clothes and dishes and cleaning of houses, whereas men were forced to perform labour outside of the prison facility, near the front line where they were exposed to cross-fire: they had to dig up trenches, carry sandbags and ammunition, chop woods and do other works for the HVO needs, which they did not dare to refuse; all of that was committed with the aim of strengthening the system for abusing and persecuting the Bosniaks in which Radić willingly and knowingly participated.

Second Accused Dragan Šunjić:

During the period from August 1993 until March 1994, in his capacity as Deputy Commander of the Vojno prison facility, Mostar Municipality, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, and the Ivan Stanić Čiće Sabotage Unit, Dragan Šunjić personally participated in the arrest and unlawful detention of several dozens of Bosniak civilians, women and children, and as the Deputy Commander, he had the authority and control over the conditions which existed in the prison facility, and over other persons who worked in the prison facility; he was also responsible for the lives and limbs of all detainees; Dragan Šunjić contributed to and furthered the functioning of the prison facility's system of abusing and persecuting Bosnian Muslims by ordering, committing, or otherwise aiding and abetting the commission of various forms of physical, mental and sexual abuse, whereby he created the atmosphere of terror; considering his position, Dragan Šunjić had the authority and duty to improve the conditions in the facilities, which were brutal, barbaric and degrading, because detainees were devoid of the basic necessities of life such as adequate food, clothing, shelter, drinking water, medical care; they were kept in unhygienic conditions and in small space; they were subjected to daily beatings, torture, harassment, humiliation, and psychological and sexual abuse; they lived in constant fear for their lives; that resulted in the death of a number of detainees and in severe mental, emotional and physical injuries of other detainees, and thus:

7. During the same period and in the same capacity he personally participated in the unlawful arrest and detention of several dozens of Bosniak civilians, women, children and the elderly in the Vojno prison facility, Mostar Municipality, including: Witness A, Witness F, Sadeta Macić, Mustafa Macić, Rahima Makaš with her daughter, Witness B, Witness E and her son Witness 153, Zejna Mirica with her daughter, Emica Ćurić with her mother and daughter, Mersija with her daughter, Ramiza Zerdalić, Edita Pehilj, Witness D, Witness K, Witness AM, Witness R, Witness J together with a 73-year-old woman, Zejna Tihak and her son, Saja Ćorić, Mirhunisa Ćorić, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI and other detainees from Mostar, whereas Bosniak men, detainees of the Heliodrom Camp, who were brought to perform forced labour, were unlawfully kept in brutal, humiliating and inhumane conditions in a garage and a cell of a house.

8. During the same period and in the same capacity, he is responsible for the physical and mental abuse, beatings, torture and murders of detainees in the Vojno prison facility, in the

places where they performed forced labour and also in other places, which were personally committed by him or by other persons, and those acts were committed with the aim of furthering the system of abusing and persecuting the Bosniaks and in which Šunjić willingly and knowingly participated, and thus:

8.(a) During August 1993, in the Vojno prison facility, together with Mario Mihalj (deceased), and other HVO members, he beat up detainee Arif Omanović who died a few days later due to the injuries inflicted on him; his body was exchanged and identified on 21 April 1994.

8.(b.) In late August or early September 1993, together with Mario Mihalj (deceased), he physically abused detainee Avdo Jelin, because of which Avdo Jelin died due to the injuries inflicted on him; his body was exchanged and identified on 25 April 1994.

8.(c) In early January 1994, in the Vojno prison facility, he personally deprived detainee Enes Nurko of life by shooting at him from an automatic rifle at point-blank range; he fired one bullet into his face and two in his chest and killed him on the spot.

8(d). On 28 August 1993, or about that date, an unknown HVO member deprived detainee Mesud Dedajić of life while he was performing forced labour on the front line in Bijelo Polje, Mostar Municipality; three detainees buried the body of Mesud Dedajić near the place where he was killed; his body was exhumed at some place between the Zalihići houses and the Convent, and was exchanged and identified on 5 July 1994.

8(e). On an undetermined date in September 1993, after one HVO member had been shot dead near the front line, unknown HVO soldiers ordered the detainees - Witness AB, Aris Začinović, Enver Kajtazi, Husnija Čorajević and Željko Čakalović to carry his body to the infirmary in the place of Vojno, which they did, but were accused of the death of the HVO soldier allegedly because they did not carry his body quickly enough; thereafter, the referenced detainees were taken to the garage in Vojno where they were exposed to beatings by Jure Kordić and Mario Mihalj (deceased) and an unidentified HVO soldier, and after detainees Enver Kajtazi and Husnija Čoralić fell down, they were deprived of lives with a knife; afterwards, the garage door opened and Mario Mihalj and HVO soldiers came out; Witness AB and Arif Začinović, both of them detainees, climbed up to a small window and tried to run away; Witness AB managed, but Aris Začinović was caught by Mario Mihalj and deprived of life in front of the garage; afterwards, 4 dead bodies, including the body of Željko Čakalović, were seen in front of the garage; the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994.

8(f) On an undetermined date in September 1993, Dragan Šunjić, together with the guard Mirko Vračević and Commander Mario Mihalj (deceased), during the transportation of approximately 50 detainees who were tied to each other, from the Heliodrom Camp, Mostar Municipality, to the Vojno prison facility, Mostar Municipality, for forced labour, on the way to Vojno guard Mirko Vračević shot at Asif Čakrama from an automatic rifle at point-blank range and killed him, and the same bullet exited Asif Čakrama and hit another detainee inflicting injuries on his chest; Čakrama's body was exchanged and identified on 25 April 1994. During the same month, Mario Mihalj deprived the life of Salim Halilović,

the detainee who had been transferred from the Heliodrom Camp, because he could not work due to heart problems; his body was exchanged and identified on 25 April 1994.

8(g) In early January 1994, Aziz Dautbegović, Džemal Sabitović and Witness 154 were carrying bricks in the vicinity of the front line, near the Andora warehouse, when Džemal Sabitović was shot with a bullet in his head, which caused his death, and on an unidentified date in November 1993, an unknown HVO soldier deprived detainee Hamdija Tabaković of life while the latter was performing forced labour on the front line in Bijelo Polje; the bodies of Džemal Sabitović and Hamdija Tabaković were exchanged and identified on 10 April 1994.

8(h) During November 1993, an unidentified HVO soldier nicknamed Roki, deprived Mustafa Kahvić, the detainee of the Vojno Camp, of his life while the latter was performing forced labour near the front line in Bijelo Polje; his body was exchanged and identified on 10 April 1994; also, on an unidentified date in November 1993, Vojno Camp detainee Mensur Salman was shot dead while performing forced labour near the Zalihići house in Bijelo Polje.

9. During the period from August 1993 to March 1994, in his capacity as Deputy Commander of the Vojno Camp, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO and the Ivan Stanić Ćićo Sabotage Unit, he personally participated in or otherwise aided and abetted the physical and mental abuse and tortures of detainees in the Vojno prison facility, in the places where they performed forced labour and in other places, the acts of which were committed with the aim of furthering the system of abusing and persecuting the Bosniaks in which Šunjić willingly and knowingly participated; detainees were beaten up with police batons and wooden handles, kicked with boots and guns, and were subjected to electric shocks, and their heads were hit against a wall, and were abused in other different ways; the following detainees were among them: Witness 152, Ramiz Mačković, Witness 153, Enver Tihak, Witness AI, Witness AA, Witness AB, Witness AF and other detainees.

10. During the period from 2 September 1993 to 2 December 1993, Šunjić, in furtherance of the system of abusing and persecuting the Bosniaks in which he willingly and knowingly participated, personally raped Witness AG in the Vojno prison facility.

11. During the same period of time and in the same capacity as mentioned in Section 9 of the Verdict, Šunjić is responsible for the rapes and sexual violence against detainees which were committed by other persons in furtherance of the system of abusing and persecuting the Bosniaks in which Šunjić willingly and knowingly participated; thus, the following female detainees were sexually abused and raped: Witness A who was raped by Marko Radić; Witness D who was raped by Marko Radić and Damir (Emir) Brekalo; Witness B who was raped by Damir (Emir) Brekalo, Tomo Aničić, Dario Mihalj and soldiers nicknamed Babo and Sergej; Witness C who was raped by Damir (Emir) Brekalo and a soldier named Marko; Witness AG who was raped by Marko Radić, Damir (Emir) Brekalo, Mario Mihalj and other unidentified soldiers; Witness AM who was raped at least three times by Mirko Vračević; Witness J who was raped by Damir Škobić; Witness E who was raped by Mirko Bukara; Witness F who was sexually abused by Damir (Emir) Brekalo and Dario Sušac.

12. During the same period of time and in the same capacity as mentioned in Section 9 of the Verdict, he personally participated, together with Mario Mihalj (deceased), Damir (Emir) Brekalo, Mirko Vračević and other soldiers, in making female detainees perform forced labour in the Vojno prison facility and in other places, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks in which Šunjić willingly and knowingly participated; the forced labour included: cooking of food, cleaning of houses in the Vojno prison facility and the surrounding area, and washing of clothes; on the other hand, men were made to do forced labour outside of the camp near the front line, where they were exposed to cross-fire, to dig trenches, to carry sandbags and ammunition, to chop woods and to do other works for the needs of the HVO; thus, detainees experienced severe physical and mental suffering.

Third Accused Damir (Emir) Brekalo:

During the period from July 1993 to March 1994, in his capacity as a member of the First Bijelo Polje Battalion of the Second Brigade HVO and the Ivan Stanić Čićo Sabotage Unit, Damir (Emir) Brekalo personally participated in the arrest and unlawful detention of several dozens of Bosniak civilians, women, children and the elderly and Bosniak men, detainees from the Heliodrom, who were brought to Vojno for forced labour, and all of them were kept in brutal, humiliating and inhumane conditions; Brekalo derived his authority from his close relationship with Marko Radić and he personally gave a substantial contribution to the furtherance of the Vojno prison facility's system of abusing and persecuting the Bosniaks by committing or otherwise aiding and abetting the commission of various forms of physical abuses, beatings, torture, which resulted in deaths of a number of detainees, rapes and sexual abuses, whereby an atmosphere of terror was created, while severe mental, emotional and physical injuries were inflicted on the rest of the detainees, as follows:

13. During the period from July 1994 to March 1994, Brekalo is responsible for aiding and abetting the killings of detainees in the Vojno prison facility and in the surrounding area, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks in which Brekalo willingly and knowingly participated; the acts included: the killing of Enver Kajtazi, Husnija Čorajević, Željko Čakalović, Aris Začinović by Mario Mihalj (deceased) and Jure Kordić; the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994; the killing of Salim Halilović by Mario Mihalj - his body was exchanged and identified on 25 April 1994; the killing of Mensud Dedajić by unknown HVO soldiers - his body was identified and exchanged on 5 July 1994; the killing of Asif Čakrama by Mirko Vračević - his body was identified and exchanged on 25 April 1994; the killing of Avdo Jelin by Mario Mihalj (deceased) and Dragan Šunjić - his body was identified and exchanged on 25 April 1994; the killing of Mensur Salman by an unknown soldier; the killing of Arif Omanović by Mario Mihalj and Dragan Šunjić - his body was identified and exchanged on 21 April 1994; the killing of Enes Nurko by Dragan Šunjić; the killing of Džemal Sabitović by an unknown soldier - his body was identified and exchanged on 10 April 1994; /sic/ of Hamdija Tabaković by an unknown soldier - his body was identified and exchanged on 10 April 1994; and the killing of Mustafa Kakvić by an unknown soldier - his body was identified and exchanged on 10 April 1994.

On an unidentified date in July 1993, Brekalo beat up prisoners Mustafa Čilić and Rasim Lulić while they were performing forced labour on the front line in Bijelo Polje, Mostar Municipality; the forced labour included the digging of trenches for members of the HVO; in the same evening, detainees Mustafa Čilić and Rasim Lulić were taken out of the cellar in which they were detained, after which they did not return nor have they been seen ever since; their bodies were exchanged and identified on 10 April 1994.

14. During the same period of time and in the same capacity as mentioned in the introduction, Brekalo is responsible for personally committing or otherwise aiding and abetting the unlawful detention of several dozens of Bosniak civilians, women, children and the elderly and their unlawful keeping in humiliating and inhumane conditions in the Vojno prison facility, Mostar Municipality, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks in which Brekalo willingly and knowingly participated; they included the unlawful arrest and detention of the following detainees: Witness X, Witness L, Witness A, Witness F, Sadeta Macić, Mustafa Macić and two children, Rahima Makaš with her daughter, Witness B, Witness E and her son Witness 153, Mediha and her grand-daughter Sanela, Zejna Mirica with her daughter, Enica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witness D, Witness R, Witness AM, Witness K, Witness J with a 73-year-old woman, Zejna Tihak and her son, Saja Ćorić, Mirhunisa Ćorić, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI and other detainees from Mostar, and Bosniak men, detainees from the Heliodrom Camp, who were brought to Vojno for forced labour and were unlawfully kept in the garage and the cellar of a house in brutal, humiliating and inhumane conditions; all of those detainees were ordered to perform forced labour in Vojno and surrounding areas and near the front line.

15. During the same period of time as mentioned in the introduction, Brekalo is responsible for personally committing or otherwise aiding or abetting the physical and mental abuse and torture of detainees in the Vojno prison facility, during forced labour and in other places, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Brekalo willingly and knowingly participated; the acts were committed in such a way that detainees were beaten up with police batons, wooden tool handles, kicked with boots and pistols, and were subjected to electric shocks; their heads were hit against a wall, and were also abused in other ways; among them there were the following detainees: Zejna Tihak, Witness 153, Enver Tihak, Witness 152, Witness AA, Witness AI, Witness AB, Ramiz Mačković and other detainees; he personally abused and tortured Witness AF.

16. During the same period of time and in the same capacity as mentioned in the introduction, he personally participated in the rape and sexual abuse of female detainees in Vojno and in the surrounding area, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks in which Brekalo willingly and knowingly participated:

17.(a) On or about 23 July 1993, he raped the 16-year-old Witness L twice,

17.(b) On or about 24 July 1993, he raped the 15-year-old Witness X in Bijelo Polje,

17.(c) On an undetermined date between 2 September and 2 December 1993, he raped the Witness AG,

17.(d) On an undetermined date in early September 1993, he forced Witness D to have sexual intercourse on two occasions; after that he passed her on to Dario Sušac to rape her, which he did,

17.(e) On an undetermined date in early September 1993, he and a soldier named Marko forced Witness C to put her finger in the vagina, while they were watching that and laughing, and then they forced her to have oral sex with them,

18. During the same period of time and in the same capacity, Brekalo participated or otherwise aided and abetted the sexual abuses and rapes of female detainees in the Vojno Camp which were committed by other soldiers and guards, the acts of which were committed in furtherance of the system of abusing and persecuting the Bosniaks in which Brekalo willingly and knowingly participated, so that guards and soldiers sexually abused the following female detainees: Witnesses A and D were raped by Marko Radić; Witness X was sexually abused by Marko Radić; Witness B was raped by Tomo Aničić, Dario Mihalj and soldiers nicknamed Babo and Sergej; Witnesses AG was raped by Marko Radić, Dragan Šunjić, Mario Mihalj and other unknown soldiers; Witnesses AM was raped at least three times by Mirko Vračević; Witnesses J was raped by Dragan Škobić; Witnesses E was raped by Mirko Bukara; Witnesses F was sexually abused by Damir (Emir) Brekalo and Dario Sušac.

Fourth Accused Mirko Vračević

During the period from July 1993 to March 1994, during the armed conflict between the HVO and the Army of BiH, Mirko Vračević aka Srbin /*Serb*/, as a member of the First Bijelo Polje Battalion of the Second Brigade of the Croat Defence Council (HVO), whose zone of responsibility covered the place of Vojno, Mostar Municipality, and in his capacity as a guard at the Vojno prison facility, personally committed, aided and instigated the carrying out of an attack on the Bosniak civilian population, within a wide-spread or systematic attack on the Bosnian Muslim civilian population of the Mostar Municipality by members of the HVO military and police forces, knowing of such attack which was aimed at abusing and persecuting the Bosniak population, in which Mirko Vračević willingly and knowingly participated; during that attack several dozens of Bosnian Muslim women, children and the elderly were unlawfully arrested, detained and kept in inhumane conditions in houses and other facilities in the place of Vojno, Mostar Municipality, whereas hundreds of Bosniak men, who were taken from the Heliodrom Camp for forced labour, were unlawfully detained in the prison facility in the place of Vojno, Mostar Municipality, where they were kept in brutal, humiliating and inhumane conditions in the garage and the cellar of a house, being exposed to physical and mental abuse, torture, being subjected to daily beatings by guards and soldiers, to which a number of detainees succumbed; as a guard, Mirko Vračević was responsible for the lives and limbs and security of all detainees; he had authority and control over detainees and duty to prevent anyone from harming them. Mirko Vračević personally contributed substantially to the functioning and furtherance of the system of abusing and persecuting the Bosnian Muslims of the Vojno prison facility, and he did so in such a way that he personally committed or

otherwise assisted in the commission of different forms of physical, mental and sexual violence, whereby the atmosphere of terror was created; he contributed to enforcing such conditions in the Camp that were brutal, barbaric and degrading for detainees who were kept there without fundamental necessities of life, including adequate food, clothing, accommodation, drinking water, medical care, who were kept detained in unhygienic conditions and in small space, being subjected to daily beatings, tortures, abuse, humiliation and mental and sexual abuse, and thus:

19. On an undetermined date in September 1993, Mirko Vračević, together with Mario Mihalj (deceased) and Dragan Šunjić, in the place of Đubrani, Mostar Municipality, participated in the transportation of fifty (50) detainees from the Heliodrom, for forced labour in Bijelo Polje, and when the group stopped to take a break, Mirko Vračević turned towards the detainees and asked them: *“How do you, Muslims, say the tomb?”*. Detainee Asif Čakrama, who was tied to Nuhan Makaš, replied: *“Mezar”*, whereafter Mirko Vračević turned and said: *“That's right”*, and he shot Asif Čakrama with an automatic rifle at point-blank range and killed him; the same bullet exited Asif Čakrama and hit the chest of another detainee, thus inflicting severe bodily injuries on him.

20. During the period from 7 September to the end of November 1993, in the Vojno Camp, at least three times in the evening Mirko Vračević took the female Witness AM, detainee of the Camp, from the room in which she was detained and brought her to a house which was in the Camp compound where he raped her.

21. During the period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade of HVO, in his capacity as a guard at the Vojno prison facility, is responsible for committing, instigating or otherwise aiding and abetting the unlawful detention of Bosniak civilians - women, children and the elderly from the area of the Mostar Municipality; those acts were committed in furtherance of the system of abusing and persecuting the Bosniaks in the Vojno prison facility in which Mirko Vračević willingly and knowingly participated; thus the following persons were unlawfully arrested and detained: Rahima Makaš with her daughter and two children, Witnesses A and F; Sadeta Macić, Mustafa Macić and two children, Witness B, Witness E; Mediha and her grand daughter Sanela, Zejna Mirica with her daughter, Enica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Edita Pehilj, Witnesses D, R, K, J together with a 73-year-old woman, Zejna Tihak and her son, Saja Ćorić, Mirhunisa Ćorić, Witness C, Witness 152, Witness 153, Dika Ćurić, Witnesses AG, AI, AM and others.

22. During the same period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, in his capacity as a guard at the Vojno prison facility, is responsible for committing, instigating or otherwise aiding the unlawful transfer of Bosniak men from the Heliodrom Camp, which was kept by the HVO, and their unlawful detention in the Vojno prison facilities, which are acts committed in furtherance of the functioning of the system of abusing and persecuting the Bosniaks in the Vojno Camp in which Mirko Vračević willingly and knowingly participated.

23. During the same period and in the same capacity as stated in the preceding Section, he is responsible for instigating or otherwise aiding the murders of detainees in the Vojno

Camp and in the surrounding area, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks in which Mirko Vračević willingly and knowingly participated; the acts included: the murders of Mustafa Čilić and Rasim Lulić by Damir (Emir) Brekalo - their bodies were exchanged and identified on 10 April 1994; the murder of Enver Kajtazi, Husnija Čorajević, Željko Čakalović, Aris Začinović by Mario Mihalj (deceased) and Jure Kordić - the bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994; the murder of Salim Halilović by Mario Mihalj - his body was exchanged and identified on 25 April 1994; the murder of Mensud Dedajić by unknown HVO soldiers - his body was identified and exchanged on 5 July 1994; the murder of Avdo Jelin by Mario Mihalj (deceased) and Dragan Šunjić - his body was exchanged and identified on 25 April 1994; the murder of Salman Mensur by an unknown soldier; the murder of Arif Omanović by Mario Mihalj and Dragan Šunjić - his body was exchanged and identified on 5 January 1996; the murder of Enes Nurko by Dragan Šunjić; the murder of Džemal Sabitović by an unknown soldier; his body was exchanged and identified on 10 April 1994; the murder of Hamdija Tabaković by an unknown soldier - his body was exchanged and identified on 10 April 1994; and the murder of Mustafa Kahvić by an unknown soldier - his body was identified and exchanged on 10 April 1994.

24. During the same period and in the same capacity as stated in the preceding Section, he is responsible for committing, instigating or otherwise aiding the physical and mental abuse and torture of detainees in the Vojno prison facility, while they were performing forced labour, as well as in other places, which are acts committed in furtherance of the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated; among other things, the detainees were beaten up, tortured and abused by commanders, guards of the prison and other HVO soldiers; specifically, they were beaten up with police batons and wooden axe handles; they were kicked with boots, hit with rifle butts; they were subjected to electric shocks, their heads were being hit against a wall; among them there were the following detainees: Zejna Tihak, Enver Tihak, Witness 152, Witness AA, Witness AB, Ramiz Mačković, Witness AF and other detainees, whereby severe physical and mental injuries were inflicted on them as was a temporary and lasting damage to their health.

On an undetermined date in the first half of September 1993, in the corridor of Mario Mihalj's command post in the Vojno Camp, Mirko Vračević came up to the Witness J and put a knife to her throat, saying to her: "*The fox is brought to the furrier*", which evoked great fear and emotional disturbance in the female detainee.

On an undetermined date in September 1993, while detainees were waiting for examination in a corridor of the command post of Mario Mihalj in the Vojno Camp, Mirko Vračević came up to a 17-month-old child of the Witness D, putting a bomb in her hands, asking: "*Does your father have one like this at home?*". The Witness D, mother of the little girl, whom she carried in her arms then, moved the child away in order to protect her, which caused a great fear and uneasiness among all of the detainees present.

On an undetermined date in late October 1993, within the compound of the Vojno Camp, while detainees were cleaning the compound of the Camp, he came up to the minor Witness 152, saying to him that he would slit his throat as he had slit his aunt's throat, whereafter he hit him with a rifle butt.

On an undetermined date in late August or early September 1993, from the garage which was located in the compound of the Vojno Camp and in which Bosniaks were unlawfully detained, Vračević brought the Witness 153 to the command post of Mario Mihalj; Mirko Vračević handed over the Witness 153 to Mario Mihalj; thereafter, Mario Mihalj ordered the Witness 153 to get undressed to the waist, and after that he began striking the Witness all over his body with a police baton, wooden curtain rod and with some tool; because of those blows the Witness 153 was covered with blood and bruises, and due to the inflicted blows the Witness 153 fell down, and then Mario Mihalj ordered Mirko Vračević to take Witness 153 back to the garage.

On an undetermined date in late August or early September 1993, Mirko Vračević took the Witness 153 out the garage which was located in the compound of the Vojno Camp and in which Bosniaks were unlawfully detained and brought him to the command post of Mario Mihalj, handed him over to him, and then Mario Mihalj, holding an electric cable in his hand, twisted bare wires of the cable around the fingers of the Witness 153 and thus he exposed him to electric shocks; during that time Dragan Šunjić was playing the guitar, whereas Mirko Vračević at the same time was bayoneting into different parts of Witness 153's body, on which occasion Witness 153 was suffering intense physical pains.

On an undetermined date in late August or early September 1993, Mirko Vračević took the detainee Arif Omanović out the garage which was located in the compound of the Vojno Camp and brought him to the command post of Mario Mihalj, where Arif Omanović was severely beaten up by Mario Mihalj, because of which Arif Omanović was covered with blood and bruises and his body was swollen up; then, Vračević dragged Omanović back to the garage as he was in such a bad condition that he was unable to walk.

On an undetermined date in early September 1993, Mirko Vračević took the Witness AI out the garage which was located in the compound of the Vojno Camp and brought him to a nearby house where Mario Mihalj and Dragan Šunjić were waiting for him; they put him on a chair and wound an electric wire around his fingers; the electric wire was connected to the telephone set; Mario Mihalj started turning the handle of the telephone, which caused the electric current to flow through the body of the Witness AI, which caused terrible pains and throes in the detainee; then they dragged him in a semiconscious condition back to the garage.

25. During the period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, in his capacity as a guard at the Vojno Camp, is responsible for committing, instigating or otherwise aiding in the unlawful use of female detainees for performing forced labour in the Vojno prison facility and in the surrounding area, including the cooking of food, washing of clothes and dishes and cleaning of houses, whereas men were forced to dig up trenches, carry sandbags and ammunition, chop woods and do other works for the needs of the HVO; he exposed them to severe physical and mental suffering, all of which was committed with the aim of furthering the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated.

26. During the period from July 1993 to March 1994, Mirko Vračević, as a member of the First Bijelo Polje Battalion of the Second Brigade HVO, in his capacity as a guard at the Vojno prison facility, is responsible for instigating or otherwise aiding in the rapes of and sexual violence against female detainees, which was committed with the aim of furthering the system of abusing and persecuting the Bosniaks, in which Mirko Vračević willingly and knowingly participated; among them there were: Witness A who was raped by Marko Radić; Witness D who was raped by Marko Radić and Damir (Emir) Brekalo, Witness B who was raped by Damir (Emir) Brekalo, Tomo Aničić, Dario Mihalj and soldiers nicknamed Babo and Sergej; Witness C who was raped by Damir (Emir) Brekalo and a soldier by name Marko; Witness AG who was raped by Marko Radić, Damir (Emir) Brekalo, Mario Mihalj, Dragan Šunjić and other unidentified soldiers; Witness J who was raped by Dragan Škobić; Witness F who was sexually abused by Damir (Emir) Brekalo, Dario Šušac and a soldier nicknamed Žuti.

On 27 August 1993, during the evening hours, from the house within the Vojno Camp complex, in which the Witness E was detained, he took out the referenced witness and brought her to the house in which there was a command and where Marko Radić ordered her to go with Mirko Vračević, saying to her that she should do everything she was told to do, whereafter Mirko Vračević took her over to HVO member Mirko Bukara, handed her over to him, saying: “*Here she is!*“, whereafter Mirko Bukara forced the Witness E to sexual intercourse.

Therefore, in the course of the armed conflict between the Army of Bosnia and Herzegovina and the Croat Defence Council (HVO), as part of a widespread or systematic attack aimed against the civilian population in the territory of Herzegovina, specifically in the territory of the Mostar Municipality, knowing about such attack and knowing that they participated in that attack:

Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, by arrangement with Mario Mihalj (deceased), Ivek Kolobara, Jure Kordić, Nedžad Čorić aka Nečko, Amel Hadžiosmanović aka Doktor, Nedžad Tinjak aka Žuti, among others, participated in the joint criminal enterprise in the Vojno prison facility in order to abuse and persecute the Bosnian Muslims and other non-Croats whom they kept in prison, through different forms of physical, mental and sexual violence and, are therefore, responsible for the above described crimes, all of which had as natural and predictable consequences the commission of the joint criminal enterprise;

Whereby:

1. the Accused Marko Radić committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with sub-paragraph a) Depriving Another Person of His Life (Murder), sub-paragraph e) Imprisonment (Arbitrary and Unlawful Detention of Detainees in the Camp), sub-paragraph f) Torture, sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence), sub-paragraph k) Other Inhumane Acts (Detention in Inhumane Conditions, Abuse, Humiliation and Other Mental Abuse), all in conjunction with Article 29 and Article 180(1) of the BiH CC,

2. the Accused Dragan Šunjić committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with sub-paragraph a) Depriving Another Person of His Life (Murder), sub-paragraph e) Imprisonment (Arbitrary and Unlawful Detention of Detainees in the Camp), sub-paragraph f) Torture, sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence), sub-paragraph k) Other Inhumane Acts (Detention in Inhumane Conditions, Abuse, Humiliation and Other Mental Abuse), all in conjunction with Article 29 and Article 180(1) of the BiH CC,
3. the Accused Damir Brekalo committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with sub-paragraph a) Depriving Another Person of His Life (Murder), sub-paragraph e) Imprisonment (Arbitrary and Unlawful Detention of Detainees in the Camp), sub-paragraph f) Torture, sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence), sub-paragraph k) Other Inhumane Acts (Detention in Inhumane Conditions, Abuse, Humiliation and Other Mental Abuse), all in conjunction with Article 29 and Article 180(1) of the BiH CC,
4. the Accused Mirko Vračević committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h), Persecution, as read with sub-paragraph a) Depriving Another Person of His Life (Murder), sub-paragraph e) Imprisonment (Arbitrary and Unlawful Detention of Detainees in the Camp), sub-paragraph f) Torture, sub-paragraph g) Sexual Violence (Rape and Other Forms of Sexual Violence), sub-paragraph k) Other Inhumane Acts (Detention in Inhumane Conditions, Abuse, Humiliation and Other Mental Abuse), all in conjunction with Article 29 and Article 180(1) of the BiH CC,

and therefore, pursuant to Article 285 of the BiH CPC, applying the provisions set forth in Articles 39, 42 and 48 of the BiH CC, the Court

S E N T E N C E S

- 1. THE ACCUSED MARKO RADIĆ TO A LONG-TERM IMPRISONMENT OF 25 YEARS,**
- 2. THE ACCUSED DRAGAN ŠUNJIĆ TO A LONG-TERM IMPRISONMENT OF 21 YEARS,**
- 3. THE ACCUSED DAMIR BREKALO TO A LONG-TERM IMPRISONMENT OF TWENTY (20) YEARS,**
- 4. THE ACCUSED MIRKO VRAČEVIĆ TO IMPRISONMENT FOR A TERM OF (14) YEARS,**

Pursuant to Article 56 of the BiH CC, the time spent in custody pending trial under decisions of this Court, starting on 2 June 2006 onwards, shall be credited towards the sentence of imprisonment of the accused Marko Radić, Dragan Šunjić and Damir Brekalo.

Pursuant to Article 188(4) of the Criminal Procedure Code of Bosnia and Herzegovina, the accused shall be relieved of the duty to reimburse the costs of the criminal proceedings and the scheduled amount, which shall be paid entirely from the Budget appropriations of the Court.

R e a s o n i n g:

Under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number: KT-RZ-95/05 of 29 November 2006, confirmed on 1 December 2006, Marko Radić, Dragan Šunjić and Damir Brekalo were charged that they, by the actions detailed in Counts 1, 2, 2a), 2b), 2c), 2d), 2e), 2f), 2g), 2h), 3, 4, 4a), 4b), 4c), 4d), 5, 6, 7, 8, 8a), 8b), 9, 9a), 9b), 9c), 9d), 9e), 10, 11, 12, 13, 14, 14a), 15, 16, 17, 18, 18a), 18b), 18c), 18d), 18e) and 19 of the Indictment, committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h) as read with sub-paragraphs a), e), f), g) and k) of the BiH CC, as read with Article 29 of the BiH CC, and all in conjunction with Article 180(1), (2) and (3) of the BiH CC. Under the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number: KT-RZ-200/06 of 27 December 2006, confirmed on 3 January 2007, Mirko Vračević was charged that, by the actions detailed in Counts 1, 2, 3a), 3b), 4, 5, 6a), 6b), 7, 8, 9, 10, 11, 12, 13 and 14 of the Indictment, he committed the criminal offence of Crimes against Humanity in violation of Article 172(1)h) as read with sub-paragraphs a), e), f), g) and k) of the BiH CC, as read with Article 29 of the BiH CC, and all in conjunction with Article 180(1) of the BiH CC.

Pursuant to Article 25(1) of the BiH CPC, under the Decision Number X-KR-05/139 of 16 March 2007, the Court decided to join the case against the Accused Mirko Vračević with the case conducted against the accused Marko Radić, Dragan Šunjić and Damir Brekalo, whereupon the main trial started on 17 April 2007.

On 15 May 2008, the Prosecutor submitted to the Court the single Indictment against the accused Radić, Šunjić, Brekalo and Vračević and he specified individual Counts of the Indictment in the factual description of the criminal offences, as follows: in Count 1 of the Indictment against Radić, Šunjić and Brekalo, below the text listing the names of Dika Ćurić, Plema Drljević, the text of the Indictment was changed by omitting the name of "*Plema Drljević*"; in Count 2a), the text of the Indictment was changed in such a way that, instead of "on an unidentified date in August", there is the text: "*on an unidentified date in July 1993*"; in the part of the same Count which reads: "after that, he deprived them of their lives", the text "*deprived them of their lives*" was deleted; in Count 2c), below the text: "was deprived of his life by an unidentified HVO soldier", the text "*was deprived of his life*" was omitted; in Count 2d), in the part of the text: "after an HVO soldier was injured", the words "*was injured*" were omitted, whereas in the part of the text: "were ordered ... to carry the body to the medical station in Vojno, the prisoners did so, and after the soldier died on the way", the part of the text: "*and after the soldier died on the way*" was omitted; in Count 2e), the text was changed so that in the text: "deprived the life of Salim Halilović, a prisoner who was in the same group of prisoners", a part of the text was omitted: "*in the same group of prisoners*"; in Count 2g), below the text: "and also during the same month, on an unknown date", the text "*the same month*" was omitted; in Count 2h), below the text: "and also during the same period of an unknown date", the text: "*during the same period*" was omitted; in Count 4a), below the text: "he ripped off her t-shirt, clothes", the word "*t-shirt*" was omitted, whereas below the text: "he ripped off her clothes", the text: "*then pulled out a knife and threatened to kill her*" was omitted, and in the same Count, below the text: "next time you'll not be that lucky", the text "*and tried to rape her, but he did not do it because the phone rang and he had to leave, but he told her that she was lucky and there would be bad days for her*" was omitted; in Count 4b), from the text: "/she/ was brought to the command post of Marko Radić on the first floor of a house", the text: "*on the first floor of a house*" was omitted, whereas from the text: "after that he went to the ground floor of the house", the text: "*he went to the ground floor of the house*" was omitted; in Count 4c) below the text: "then he forced her", the text: "*brought witness D to Marko Radić who forced her*" was omitted; in Count 5, below the word "Sergej", the words: "and Marko" were omitted; in Count 7, below the words: "Dika Ćurić", the name of "*Plema Drljević*" was omitted; in Count 9a), at the beginning of the Count, a part of the text: "*on an unidentified date in August*" was omitted; in Count 9b), below the text: "HVO member", the words "*was injured*" were omitted, whereas in the part of the text: "and they did it", the text: "*after the HVO soldier died on the way*" was omitted, and also in the part of text: "was deprived of his life", the text: "*by camp guards*" was omitted; in Count 9c), below the word prisoner which was omitted, there is a part of the text: "*who was in the same group of prisoners who were*"; in Count 9d), a part of the text: "*on an unknown date in November 1993, prisoner Sabitović Džemal*" was omitted; in Count 9e), below the word: "April 1994", the text: "*during the same period*" was omitted; in Count 10, below the name "*Ramiz Mačković*", the last name "*Sirovica*" was omitted, whereas below the name "Avdo Jelin", the word "*protected*" was omitted; in Count 12, after the name "Sergej", the words "*and Marko*" were omitted; in Count 14, below the

text: “and after that”, the text: “*he deprived them of their lives*” was omitted; in Count 16, after the name “Dika Ćurić”, the name “*Drljević Plema*” was omitted; in Count 17, “*Sirovica*” was omitted; in Count 18d), below the text: “and after that”, the text “*he ordered a soldier named*” was omitted; and in Count 19, “witness D” was omitted, whereas after the name “Sergej”, the words “*and Marko*” were omitted. In respect of the Indictment against the Accused Mirko Vračević, in the factual description, the Prosecutor specified the Indictment in such a way that in Count 20 of the single Indictment, in the very beginning of that Count, he replaced the text: “in late August 1993” with the text: “*on 27 August 1993*”, and from the text “go with Mirko Vračević to do everything she is told to do”, he omitted the text “*do everything she is told to do*”, whereas from the part of the text: “then Mirko Bukara forced”, the text: “*forced*” was omitted; in Count 21a) from the text: “Mirko Vračević came into the house where J was detained”, the text: “*came into the house where J was detained J*”; in Count 21b), from the text “Mirko Vračević entered a room where female Bosniak prisoners together with underage children were detained”, the text: “*entered a room where female Bosniak prisoners together with underage children were detained*” was omitted; whereas from the part of the text: “to all the prisoners in the house”, the words “*in the house*” were omitted; in Count 23a), below the text: “in which Bosniaks were unlawfully detained”, the text: “*among them was underage 153*” was omitted, as was the part of the text: “*took him from a garage*”, whereas below the text: “and brought Witness 153”, the text: “*to a house close to the garage, where ... had his office*”, was omitted; in Count 23b), below the text “Bosniaks were unlawfully detained”, the text: “*among them was underage 152*” was omitted, whereas below the name “Mirko Vračević”, the text: “*took him from a garage and brought to a house close to the garage*” was omitted; in Count 24, the words: “*in late or early September*”, were omitted, as was the part of the text: “*a house close to the garage, in which ... had his office, he handed him over, after which Mario Mihalj beat him for a while*”, in Count 26, below the text: “the following persons were arrested”, the text: “*protected witness X, and protected witness L, as well as Plema Drljević*” was omitted; in Count 30, the part of the text “*women detainees*”, was omitted and in Count 31, after the text: “by Marko Radić”, the text: “*and Damir (Emir) Brekalo*” was omitted, and also in the part of the text, after the names “Babo and Sergej” the name “*and Marko*” was omitted. The Prosecutor maintained such factual description of the criminal offences and the unchanged legal definitions from separate indictments throughout the main trial.

On 26 December 2006, the Court held a plea hearing of the accused Marko Radić, Dragan Šunjić and Damir Brekalo, on the occasion of which the accused Radić refused to enter a plea. Acting pursuant to Article 229(1) of the BiH CPC, the Preliminary Hearing Judge *ex officio* noted for the record that the Accused denied the guilt, whereas the accused Šunjić and Brekalo stated that they were not guilty. At the hearing held on 26 January 2007, the Accused Mirko Vračević pled not guilty.

During the main trial, the accused Marko Radić and Dragan Šunjić went on a hunger strike, and for that reason they did not appear at the main trial session held on 21 September 2007. The Court noted that the court police submitted an official note stating that the accused refused to appear at the scheduled hearing as they went on a hunger strike. The Court rendered a decision to hold a hearing without the presence of the accused who were timely summoned, but in the presence of their defence counsels. Because of the hunger strike, the accused Radić and Šunjić did not appear at the trial days on 24 September 2007, 28

September 2007, 5 October 2007, 8 October 2007 and 11 October 2007, so that the Court rendered decision at all of the referenced hearings to hold the hearings without the presence of Marko Radić and Dragan Šunjić who were timely summoned, holding that the accused refused to attend the scheduled hearings, and in that way they knowingly waived the right which they had under the law. Throughout the hunger strike, a team of expert witnesses regularly checked the health condition of those accused and submitted reports to the Court, stating that they were conscious and well-oriented in time and space; the defence counsels for the accused were present at all hearings; the record of the hearings held was provided to the accused in the forms of a CD; and they were given the opportunity to appear and attend the trial at any time.

Throughout the proceedings the Court was mindful of witness identity protection, especially the witnesses for the Prosecutor's Office who were granted protective measures, as follows: AI, 152, A, J, C, F, E, D, R, AD, AK, AA, AL, 151, K, AF, AJ, 153, AH, AE, B, L, X and 154, and also of the Prosecution witnesses AG, AB and AM whose statements were read out, as well as the following witnesses for Defence who were granted protective measures: witnesses of the first accused 001 and 003, in a way that full first and last names of those witnesses were not mentioned at the main trial and in the Verdict, but only the pseudonyms given to them, whereas complete data about the referenced witnesses exist in the case-file which is also under special protection.

During the main trial, members of the public were excluded from the hearings held on the following dates: 19 April 2007 during the examination of the Protected Witness AI, 7 June 2007 during the examination of the Protected Witness 152, 13 June 2007 and 26 June 2007 during the examination of the Protected Witness A, 29 June 2007 and 6 July 2007 during the examination of the Protected Witness J, 23 July 2007 and 27 July 2007 during the examination of the Protected Witness C, 24 September 2007 and 28 September 2007 during the examination of the Protected Witness E, 5 October 2007 and 8 October 2007 during the examination of the Protected Witness D, 21 January 2008 during the examination of the Protected Witness B, 13 February 2008 during the examination of the Protected Witness L, 19 February 2008 during the examination of the Protected Witness X and 28 August 2008 during the examination of the Protected Witness 001 who was proposed by the Defence for the first accused. Also, the public was partially excluded from the hearings which were held on 30 November 2007 during the examination of the Protected Witness K, 3 December 2007 during the examination of the Witness Ibrahim Šogolj, 8 January 2008 during the examination of the Protected Witness AH, 15 January 2008 during the examination of the Protected Witness AE and 18 August 2008 during the examination of the Protected Witness 003.

More specifically, the Prosecutor's Office moved the Court to exclude members of the public during the examination of the referenced Prosecution witnesses who were granted protective measures, and also during the reading of statements of such witnesses, for the reason of protection of personal and intimate life of the injured parties, the largest number of whom were women who testified about the rapes and sexual abuse to which they were exposed, as well as for the protection of interests of the witnesses. The Defence for the accused objected to the exclusion of the public on the grounds that protective measures have already been granted to all of those witnesses, noting that they were to testify under pseudonyms, which provides a sufficient guarantee of the protection of identities of all of

those witnesses. The Panel rendered the decision to grant the motion of the Prosecutor's Office and exclude members of the public from the testifying of the referenced witnesses at the hearing as well as from the reading of the statements of the injured parties and the witnesses, pursuant to Article 235 of the BiH CPC, considering that the contents of their testimonies are of such nature that the exclusion of the public is necessary because of the protection of their personal and intimate life as well as because of the protection of interests of the witnesses, notwithstanding the protective measures granted under the Law on Protection of Witnesses. Also, the Court granted the Motion of the Defence to exclude members of the public from the testifying of the witnesses 001 and 003 of the first accused, because, due to the contents of those witness testimonies, it considered that members of the public should be excluded, as only in that way could the interests of those witnesses be protected.

Evidence adduced

During the evidentiary procedure the Prosecutor's Office adduced the following pieces of evidence:

Under the Motion of the Prosecutor's Office of BiH, the following witnesses were heard: Witness AI, Saja Ćorić, Witness 152, Witness A, Witness J, Witness C, Witness F, Witness E, Witness D, Witness R, Witness AD, Witness AK, Witness AA, Witnesses Ramiz Mačković, Dika Ćurić, Azer Handžar, Ramiz Bebanić, Witness AL, Semir Humačkić, Witness 151, Hasan Trtak, Witness K, Ibrahim Šogolj, Slavko Kožul, Redžo Ibrahimović, Dragan Galić, Witness AF, Zulfo Humačkić, Damir Lukić, Witness 153, Stanko Božić, Aziz Dautbegović, Witness AH, Witness AE, Huso Mehremić, Witness L, Witness X, Witness 154 and Witness Arnel Šahurić.

During the main trial, in their capacity as expert witnesses of the Prosecutor's Office of BiH, the following expert witnesses gave their Findings and Opinion: Haso Sefo MD (expert evaluation of the neurosurgical state of the Accused Brekalo), the expert witness Alma Bravo-Mehmedbašić (expert evaluation of the Witness AG) and the expert witness Senadin Ljubović (expert evaluation of the Accused Damir Brekalo).

Further, during the main trial, the Court reviewed the following pieces of evidence submitted by the Prosecutor's Office of BiH: Record of examination of protected witness AI made in the Prosecutor's Office of BiH on 10 October 2006 under Number KT-RZ-95/05, with translation in English language; Medical documentation – Finding and Opinion of a specialist for the patient AI made by the Regional Medical Centre, Dr Safet Mujić Mostar, under Number 3760 of 13 September 1996; Medical documentation – Finding and Opinion of a specialist for the patient AI made by the Regional Medical Centre Dr Safet Mujić Mostar, under Number 6216/06 of 16 November 2006; Medical documentation for the Witness AI – incomplete photocopies; List of persons exchanged from the Vojno Camp on 14 August 1993, under Number 1-5-10/96, made by the Initiatives Board of female prisoners of the Vojno Camp Bijelo Polje of 1 May 1996; Discharge Card from hospital bearing the name of Sajo Ćorić, under number 562/97, issued by the General Surgery Hospital Mostar; Medical documentation – Radiological Finding and Opinion for Sajo Ćorić, made by the Clinical Hospital Mostar (Radiology Service), under Number 4458 of 22 August 1997; Medical documentation - Radiological Finding and Opinion for Sajo

Ćorić made by the Clinical Hospital Mostar (Radiology Service), under Number 4458 of 22 August 1997; Medical documentation - Finding and Opinion of a specialist for patient Sajo Ćorić, made by the Regional Medical Centre Mostar (Service for Surgical Treatment), under Number 65/97 of 25 August 1997; Medical documentation - Radiological Finding and Opinion for Sajo Ćorić, made by the Clinical Hospital Mostar (Radiology Service), under Number 4606 of 19 September 1997; Discharge Card bearing the name of Sajo Ćorić, under Number 585, issued by the Clinical Centre of the University in Sarajevo (Neurosurgery Clinic); Medical documentation - Finding and Opinion for Sajo Ćorić, made by the Clinical Centre of the University in Sarajevo (Institute for Radiology) of 14 July 1998; Witness Examination Record - Sajo Ćorić, made in the Prosecutor's Office of BiH of 15 May 2006, under Number KT-RZ-95/05, with translation in English Language; Witness Examination Record for Sajo Ćorić, made in the Prosecutor's Office of BiH of 7 December 2006, under Number KT-RZ-200/06, with translation in English Language; Discharge Card from hospital bearing the name of the Witness under the pseudonym of 152, under Number 326/00, issued by the RMC Dr Safet Mujić, O.J. Hospital for Surgical Treatment, Service for Surgical Treatment; Discharge Card bearing the name of Witness 152, under Number 70, issued by the Clinical Centre of the University in Sarajevo; Medical documentation bearing the name of Witness 152, under Number 221/00 made by the RMC Dr Safet Mujić, Department for Pathology and Forensic Medicine; Medical documentation – Finding and Opinion of doctors, bearing the name of Witness 152, of 11 April 1996; Photo-documentation – taking photos of scars on Witness 152 in the Prosecutor's Office of BiH, under Number 17-13/1-7-19/06 made by the State Investigation and Protection Agency, of 25 May 2006 (date of making 9 March 2006); Record on Examination of Witness under the pseudonym of 125, made in the Prosecutor's Office of BiH, of 25 May 2006, under Number KT-RZ-95/05, with translation in English Language; Record on Examination of Witness under the pseudonym A, made in the court in Mostar, in the office of Investigating Judge Reuf Zaimović, of 30 March 1996, under Number Ki 4/95, with translation in English Language; Statement by Witness A given to ICTY investigators, of 26 February 2001 and 6 March 2001; Witness Examination Record for A, made in the Prosecutor's Office of BiH, of 19 May 2006, under Number KT-RZ-95/05, with translation in English Language; Record on Examination of Witness under the pseudonym of J, made in the court in Mostar, in the office of Investigating Judge Halil Maksumić, of 29 March 1996, under Number Ki 4/96, with translation in English Language; Statement by Witness J given to ICTY investigators, of 28 April 1997; Witness Examination Record for J, made in the Prosecutor's Office of BiH, of 30 June 2006, under Number KT-RZ-95/05, with translation in English Language; Record on Examination of Witness under the pseudonym of C, made in the Prosecutor's Office of BiH, of 23 May 2006, under Number KT-RZ-95/05, with translation in English Language; Record on Examination of Witness under the pseudonym of F, made in the court in Mostar, in the office of Investigating Judge Halil Maksumić, of 9 April 1996, under Number Ki 4/96, with translation in English Language; Record on Examination of Witness F, made in the Prosecutor's Office of BiH, of 24 July 2006, under Number KT-RZ-95/05, with translation in English Language; Sketch of the Camp and terrain around the Vojno Camp, made by Witness under the pseudonym of E, of 24 September 2007; Record on Examination of Witness under the pseudonym of D, made in the Prosecutor's Office of BiH, of 24 May 2006, under Number KT-RZ-95/05, with translation in English Language; Statement by Witness under the pseudonym of R given to ICTY investigators, of 29 June 2002, with translation; Handwritten List of persons made by Witness under the pseudonym of AK; Statement by detainees who returned from the

work and stay in the Vojno Camp, of 28 January 1994, in which Witness AK personally put his signature on page 8 of the Statement; English translation of statement of detainees who returned from the work and stay in the Vojno Camp, of 28 January 1994 (with ICTY electronic certification); Statement by detainees who returned from the work and stay in the Vojno Camp, of 28 January 1994, in which a signature of Witness Semir Humačkić was put on page 8 of the Statement; Medical documentation – Medical History and Discharge Card for Azer Handžar, under Number 430/0, made by the HVO Regional War Hospital Mostar; Medical documentation – Certificate confirming that Azer Handžar was admitted in hospital for treatment, under Number 30-17-3-682/93, issued by the MC Džemal Bijedić Zenica, Regional Hospital Zenica, of 14 September 1993; List made by Witness Ibrahim Šogolj, including the names of 75 persons; Log from Heliodrom – School and Gym – Mostar, kept from 16 September 1993 until 13 October 1993; Witness Examination Record for Slavko Kožul, made in the Prosecutor's Office of BiH, of 5 October 2006, under Number KT-RZ-95/05, with translation in English Language; Witness Examination Record for Damir Lukić, made in the Prosecutor's Office of BiH, of 21 November 2006, under Number KT-RZ-95/05, with translation in English Language; Sketch identified by Witness under the pseudonym of 153, with ICTY certification; Order approving the taking of 50 detainees from SVIZ /*Military Remand Prison Centre*/ Heliodrom Mostar, under Number 02-4/3-01/01-1153/93, issued by Croat Community of Herceg-Bosna, Croat Defence Council, OZ JIH, Defence Sector of Mostar, of 2 September 1993; Order approving the taking of 50 detainees of the SVIZ Heliodrom Mostar, under Number 02-4/3-04/2-933/93, issued by Croat Community of Herceg-Bosna, Croat Defence Council, OZ JIH, Defence Sector of Mostar, of 19 August 1993; Report under Number 02-12-13-37/94, made by Military Police Administration, POW shelter, of 31 January 1994, with attached Reports made by Commander of the Military Camp Mario Mihalj, of 30 October 1994; Statement by detainees who returned from the work and stay in the Vojno Camp of 28 January 1994; Report on inspection of prison, containing four statements by detainees as attachments, under Number 663/93, signed by Commander of the SVIZ Stanko Božić, Military Remand Prison Centre, of 10 September 1993; Report for September 1993, sent to chief of Military Police, under Number 735/93, signed by Commander of the SVZ Stanko Božić, Military Remand Prison Centre, of 2 October 1993; Report under Number 685/93, signed by commander of the SVIZ Stanko Božić, Military Remand Prison Centre, of 18 September 1993; Report under Number 698/93, signed by Commander of the SVZ-a Stanko Božić, Military Remand Prison Centre, of 22 September 1993; Report under Number 636/93, signed by Commander of the SVIZ-a Stanko Božić, Military Remand Prison Centre, of 3 September 1993; List of detainees brought in on 21 September 1993, under Number 703 (675 crossed out)/93, made by Military Remand Prison Centre, of 23 September 1993; Report under Number 698/93, signed by Commander of the SVIZ Stanko Božić, Military Remand Prison Centre, of 22 September 1993; List of detainees from Doljani and Sovići who are currently at work or in medical treatment, under Number 586/93, sent to the Office for Exchange of Prisoners, signed by Deputy Warden and SVIZ Commander Josip Praljak, Military Remand Prison Centre, of 25 August 1993; Photo-documentation – Exchange and identification of corpses from the Vojno Camp made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, from 11 April 1994 to 5 July 1994; Official Note on examination and identification of Hamdija Tabaković's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of Mustafa Čilić's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April

1994; Official Note on examination and identification of Rasim Lulić's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of Džemal Sabitović's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of NN 109's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of Nijaz Nurko's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 10 April 1994; Official Note on examination and identification of NN 112's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 113's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 115's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 116's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 119's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of NN 120's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 25 April 1994; Official Note on examination and identification of Arif Omanović's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 27 April 1994; Official Note on examination and identification of Mesud Dedajić's body, made by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 5 July 1994; Black-and-white photograph of NN 120's body; Black-and-white photograph of NN 120's body; Black-and-white photograph of NN 120's body; Black-and-white photograph of NN 108's body; Black-and-white photograph of NN 108's body; List of detainees in the Vojno Detention Centre, under Number 01-306/94, made by the SIS /Intelligence Security Sector/, Second Brigade, HVO – Mostar Military District, of 13 January 1994; Request, under Number 02-4/2-2-526/93, signed by Head of SIS Centre Mostar Zoran Lasić, Ministry of Defence, SIS Centre Mostar, of 11 December 1993; List of detainees in Vojno, made on 11 December 1993; Report on situation in the 2nd Brigade, made by Ivica Rotim, of 24 August 1993; List of Muslims present in units of the Second Brigade HVO; Order under Number 02-2/1-01-1264/93 for establishing Bijelo Polje Battalion, issued by HVO Main Staff, of 3 July 1993; Witness Examination Record for Ivica Rotim, made in the Prosecutor's Office of BiH, of 25 October 2006, under Number KT-RZ-95/05, with translation in English Language; Witness Examination Record for Junuz Halilović, made in the Prosecutor's Office of BiH, of 18 May 2006, under Number KT-RZ-95/05, with translation in English Language; Witness Examination Record for Junuz Halilović, made in the court in Zenica, in the office of the Investigating Judge Reuf Zaimović, of 6 September 1996, under Number Ki-6/96; Certificate of Hamdija Tabaković's death, under Number 18/02-1684/96, issued by Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 27 May 1996; Official Letter sent to the Higher Public Prosecutor's Office Mostar regarding the identification of Hamdija Tabaković, under Number KU 71/95, sent by the Ministry of the Interior, Security Services Centre, Crime Police Sector Mostar, of 27 May 1996; Death Certificate for a person under the name of Hamdija Tabaković, under Number 04/II-, issued by the Registry Office, Town area of Mostar – Stari Grad; Decision under Number 18/07-202-, approving of the

subsequent entry of death into the Registry of Deaths for the person under the name of Hamdija Tabaković, made by the Ministry of the Interior, Security Services Centre Mostar, of 27 May 1996; Official Letter sent to the Prosecutor's Office of BiH, Special Department for War Crimes, under Number 04/II-15-1558/06, sent by the Registry Office, Town area of Mostar – Stari Grad, of 5 April 2006; Death Certificate for the person under the name of Avdo Jelin, under Number 04/II-15-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Certificate for a person under the name of Husnija Ćorajević, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Husnija Ćorajević, under Number 18/02-29-6/47-95, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 30 January 1995; Death Certificate for the person under the name of Džemal Sabitović, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Džemal Sabitović, under Number 18/02-29-6/85-95, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 11 September 1995; Death Certificate for the person under the name of Aris Začinović, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Aris Začinović, under Number 18/02-29-6/206-96, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 5 July 1996; Death Certificate for the person under the name of Arif Omanović, under Number 04/, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Arif Omanović, under Number 18/02-29-6/103-96, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 5 January 1996; Death Certificate for the person under the name of Asif Čakrama, under Number 04/, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Report for the person under the name of Asif Čakrama, under Number 18/02-29-6/209-96, submitted by the Ministry of the Interior, Security Services Centre Mostar, of 30 July 1996; Death Certificate for the person under the name of Mensud Dedajić, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Death Certificate for the person under the name of Mensud Dedajić, issued by the War Hospital Mostar, of 7 July 1994; Death Certificate for the person under the name of Željko Čakalović, under Number 04/II-15-3-, issued by the Registry Office, Town area of Mostar – Stari Grad; Cover Letter sent to the Prosecutor's Office of BiH by the Registry Office – Service for General Administration, Social Activities, Protection of War Veterans and Invalids and Social Issues of the Jablanica Municipality, under Number 03-I/5-15-3-1081/06, of 25 April 2006; Death Certificate for the person under the name of Mustafa Čilić, under Number 03-I/5-15-3-1079/06, issued by the Registry Office of the Jablanica Municipality, of 25 April 2006; Request for entry into the Registry of Deaths for the person under the name of Mustafa Čilić, under Number 05/513-1-7/94, sent by the Command of the 44th Mountain Brigade Jablanica, Army of BiH, of 3 August 1994; Death Certificate for the person under the name of Rasim Lulić, under Number 03-I/5-15-3-1078/06, issued by the Registry Office of the Jablanica Municipality, of 25 April 2006; Request for entry into the Registry of Deaths for three persons, including the person under the name of Rasim Lulić, under Number 09/513-1-5/94, sent by the Command of the 44th Mountain Brigade Jablanica, Army of BiH, of 26 July 1994; Personal Record Card bearing the name of Marko Radić, under Number 1064190359; Unit Record bearing the name of Marko Radić, under Number 1064190359; Report on handover of duty of Commander of the 2nd Brigade HVO Mostar, under Number 03-1472/93, made by the Second Brigade of the Mostar Military District, of 22 December 1993; Personal Record Card bearing the name of Dragan Šunjić; Membership

Application Form of Dragan Šunjić for the Homeland War Volunteers and Veterans Association HR H-B, of 28 May 1996; Military ID Card for Dragan Šunjić, under Number 0026514; Personal Record Card bearing the name of Damir Brekalo, under Number 1064010564; Minutes from the meeting between battalion commanders and Municipal Authorities representatives, of 20 March 1993, under Number 0-0013/93, made on 26 March 1993 by the Tihomir Mišić Battalion, 3rd Brigade HVO; List of soldiers of Convicts Battalion who are to be issued a decision for an apartment, made by HVO – OZ JIH /*Southeast Herzegovina Operations Zone*/, of 2 June 1993; List of members of the Ivan Stanić Ćićo Convicts Battalion, signed by Commander of the Convicts Battalion of Marko Radić, of 27 June 1993; Payroll for November 1993, under Number 02-2/2-403-1144/93, made by Convicts Battalion I ATJ, of 2 December 1993; Order issued by the Second Brigade HVO – Mostar Military District, under Number 02-582/94, signed by Commander of the Brigade Marko Radić, of 27 January 1994; Order issued by the Second Brigade HVO – Mostar Military District, under Number 02-1351/94, signed by Commander of the Brigade Marko Radić, of 6 March 1994; Order approving of taking 8 prisoners of the SVIZ Heliodrom Mostar, under Number 02-4/3-01/01-1270/93, issued by the Croat Community of Herceg-Bosna, Croat Defence Council, OZ JIH, Mostar Defence Sector, of 6 September 1993; Order approving of taking 6 prisoners of the SVIZ Heliodrom Mostar, under Number 02-269/93, issued by the Croat Republic of Herceg-Bosna, Croat Defence Council, OZ JIH, Mostar Defence Sector, of 4 October 1993; Report under Number 676/93, made by the Military Remand Prison Centre, of 14 September 1993; List including 58 names of prisoners with personal information, information about their arrest and stay in the Vojno Camp; List of war and civil prisoners who were killed at work by the MOS, under Number 02-4/3-12-15/94, sent to the Office for exchange by Military Police – POW shelter, of 6 January 1994; Information about situation in the POW shelter Heliodrom, under Number 02-4-1/94-112, Class 804-01/94-01 made by the Security Sector of the Ministry of Defence of the Croat Republic of Herceg-Bosna, of 3 February 1994; Request for the check of averments from the Report on the visit of ICRC to the POW shelter, under Number 02-4-1/94-104, Class 003-01/94-01, sent by the Security Sector of the Ministry of Defence of the Croat Republic of Herceg-Bosna, of 31 January 1994; Information “A“, under Number 02-4/2-2-477/93, in connection with the exchange of civilians which was carried out on 2 December 1993 in Vojno, made by the Ministry of Defence, SIS Centre Mostar, of 3 December 1993; Statement in connection with the Request Reg.No. 05.167/93 of 22 July 1993, made by the First Bijelo Polje Battalion, signed by Commander of the Battalion Marko Radić, of 31 July 1993; Decision, under Number 03-8/1-7-203-111, approving of the change of Emir Brekalo's personal name, issued by the Police Station Mostar, Police Department Mostar, Interior Affairs Unit, of 28 September 1993, with cover letter of the Service for administration and support of the MoI of the Hercegovina-Neretva Canton, under Number 02-03/1-5-09-2-1009/06, sent to the Prosecutor's Office of BiH, of 14 June 2006; Verdict by the Cantonal Court in Mostar, finding Dragan Šunjić guilty of the criminal offence of attempted murder, under Number K-2/05, of 22 March 2005; Verdict by the Supreme Court of the Federation of BiH whereby the Verdict by the Cantonal Court in Mostar Number K-2/05 of 22 March 2005 is revised in the decision on the punishment, of 7 July 2005, under Number Kž-258/05, with the cover letter of the Supreme Court of the Federation of BiH forwarded to the Prosecutor's Office of BiH, under Number 070-0-Su-00 1251, of 26 June 2006; Decision of the Commission for parole of the Government of the Federation of BiH by which Dragan Šunjić is released on parole, under Number 05-12-366/06, of 12 April 2006; Verdict by the Higher Court in Mostar confirming the Verdict by

the Basic Court in Mostar, Number K.1/96 of 24 July 1996, under Number Kž. 14/96, of 22 April 1997; Verdict by the Municipal Court I Mostar, finding Damir Brekalo guilty of criminal offence of Seriously endangering the general safety of people and property, under Number K.30/98, of 26 November 2001; Verdict by the Cantonal Court in Mostar confirming the Verdict of the Municipal Court I Mostar, Number K.30/98 of 26 November 2001, under Number Kž 23/02, of 6 February 2002; Photo-documentation based on the search of the apartment and other premises owned by Marko Radić, conducted in Mostar on 2 June 2006, under Number 17-14/1-7-21/06, made on 26 July 2006, with cover letter of the State Investigation and Protection Agency sent to the Court of BiH, under Number 17-04/2-04-2-310-28/06, of 31 July 2006; Record of the Prosecutor's Office of BiH, Number Kt-RZ-95/05 of 19 July 2006 on the opening and inspection of the temporarily seized objects and documentation; Cover Letter by SIPA no. 17/04/2-04-2-310-20/06 of 6 July 2006 with Photo-documentation of SIPA no. 17-02/8-04-1-08/06 of 2 June 2006; Search of Dragan Šunjić's house; Official Letter by the Prosecutor's Office of BiH Number KT-RZ-95/05 of 7 June 2006 sent to the Court of BiH, containing the official report by the SIPA on the search of the premises and temporary seizure of objects; Cover Letter by SIPA no. 17-04/2-04-2-310-12/06 of 5 June 2006 with Official Report by SIPA no. 17-04/2-04-2-310-11/06 of 5 June 2006 on acting under the Order of the Court of BiH Number X-KRN-05/139 of 2 June 2006; Records by SIPA on the search of Marko Radić's apartment, other premises and movable property no. 17-04/2-04-2-7/06, no. 17-04/2-04-2-7-1/06 and no. 17-04/2-04-2-7-2/06- all of 2 June 2006; Receipts by SIPA of temporary seizure of objects no. 17-04/2-04-2-24/06, no. 17-04/2-04-2-27-1/06 and no. 17-04/2-04-2-24-2/06- all of 2 June 2006; Search Warrant by the Court of BiH no. X-KRN-05/139 of 2 June 2006; Record by SIPA on the search of Damir Brekalo's apartment, other premises and movable property no. 17-04/2-04-2-10/06 of 2 June 2006; Receipts by SIPA of temporary seizure of objects no. 17-04/2-04-2-25/06 of 2 June 2006; Record by SIPA on the search of Dragan Šunjić's apartment, other premises and movable property no. 17-04/2-04-2-8/06 of 2 June 2006; Receipt by SIPA of temporary seizure of objects no. 17-04/2-04-2-26/06 of 2 June 2006; Order by the Court of BiH no. X-KRN-05/139 of 2 June 2006; Record by SIPA on the search of Franjo Radić's apartment, other premises and movable property no. 17-04/2-04-2-9/06 of 2 June 2006; Receipt by SIPA of temporary seizure of objects no. 17-04/2-04-2-28/06 of 2 June 2006; Order by the Court of BiH no. X-KRN-05/139 of 2 June 2006 (2 copies of the Order); Cover Letter made by SIPA no. 17-04/2-04-2-310-30/06-BK of 6 September 2006 with On-site Investigation Report by SIPA no. 17-04/2-04-2-310-30/06 of 18 July 2006; Warrant for the search of premises issued by the Court of BiH under Number X-KRN-05/139 of 2 June 2006; Cover Letter made by SIPA officers under no. 17-02/8-04-1-921/06 of 25 August 2006 with photo-documentation of facilities in the town of Vojno no. 17-02/8-04-16/06 of 17 July 2006; Sketch of the site with drawing of the facility no.1 (house) in the town of Vojno made by SIPA officers no. 17-02/8-04-16.2/06 of 17 July 2006; Sketch of the site with drawing of the facility no. 2 (house) in the town of Vojno made by SIPA officers no. 17-02/8-04-16.1/06 of 17 July 2006; Sketch of the site with drawing of the facility no. 3 (garage) in the town of Vojno made by SIPA officers no. 17-02/8-04-16/06 of 17 July 2006; Record of examination of Mario Mihalj made by Military Police Administration, Crime Prevention Department of the Mostar Section no. 02-4/3-03-S1651/93 of 8 July 1993; Discharge Card bearing the name of the Witness under the pseudonym X, under Number 259/0, made by Regional War Hospital HVO Mostar with medical documentation bearing the name of the Witness X; Finding and Opinion by the team of doctors - expert witnesses in psychiatry of the KCU /*Clinical Centre of the*

University/ Sarajevo in connection with psychical state of the Witness under the pseudonym AG, with the Order for psychical and psychiatric expert evaluation of the Prosecutor's Office of BiH, under Number KT-RZ-95/05 of 14 February 2008, with attachments, and with cover letter of the Prosecutor's Office of BiH, under Number KT-RZ-95/05 of 22 February 2008; Certificate of resolving the housing issue of soldiers of the First Battalion Bijelo Polje of 24 May 1993, signed by Marko Radić; Statement given by Ivica Kolobara to Military Police Administration, Crime prevention department of Mostar Section on 8 July 1993 under Number 02-4/3-03-81657/93; Request for giving consent for relocation of soldiers from the First Battalion of 7 December 1993, Number 04-127/93 signed by B. Božić for Marko Radić as Commander of the First Battalion; Certified copy of one page from military records of conscripts which lists the name of Rudo Ravlić under Number 2080; Official Note made by SIS officer Ivica Leko on 23 November 1993 under Number 01-2424/93; Original cover letter Number 17-04/2-04-2-1155 of 25 January 2007 with Photo-documentation made by SIPA officers, referring to the search of Mirko Vračević's house; Original Military ID Number 0026494 of 4 November 1995, issued to the name of Mirko Vračević; Excerpt from the military records for Mirko Vračević of 1 February 2008, Number 07-03-88-2/07, issued by the Federation Ministry for War Veterans and Disabled Veterans of the Homeland War; Certified copy of one page from military records of conscripts which lists the name of Mirko Vračević under Number 1750; Official Letter of 8 February 2008, issued by MoI of HNK /*translator's note: Herzegovina-Neretva Canton*/ under Number 02-02/3-1-04-96-15/08 IZ, referring to Death Report for Mustafa Jelovac; Death Report for Mustafa Jelovac made in MoI Mostar on 8 November 1994 under Number 187/02-29-6/36-94; Official Letter of 21 January 2008, Number 04/5-13-274/08 made by Service for administration and social activity, referring to Death Report for Salim Halilović; Death Certificate for Salim Halilović, Number 04/6-13-2-587/08 of 21 January 2008, issued by Registry Office in Zavidovići; Decision on the proof of Salim Halilović's death, Number 31/96 of 28 April 1997 issued by Municipal Court in Zavidovići; Official Letter by Missing Persons Institute of BiH, Number 01-40-125/2008 of 28 January 2008, referring to the following persons: Ibrahim Hodžić, Mustafa Jelovac, Humija Omanović, Enes Nurko, Mensud Salman, Enver Kajtazi, Mustafa Kahrić and Salih Halilović; Official Letter made in Registry Office Mostar on 30 January 2008 under Number 04/1-II-15-184/08, referring to Enes Nurko, Mustafa Kahvić, Ibrahim Hodžić who are listed in the Register of Deaths, and confirmed record of entry in Register of Deaths for Mensud Salman and Mustafa Jelovac; Death Certificate for Mensud Salman, Number 04/1-II-15-3-192/2008 of 30 January 2008 issued by Registry Office in Mostar; Death Report for Mensud Salman made in MoI Mostar on 14 March 1996, under Number 187/02-29-6/116-96; Death Certificate for Mustafa Jelovac, Number 04/1-II-15-3-193/2008 of 30 January 2008, issued by Registry Office in Mostar; Certified copy of Personal Record Card on military records for Branko (Ivan) Božić of 11 March 1975, with the change of data of 2 November 1992, 1 January 1994 and 19 April 1994; Certified copy of Personal Record Card on military records for Nedžad Tinjak; Certified copy of Personal Record Card on military records for Dario Sušac; Certified copy of Personal Record Card on military records for Amel Hadžiosmanović; Certified copy of Personal Record Card on military records for Nedžad Ćorić; Certified copy of one page from military records of conscripts which lists the name of Ivica (Stojan) Kolobara under Number 824; Certified copy of Personal Record Card on military records for Dragan Škrobić; Official Letter of 15 June 2006, Number 17-13/3-1-918, made by State Investigation and Protection Agency, referring to the excerpt from criminal and operative records for Dragan Šunjić, Marko

Radić and Damir Brekalo; Record on Examination of Witness under the pseudonym of AG, made in Higher Court in Mostar, in the office of Investigating Judge Reuf Zaimović, of 12 April 1996, under Number Ki 4/96, with translation in English Language; Statement by Witness AG, given to ICTY investigators, of 28 June 2002; Record on Examination of Witness under the pseudonym AM, made in Prosecutor's Office of BiH, of 7 December 2006, under Number KT-RZ-200/06, with translation in English Language; Record on Examination of Witness under the pseudonym of AB, made in the Prosecutor's Office of BiH, of 10 August 2006, under Number KT-RZ-95/05, with translation in English Language; Record on Examination of Witness AB, made in Higher Court in Mostar, in the office of Investigating Judge Halil Maksumić, of 14 November 1996, under Number Ki 4/96, with translation in English Language; Witness Examination Record for Žarko Leko, made by SIPA officers, under Number 17-04/2-04-2-368/06 of 20 June 2006; Witness Examination Record for Žarko Leko, Number KT-RZ-95/05 of 25 September 2006, made in the Prosecutor's Office of BiH, with the sketch made by the Witness during the examination in the Prosecutor's Office including specific locations of lines of defence, command, a house in which there were women, a garage, a kitchen and Zadro's house; Witness Examination Record for Rude Ravlić, made by SIPA members on 26 June 2006, under Number 17-04/02-04-2-369/96; Witness Examination Record for Rudo Ravlić, made in the Prosecutor's Office of BiH on 26 September 2006, under Number KT-RZ-95/05; Report made by Command of the II Company of the V Battalion, Number 02-4/3-06/2-846/93 (handwriting added), for the date of 2 July 1993, with Tihomir Kožul's signature; Report made by Command of the II Company of the V Battalion, Number 02-4/3-06/2-871/93 (handwriting added), period from 8 July to 15 July 1993; Witness Examination Record for Niko Marušić, made in Prosecutor's Office of BiH, under Number KT-RZ-95/05, on 5 September 2008, with attachment including the names of the Fifth Battalion of Military Police HVO, as well as handwritten Report from a check-point in Salakovac made by Commander of the check-point Niko Marušić; Official Note including the List of names of witnesses of Prosecutor's Office who are to be called, and who are presented to Witness Šahorić; Personal Data Card for Officer Anđelko Zlatić, with Number 2388/60; Death Record for Mesud Dedajić, made and signed by Dragan Šunjić as Prison Deputy Commander, and signed by Mario Mihalj as Prison Commander, on 29 August 1993.

Defence adduced following evidence during the main trial:

As a common proposal of the Defence, the following witnesses were examined: Žarko Leko, Željka Zovko, Rudo Ravlić and Ivan Pole.

The Defence for the first accused adduced the evidence by hearing the witnesses Karlo Marić, Vinko Jurišić, Nikola Mihalj, Štefica Zovko, Dr. Vajdana Tomić, Dr. Zoran Trninić, Vitomir Zlatić, Ivan Glemac, Dr. Ranko Gačić, Dr. Teo Tomić, Mirko Kožul, Goran Zovko, Marko Leko, Ilko Kožul, Niko Marušić, Slavko Kožul, Zdenko Sesar, Marijan Šunjić, Dražen Lovrić, Ivica Rotim, Witness under the Pseudonym 003, Witness under the pseudonym AH who previously was also a witness for the Prosecutor's Office, Witness under the pseudonym 001 and Witness Slavko Puljić, and presented the following documents as documentary evidence, which the Court admitted and included into the case-file: Witness Examination Record for Sajo Ćorić No. Ki 4/96 of 30 March 1996, made before Higher Court in Mostar, with translation in English Language; Record on Examination of Witness under the pseudonym of E, No. Ki 4/96 of 12 April 1996, made

before Higher Court in Mostar, with translation in English Language; Statement by Witness E, given to ICTY investigators, of 24 June 2002, in English Language and translation in BHS Languages; Record on Examination of Witness E, No. KT-RZ-95/05 of 24 May 2006, made in Prosecutor's Office of BiH, with translation in English Language; Record on Examination of Witness under the pseudonym of D, No. Ki 4/96 of 29 March 1996, made by Higher Court in Mostar, with translation in English Language; Statement by Witness D, given to ICTY investigators, of 2 April 2001; Statement by Witness D, given to ICTY investigators, of 2 April 2001, English version, Record on Examination of Witness under the pseudonym of R, No. KT-RZ-95/05 of 25 July 2006, made in Prosecutor's Office of BiH, with translation in English Language; Record on Examination of Witness under the pseudonym of K, No. KT-RZ-95/05 of 30 June 2006, made in Prosecutor's Office of BiH, with translation in English Language; Record on Examination of Witness under the pseudonym of K, of 3 February 1997, made by Higher Court in Mostar, with translation in English Language; Statement by Witness K, given to ICTY investigators, of 2 May 1997, English version, with translation in BHS Languages; Record on Examination of Witness B, of 28 March 1996, made before Higher Court in Mostar, with translation in English Language, Record on Examination of Witness B, No. KT-RZ-95/05 of 22 May 2006, made in Prosecutor's Office of BiH, with translation in English Language; Record on Examination of Witness L, of 25 March 1996, made before Higher Court in Mostar, with translation in English Language; Record on Examination of Witness L, No. KT-RZ-95/05, of 27 June 2006, made in Prosecutor's Office of BiH, with translation in English Language; Record on Examination of Witness X, made before Higher Court in Mostar under Number Ki-5/96, on 25 March 1996, with translation in English Language; Statement by Witness X, given to ICTY investigators, of 31 January and 1 February 2001, in English Language and with translation in BHS Languages; Record on Examination of Witness X, No. KT-RZ-95/05 of 27 June 2006, made before Prosecutor's Office of BiH, with translation in English Language; List of persons captured in Bijelo Polje area, of 30 June 1993 (original in handwriting made by witness Željka Zovko) and printed version with a stamp of Croat Association of Camp Detainees, filed on 10 April 2008; Report by Command of the II Company, V Battalion of Military Police, Number 02-4/3-06/2-855/93, for the period from 30 June to 5 July, signed by Commander of the II Company of VP */translator's note: Military Police/* Tihomir Kožul; Daily Report for 8 July 1993, Number 02-4/3-06/2-865/93, made by Command of the II Company of V Battalion of VP Mostar, and signed by Commander of the II Company of VP Tihomir Kožul; List of soldiers of VP, made on 11 August 1993 by Command of the V Battalion of Military Police Mostar; emblem of Anti-sabotage Platoon Ivan Stanić Ćićo, I Battalion Bijelo Polje; Order Number 02-441-/93 of 24 August 1993, issued by Commander of the North Sector Colonel Miro Andrić; Request Number 04-440/93 of 24 August 1993, submitted to Operations Zone of Southeast Herzegovina, by Commander of North Sector Colonel Miro Andrić; Proposal by Operations Zone of Southeast Herzegovina, Number 03-0575-2/93 of 23 August 1993, signed by Brigadier Ivan Nugulov and Major Nikica Burić; Order Number 03-0597-1 of 3 September 1993, issued by Operations Zone of Southeast Herzegovina, signed by Brigadier Miljenko Lasić; Order Number 01-5073/93 of 7 September 1993, issued by Operations Zone of Southeast Herzegovina, signed by Brigadier Miljenko Lasić and Assistant to Logistics Commander Ljubomir Čuljak; Schematic presentation of logistics support for units in OZ H-B; Order Number 02-814/93 of 18 November 1993, issued by Defence of Mostar Sector, signed by Commander Zlatan Mijo Jelić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj,

referring to injuries of detainee Ismet Kero; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to infliction of injuries on Elvir Isić and injury of Mujo Lulić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the escape of two prisoners; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Džemal Sabitović and injury of Safet Puljić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Hamdija Tabaković; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Menso Salman; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Mustafa Kahvić; Record of 30 January 1994, made in Vojno Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Suad Osmić; Record of 4 August 1993, made in Bijelo Polje Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of prisoner Avdo Jelin; Record of 8 September 1993, made in Bijelo Polje Military Prison and signed by Prison Commander Mario Mihalj, referring to the murder of five prisoners; Record of 9 September 1993, on the release of two prisoners, made and signed by Prison Commander Mario Mihalj and Deputy Prison Commander Dragan Šunjić; Daily Report Number 02-4/3-06/I-2607/93 from 31 July to 4 August 1993, made by Command of the I Company of V Battalion of VP Mostar, and signed by Miroslav Šunjić, Platoon Commander; Summary Report Number 02-4/3-06/I-2607/93 from 31 July to 4 August 1993, made by Command of the I Company of V Battalion of VP Mostar; Report of 1 October 1993, Number 731/93, made by Warden of Military Remand Prison Centre Stanko Božić; Monthly Report for September 1993, Number 02-4/3-13/2-111/93 of 30 September, made by Command of the II Company of V Battalion of VP Bijelo Polje; Daily Report for 10 September 1993, Number 02-4/3/2-1010/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Daily Report for 11 and 12 September 1993, Number 02-473-13/2-1018/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Report August 1993, Number 02-4/3-1372-952/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Report for 30 and 31 August 1993, Number 02-4/3-13/2-947/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Supplement to Report on Brigade Activities of 5 November 1993, made by Mostar Military District, Second Brigade, Brigade VP; Interim Report of 12 April 1993, Number 02-4/3 06/1-190 V/93, made by the I Company Tihomir Mišić, Mostar; Daily Report for 28 June 1993, Number 01-55/93, made by Brigade Military Police of the Second Brigade of Operations Zone of Southeast Herzegovina; Report on problems in carrying out combat operations and duties of a unit of the V Battalion, Number 02-1410/93 of 27 July 1993, made by Command of the V Battalion of Second Brigade of Operations Zone of Southeast Herzegovina; Report of 10 October 1993, made by Command of Defence of Mostar Sector; Topographic Map with marked responsibilities of the I, II, III and V Battalions which are parts of Mario Hrkáč - Čikota Brigade, assigned in the locality of Bijelo Polje; Topographic Map with marked zones of responsibility of units which are parts of the II Brigade HVO; Interim Report of 19 August 1993, Number 01-691/93, made by the Second Brigade of Operations Zone of Southeast Herzegovina HVO; Statement of Reasons of 4 July 1993, made by Brigade Military Police; Daily Report for 8 July 1993, Number 02-413-06-1825/93, made by Command of the II Company of V Battalion of VP Mostar; Scheme of command of the II Company of V Battalion of VP, as well as entire duty service

of the I Platoon of General VP, Daily Report for 25, 26 and 27 August 1993, Number 02-4/3-06/2-925/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Daily Report for 5 September 1993, Number 02-4/3-13/2-979/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Interim Report for 4 October 1993, Number 01-281/93, made by Defence of Mostar Sector.

The Defence for the second accused adduced the evidence by hearing the witnesses Zdravko Šunjić, Jozo Prga, Ljubo Vukoja, Ljubo Škobić, Branimir Vidović, Veselko Pandža, Mladenko Šarić, Milan Sesar, Vlado Ramljak, Vladimir Zadro, Božidar Novak, Miroslav Šunjić, Tomislav Aničić, Mate Aničić, Valter Aničić, Mladen Mandić, Ilija Vrljić, Nikica Zovko and Zoran Lasić, and presented the following documents as documentary evidence which were admitted by the Court and included in the case-file: Witness Examination Record for B, No. Ki 4/96 of 28 March 1996, made before Higher Court in Mostar, with translation in English Language; Witness Examination Record for B, No. KT-RZ-95/05 of 22 May 2006, made in the Prosecutor's Office of BiH, with translation in English Language; Medical documentation bearing the name of Marinko Šunjić (Discharge Card and Conclusion), issued by Regional War Hospital HVO Mostar; Report Number 496/93 of 21 July 1993, made by Military Remand Prison Centre Mostar, signed by Warden Stanko Božić; Report for 30 and 31 August 1993, under Number 02-4/3-13/2-947/93, made by Command of the II Company of V Battalion of VP Bijelo Polje; Monthly Report on activities of VP of the V Battalion for August 1993, made by Commander Ivan Aničić; Daily Report of Command of the II Company of V Battalion of VP Bijelo Polje, for 10 September 1993, under Number 02-4/3-13/2-1010/93, signed by Mate Aničić; Request for status termination in a unit of the First Battalion for soldier Dragan Šunjić, made by the II Brigade of HVO Mostar of 16 September 1992, under Number 04 /sic/, signed by Pero Jurica; Order Number 02-4/43-04/2-939/93, of 19 August 1993, issued by Military Police Administration Mostar, signed by Commander of Light Assault Battalion of VP Vladimir Primorac; Questionnaire on candidate Mario Mihalj, Number 02-13-04-95-02 of 17 June 1994 as well as Proposal for assignment by Military Post of 1 September 1994 to the name of Mario Mihalj and cover letter by Ministry of Defence of HR HB; Information with marking A, made by SIS /*Security and Information Service*/ Centre Mostar on 26 November 1993, under Number 02-4/2-2-434/93, signed by Head of the Centre Zoran Lasić; Daily Report Number 01-53/93 from 26 to 27 June 1993, made by Brigade Military Police of the II Brigade HVO, signed by Miroslav Šunjić; Official Gazette, official newspaper of Čapljina Municipality, Number 4, of 8 July 1993; Report by Military Remand Prison Centre Mostar, Number 731/93 of 1 October 1993, with signature of Stanko Božić; Military Record with the name of Dragan Šunjić entered under number 6, including general particulars; Military Unit File bearing the name of Dragan Šunjić; Monthly Report for September 1993, made by Command of the II Company of V Battalion of VP Bijelo Polje under Number 02-4/3-13/2-1111/93 of 30 September 1993; Daily Report for 14 September 1993, made by Command of the II Company of V Battalion of VP Bijelo Polje, under Number 02-4/3-13/2- 793; Page number 225 of Escort Sheet of Military Police, Military Post 1711, where the name of Mario Mihalj was entered under Number 1733; Report for period from 29 August to 5 September 1993, made by Commander of Platoon of VP Valter Aničić; List of Platoon of General Military Police (I, II, III Platoons), with the name of Dragan Šunjić entered under Number 17; Report Number 698/93 of 22 September 1993, made by Military Remand Prison Centre, signed by Commander Stanko Božić, referring to taking over of 70 prisoners by Dragan Šunjić;

Order by Military Police Administration, Military Post 1711, for release for work; List of prisoners Number 703/93, made by Military Remand Prison Centre, referring to prisoners brought on 21 September 1993 in Dubrani; Record of 15 September 1993, made by Prison Commander Dragan Šunjić and Deputy Commander Zdravko Šunjić, referring to murder of Salim Alilović; Report on ICRC visit to prisoners of war, made by Service for Exchange of Prisoners, Number 01-IP-64/94 of 29 January 1994; Request for giving consent for relocation of soldiers of the First Battalion, made by the Second Brigade – First Battalion under Number 04-127/93 of 7 December 1993, signed by Marko Radić; Interim Report Number 01-1338/93 of 15 December 1993 on disbandment of Brigade of VP; Report Number 02-4/3-06/2-883/93 of 19 July 1993, made by Command of the II Company of VP Mostar; Report made in handwriting by VP of the II Company of V Battalion HVO; Report of 7 July 1993, made by OZ JIH, referring to capturing the Elevation 224; Report Number 02-4/3-06/2-855/93 for period from 30 June to 5 July 1993, made by Command of the II Company of V Battalion of VP in Tihomir Mišić Barracks; List by Command of the II Brigade of I Battalion HVO, Number 01-021/92 of 1 December 1992; Witness Examination Record for Mehmed Obradović, Number 195/93 of 27 September 1993, made by MoI, Security Services Centre, Police Station in Blagaj; Order Number 02-2/1-01-2151/93 of 25 August 1993, issued by HVO Main Staff; Request Number 04-086/94 of 15 January 1994, sent by Command of the II Brigade, referring to making available of 30 prisoners from Heliodrom; Report Number 658/93 of 19 September 1993, made by Warden of Military Remand Prison Centre, referring to condition of prisoners who go from Heliodrom to Bijelo Polje to work; Certificate Number 02-4/3-13/1-026/93 of 31 August 1993, issued to the name of Zoran Čuljak, as member of the I Company of V Battalion of VP HVO Mostar; Consent Number 0058/93 of 19 September 1993, allowing the transfer of Zoran Čuljak from one to the other Company; Order Number 02-2627/93 of 22 September 1993, ordering the transfer of Zoran Čuljak to the V Battalion of VP HVO Mostar; Consent Number 06-1262 of 19 September 1993, based on which soldier Zoran Čuljak is transferred from Unit of the I Battalion HVO to Unit of the I Company of V Battalion HVO; Report Number 02-12-13-37/94 of 31 January 1994, made by Military Police Administration, referring to ill-treatment and abuse of a group of prisoners by Mario Mihalj and Dragan Šunjić; Report on ICRC visit, Number 02-4-1/94-104 of 31 January 1994, made after the visit of POW shelter; Order Number 02-582794 of 27 January 1994, issued by Commander of the Second Brigade HVO Marko Radić; Official Note Number 12-139 of 13 December 1993, made by Security Services Centre Mostar, referring to exchange of 57 Muslim civilians from Vojno Camp; Certificate Number 02-03/1-5-9-1-550/07 of 24 May 2007 referring to registration of permanent residence of Dragan Šunjić; Agreement on accommodation and food for student Dragan Šunjić in Students' Centre Sarajevo, of 6 September 1988 /sic/; Report Number 07-0497/93 of 20 October 1993, made by SED /translator's note: Electronic Operations Centre/ OZ JIH, signed by Edvard Babić; Request Number 02-4/2-2-526/93 of 11 December 1993, issued by Ministry of Defence, SIS Centre Mostar; Official Note Number 01-2424/93 of (illegible date), made by VP, referring to developments on the front line in Bijelo Polje; Information with marking A, Number 02-4/2-2-434/93 of 26 November 1993, made by Ministry of Defence, SIS Centre Mostar, referring to developments on the front line in Vojno; Interim Report Number 02-1789/93 of 30 June 1993, made by Operations Zone of JIH, the Second Brigade, referring to the incident in the zone of responsibility of the Second Brigade HVO; Report for 29 June 1993, made by the Second Brigade HVO; Information of 6 September 1993, Number 1-4-210/93, made by SIS Centre, referring to problems about manning the

front line in the zone of responsibility of the Second Brigade; Information under marking A, Number 02-4/2-2-030/93 of 1 October 1993, referring to taking of Muslim persons from the settlement Centar II; Report Number 01-1073/93 of 10 September 1993, made by the Second Brigade of IZM Domazeti, signed by Commander of the Second Brigade Ilija Vrljić; Report Number 02-4/3-06/2-855/93 of 5 July 1993, made by Command of the II Company of V Battalion of VP, referring to situation of VP on terrain; Report made in handwriting by the II Company of V Battalion of Military Police, referring to attack by ABiH on the left bank of the Neretva; Handwritten text of 20 August 1993, referring to Zones of responsibility of the I, II, III and V Battalion of II Brigade HVO; Order Number 02-487/93 of 6 August 1993, issued by the Second Brigade of IZM Domazeti, signed by Commander Ilija Vrljić; Report on ICRC visit, Number 02-4-1/94 of 31 January 1994, made by Ministry of Defence of HR H-B, Security Sector; List of detainees in Vojno Centre, Number 01-306/94 of 13 January 1994, made by the Second Brigade, SIS Centre; Report by Commission for disbanding of collection centre Heliodrom Mostar, Number 02-4/2-2-538/93 of 13 December 1993, made by Ministry of Defence, SIS Centre Mostar; Interim Report Number 01-691/93 of 19 August 1993, made by the Second Brigade of IZM Domazeti, referring to zone of responsibility of the Second Brigade HVO; Parts of a book by the author Ajša Zahiriović */sic/*.

The Defence for the third accused adduced evidence by hearing the witnesses Goran Zovko, Zdenko Sesar, Božo Perić, Zlatko Perić, and presented the following documents as documentary evidence, which were admitted by the Court and included into the case-file: Witness Examination Record for AD, No. KT-RZ-95/05 of 29 June 2006, made in the Prosecutor's Office of BiH, with translation into English Language and with three Annexes on which there is a sketch drawn by hand, showing locations of the house, garage, Command and threshing floor in the place of Vojno; Sketch of important facilities in Vojno Camp, and List of 19 names including Protected Witness AD; Witness Examination Record for AD of 17 July 1996, made before the Higher Court in Mostar, with translation into English Language.

The Defence for the fourth accused adduced evidence by hearing the witnesses Marica Perić, expert witness Alma Bravo Mehmedbašić, expert witness Vesna Lozo, expert witness Žarko Savić, and presented the following documents as documentary evidence, which were admitted by the Court and included into the case-file: Finding and Opinion by expert witness Prim. Dr. Žarko Savić, Number 55/08 of 5 January 2009, referring to the medical expert evaluation of the Accused Mirko Vračević.

The Panel visited the scenes of the commission of the criminal offence in the territory of the Mostar Municipality on 23 October 2008, as follows: in the place of Vojno two private houses in which civilians were detained, one garage in the yard of the house where the men were detained, locality of the Zalihići houses and the Convent by the M17 main road, and the locality of Bočine, where there was Marko Radić's command post. A DVD recording was made, as well as Photo-documentation Number 17-13/1-7-04-1-11/08 of 23 November 2008, made by SIPA members, which were admitted into the case-file as Court exhibits.

During the main trial, expert witnesses Dr. Marija Kaučić Komšić, neuropsychiatrist and forensic psychiatrist, Dr. Radojka Golijan, internist and Dr. Senad Pešto gave their Finding and Opinion, in their capacity as expert witnesses hired by the Court under the proposal of

the Defence for the Accused Mirko Vračević. Those expert witnesses made an expert evaluation of medical documentation of the Accused Mirko Vračević. The expert witnesses Dr. Alma Bravo - Mehmedbašić, neuropsychiatrist, Dr. Vesna Lozo, internist and Elvedina Dervović MSc., clinical psychologist, also gave their Finding and Opinion. These expert witnesses gave their Finding and Opinion on whether the Accused Mirko Vračević was fit to stand trial.

During the main trial, expert witness Dr. Haso Sejfo, neurosurgeon, also gave his Finding and Opinion. The subject of the expert evaluation was Damir Brekalo and whether he was fit to stand trial and participate therein.

Procedural Decisions

At the hearing held on 26 September 2007, during the examination of the witness under the pseudonym *J*, the Defense Counsels raised an objection that the presentation of the record from the investigation was not allowed at the stage of direct examination but only at the stage of cross-examination and additional examination and they referred to Article 273 of the BiH CPC. The Court decided to overrule the objection of the Defense Counsels and to allow the Prosecutor to present the investigation statement during the direct witness examination, as pursuant to Article 273(1) of the BiH CPC the statements given during the investigation shall be admissible at the trial and may be used in the rebuttal of the presented allegations. It ensues from the amended Article 273(1) of the BiH CPC (*Official Gazette No. 58/08*) that the statements given during the investigation may be used as evidence at the trial during direct and indirect examination, as well as in rebuttal and rejoinder, and may subsequently be proposed to be admitted into the evidentiary material. Having in mind the mentioned legal provisions, the Court rendered the decision to allow the Prosecutor to present the witness with the previously given statement during the direct examination in rebuttal of the arguments the witness gave at the trial.

The Prosecutor's Office of BiH filed the Motion to the Court during the trial requesting that the statement of the witness Junuz Halilović given to the Prosecutor's Office of BiH No.KT-RZ-95/05 of 18 May 2006 and the statement given before the High Court in Mostar No. Ki-6/96 of 6 September 1996 be read out at the trial, and thereby be admitted and used as evidence in the given proceedings. The Prosecutor's Office also proposed that the statement of the witness *AG* given to the investigating judge of the High Court in Mostar of 12 April 1996, including the statement given to the ICTY investigators in the Hague of 28 June 2002, then the statement of the witness *AM* given to the Prosecution No. KT-RZ-95/05 of 7 December 2006, as well as the statement of the witness *AB* given before the Prosecutor's Office of BiH No. KT-RZ-95/05 of 10 August 2006 and before the investigating judge of the Higher Court in Mostar of 14 November 1996, all be read out at the trial and admitted as evidence. The Prosecutor's Office of BiH found the grounds for the mentioned Motion under Article 273(2) of the BiH CPC.

The Court granted the aforementioned Prosecution's Motion and pursuant to Article 273(2) of the BiH CPC accepted that the prior statements of the witness Junuz Halilović, and the witnesses under protection measures *AG*, *AM* and *AB* be read out and admitted into the case file, given that those were persons whose appearance before the court was not possible or was rendered rather difficult due to important reasons. As for the witness Junuz

Halilović, the Court found that his presence before the Court was difficult due to his bad health, which follows from the provided medical documents of this witness. Pursuant to Article 81(3) of the BiH CPC the Court tried to hear this witness elsewhere, due to his illness, that is, in his house, however the submission delivered to this Court suggested that there was no room in the place of residence of this witness where the examination could have been conducted in the presence of the parties to the proceedings, defense counsels, court police officers and the administrative and technical staff of the Court, which is why the Court rendered the decision that the statements of this witness be read out and admitted into the case file, as the presence of this witness before the court was rendered very difficult for important reasons. As for the protected witness AG, during the proceedings the forensic medical evaluation of her health was conducted through the expert witness Doc. Dr. Alma Bravo-Mehmedbašić, whose written Findings and Opinion were delivered to the Court and filed in the case file. It ensues from the findings that the witness AG suffered from ... and that due to her health condition she was not able to appear and testify before the court, based on which the expert witness inferred that she was not able to testify before the court. The witnesses that have been granted protection measures and given the pseudonyms AM and AB did not appear before the Court because they were living abroad, in America and the Netherlands, meaning that they were not residing in the territory of BiH anymore, and due to that fact their appearance before the Court was rendered very difficult for important reasons. Therefore, in the opinion of the Court all the aforementioned witnesses satisfy the legal requirements for the application of Article 273(2) of the BiH CPC, which provide for the exemption from the direct presentation of evidence. In addition, Article 7 of the Law on Transfer of Cases provides for the possibility that the witness statements given to the ICTY officers during the investigation may be read out in the proceedings conducted in BiH.

Through his Motion the Defense Counsel for the Accused Marko Radić requested that protection measures be granted to three witnesses for the Defense pursuant to the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses. The Court granted the Motion filed by Defense Counsel and at the hearing held on 18 July 2008, pursuant to Article 12 and 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, rendered the decision that two witnesses for the Defense be granted protection measures by giving them the pseudonyms 001 and 002, that the personal data stated in the Motion be declared secret, and that they would remain as such no longer than 20 years after the verdict became final. With regard to the Motion by the Defense Counsel that a third witness be granted protection measures, the Court noted that that the witness in question had already been granted protection measures in this case upon the Prosecution Motion and that he was given the pseudonym AH, thus the witness was allowed to testify under the same protection measures and the pseudonym as a witness for the Defense of the First Accused.

Following the Order of the Court of BiH, the team of experts composed of Dr. Marija Kaučić-Komšić, a specialized neuro-psychiatrist and forensic psychiatrist, Dr. Radojka Golijan, an internal medicine specialist, and Dr. Senad Pešto reviewed the medical documents bearing the name of Mirko Vračević and came up with their Findings and Opinion. Based on the review of the delivered medical documents the team of experts found that it was necessary for a neuro-psychiatrist to examine the witness in order to complete the Findings and Opinion. Following the Motion by the Defense, the Court of

BiH issued the Order that forensic and psychiatric examination be conducted of the Accused Mirko Vračević. Having reviewed the medical record and having examined and interviewed the Accused, the team of expert witnesses composed of Dr. Alma Bravo-Mehmedbašić, a specialized neuro-psychiatrist, Dr. Vesna Lozo, internal medicine specialist, and M.Sc. Elvedina Dervović, a clinic psychologist, prepared the Findings and Opinion stating that the Accused did not suffer from a permanent mental disease of the psychotic nature and that his intelligence is average and that he was fit to stand trial. Based on the submitted medical documents the team of experts established that there were no indications suggesting that the mental capacity of the Accused Mirko Vračević was diminished in terms of comprehending the significance of the offence and controlling his actions, *tempore criminis*, and that at the time when the offence was committed he was mentally sound.

Consequently, the Defense for the Accused Mirko Vračević hired the medical forensic expert Prim. Dr. Žarko Savić, specialized in neurology and psychiatry, and tasked him to examine the Accused and the entire medical record and state his opinion about the mental capacity of the Accused to participate and follow the trial, to perform the psychological, psychiatric and neurological examination of his mental state and establish if the Accused was fit to testify before the Court as a witness in the proceedings. The expert witness submitted to the Court his Findings and Opinion where in the conclusion he stated that it was evident that the Accused Vračević has suffered from ... at some point during his life. The Accused suffers from ... of the unknown cause and outcome. The expert witness further stated that in order to obtain detailed information it was necessary to conduct a detailed neurological examination in hospital. After the Accused had undergone medical examinations in the Clinical Hospital in Mostar, the expert witness Žarko Savić supplemented his Findings and Opinion and in the conclusion of his medical expertise he stated that the Accused Mirko Vračević has a diminished capacity to follow and participate in the trial proceedings, and that the overall health condition of the Accused was characterized by several chronic diseases, but they were not life-threatening and that the Accused was fit to be examined as a witness.

After the expert witness Dr. Žarko Savić had presented his findings and opinion, at the hearing held on 20 January 2009, the Defense Counsel Danilo Mrkaljević moved the Court pursuant to Article 26 of the BiH CPC to sever the proceedings against the Accused Vračević from the other Accused and that the proceedings against the Accused Mirko Vračević be discontinued due to his mental illness pursuant to Article 388 of the BiH CPC, and that the criminal proceedings be continued once the health condition of the Accused was improved for him to stand trial.

The Court rendered the decision that both motions by the Defense Counsels be refused because they lacked the legal grounds based on which the Court could satisfy the Motions of the Defense Counsel. With regard to the Motion of the Defense Counsel that pursuant to Article 26 of the BiH CPC the proceedings against the Accused Vračević be severed from the other Accused in this case, the Court found the Motion unfounded. Namely, Article 26(1) of the BiH CPC stipulates that before the main trial is completed the Court may, for important reasons or for reasons of purposefulness, decide to separate the proceedings against certain accused persons and complete them separately.

The correct interpretation of this legal provision suggests that important and purposeful reasons should exist for the rendering of such decision. The important reasons may be a severe illness or injury of one of the accused, which does not exist in the case at hand. It follows from the findings and Opinion of the team of experts headed by the expert witness Doc. Dr. Alma Bravo–Mehmedbašić, which was accepted by the Court as professional and objective, that the Accused Vračević was fit to participate in the given criminal case. It also ensues from the opinion of the expert witness Dr. Savić that the Accused was able to be heard as a witness. Accordingly, none of the witnesses heard stated that the Accused Vračević was a severely ill person who, due to the nature of his illness, was not able to follow or participate in the court proceedings. The Panel also notes that by the hearing held on 20 January 2009, when this Motion was filed, the evidentiary proceedings in this legal matter which lasted for almost two full years had been completed, that the Accused dully responded to all summonses and was present throughout the trial, and that he actively participated in it himself and through his Defense Counsels, thus the reasons for the separation of the proceedings in the given phase of the proceedings did not exist at all.

With regard to the other Motion by the Defense Counsel to discontinue the proceedings due to the mental illness of the Accused Vračević, this Panel considers this Motion unfounded too. More specifically, it emanates from Article 388(1) of the BiH CPC that the criminal proceedings may be discontinued in case the accused is affected by a mental illness, or if after the commission of the criminal offence he became affected by such a mental illness that makes the accused unfit to stand trial. Based on the Findings and Opinion of the team of experts headed by Dr. Alma Bravo-Mehmedbašić, the Panel ascertained that the Accused Vračević did not suffer from such mental illness due to which he would be unfit to stand trial. According to the expert witness Dr. Savić, too, the Accused only had a diminished capacity to follow the court proceedings. At the trial Dr. Savić linked the ... disease of the Accused with the finding that he used to be ..., and in the opinion of this expert witness this type of ... could not be completely cured. However, a review of the medical documents bearing the name of the Accused Vračević indicated that he did not ... for a long period of time now. This Panel also notes that the expert witness Dr. Savić in his Findings and Opinion stated that the Accused was fit to be examined as a witness, which indicated that the Accused did not suffer from ..., as confirmed by the expert witness Doc. Dr. Alma Bravo-Mehmedbašić. As for ..., the Panel notes that nothing changed from the day when the team headed by Dr. Alma Bravo–Mehmedbašić gave its Finding and Opinion to the day when Dr. Savić gave his, as the medical documents related to this type of ... the Accused developed, were the same.

Pursuant to Article 12 and 13 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, following the Prosecution Motion, on 3 June 2006, 20 November 2006, 20 December 2006 and 13 April 2007, the Court rendered the decision on granting protection measures regarding personal details of the witnesses, deciding that the witnesses would be testifying under the following pseudonyms: A, B, C, D, E, F, J, K, L, R, X, AA, AB, AC, AD, AE, AF, AG, AH, AI, AJ, AK, AL, AM, 150, 151 and AN. At the hearing held on 7 June 2007 the Court also gave the new pseudonym 152 to the witness who had already had the pseudonym AN prior to the testimony, while the other measures regarding this witness remained unchanged. At the hearing held on 17 December 2007, upon the Prosecution Motion, the Court granted protection measures to a witness, giving him the pseudonym 153 with the obligation that the personal information of this witness should be

protected for 30 years. Finally, at the hearing held on 10 March 2008 the Court granted protection measures to a witness giving him the pseudonym 154 as well as the obligation that his personal information of the witness should be protected for the next 30 years. Upon the Motion of the Defense Counsel for the First Accused at the hearing held on 18 July 2008 the Court rendered the decision to grant the Motion by the Defense Counsel for the First Accused and, pursuant to Article 12 and 13 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, grant the protection measures by allowing the witnesses to testify under the pseudonyms 001, 002 and 003 and the obligation that all personal details of these witnesses should be protected for no longer than 20 years after the verdict became final. At the hearing held on 21 August 2008, the Court rendered the decision that the witness who had already been given the pseudonym 004, who also testified as a protected witness for the Prosecution under pseudonym AH, would testify under the previously assigned pseudonym AH, not under the pseudonym 004 as the Panel had already decided at the previous hearing. As for the additional witness protection measures, at the hearing held on 19 April 2007 during the hearing of the protected witness AI and at the hearing held on 7 June 2007 during the examination of the protected witness 152 the Court granted the Motion of the Prosecution to impose additional protection measures so that the witnesses were allowed to testify from a different room, with their image and voice distorted, and as for other protection measures, the Court rendered the decision that the protection measures remained the same as decided before. At the hearings held on 13 June 2007, 29 June 2007, 6 July 2007, 23 July 2007, 27 July 2007, 27 August 2007, 6 September 2007, 21 September 2007, 24 September 2007, 28 September 2007, 5 October 2007, 8 October 2007, 11 October 2007, 30 November 2007, 10 December 2007, 8 January 2008, 21 January 2008, 13 February 2008 and 19 February 2008, during the hearings of the protected witnesses A, J, C, F, E, D, R, K, AF, AH, L and K, the Court accepted in part the Prosecution Motion to grant additional witness protection measures, but only with regard to the measures related to the testifying from a separate room with the distorted image, not the distorted voice, meaning that the voice remained unchanged. The other protection measures remained the same as previously decided. The Court did not accept the motion of the Defense not to accept the motion of the Prosecution related to the imposition of the additional protection measures on the mentioned witnesses, considering them to be the witnesses under threat and vulnerable witnesses, and that in the specific cases, bearing in mind the status of the witness and the subject of the testimony, there were justified reasons for the parties and Defense Counsels not to be present in the same room with these witnesses while giving their evidence, and that the assigning of these measures ensured the protection of personal safety of these witnesses and the safety of their families.

By the decision of the Panel at the hearing held on 20 January 2009 the Motion filed by the Defense of the Second Accused that Vladimir Zadro should be heard as a witness was refused. The Court refused this Motion by the Second Accused pursuant to Article 263 of the BiH CPC, because it considered that the circumstances the proposed witness should have testified about were not of any particular relevance to the case.

In the closing argument, the Court departed from the established order of closing arguments, deciding that the representative of the victims should present the closing argument first because the translation of the Prosecutor's closing argument was not finished at the time. For the aforementioned reasons on behalf of all the victims in this case the protected witness X presented the closing argument first. While presenting the closing

argument, the Court noted that all protected measures granted to this witness were still effective, and that the victim X should present the closing argument from a separate room with the distortion of image.

The Prosecution presented the theory that at the time when the Accused committed the acts they were charged with the widespread and systematic attack by the HVO was under way against the Bosniak civilians in the western part of the City of Mostar, but also in the broader area.

To prove this essential element of the criminal offence of Crimes against Humanity, the Prosecution moved the Court to accept in part the facts established in the case *Prosecutor v. Mladen Naletilić Tuta and Vinko Martinović Štela* (case No. IT-IT-98-34-T) of the ICTY Trial Judgement of 31 March 2003 upheld by the Appeals Chamber. The Prosecution proposed that pursuant to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the use of evidence obtained by the ICTY in the proceedings before the courts of BiH (Law on Transfer), the Court accept as established the facts related to the existence of the widespread and systematic attack (widespread and planned attack) directed against Bosniak civilians, as established in the mentioned judgments, and specified in the Motion of the Prosecutor's Office of BiH No. KT-RZ-95/05 of 22 March 2007.

Considering the Motion of the Prosecutor's Office of BiH, the Court, pursuant to Article 4 of the Law on Transfer, on 28 January 2008, granted the Motion in part and thus accepted some facts established in the final judgment in the ICTY case *Prosecutor v. Mladen Naletilić Tuta and Vinko Martinović Štela* (case No. IT-IT-98-34-T).

The facts accepted in this case in favor of the Prosecutor's Office of BiH are the following:

1. Mostar is the largest town in South-eastern Bosnia and Herzegovina and the historic capital of Herzegovina. According to the 1991 census the population of the municipality of Mostar comprised of 126,628 inhabitants of which 34.6% were BH Muslims, 33.9% BH Croats and 18.8% Serbs. The remainder were "Yugoslavs" and others.
2. A referendum from SFRY was held in Bosnia and Herzegovina on 29 February and 1 March 1992. Independence was declared on 3 March, 1992.
3. Following the declaration of independence, the BH Serbs attacked different parts of Bosnia and Herzegovina. The state administration of Bosnia and Herzegovina effectively ceased to function having lost control over the entire territory.
4. As a result of the conflict in 1992 between the BH Croats and BH Muslims on one side and Serbs on the other side, most Serbs left or been driven out of Mostar. In May 1993, between 16,000 and 20,000 BH Muslim civilians fleeing fighting in other parts of Bosnia and Herzegovina had taken refuge in Mostar. The presence of these BH Muslim refugees from outside Mostar created a BH Muslim majority.
5. On April 10, 1992, the president of the HZ H-B, Mate Boban, issued a decree creating the HVO.

6. The HVO became the supreme executive and defence authority for the HZ- H-B and the BH Croats. Mate Boban himself became the supreme commander of the HVO. This meant that in this part of Bosnia and Herzegovina, the HZ H-B had the actual authority.
7. There was a bitter conflict between the BH Croats and BH Muslims from April 1993 to January 1994. Mostar became divided into an Eastern part, dominated by BH Muslims and a Western part, dominated by BH Croats.
8. Both the HVO and A BiH had military formations positioned in the town. Mostar was divided into a Western part, which was dominated by the HVO and an Eastern part where the A BiH was largely concentrated.
9. In the early hours of 9 May 1993, the HVO attacked Mostar using artillery, mortars, heavy weapons and small arms. The HVO controlled all roads leading to Mostar and international organizations were denied access.
10. From about five o'clock in the morning, armed HVO units surrounded apartment buildings and houses and collected and rounded up the BH Muslim civilians. In certain apartment-blocks where both BH Muslim s and BH Croats lived, only the BH Muslims were forced to leave.
11. Hundreds of people were taken to Velez Stadium. Most of them ended up in Heliodrom, west of Mostar in Radoc, which became the main HVO detention centre in the area.
12. In total, between 1,500 and 2,500 Muslim civilians were rounded up and detained at the Heliodrom detention centre on that day.
13. The harassment of BH Muslims by forcing them out of their apartments and detaining them became common and widespread from May 9 throughout the autumn 1993.
14. BH Muslims crossed over to the Eastern side of Mostar in large numbers.
15. The humanitarian situation of the Eastern side of Mostar was horrific. There was no running water, electricity and food.
16. The Eastern side was completely encircled. The bombardment was constant.
17. The siege of East Mostar continued until the beginning of 1994.
18. The attacks resulted in a large number of both prisoners of war and civilian prisoners who were held at different detention centres in the area.
19. The main detention centre was Heliodrom, which at times held thousands of prisoners. The Heliodrom was a former JNA barracks composed of several

buildings and hangars. The Ljubuski prison became infamous because "special" prisoners were held there.

20. Prisoners were moved around between places and detention centres.
21. The armed conflict existed between 17 April 1993 and the end of February 1994.
22. Groups of soldiers forcibly evicted BH Muslim civilian families out of their apartments at night, throwing them literally out on the streets and forcing them to leave everything behind.
23. The humanitarian conditions on the East bank of Mostar were appalling. While the Muslim population was swelling due to the intense expulsions from the West bank, water and electricity were cut off and humanitarian organizations were denied access for weeks. Crucial public services, such as the hospital, were located in the West bank of Mostar and, thus no longer accessible to the BH Muslim civilian population. Architecture evocative of an oriental influence, as for instance, the old bridge in Mostar, was destroyed. The street names of West Mostar were changed after the expulsion of the BH Muslim population

Considering the Prosecution Motion to accept the established facts, and after all Defense Counsels for the Accused filed their written responses thereon, the Court rendered the Decision accepting the facts for the following reasons:

Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and use of evidence obtained by the ICTY in the proceedings before the courts in BiH (hereinafter: the Law on Transfer of Cases) stipulates that *"at the request of a party or proprio motu, the courts, after hearing the parties, may decide to accept the proven relevant facts that are established by legally binding decisions in any other proceedings by the ICTY."*

The first formal requirement under the mentioned provision related to the hearing of the parties has been satisfied.

The provisions laid down in the Law on Transfer of Cases as well as the provisions of the CPC do not set the criteria based on which the Court could use this discretion. This Panel rendered the Decision No. X-KR-05/139 stating the criteria which the panel considered appropriate for application in the use of its discretion under Article 4 of the Law, bearing in mind the obligation to respect the right to a fair trial guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR), and the BiH CPC. The Trial Panel applied the criteria which the ICTY established in this regard in the Decision of 28 February 2003, in the case *Prosecutor v. Momčilo Krajišnik*. The Panel notes that Rule 94(b) (judicial notice) of the ICTY Rules of Procedure and Evidence and Article 4 of the Law on Transfer of Cases are not identical and the Court is not bound by the ICTY decisions. However, it is evident that some issues with which the Tribunal and this Court are faced are similar when it comes to the adjudicated facts and that therefore the findings of this Panel will be similar. Accordingly, the Court had in mind the following criteria while deciding on the acceptance of established facts:

1. The fact must be distinct, concrete and identifiable. In order for a fact to be distinct, concrete and identifiable, it must be taken from the specific paragraphs of a trial or appeal judgment.² Moreover, it must be comprehensible when taken out of its context and must have the same or at least a similar form as the one that was adjudicated in the trial or appeal judgment from which it has been taken.

2. The fact must be restricted to factual findings and should not include legal characterizations. The legal characterizations are usually evaluated on a case-by-case basis and are interpreted restrictively.³ While the ICTY jurisprudence tends to exclude any facts that contain legal terms and make primarily legal points⁴, the Court of BiH has taken the view that facts containing some indirect elements of the criminal offense are still suitable to be accepted as established facts⁵. The Panel maintained a conservative approach and ruled out all those proposed facts that contained any legal conclusions or legal qualifications related to the manner of commission of the criminal offence, because thereby the specific act of commission is placed in the broader context of the war.

3-4. The fact must not be subject to a pending appeal or review. Only facts from final judgments can be judicially noticed⁶. In other words, this Court cannot take judicial notice of any adjudicated facts which are currently being appealed. On the other hand, if the facts have been adjudicated at trial and are not covered by the appeal, they remain unaffected and may be judicially noticed even before the appeal is finally concluded. The mere fact that the judgment has been appealed does not in itself provide sufficient grounds for excluding all facts adjudicated in that judgment.

5. The fact must not relate to the acts, conduct or mental state of the Accused. The Court may take judicial notice of a fact related to the responsibility of the Accused provided that these facts do not relate to the acts, conduct, and mental state of the accused.⁷ This refers to the facts relating to the conduct of persons (other than accused), who participated in a joint criminal enterprise cited in the indictment or to facts relating to the acts and conduct of subordinates of the accused.

² *Prosecutor v. Prlić*, IT-04-74-T, of September 7, 2006.

³ ICTY Decision on Established Facts in the case against *Momčilo Krajišnik*, the case No. IT-00-39-T, of 24 March 2005.

⁴ ICTY Decision on Established Facts in the *Željko Mejačić et al.*, Case No. IT-02-65-PT, of 1 April 2004, excluding facts of the existence of a “policy to commit inhuman acts against the civilian population” and of “acts that were committed on both a widespread basis and a systematic fashion”.

⁵ See decisions on established facts in the cases against Radovan Stanković, case no X-KR-05/70 of 13 July 2006; *Gojko Janković*, Case No. X-KR-05/161, of 4 August 2006; *Momčilo Mandić*, Case No. X-KR-05/58, of 5 February 2007; *Krešo Lučić*, Case No. X-KR-06/298, of 27 March 2007; See also the decisions of the Court of BiH in the verdicts of the Trial Panels in Neđo Samardžić case, the case No. X-KR-05/49 of 7 April 2006; the First Instance Verdict in the *Dragoje Paunović* case, the case No. X-KR-05/16 of 26 May 2006, the First Instance Verdict in the case of the *Boban Šimšić* case, the case No. X-KR-05/04 of 11 July 2006, para 49; the First Instance Verdict in the *Marko Samardžija* case, the case No. X-KR-05/07 of 3 November 2006, the First Instance Verdict in the *Radislav Ljubinić* case, the case no: X-KR-05/154 of 8 March 2007.

⁶ *Prosecutor v. Ljubičić*, IT-00-41-PT, Decision of 23rd January 2003.

⁷ *Prosecutor v. Prlić*, IT-04-74-T, of September 7, 2006.

6. The fact is not subject of (reasonable) dispute between the parties in the present case. Only facts that are not subject to a reasonable dispute between the parties in the case at hand can be judicially noticed.

7. The fact must not be based on plea agreements in previous cases. A fact is capable of admission as an established fact, if it is truly adjudicated and is not based upon an agreement between the parties to previous proceedings, such as agreed facts underpinning a plea agreement.⁸ Truly adjudicated facts are facts extracted from cases for which the Appeals Chamber has ruled on the merits or where the appeal was not filed.⁹

8. The fact does not impact on the right of the Accused to a fair trial. The principle of judicial economy is frustrated when the judicially noticed facts are unduly broad, vague, tendentious or conclusory.¹⁰ In the final analysis, even those facts that meet all of the above listed preconditions may be refused at the discretion of the Panel if the facts taken together infringe the right of the accused to a fair trial.

While deciding on the Motion of the Prosecutor's office of BiH to accept the established facts the Court found that the aforementioned facts fully satisfy the given criteria, which is the reason why it accepted them. In doing so, the Court did not accept all facts which the Prosecution requested in its Motion. The Court accepted the objection of the Defense that some facts the prosecution proposed were irrelevant to the case, that some facts contained legal conclusions and characterizations, that some facts were not specific enough, while others indirectly incriminate the Accused.

In addition to the Motion to accept the facts established by the ICTY judgments, the Prosecution also presented an abundance of other evidence to prove the existence of the widespread and systematic attack directed against the civilians, as a general element of the criminal offence of Crimes against Humanity. Many witnesses were examined and many documents were tendered with regard to these circumstances. The Defense on the other hand tendered substantial evidence in rebuttal of this Prosecution's theory.

Closing Arguments:

Closing Argument of the Victims Presented by the Witness „X“

In her closing argument the witness X stated that she wanted to address the Panel in this case once again as a victim of the crimes committed by the Accused. She stated that the crimes committed by some people continue living thereafter, because she believes that most of the victims of the Vojno Camp are still suffering and feel the traumas and have the PTSD. It has been 15 years since it happened, but the committed crimes have not been forgotten and cannot be forgotten. This was confirmed by testimonies of many victims who testified before the court, with eyes filled with fear, petrified, ashamed and humiliated and looking at Your Honors, seeking justice. She was among them, too. She still recalls the

⁸ *Prosecutor v. Slobodan Milosevic*, IT-02-54-T, 5 of June, 2002.

⁹ *Ibid*, 5.

¹⁰ ICTY Decision on Adjudicated Facts in the case *Vujadin Popović et al*, Case No. IT-05-88-T, of 26 September 2006, para. 16.

torture and inhuman treatment committed by the Accused against her and her family, and at the time she was only a fifteen year-old girl. She asks herself as to why they destroyed her childhood and not only the childhood but also her life and her dreams? Why did they do it? Was it because she had a different name and surname, as other prisoners had, because they were different, of other ethnicity? That is the only answer which she is able to give. It is exactly the reason why Radić, Šunjić, Brekalo and Vračević should be held responsible. They are responsible for the planned, systematic and unlawful arrests of the Muslim civilians and their taking to the already established camp in Vojno. They did so to her and her family. Who on earth did they possibly do any harm to? These people demonstrated their strength on a woman and her three minor children, and they separated her family members, too. They separated her from her mother, brother and sister, maltreated her, and then she was shot at and wounded. She did not know anything about her family and her family did not know anything about her. They took her childhood, youth and her mother too who got ill severely having serious health, physical and mental problems. Why did they do it to them? These people are responsible for the violation of basic human and humanitarian rights and brutal abuse of civilians. They held them locked on unsuitable premises in the settlement of Vojno, maltreating them, physically, mentally and sexually. She asked them not to touch her, not to abuse her, but that caused even stronger rage and hatred and made them continue. The Accused disregarded the pain of their victims. She still feels the fear of what she was through and what they did to her. Out of the obligation to the victims who did not survive, out of moral obligations to all women, mothers, girls who went through the tortures in the Vojno Camp, she wishes that their cries be heard. She stand there also because of the obligation toward the children who did not have a normal childhood because they had been detained in Vojno. She stands there out of a moral obligation toward her family which was a victim of a violent competition and brutality committed by the Accused. This is a chance for a victim's appeal to the Court to render a righteous decision and to impose the appropriate punishment on the Accused. On behalf of the victims of the rape, on behalf of all the children who did not have a normal childhood she requests that all the Accused be found guilty. She points out that the victims were not soldiers, and that they did not put up any resistance. She requests that a maximum punishment be imposed on the Accused as the only punishment which is adequate and corresponding to the crimes committed.

Closing Argument of the Prosecution

After the completion of the evidentiary proceedings, the Prosecution in its closing argument noted that in the course of the evidentiary proceedings the Prosecution proved beyond any reasonable doubt that the Accused were directly involved in the planned and coordinated maltreatment of the detained Bosniak civilians at the material time in the Vojno Camp. They killed them, mentally and physically abused them, held them in inhumane conditions, took them to forced labor and raped the detained women and that they did all these acts with an intent to cause great pain and suffering to the detainees because of their ethnic origin or religion. The Prosecution avers that, in doing so, the Accused committed the crime against humanity either directly or as members of the joint criminal enterprise. In addition, the Prosecution stated that during the proceedings the command liability was proven with regard to Marko Radić and Dragan Šunjić, pursuant to Article 180(2) CC BiH, for the Crimes against Humanity they knew about or had reason to know that they were committed by the subordinates under their effective control. The

general elements of the crimes against humanity, in the opinion of the Prosecution, were proven by the witness statements, presented evidence and thorough the adjudicated facts from the ICTY cases which were accepted by this Panel. In this manner the acts of the Accused were placed in a broader context, and the Prosecution argues that they were committed within a widespread and systematic attack directed against the civilian population and that the Accused knew of this attack. Furthermore, the Prosecution avers that by participating in the joint criminal enterprise the Accused mutually worked in coordination and cooperated, and that each of the Accused had a role in the establishment of the Camp. The crimes committed in the Vojno Camp were systematic with the elements of persecution. The perpetrators acted together and in a coordinated manner, relying on the efforts of other perpetrators to implement their criminal scheme. Furthermore, the crimes committed in the Camp were repeated in the presence of other participants of the JCE, so that no crime could have been committed without a mutual agreement among the perpetrators. As for the JCE's joint plan or purpose, the Prosecution holds that the fact that there was no formal or explicit agreement between the parties to join the JCE does not affect the final evaluation of the liability of the Accused. Finally, the Prosecution is convinced that the participation of each Accused individually in terms of their contribution to the perpetration of the JCE has been proven and that every Accused had the intention to support the JCE, that is, in the case of a systematic JCE, that he was aware of that system and that he had the intention to enhance it. The Prosecution stated that violence was encouraged in the Camp and that the living conditions and treatment of the detainees in the Vojno camp ranked among the worst of all documented incidents in this war – the prisoners were detained under extreme conditions, with the shortage of food, there were no toilettes in the Camp, and the prisoners did not have proper water to wash themselves and their clothes. The Prosecution further avers that all men and women were taken to forced labor on a daily basis in the Vojno Camp, whether they were fit for work or not. The Prosecution states that all four of the Accused were aware and had knowledge of the incidents in the Camp, and that they did not do anything to improve the conditions or the treatment of the prisoners. On the contrary, they personally participated in the beatings, torture, persecution, rapes and killings in the Camp. Substantiating the averment that it was proven beyond any reasonable doubt that the Accused were guilty of the commission of the criminal offences as charged by the Indictment, the Prosecution paid significant attention to the witness statements, pointing to the essential elements of each statement and bringing them in connection with the individual charges. In conclusion, the Prosecution proposed that the Court should find the Accused Marko Radić, Dragan Šunjić and Damir Brekalo guilty and sentence them to imprisonment for the term of no less than 30 years, and the Accused Mirko Vračević to imprisonment for the term of 20 years minimum.

Closing Argument of the Defense

The Defense Counsel for Marko Radić, Lawyer Dragan Barbarić, in the closing argument averred that the Prosecution failed to prove in the course of the proceedings that the Accused participated in the acts and events indicated in the Indictment, and it also did not prove the Accused's guilt, intent and knowledge of the criminal offence he is charged with. The Defense considers that the Court should apply the 1992 Criminal Code of the Republic of Bosnia and Herzegovina as a more lenient law. During the presentation of its closing argument, the Defense for the Accused Marko Radić primarily contests the formal correctness of the Indictment, claiming that the Indictment contains a factual description of

the acts of execution of the criminal offences the Accused is charged with, but it is evident that those are alternative charges (except for Count 4 of the Indictment) with elements of cumulative charges, which the national law strictly prohibits. The Defense is of the opinion that multiple charges, either alternative or cumulative, when all requirements are not satisfied for the application of the ideal concurrence, which is at issue in the case at hand, are not stipulated by the legislation in BiH and are not applied in practice. In this manner, the Accused is brought into the situation to guess what the subject of charges was with regard to the act of execution of the criminal offence. The Defense Counsel for Marko Radić further avers that after 30 June 1993, Vojno was not in the area of responsibility of the *Prva Bojna /hereinafter: the First Battalion/* whose Commander was the Accused Radić. As for the general elements of the criminal offence of Crimes against Humanity, the Defense of the first accused considers that these general elements were not proven in the course of the proceedings, in particular the existence of the widespread and systematic attack directed against the Bosniak civilians. According to the Defense, the Prosecution did not prove beyond any reasonable doubt that Radić was the Commander of the *Ivan Stanić Čičo* Sabotage Unit, as charged in the second preamble of the Indictment, then that he participated in the establishment of the Vojno prison, that is, that he participated in the unlawful imprisonment of men, the detainees of Heliodrom, who were brought to Vojno for forced labor. The Defense further argues that the Prosecution did not prove that the Accused was a direct superior and had control over the Commander Mario Mihalj and his Deputy Dragan Šunjić, Mirko Vračević and other prison guards and soldiers who worked in the prison. As for the application of the substantive law, the Defense avers that the 2003 BiH CC should not be applied, because it violates the principle of legality, that is, the retroactive effect of the criminal code. In conclusion, the Defense proposes to the Court to acquit the Accused Radić of any criminal responsibility.

The Accused Marko Radić in his closing argument stated that he supported the closing argument of his Defense Counsel. He wanted to tell the Trial Panel that he was a soldier and member of the HVO and the Commander of the Bijelo Polje First Battalion, and for some time he was also the Commander of the Second HVO Brigade. Throughout that time he did not do anything dishonest to be ashamed of. All that was written against him in the Indictment is a complete lie and fabrication. He never raped anyone and the presented charges were made up by Saja Ćorić whom he knows to have incited women from Bijelo Polje to testify against him. Although he was aware that the investigation was conducted against him, and many tried to persuade him to flee, he did not do that because he had nothing to run away from. If he had raped anyone and committed war crimes then the Muslims would not have worked on his farm, as they did. He requested to be confronted with the women who falsely accused him of rape, whom he did not know and whom he had never seen before, but this confrontation did not happen. All these women testified from the other room with distortion of the image, instead of coming into the courtroom and look him in the eyes and tell him straight to his face what he did. They evidently did not have the strength to do that. He wanted to point out that he did no harm to them and that he did not know them. It is obvious from the statements of other witnesses for the Prosecution that he never slapped or even flicked any Muslim in Bijelo Polje. Muslims attacked his unit on 30 June 1992 and in spite of that he did not order the attack against them, which he could have done. He did not want to attack their husbands and children, although he could have done so. He reiterated that he had nothing to do with the rapes and he did not support them, aided them or participated in any maltreatment.

The Defense Counsel for the Second Accused Dragan Šunjić stated in his closing argument that the Prosecution during the trial did not even prove the indications that the Second Accused Šunjić committed the offences as charged by the Indictment. Furthermore, the Defense is of the opinion that the Prosecution acts in violation of the basic principles set forth under Article 1 and 2 of the BiH CPC, by charging the Accused in the introductory part of the general incriminations with having committed, in three different capacities (the Deputy Camp Commander, a member of a combat and sabotage units), the criminal offence which *tempore criminis* did not exist during the period from August 1993 to March 1994. Based on the aforementioned, the Defense contests the application of the 2003 BiH CC because it believes that it violates the principle of legality. As for the specific charges related to the Accused, the Defense avers that it undoubtedly emanates from the military record of the Accused that before 15 September 1993 he was a military policeman, that he served the army during the war, and then on 30 September 1993 he was transferred to the reserve unit of the HZHB /Croat Community of Herceg-Bosna/ Armed Forces, and that the Accused held no rank. The Defense averred that the documents presented by the Prosecution, proving the opposite, were falsified. Also, the Defense avers that in October, November and December 1993 the Accused was far from the front line and that he was a guard in the woods during the woodcutting. The Defense stated that the Prosecution did not manage to prove beyond reasonable doubt that Dragan Šunjić was *de jure and de facto* the Deputy Camp Commander in the Vojno Prison. According to all the aforementioned, the Defense Counsel proposed that the Accused Šunjić should be fully acquitted of the criminal responsibility.

In his closing argument the second Accused Dragan Šunjić stated that his right to defense was violated because since the beginning of the criminal proceedings he did not have defense counsels who would defend him adequately. Having closely analyzed the statements of the witnesses heard and having brought them in connection with the specific charges, the Accused avers that the Prosecution did not prove beyond any reasonable doubt that he had participated in the establishment of the prison, or in any other act of perpetration as charged by the Indictment and that he was not in the position to decide who would be considered a military prisoner of war. The Accused Šunjić made an objection to the Court that he was not provided with the adequate defense also because most of the times during the presentation of documentary evidence he was not allowed to point to all relevant facts, with an explanation of the Court that he might do that in his closing argument. The Accused also objected that the transcripts of the trial were not made available to him as well as the documents in the Prosecution case file, because he doubted that the Prosecutor and lawyers made a detailed review of the documents. Furthermore the Accused contests the application of the 2003 Criminal Code of BiH, explaining that it was passed for the future not for the distant past. Finally, the Second Accused concluded that he should not be charged with the given criminal offences because at the time of the offenses he is charged with in the Indictment he was only a military police officer, more specifically, by mid September 1993, and later on, as of early October he was an ordinary soldier or a guard, and he was not at all a commander or a decision-maker. In addition he proposed that the Court acquit him of the criminal liability.

In the closing argument by the Defense for the Third Accused Damir Brekalo, through the Defense Counsel Slavko Aščerić, pointed out that in the course of the evidentiary proceedings the Prosecution failed to prove that the Accused committed the criminal offence he was charged with. As for the general elements of the criminal offence of Crimes against Humanity, the Defense raises the issue as to what specific attack is the subject of the Indictment, and what actions of the Accused suggest that he took part in that attack. The Defense finds that the attack of 9 May 1993, which the Prosecution referred to in the closing argument, is disputable because the link was not clear between this attack and the incidents in Vojno. The Defense contests also that the joint plan existed to launch the attack, and that the Accused knew of this attack, that is, that as an ordinary soldier he was a knowing participant in it. According to the Defense, the Accused could not be found guilty of the attack against the Bosniak civilians because at the time the Accused and his entire family were Bosniaks - Muslims. The Defense for the Third Accused too believes that the application of the 2003 Criminal Code of BiH is unacceptable because the Criminal Code of SFRY in effect in the relevant time was more lenient to the Accused. With regard to the punishment proposed by the Prosecution, the Defense submits that it is overly severe, when compared to the jurisprudence of the ICTY. As the Prosecution failed to prove beyond any reasonable doubt that the Accused Brekalo had committed the criminal offence as charged by the Amended Indictment thus the Defense proposed that the Court acquit the Accused of the criminal liability.

In his closing argument the Accused Damir Brekalo stated that he fully accepted the closing argument of his Defense Counsel, and that he was not guilty of the offence he was charged with, adding that he was but an ordinary soldier. The Accused considered that the obligation of the Prosecution was to launch a comprehensive investigation prior to presenting what the Accused considered to be blatant lies. In conclusion, the Accused submits that he expected from the Court to return an acquittal.

The Defense of the Fourth Accused Mirko Vračević, through the Lawyer Danilo Mrkaljević, in the closing argument pointed out that the Prosecution in the course of main trial, in spite of the abundance of the presented evidence, did not prove the existence of the criminal offence the Accused was charged with, in particular those offences and actions the Accused Mirko Vračević was charged with. The Defense did not contest that from 30 June 1993 onwards, the Accused Vračević was an HVO member – the First Bijelo Polje Battalion, and that during the material time he was a guard in Vojno. However, the Defense considers that the fact alone could not constitute a criminal offence and that the Accused performed his legitimate duty as a guard. This Defense supports the presentation of the Defense Counsel for the First Accused in the part referring to the correctness of the Indictment and its contents, and it added that the actions of the Accused were not specified and that the Accused Vračević as a guard could not commit the criminal offences which include planning and ordering. Furthermore, in terms of the application of the substantive law, the Defense submits that the criminal offence should be qualified pursuant to the provisions of the SFRY CC, in effect at the time when the criminal offences were committed. From the Indictment the Defense was not able to infer whether the Prosecution viewed the joint criminal enterprise as a separate criminal offence or as a form of criminal liability, nor were specific facts mentioned regarding the existence of this enterprise. The Defense notes that the JCE did not constitute a general principle of the international law at the material time, and for that reason its application pursuant to Article 4a. of the BiH CC

is ruled out. The Defense believes that the Prosecution also did not prove the existence of the general elements of the criminal offence of crimes against humanity, more precisely, the widespread and systematic attack. Finally, the Defense believes that due to the mental illness Accused Mirko Vračević could not present an adequate defense, because he was not able to understand the significance of these proceedings, and therefore it proposed that the Accused be acquitted.

The Accused Mirko Vračević stated that he fully supported the closing argument of his Defense Counsel, and that he was not guilty of the offence he was charged with.

EVALUATION OF EVIDENCE

The evaluation of the presented evidence individually and in their mutual connection, with regard to all Counts of the Indictment the Court established in a reliable and incontestable manner that the Accused, during the conflict between the Army of Bosnia and Herzegovina and the Croat Defense Council (HVO), as part of the widespread and systematic attack directed against the civilian population in the territory of Herzegovina, more specifically, in the area of the Mostar Municipality, knowing of such attack and knowing that they are participating in such attack: the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević, in agreement with Mario Mihalj (deceased), Ivek Kolobara, Jure Kordić, Nedžad Čorić a.k.a. Nečko, Amel Hadžiosmanović a.k.a. Doktor, Nedžad Tinjak a.k.a. Žuti, among others participated in the joint criminal enterprise in the Vojno Prison for the maltreatment and persecution of Bosnian Muslims they held imprisoned, through various types of physical, mental and sexual violence, and accordingly, they are liable for the described crimes, which all resulted in natural and predictable consequences of the joint criminal enterprise;

The Court established these facts based on the following:

By the Amended Indictment the Prosecution charged the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević with having committed the criminal offence of Crimes against Humanity under Article 172(1)(h) as read with (a), (e), (f), (g) and (k) of the BiH CC, thus the Prosecution had to prove all essential elements of this offence, that is, the existence of the widespread and systematic attack directed against any civilian population, the knowledge of the perpetrators of such attack and that the offence of the perpetrators was a part of the attack, that is, that there was a nexus between the acts of the accused and the attacks on the civilian population. Also, the Prosecution was under the obligation to prove the existence of the criminal enterprise as a type of liability under Article 180(1) of the BiH CPC.

In order to prove the charges for the crimes against humanity the Prosecutor was bound to establish the general elements of this criminal offence first, as follows:

- The existence of a widespread and systematic attack, directed against civilians, that is, the conduct which includes multiple perpetration of the crimes under Article 172(1) of BiH CC, against civilians and pursuant to and in furtherance of the state or organizational policy to carry out such attack;

- The attack is either widespread or systematic and directed against any population;
- The nexus between the offences of the accused and the attack; or
 - That the offences were committed as part of that attack;
 - That the accused knew of that attack;
 - That the accused knew that their actions were part of that attack;
 - That the accused knew that the attack was carried out pursuant to or in furtherance of the state or organizational policy to commit such attack;
 - That the accused were aware that their actions were committed pursuant to or in furtherance of the policy to carry out such attack, that is, that the unpermitted acts were committed as part of that attack and that the accused knew of such attack.

Article 172(2)(a) of the BiH CC clarifies that the attack directed against any civilian population constitutes conduct which includes multiple commission of the acts under Paragraph 1 of this Article against any civilian population pursuant to or in furtherance of a State or organizational policy to commit such attack.

Pursuant to customary international law, the existence of a plan or policy to commit such attack against civilian population or to commit the acts which constitute such attack does not have to be proven as an element of prosecution for crimes against humanity.

However, Article 172(2)(a) of the BiH CC includes the element of *policy*.

The element of policy may be expressed through four sub-elements. Pursuant to Article 172(2)(a), it has to be proven that:

- The state or organizational policy
- existed
- to commit such attack, and
- that the attack is apparently launched pursuant to or in furtherance of such policy.

Interpreting this element of “policy“, the Panel notes that Article 172 of the BIH CC is identical to Article 7 of the Rome Statute. Therefore, the Panel submits that the Rome Statute, the history of its making and the accompanying elements of the criminal offences constitute a credible authority they had in mind while interpreting this provision. While the “state“ is a specific term whose meaning is clearly defined in the international law, „organization“ is a much broader and more amorphous conception. Although the Panel opines that it is not necessary that an organization should be considered to be a criminal one based on the international or national law in terms of this sub-element, this requirement should be interpreted freely to make sure that it includes a wide range of organizations, and to focus the relevant consideration to the ability of the organization as a group to design and adopt the policy of the attack against the civilian population in the widespread and systematic manner.

As for the other sub-element of the existence of “the policy“, the Panel notes that “the policy“ should be interpreted differently from “the plan“. The policy may generally define the goals which subsequently should be implemented through individual decision-making on lower levels. “The policy to commit such attack“, as the third sub-element, requires that a state or an organization actively promote or encourage such attack against civilians. The policy does not have to include the criminal offences listed under Article 172(1) of the BiH

CC, but only the policy of commission of the attack in general terms. The fourth sub-element requires the causal connection between the state policy and the organizational policy and the attack which was actually committed. This element implies the factual considerations in each individual case and in relation with the overall circumstances, including the characteristics of the given policy and the crimes committed during the attack. Whether an attack is widespread or systematic on the one hand, and whether the attack was committed pursuant to or in furtherance of the state or organizational policy on the other, are two separate issues, and the satisfaction of one element cannot simply mean the satisfaction of the other. Although each attack individually does not have to be considered as widespread and systematic, the pattern of the attack against the civilian population regardless of whether they are systematic or widespread individually would, under some circumstances, be proof of a policy that such attacks be committed.

Widespread and Systematic Attack

An attack is widespread if by its nature it is comprehensive and directed against a great number of persons, and systematic if by nature it is organized and constitutes “*non-accidental repetition of a similar criminal conduct*”¹¹. Among other things the following factors are significant for establishing whether the attack is widespread or systematic: “*The consequences of the attack upon the targeted population, the number of victims, the nature of the acts, the possible participation of the officials or authorities, or any identifiable patterns of crimes*”¹².

Attack Directed against Civilian Population

The attack is “directed against civilian population” if the civilian population is the primary object of the attack¹³. It is not necessary that the entire civilian population be subjected to the attack, it is sufficient to show that enough individuals were targeted in the course of the attack, that they were targeted in such a way as to show that the attack was not directed against the limited and randomly selected number of individuals and did not consist of a limited and isolated acts. The population does not have to be entirely civilian, but only to the great extent, which may also include the persons who were not civilians without affecting the conclusion that it was the population which is civilian by nature. Article 3(1)(a) of the Geneva Convention on the Protection of Civilians defines the term civilian as “*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*”¹⁴. The following factors should be considered when establishing if the attack is directed against the civilian population: *the means and method used in the course of the attack, the status of the victims, their number, the discriminatory nature of the attack, the nature of the crimes committed in its course, the resistance to the assailants at the time, and the extent to which the attacking force may be said to have*

¹¹ Prosecutor v. Kordić and Čerkez, IT-95-14/2-A, Judgment of 17 December 2004, para. 94.

¹² Appeals Judgment in the Kunarac case, para.95.

¹³ Id. para.91.

¹⁴ Prosecutor v. Blagojević and Jokić, IT-02-60-T, Verdict, 17 January 2005, para. 544.

*complied or attempted to comply with the precautionary requirements of the laws of war.*¹⁵

It is not relevant that the other side also committed atrocities against its opponent's civilian population¹⁶.

Nexus between the Offence the Accused are Charged with and the Attack

Article 172 stipulates that the accused have to commit criminal offences *as a part of the widespread or systematic attack directed against any civilian population, being aware of such attack*. In that case, the required nexus has the objective and subjective element.

As to the objective element, in order to be part of the attack, the offences of the accused have to be sufficiently connected to the attack or refer to it to a sufficient extent. It is enough that the offence of the accused is part of the attack. The offences geographically and temporally distant from the midst of the attack may still be considered to be part of that attack if regardless of that they are linked to the attack, for example, by the manner in which they were committed or the identity of the victims, or when they continued after the peak of the attack¹⁷. Finally, the acts of the accused themselves do not have to be widespread and systematic to be part of the attack, as that prerequisite relates only to the attack.¹⁸

As to the subjective element, Article 172 stipulates that the Accused have to act *as a part of the attack ..., being aware of the attack*. Some trial panels of the Court of Bosnia and Herzegovina inferred that there are two parts of the subjective nexus. In the *Jadranko Palić case*, the Panel stated that general elements of the crime against humanity include also that *the acts of the Accused were part of the attack and that he was aware that his acts were a part of the attack*¹⁹; In the *Dragan Damjanović case* this Panel established *a knowing participation of the Accused in the attack*²⁰. However, the Appellate Panel in its Second Instance Verdict against Boban Šimšić characterized the subjective element only by stating that *“the Accused was aware of the attack”*, although the Panel did not conclude that the Accused wanted his acts to be part of that attack²¹.

¹⁵ Appeals Judgment in the *Blaškić case*, para. 106.

¹⁶ Appeals Judgment in the *Kunarac case*, para.87, 88; Trial Judgment in the *Nikola Kovačević case* No. X-KR-05/40 (Court of BiH) of 3 November 2006, pg. 22-23.

¹⁷ See *Prosecutor v. Brđanin*, No. IT-99-36-T, Judgment of 1 September 2004, para. 132; *Prosecutor v. Kunarac et al*, No. IT-96-23/1-T, Judgment, 22 February 2001, para 581-592.

¹⁸ See the Appeals Judgment in *Kordić case*, para.94.

¹⁹ In the *Jadranko Palić case*, X-KR-06/290 (Court of BiH), First instance Judgment of 28 November 2007, pg. 25, 26

²⁰ In the *Dragan Damjanović case*, X-KR-05/51 (Court of BiH), First Instance Judgment 15 December 2006, pg. 17;

²¹ In the *Boban Šimšić case* No. X-KRŽ-05/04, (Court of BiH), Second Instance Verdict, 7 August 2007, pg. 15, 19

The Panel concluded that it is necessary based on the customary international law and Article 172 that the Accused be aware of the attack against the civilian population and that their acts are part of that attack.²²

It is not necessary for the Prosecutor to prove through the direct evidence that the Accused apparently knew of the given context and nexus, as such evidence may be established constructively through indirect evidence, including the following: position of the accused in the civilian or military hierarchy; his membership in a group or organization involved in the execution of the crime; extent of the violence; his presence on the crime scenes; and to what extent the media covered these crimes.

More specifically, the elements of the obligatory nexus are:

- 1) the execution of the offence which objectively constitutes part of the attack; and
- 2) the knowledge of the accused:
 - that the attack against the civilian population exists;
 - a. that his act constitutes part of such attack;
 - b. that the attack was carried out pursuant to or in furtherance of the state or organizational policy to commit such attack; and
 - c. that his act was committed pursuant to or in furtherance of the policy to commit such attack.

Factual and Legal Findings

The Panel concluded on the grounds of the presented evidence that there was a wide-spread and systematic attack in the area of Mostar Municipality in the relevant period, that is, from July 1993 to March 1994, which was targeted against Bosniak civilians. During the attack, multiple offences in violation of Article 172/1/ took place, which were perpetrated pursuant to or in furtherance of the policy and plan of the Croat Community of Herzeg-Bosnia (HZ HB). The attack was carried out by the army and police forces of the Croat Defence Council (HVO), which was the executive and defence structure. The Panel further concluded that the acts committed by the Accused were carried out within the scope of the attack, that the Accused knew of the attack and knew that their actions constituted part of the attack and they knew that their actions were carried out pursuant to or in furtherance of the policy aimed at carrying out the attack.

To that end, the Panel primarily took into account the established facts, in particular the following: on 10 April 1992, Mate Boban, the President of the HZ HB, issued an order that the HVO be created. The HVO became the supreme executive and defence structure of the HZ HB and BH Croats. That meant that the HZ HB had actual power in that part of Bosnia and Herzegovina. A fierce conflict broke out between BH Croats and BH Muslims in April 1993, when Mostar was divided in two parts – Eastern that was controlled by Muslims and Western, controlled by Croats. On 9 May 1993, in the morning hours, HVO units attacked Mostar using artillery, mortars, heavy and light weapons. The HVO took control of the

²² See Prosecutor v. *Kayishema i Ruzindana*, ICTR-95-1-T, Judgment of 21 May 1999 para. 134. See also the Appeals Judgment in the case Prosecutor v. *Semanza*, para. 332. (the same); the case Prosecutor v. *Bagelshema*, ICTR-95-1A-T, Judgment, 7 June 2001, para.94.

entrance points to the town and denied access to the town to international organisations. These facts were established on the grounds of accepted facts No: 5, 6, 7, 8, 9. Also, many of the heard witnesses, including A.I, Saja Čorić, witnesses 152, A, J, C, F, D and R, who testified about these facts were consistent in stating that Mostar was attacked by the HVO on 9 May 1993 by artillery fire and fire from all types of weapons and that the Eastern part of Mostar, located on the left bank of the Neretva river, was attacked.

Around 5 a.m. armed HVO units surrounded residential buildings and private houses, took out and rounded up civilians, BH Muslims. There were buildings in which both BH Muslims and BH Croats lived, but only BH Muslims were forced out. Hundreds of people were taken to the *Velež* Stadium. The majority of those people ended up at Heliodrom, in Rodoč, west of Mostar, which became the main HVO detention centre in that area. That day, a total of 1,500 to 2,500 Muslim civilians were rounded up and detained at the Heliodrom detention centre. BH Muslims were ill-treated by being forced out of their homes or detained, which became a usual and wide-spread routine as of 9 May throughout the entire autumn of 1993. Many BH Muslims moved to the eastern part of Mostar. The attack also resulted in capturing a number of prisoners of war and civilians, who were taken to various detention centres in the area. Heliodrom was the main detention centre and at times, there were thousands of detainees there. Heliodrom used to be a JNA barracks, it consisted of several buildings and hangars. Detainees were transferred from one place to another, or from one detention centre to another. Groups of soldiers forcibly evicted families, Muslim civilians, from their flats, they literally threw them out in the street and forced them to leave all their things in their flats. All structures which were built in oriental style, like for instance Stari Most (Old Bridge) in Mostar, were destroyed. Following the expulsion of Muslim inhabitants from Mostar West, the names of the streets were changed. These facts were established on the grounds of the accepted facts No. 10, 11, 12, 13, 14, 18, 19, 20, 21, 22 and on the basis of testimonies of a number of prosecution witnesses. Notwithstanding that the relevant time period referred to in the Indictment is July 1993 through March 1994 and the location of perpetration is only Mostar Municipality, the Panel still wants to reflect upon some earlier witness' testimonies predominantly dating from 9 May 1993 onwards, in order to get an overview of the events. In addition to Mostar, these testimonies are relevant also to other areas that were controlled by the HVO as well. According to Witness D, as of 9 May 1993, Muslims inhabitants of Mostar started to be arrested and taken away, but soon after that, individuals and families were arrested and taken away on a daily basis, so that she herself, her seventeen-month-old daughter and 68 year old mother-in-law were arrested in Mostar West in early September and taken to Vojno. All people arrested that day were Muslims, while other inhabitants, who were Croats, stayed in their homes.

Witness Saja Čorić stated that HVO soldiers came to all Bosniak homes that day, they took people out in the street and she saw a line of 200 people. This witness was arrested in her flat in September 1993, together with her underage niece. Witness 152 said that after the HVO attack in May 1993, Bosniak civilians were arrested by the HVO and taken to Heliodrom. He was arrested in his flat in Mostar West in October 1993 and taken to Vojno. Witness A also testified that HVO soldiers arrested Muslims on 9 May 1993 in Mostar West and took them mainly to Heliodrom or in an unknown direction. This witness was arrested in mid August 1993 with her two minor children, while her husband was arrested on 30 June 1993 and taken to Heliodrom. Witness E stated that she lived in a flat in Mostar

West and that shooting started on 9 May 1993 from heavy weapons and cannons deployed at HVO positions. That day, HVO soldiers came to take her husband, but her son showed them an HVO card and they did not arrest him on that occasion. According to Witness E, after the shelling, HVO soldiers entered Muslim flats *en masse* and started to arrest and persecute Muslims in the western part of the town. Men were mainly taken to the camp at Heliodrom, while women were expelled to the left bank of the Neretva river. She did not receive any humanitarian aid, since it was given only to Croats. This witness was arrested in mid August 1993. Witness C said that ethnic cleansing of the western bank of the Neretva river started in April 1993, when Bosniak civilians were expelled from their homes and men, who were not members of military formations, were taken to Heliodrom. This witness stated to have seen them cleansing building by building of Bosniaks and that maybe only 5% Bosniaks stayed on the west side of Mostar. She was expelled from her flat in the western part of Mostar together with her husband in early September the same year. According to Witness F, the HVO attacked the left bank of Mostar on 9 May 1993 and the left side of the town was literally burning. It was then that Bosniak civilians in the western part of the town started to be arrested. The witness was arrested in mid August together with her two minor children and taken to Vojno. Witness J stated that, following the attack by the HVO units on the relevant day in the month of May, Muslim inhabitants were arrested and taken away. All men who were on the right bank were arrested and taken to Heliodrom, Vojno and Ljubuški. She was arrested in early September 1993 together with her 73-year-old grandmother and with Witness K and they were taken to Vojno. Witness R said that her husband was arrested in his flat in the western part of Mostar and taken to Heliodrom on 9 May 1993, when HVO units attacked the eastern part of the town. Her husband was released on 24 May 1993, when UN representatives came to Heliodrom, but in September that same year, she was arrested in her flat together with her husband, two-year-old child and her father-in-law who was 72, and taken to Vojno. Witness AD stated that he lived in the western part of the town in May and that, following the conflict of 1993, he was arrested two times and taken to Heliodrom. First time he stayed 11 days and was released, but he was arrested for the second time when HVO units cleansed the town and when Bosniaks and Orthodox Christians were rounded up and taken from their homes to Heliodrom. On that occasion, women were also arrested and taken to Heliodrom and there was a huge number of arrested people there, two full halls, a school building was packed, central prison was full, so that there were several thousand people at Heliodrom. People were brought there from Stolac, Čapljina, Mostar, Prozor, Ljubuški. Witness AK stated that he was arrested as a civilian in the western part of Mostar in late June 1993, while his wife was expelled to Blagaj. He was then taken to Dretelj, which was controlled by the HVO, where he saw 4000 to 5000 prisoners, all of them Bosniaks, brought there from different parts of Herzegovina and Bosnia, from Teslić, Žepče, Prozor. Prisoners who lived in Mostar were transferred from there to Heliodrom, while others were moved to Gabela. There were thousands of prisoners at Heliodrom, all of them Bosniaks, maybe only a few Serbs. According to witness Ramiz Bebanić, he was taken from his flat in the western part of Mostar to Heliodrom in June 1993 by HVO members and a lot of Muslims were expelled that day from the western part of Mostar. There were thousands people there, around 5-6000, from Stolac, Čapljina, Jablanica, Prozor and western part of Mostar. Witness 151 stated that he lived in the western part of Mostar in May 1993 and that there was shooting and shelling in the early morning hours of 9 May 1993. He heard over the radio that Muslims were called on to hang white sheets on their windows. Soon afterwards, HVO members entered his flat, took him out and brought him in a van to the Velež

stadium, where he saw many people, including women and children. This witness stated that Croats and Serbs were not taken out of their flats that day, only Muslims. He left on foot from the stadium to Varda, then to Heliodrom, where there were thousands of prisoners. Heliodrom was controlled by HVO forces. Several days later, he left with a group of prisoners to Ljubuški, while another group was taken to Čapljina. He saw around 200 prisoners in Ljubuški, they were all Bosniaks and there were women and children among them. Ljubuški was controlled by the HVO. They were returned from Ljubuški to Heliodrom, with a group of captured Bosniaks from Sovići. Then he was transferred from Heliodrom to Dretelj, which was also controlled by the HVO. Then, from Dretelj, he was sent back to Heliodrom again and from there he was taken to work detail to Mostar and then to Vojno.

Many Bosniaks from other parts of Bosnia and Herzegovina, which were under the control of HVO units, were also arrested in the relevant period and imprisoned in various detention centres. Witness Ramiz Mačković so stated to have been arrested in his flat in Bradići, Maglaj Municipality, by HVO members along with other 200 fellow nationals and taken to the prison in Vitina (Ljubuški Municipality), where there were several hundred captured people of Bosniak nationality, from Bosnia as well as from Herzegovina. This witness was transferred from there to Heliodrom and then to Vojno. Witness Samir Humačkić stated that he lived in Pješivac, Stolac Municipality, where he was hiding in the forests for two months, but in September 1993 he decided to surrender to HVO members. He was taken to Dretelj, which was controlled by the HVO, where there was a huge number of prisoners who were placed in hangars. They were mostly Muslims-Bosniaks from different places: Čapljina, Stolac, Gornji Vakuf, Šeher, Maglaj. He was transferred from there to Heliodrom, while the other group was transferred to Gabela. He went to forced labour from Heliodrom to Mostar, Čabulja, Vojno, Buna, where he mainly dug trenches. Witness Aziz Suljević stated that he lived in Novi Šeher near Maglaj in June 1993, where HVO members who controlled the area arrested all men from the village and bused them out to Žepče. They were transported to Herzegovina from there, to the place called Vitina near Ljubuški, where they were kept in a hangar. He was transferred from Vitina to Heliodrom and then to Vojno. Witness Hamza Leto stated to have been arrested in July 1993 in Počitelj, Čapljina Municipality, by HVO members and that other Bosniaks were rounded up as well at that time, so that his relatives were also arrested, his cousins and all of them were taken to Dretelj, which was controlled by HVO and it was packed with captured Bosniaks. He was transferred from Dretelj to Rodoč, then to Heliodrom, from where he was taken to work detail in Vojno.

It follows from the established facts and from the testimonies given by the above mentioned witnesses, who gave almost identical account which the Court accepted as credible and reliable, that there is no doubt that the attack was carried out pursuant to or in furtherance of the policy and plan of the Croat Community of Herzeg-Bosnia, whose supreme executive and defence structure was the HVO, among other organisations, in terms of Article 172/2/a/ and that the attack was to be carried out against Bosnian Muslim civilians of Mostar Municipality. The earlier described attack was a wide-spread and systematic by its nature. The Panel in particular stresses its systematic and organised manner of execution, starting from the use of artillery fire, through systematic arrests and imprisonments and ultimate removal of Bosniak inhabitants, either by expulsion or imprisonment. The Panel also found that the systematic pattern of events was methodically

implemented in the territory of Mostar Municipality that was controlled by the HVO. The political and strategic objective of this attack was obvious and became apparent soon after the main phase of the attack was completed when, following the expulsion of Muslim population from the western bank of Mostar, everything that was built in oriental style was destroyed, like for instance the Old Bridge in Mostar, and the names of the streets were changed, as was established under Fact 23.

The assumption that these events were random and isolated is unacceptable. Quite the opposite, it is clear beyond reasonable doubt that these events were a result of comprehensive planning, organisation and coordination, whose ultimate goal was the attack on Bosniak civilians, which is what actually happened, with multiple crimes being committed in the process.

The Panel reaffirms that customary international law absolutely bans the use of armed force against civilians and that neither national nor international jurisprudence accepts the defence based on the *tu quoque* ('you too') principle. This was precisely the principle referred to by the Defence, who wanted to prove that the opposite party committed similar crimes, when they attacked civilians and soldiers in Bijelo Polje on 30 June 1993. The Panel further stresses that criminal proceedings for crimes against humanity are not forums for establishing responsibility for the break out of hostilities. Therefore, the cause of attack on civilians and the fact that the same attack was carried out against assailant's civilians, is completely irrelevant. Furthermore, when evaluating the facts presented by the Defence in the most relevant and favourable manner, the Panel concludes that there was insufficient number of armed soldiers among Bosniak civilian population of Mostar West that would alter the character of that population, and that the evidence presented does not affect the conclusion that the above described attack was targeted against civilians, notwithstanding any military actions between the armed forces of the belligerent parties.

The Panel further concludes that the necessary nexus between the actions by the Accused and the attack was proved beyond reasonable doubt. The Unit File in the name of Marko Radić shows that the Accused was a member of the First Battalion from 20 September 1991 to 2 November 1992. After that, he was a member of the First Battalion, Second Brigade from 3 November 1992 to 1 December 1993, then he was the commander of the Second Brigade from 2 December 1993 to 4 May 1994. Also, it follows from his Personal File that the accused Marko Radić was a member of the First Battalion from 20 September 1991 to 2 November 1992, then a member of the First Battalion of the Second Brigade from 3 November 1992 to 1 December 1993, member of the Ivan Stanić Čičo Sabotage Unit from 24 December 1992 to 1 January 1994. It stems from the Order on the Establishment of the Bjelopoljska Battalion issued on 3 July 1993 that the accused Marko Radić was the commander of the Bjelopoljska Battalion. Dragan Šunjić's certified Personal File shows that he was a member of the First Battalion from 18 September 1991 to 1 July 1992, then a member of the Military Police from 1 July 1992 to 19 April 1993 and a member of the HVO Convict's Battalion from 19 April 1993 to 1 January 1994. The original Military ID in the name of the accused Dragan Šunjić shows that he was assigned to Military Postcode 1520 (First Battalion, Second Brigade of HVO) from 20 September 1991 to 10 March 1994 and, having inspected the original copy of the Application for Membership Form of the Association of Veterans, it was established that the accused Šunjić was a member of the First Battalion of the Second Brigade from 8 April 1992 to 10

March 1994. The Personal File in the name of the accused Damir (Emir) Brekalo shows that the accused Brekalo was a member of the Convict's Battalion from 24 December 1992 to 1 January 1994, member of the First HVO Battalion from 20 September 1991 to 2 November 1992, member of the First Battalion of the Second Brigade from 3 November 1992 to 30 September 1993, member of the Second Brigade, First Battalion from 2 February 1994 to 19 April 1994 and member of the 81 st. Guards, Second Battalion from 20 April 1994 to 14 April 1995. The Panel notes that it follows from the documentary evidence that the accused persons were members of multiple units at the same time. However, this fact was elucidated by witnesses both for the Prosecution and for the Defence by stating at the main trial that it was possible at that time that an individual be recorded in multiple units at the same time, as is the case here. The Decision allowing Emir Brekalo to change his name to Damir Brekalo, issued by Mostar Police Station and dated 28 September 1993, shows that Emir Brekalo changed his first name to Damir, so that hereinafter Emir *alias* Damir are the same individual. The original Military ID in the name of Mirko Vračević shows that he was assigned to Military Postcode 1520 from 30 June 1993 to 18 April 1996, while it follows from the Letter No. 07-03-88-2/07 of the Ministry of Veterans and Disabled Veterans that the accused Mirko Vračević was assigned to Military Postcode 1520 from 30 June 1993 to 18 April 1996 (from 30 June 1993 to 19 April 1994 – First Battalion, Second Brigade). It stems from the physical evidence that there is no doubt that all four Accused were in the same military units in the relevant period, initially in the First Battalion and then in the First Battalion of the Second Brigade. Further in the Reasoning it will be established on the grounds of other physical evidence that the accused Radić and Brekalo and Šunjić for a short time period, were members of the Convict's Battalion, Ivan Stanić Čičo unit, in the relevant period. The Vojno prison constituted an integral element of the attack on Bosniak population, since it served as a prison for the unlawfully arrested women, children and elderly people of Mostar West. It was also used for the unlawful detention of Bosniak men who were unlawfully arrested during the attack and who were brought from Heliodrom for forced labour. Violence, ill-treatment and abuse in the Vojno prison were constituent elements of the attack on Bosniak civilians in Mostar. Therefore, the actions carried out by the Accused were related to the attack.

The scale of the attack, the fact that the Vojno camp was a constituent element of the attack and the specific positions the Accused assumed and the assignments they executed, show that they knew of a broader context of their own actions and how they fit in the attack. It follows from the Minutes of the Meeting No. 0-0013/93 held between the Commanders of the Battalions and members of the Municipal Government which was drafted on 26 March 1993, that the accused Marko Radić was present at the meeting as the commander of the First Battalion and that he said “we were promised that the town would be cleansed and that there would be flats available to our soldiers. We want the competent Government authorities to state their position in this respect”. “I believe that it can be done only with strong special forces and your full support”. This piece of documentary evidence shows that the policy existed to ethnically cleanse Bosniaks from Mostar and that not only was the accused Marko Radić informed beforehand about the policy and the plan concocted by both administrative and military authorities to carry out the attack, but he insisted that the policy and plan be executed by proposing that special forces be engaged for that purpose. It arises from the written statement given on 31 July 1993 by the accused Marko Radić, commander of the First Battalion, that he participated in the attack with his unit and in the

cleansing of the place called Jasenjani, when Muslims were arrested, questioned, imprisoned and expelled. It was obvious early in the attack that the plan existed, and the Accused, as members of the HVO, undoubtedly became aware of the plan while they were in the HVO units, or while they were coming to Vojno prison to carry out some duties, or very soon after that. According to testimonies of all the Prosecution witnesses, the accused Dragan Šunjić was the Deputy Commander of the Vojno prison from August 1993 through March 1994, which follows also from the Minutes of the Meeting of 29 August 1993, which he signed as the Deputy Commander of the Vojno prison. All witnesses were consistent that the accused Mirko Vračević was a guard in the Vojno prison in the relevant period, which was not refuted by the Defence, while a number of witnesses (witnesses X, L) stated that the accused Damir Brekalo, as a member of the First Battalion, Second Brigade and Convict's Battalion Ivan Stanić Ćićo, took part in arresting civilians, specifically women, children and elderly people from the western part of Mostar and their transfer to Vojno, and on a number of occasions he came to the Vojno compound and facilities in the same capacity while prisoners were there. Even if the Accused were not informed about the plan, either in detail or at least in part, which is rather improbable, it would still be clear to them that the arrests and ill-treatment of so many hundreds of civilians by the HVO and members of the Military Police was carried out in accordance with the policy of the HZ HB and HVO authorities. The Accused also had reason to know that their actions and actions by others in the Vojno prison were undertaken pursuant to or in furtherance of such policy.

Therefore, based on the foregoing, the Panel concludes that the general elements of the criminal offence of Crimes against Humanity under Article 172 of the CC of BiH have been satisfied and proved beyond reasonable doubt.

INDIVIDUAL COUNTS OF THE INDICTMENT

The Panel has harmonized the operative part of the Verdict with the Panel's factual findings and legal conclusions that are elaborated here and in the part related to the criminal liability of the accused persons. During the harmonization of the operative part with the factual findings and legal conclusions, the Panel omitted certain allegations from the Indictment which were not proved beyond a reasonable doubt.

The Panel has found that a certain number of listed detainees who were, according to the allegations from the Indictment, tortured in the Vojno prison were not mentioned by the witnesses at all, due to which the Panel has omitted the names of these persons from the Verdict.

Also, with regard to certain acts charged against the accused persons, namely that they committed them personally, which was in the opinion of the Panel not proved beyond any doubt, the Panel has found the accused persons guilty based on the joint criminal enterprise, due to the existence of legal and factual basis for this type of their liability in the specific cases.

With regard to some counts of the Indictment, the Panel has changed the time framework of the incrimination in the manner determined during the proceedings, whereby all the

changes of the incriminating period remained in the general time framework given in the introductory part of the factual description in the Indictment.

The specific form of the liability of the accused persons is separately explained through the elaboration of the forms of liability in the separate part of the Verdict.

Since the Prosecutor's Office composed the Indictment in the manner that, with regard to each of the accused persons, all the acts he committed were listed, because of which the factual description of many acts was repeated several times, in the reasoning part of the Verdict the Panel shall, with regard to each act, note the count of the Indictment to which it refers and the accused persons to whom it refers, since the Panel believes that in this manner the reasoning of individual counts would be more easy-to-consult and less extensive.

IMPRISONMENT OR OTHER SEVERE DEPRIVATION OF PHYSICAL LIBERTY IN VIOLATION OF FUNDAMENTAL RULES OF INTERNATIONAL LAW AND OTHER INHUMANE ACTS

Imprisonment

(Count 1. Radić; Count 7. Šunjić; Count 14. Brekalo and Counts 21. and 22. Vračević)

Article 172(1)e) of the CC BiH foresees "Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law" as an act of commission of Crimes against Humanity. Therefore, the basic elements of the criminal offence of imprisonment set forth in Article 172(1)e) of the CC BiH are:

- 1) imprisonment or other severe deprivation of physical liberty; and*
- 2) violation of fundamental rules of international law.*

The necessary element *mens rea* of this criminal offence is the intent to deprive a person from liberty arbitrarily, or a logical conclusion that the offence would probably lead to the arbitrary deprivation of liberty.²³ The ICRC notes that, as far as the first element is concerned, imprisonment or internment represents the most severe form of deprivation of physical liberty.²⁴ The fundamental rules of international law to which the second element refers represent international legal standards established in the customary law and conventional humanitarian law and human rights law, including: Articles 42 and 43 of the IV Geneva Convention, Article 9 of the Universal Declaration of Human Rights ("Universal Declaration") and Article 9 of the International Covenant on Civil and Political Rights ("International Covenant"). These standards are considered violated if a person is deprived of liberty arbitrarily, regardless of the existence of a conflict. Arbitrary deprivation of liberty depends on the analysis of each and every case, however it includes ungrounded imprisonment as determined by law.

²³ See the First-Instance Judgment in the *Krnjelac* case, paragraph 115.

²⁴ Comment by the ICRC within the IV Geneva Convention, Article 41.

The Panel finds that the legal qualification of the criminal offence of imprisonment set forth in Article 172(1)e) is consistent with the legal qualification of that criminal offence in international humanitarian law during the relevant time.

In the *Krnojelac* case, the Trial Chamber concluded that “a deprivation of an individual’s liberty will be arbitrary and, therefore, unlawful, if no legal basis can be called upon to justify the initial deprivation of liberty.”²⁵

The evidence that the persons who were deprived of liberty were not informed about the reasons for their detention or that the justification of detention was not subject of consideration in a court or administrative procedure, can indicate that there were no legal grounds for imposing detention.

Other inhumane acts

(Count 1. Radić, Count 7. Šunjić, Count 14. Brekalo)

Elements of “other inhumane acts” as Crimes against Humanity, in violation of Article 172(1)k) of the CC BiH, are the following:

- 1) the acts must by their nature be similar to the acts listed specifically in Article 172 (1)a)(1);
- 2) the acts must cause great suffering or serious physical or psychological injuries or damage to health; and
- 3) the acts must be committed with the intent to cause great suffering or serious injuries.

The above reasoned legal issues related to inhumane acts also refer to the analysis made by the Panel in view of the allegations and facts under this Count of Indictment.

Inhumane living conditions can cause sufficient suffering or injuries and can be severe enough to constitute, by their degree of gravity, other forms of inhumane acts, such as Crimes against Humanity. The ICTY concluded in the *Krnojelac* case and in the *Kvočka* case that inhumane living conditions can constitute a crime of other inhumane acts, such as Crimes against Humanity.²⁶ As far as other acts foreseen in Article 172(1)k) of the CC BiH are concerned, the crucial question is whether the acts are of similar gravity as the criminal

²⁵ *Krnojelac* First-Instance Judgment, paragraph 114.

²⁶ First-instance Judgment in the *Krnojelac* case, paragraph 133; first-instance Judgment in the *Kvočka* case, paragraphs 190-192. *See also* first-instance Judgment in the *Limaj* case, paragraphs 288, 289 (in which it is concluded that inhumane living conditions caused serious physical and mental suffering and that they represent the criminal offence of cruel treatment in violation of Article 3 of the ICTY Statute); first-instance Judgment in the *Šimić* case, paragraph 97 (in which it is concluded that inhumane living conditions, - including harassment, humiliation, the creation of an atmosphere of fear through torture and other forms of physical and psychological abuse, insufficient supply of food and water, lack of space, unhygienic detention conditions and an insufficient access to medical care – are with their gravity similar to other Crimes against Humanity and, therefore, represent *actus reus* of persecution); first-instance Judgment in the *Čelebići* case, paragraph 1119 (in which it is concluded that inhumane living conditions – including an atmosphere of fear and deprivation of adequate food, water, sleep and toilet facilities, as well as medical care – represent actions of cruel treatment and intentional causing of great suffering or injuries to body or health, in violation of Article 2 of the ICTY Statute).

offences specifically listed in this Article and whether the acts caused serious injuries or great suffering.

Legal and factual conclusions

The Prosecutor proved beyond a reasonable doubt the fact noted in the introductory paragraph of the operative part of the Indictment, as well as in the Counts of the Indictment noted below the names of the offences, that over seventy Bosniak civilians, women, children and elderly were unlawfully arrested and detained in inhumane conditions in houses and other facilities in the Vojno village, municipality of Mostar, as well as that Bosniak men, who were brought from the Heliodrom prison, were also unlawfully detained in the same and other facilities in Vojno and were held in brutal, degrading and inhumane conditions in a garage and a cellar of a house. The acts described below represent the criminal offence – Imprisonment, in violation of Article 172(1)e) of the CC BiH and the criminal offence – Other Inhumane Acts, in violation of Article 172(1)k) of the CC BiH.

a. Imprisonment

The evidence proves beyond reasonable doubt that detainees of Bosniak ethnicity, women, children and elderly, as well as men, were imprisoned arbitrarily and without any legal basis whatsoever. The evidence in fact proves that the detainees were imprisoned only on the ethnic basis, without individual suspicion and without respecting the law.

Based on the consistent statements of the heard witnesses, having inspected the List of detainees, women, children and elderly who were detained in the Vojno prison during the relevant period, which was made by the Initiative Board of female detainees of the *Vojno* Bijelo Polje detention camp on 1 May 1996, as well as based on the List of persons that was made on the occasion of the exchange held on 2 December 1993, the Panel has established that, among others, the following persons were unlawfully arrested and imprisoned: Witness X, Witness L, Witnesses A, F, Sadeta Macić and Mustafa Macić with their children, Witness E and her son Witness 153, Mediha and her granddaughter Sanela, Rahima Makaš with her daughter, Witness B, Zejna Mirica with her daughter, Emica Ćurić with her mother and daughter, Mersija Omanović and her daughter, Ramiza Zerdalić, Witness D with her 17-month-old child, witnesses R, AM, K and J with a 73-year-old old woman, Witness C, Witness 152, Dika Ćurić, Witness AG, Witness AI, Edita Pehilj, Zejna Tihak and her son, Saja Ćorić, Mehunisa Ćorić and other detainees from Mostar. The Panel has noted that Witness L was not detained in the Vojno prison, but that she was unlawfully arrested and detained in a house in Rudnik by the accused Brekalo and that she was arrested together with her family, her sister Witness X, her mother and brother, who were all taken to Vojno. Taking into consideration the fact that Witness L was unlawfully arrested and that she was taken to the Vojno prison, where she never really arrived due to sexual abuse by Brekalo, as well as the fact that she was unlawfully detained in a house in Rudnik, the Panel has listed the name of this Witness together with the persons who were unlawfully arrested and imprisoned, whereby their arrest is directly connected with the accused persons and the Vojno prison.

Also, based on the statements of male witnesses who were brought to Vojno from Heliodrom, as well as based on the documentary evidence in the case file, and particularly based on two lists of names of detained persons which were made by Witness AK and witness Ibrahim Šogolj, the log book which was kept in the Heliodrom prison facility, the statements of detainees after they returned to Heliodrom from Vojno on 28 January 1994, and based on several Orders on taking detainees from Heliodrom based on the Request of the 1st Battalion of the 2nd Brigade, as well as based on several Reports made by the relevant persons from SVIZ /military remand prison centre/ Heliodrom, which refer to the problems in the Vojno prison, the Panel has established that it is indisputable that men of Bosniak ethnicity were on several occasions and in different groups taken to the Vojno prison as detainees from the Heliodrom detention camp. Based on the Orders dated 19 August 1993, 2 September 1993 and 6 September 1993 it clearly stems that those Bosniak men were taken from Heliodrom following the request of the 1st Battalion of the 2nd Brigade, commanded by Marko Radić. Namely, during the proceedings the parties did not deny the fact that during the period until December 1993 Marko Radić was the Commander of the 1st Battalion of the 2nd Brigade, which also stems from the statements of all the witnesses who were heard, as well as from the documentary evidence, from which it is clear that he signed his name as the Commander of the 1st Battalion. The above-mentioned Orders clearly indicate that the request for taking the detained men from Heliodrom came precisely from the Battalion commanded by the accused Radić, which clearly shows that he ordered that the detainees be taken. On the other hand, the statements of the Prosecution witnesses, particularly the statements of the women who were taken to the Vojno prison together with children and elderly, show that they were arrested and then taken to the Vojno prison mostly by the following persons: Ivica Kolobara a.k.a. Ivek, Jure Kordić, Nedžad Ćorić a.k.a. Nečko, Nedžad Tinjak a.k.a. Žuti, Amel Hadžiosmanović a.k.a. Doktor, the accused Damir Brekalo, who were all members of the 1st Battalion or the “Ivan Stanić Ćićo” Convicts Battalion. Based on the list of the members of the “Ivan Stanić Ćićo” Convicts Battalion dated 27 June 1993, it stems that the accused Marko Radić was the Commander of this Unit as well. The above-mentioned list consists of the names of 56 persons who were members of this Unit, including Nedžad Tinjak, Nedžad Ćorić, Ivica Kolobara, the accused Emir Brekalo, Amel Hadžiosmanović, Dario Sušac and others. This fact also stems from the payroll list for November 1993 related to the members the Convicts Battalion, whereby the list of the ATG “Ivan Stanić Ćićo” consists of 48 names, including the name of the accused Marko Radić under number 1, the name of Dragan Šunjić under number 46 and the name of Mario Mihalj under number 47. The List of privates of the Convicts Battalion whose housing issues needed to be resolved dated 2 June 1993 shows that it was signed by the accused Marko Radić and that it contains the names of 26 persons who were to be granted apartments, with addresses, including Marko Radić, Ivica Kolobara, Emir Brekalo and others.

The inspection of the Statement given by Ivica Kolobara on 8 July 1993, clearly has showed that, following the order of the HVO 1st Battalion Command, on 7 July 1993 he went to Mostar to take the remaining persons of Muslim ethnicity who temporarily resided in Mostar and whose place of residence was in the region of Bijelo Polje, Vrapčići and Raštani. The same document says that Ivica Kolobara was a member of the “Ivan Stanić Ćićo” Convicts Battalion’s Sabotage Platoon. Based on the above-mentioned documentary evidence it stems that the 1st Battalion Command issued the Order to arrest the Muslims in Mostar, who were then taken to Vojno, as well as that this Order was issued to a member

of the “Ivan Stanić Ćićo” Unit, to which the accused Radić also belonged and over which he had command. Furthermore, the VOB form in the name of Ivica Kolobara clearly shows that during the period from 20 September 1991 to 30 October 1995 he was a member of the 1st Battalion, which means that, being a member of this Unit, the accused Radić was his commander during the relevant period.

Many witnesses who had been taken to the Vojno prison gave their evidence about the persons who had arrested and imprisoned women, children and elderly in the Western part of Mostar. For example, Witness A noted that Ivica Kolobara and Nedžad Tinjak, who were members of the Bijelo Polje Battalion, arrested him and his whole family in his apartment in Mostar at the beginning of September 1993, as well as that around 30 arrested persons were on the truck that day. Witness Saja Ćorić stated that Ivica Kolobara, Nedžad Ćorić and a person with the nickname Žuti and the last name Tinjak arrested her together with her niece in her apartment in the Western part of Mostar at the beginning of September. Several persons of Bosniak ethnicity were arrested on that day. Witness 152 noted that he was arrested on 11 October 1993 in his apartment in the Western part of Mostar and that Tinjak, a.k.a. Žuti and another person whom he did not know arrested him. On their way towards the prison, a soldier stopped them at the checkpoint in Goranci and he asked Tinjak whether he had a written order and then he said that they were taking them upon the order of Marko Radić, after which they immediately let them proceed. These claims of Witness 152 were entirely confirmed by witness Dika Ćurić. Witness A was arrested on 15 August 1993 in her apartment in the Western part of Mostar, together with her two underage children, by Ivica Kolobara, Amer Hadžiomerović a.k.a. Doktor and Tinjak. Witness J stated that she was arrested on 7 September 1993 in her apartment in the Western part of Mostar and that she was arrested together with her grandmother, who was over 70, by Ivica Kolobara a.k.a. Ivek and Emir Tinjak a.k.a. Žuti. Witness C, who stated that she was arrested either on 9 or on 10 September 1993, mentioned that the persons who arrested her were Tinjak a.k.a. Žuti and Emir Brekalo, who had the letter “U” written on his cap. On this occasion her sister was arrested too, as well as her other sister, her husband and their two children. Witness F was arrested on 15 August 1993 by Kolobara, Tinjak, Hadžihasanović and a young man called Zec. Ivek Kolobara and Žuti arrested Witness E too, as well as Witness D with her 17-month-old child and her old mother-in-law. According to her statement Witness R was arrested on 13 September 1993 and from her balcony she saw a vehicle type Zastava, on which it was written “the 1st Bijelo Polje Brigade”, park in front of her building. Then Ivek Kolobara, Bruno Azinović and two brothers Tihak and Dražen Lovrić, whom she all knew, entered her apartment. On that occasion her mother was arrested too, as well as her husband, her underage son and her father-in-law. Witness K stated that she was arrested at the beginning of September by Ivek Kolobara, Nedžad Ćorić and Emir Tinjak. Witness 153 stated that he was arrested in his apartment in the Western Part of Mostar and that Ivek Kolobara, a person with the nickname Jež, Ćorić and Tinjak arrested him in mid August. Witness B was arrested by Nedžad Tinjak and Dario Stupa in August, Witnesses L and X were arrested by Nedžad Ćorić, Jure Kordić and Emir Brekalo in July. All the persons who were arrested lived in their apartments in the Western part of Mostar, they were arrested together with their families as civilians and they were taken to the Vojno prison.

The persons who carried out the arrests, such as Nedžad Tinjak, Ivica Kolobara, Nedžad Ćorić and Amel Hadžiosmanović, were members of the Convicts Battalion and their names

are on the list which was signed by Marko Radić related to the resolving of their housing issues. In addition, with regard to Nedžad Ćorić, his personal file shows that during the period from 3 November 1992 to 19 April 1994 he was a member of the 1st Battalion of the 2nd Brigade, which was commanded by the accused Radić, whereas the personal file of Amel Hadžiosmanović shows that he was also a member of the 1st Battalion of the 2nd Brigade during that period. As it has been already noted, Ivica Kolobara was also a member of the 1st Battalion during the relevant period. The inspection of Nedžad Tinjak's personal file has shown that he was a member of the 1st Battalion of the 2nd Brigade from 3 November 1992 to 20 May 1994, as well as that he was a member of the Convicts Battalion from 24 December 1993 to 1 January 1994. Based on these pieces of evidence the Panel has concluded that all the persons who were directly arresting the civilians in the Western part of Mostar and who were taking them to the Vojno prison were under the command of the accused Marko Radić. Bearing in mind all the listed statements of witnesses, which were accepted by the Panel because they were consistent with each other and with the above-mentioned documentary evidence, the Panel has concluded that during the relevant period the accused Radić participated in the events by issuing orders that civilians of Bosniak ethnicity, women, children and elderly, be unlawfully arrested and detained in the Vojno prison.

The accused Dragan Šunjić, along with the Camp Warden Mario Mihalj, most often waited for the arrested persons of Bosniak ethnicity in the Vojno prison. This fact was noted by many witnesses in their statements, including Witness AI, Saja Ćorić, Witness J, Witness C, D, Semir Humačkić, Witness 151 and others. Some of the witnesses noted that on this occasion their personal documents, as well as their other personal belongings, were taken away. Also, based on the documentary evidence and based on the statements of Prosecution witnesses, the accused Šunjić personally used to come to the Heliodrom prison and used to take the detainees to Vojno. Based on the statements of witnesses Aziz Suljević and Ramiz Mačković it stems that on one occasion the accused Šunjić came to take the detainees sent from Heliodrom to Đubrani, from which place they were taken to Vojno on foot and tied with wire. According to the statements of the same witnesses, the accused Mirko Vračević, who was a guard in Vojno, went to Đubrani to take the detainees from Heliodrom. Several Prosecution witnesses also mentioned Mirko Vračević as a person who was present when detainees were brought to Vojno as well as that sometimes he would inform the newly-arrived detainees about the behavior rules. With regard to the accused Brekalo it has been already noted that on a couple of occasions he personally took part in arresting and taking the civilians from Mostar to the Vojno prison, which also stems from the statements of Witness D.X.L. and Witness C who consistently stressed that, among others, Brekalo arrested them and took them to Vojno.

It is undisputable that detainees of Bosniak ethnicity in the Vojno detention camp were arrested and deprived of their physical liberty. Based on the statements of all the Prosecution witnesses, it follows that the detainees of Bosniak ethnicity could not leave the Vojno detention camp at their own free will. The facilities in which the detainees were held, namely in houses, a cellar and a garage, were all locked. According to the statement of all Prosecution witnesses, guards secured the outside area of the prison facility.

All the Prosecution witnesses consistently stated that they were arrested as civilians and then imprisoned, except for Witness AA, who stated that he was arrested as a member of

the Army of BiH, after which he was first taken to Gabela, while later on he was taken from Heliodrom to Vojno. The statements and personal details of all the Prosecution witnesses clearly show that among the detainees there was a large number of women, children, some of whom were babies just over one year old, as well as elderly in different health conditions, including the sick and the disabled. The husband of Witness “AM” was a disabled person who had to use crutches, whereas the mother of person R had diabetes. The detainees belonged to different categories of population and were of different professions. They were arrested individually and in groups, some of them were arrested together with their family members and their neighbors, some were arrested together with unknown persons, some were arrested alone. They were arrested at their homes, some of them were arrested in the apartments in which they were hiding. During their stay in the prison they were never processed, they were not issued with any decisions ordering them into detention. The only common characteristic that could be established is that they were all of Bosniak ethnicity. The statements of the witnesses are confirmed by the admitted facts number 18 and 22.

All the Prosecution witnesses who were imprisoned in Vojno stated that none of the arrested persons was shown an arrest warrant, many of them were not informed about the reasons for their arrest and imprisonment. At the very best, some of them were told that they were going to be exchanged. Upon their arrival in Vojno they were questioned about members of their families, whether they were engaged in the military, whether they were members of the resistance movement, whether they were members of the Army of BiH. After they were arrested and imprisoned in Vojno, none of the detainees was given a legal explanation of the reasons for his arrest. None of the detainees was given an opportunity to participate in court or administrative proceedings to challenge his detention. In fact, none of the detainees was ever indicted, tried, let alone convicted of a crime. These violations of procedural rights which are guaranteed by international law were serious – they were deprived of all rights – and extensive – all the detainees were in a similar manner deprived of their procedural rights.

Based on these facts, which were established based on the statements of all the witnesses who were imprisoned in the KP */penal and correctional/* Institution, the Panel finds that it has been proved beyond a reasonable doubt that the detainees of Bosniak ethnicity in Vojno were arrested arbitrarily, that is, without any legal justification whatsoever.

As for the number of Bosniak civilians who were unlawfully imprisoned in the Vojno prison facilities, the Prosecutor’s Office tendered as documentary evidence several lists made by the detainees themselves, as well as by other authorized persons. Therefore, the following lists were tendered in the case file of the Court: the List made on 1 May 1996 by the Initiative Board of female detainees in the Vojno – Bijelo Polje detention camp containing names of 76 persons, women, children and elderly, who were imprisoned in Vojno; the List of detainees made by Witness “AK” containing the names of 72 male detainees who were imprisoned together with him in Vojno; the List of male detainees made by Witness Ibrahim Šogolj containing the names of 75 persons who were detained during the period from 17 November 1993 to 28 January 1994; the List of detainees who came from Heliodrom on 21 September 1993, made by the SVIZ Warden Stanko Božić number 703/93 dated 23 September 1993; the List of detainees in the Vojno prison centre dated 13 January 1994 made by Ivica Rotim, Assistant Commander of the HVO 2nd

Brigade SIS /*Security and Information Service*/ number 01-306/94 dated 13 January 1994, containing the names and personal details of 57 detainees; the List of personal details of prisoners in Vojno, made by Anđelko Zlatić, Assistant Commander of the HVO 1st Battalion of the 2nd Brigade SIS. Based on the above-mentioned lists, as well as based on several Orders of the Mostar Defense Sector related to the taking of prisoners, and based on several SVIZ Reports and the statements of witnesses it indisputably stems that in the Vojno prison centre, during the relevant period, at least 70 women, children and elderly were detained in Vojno, as well as a large number of men of Bosniak ethnicity who were brought from the Heliodrom detention camp in different time periods and imprisoned in facilities in the Vojno settlement, municipality of Mostar, and who were returned to Heliodrom later on. Since the above-mentioned Orders and SVIZ Reports, as documentary evidence, show that male Bosniaks from the Heliodrom detention camp were brought in groups of several dozens of persons, as well as that some groups were returned while others were brought in there, during the proceedings the exact number of male Bosniaks who were imprisoned in Vojno was not established, however, based on the above-mentioned documentary evidence, the Panel has concluded that there were several hundreds of them.

The Panel primarily notes that the detainees were not prisoners of war, but that they were in fact civilians, as it was determined earlier. The command and military members of the HVO 1st Battalion of the 2nd Brigade, the Convicts Battalion “Ivan Stanić Čičo” and the 2nd Brigade, as well as the personnel in the Vojno prison could not logically, honestly and in good faith believe that the detainees were prisoners of war. Members of the HVO units during that time, including all the accused persons, were familiar with the circumstances of the attack on Bosniak civilians in Mostar, as well as with the circumstances under which the detainees were arrested and imprisoned. The previously elaborated personal characteristics and circumstances of the detainees, particularly the fact that a large number of women, small children and elderly, including the sick, were among them, were also obvious to everyone. Finally, the accused persons were neighbors, friends and acquaintances of many of the detainees and they must have known that those detainees whom they knew personally were civilians and not prisoners of war. From the inspection of the List of detainees in the Vojno prison centre made by the Assistant Commander of the 2nd Brigade SIS Ivica Rotim it follows that out of 57 detainees not a single one was arrested as an armed member of the Army of BiH and that the majority of them were unarmed at the moment of their arrest, whereas those few of them who were armed were Bosniak members of the HVO units, who were arrested at the beginning of the attack. Also, based on the consistent statements of the Prosecution witnesses who were transferred from Heliodrom to Vojno it stems that at the moment of the arrest they were unarmed civilians, except for the already mentioned Witness AA. The accused persons must have known that the majority of detainees were civilians who were deprived of liberty arbitrarily and only because of their ethnicity, as well as that their arrest was arbitrary and unlawful.

The accused persons claimed that they did not arrest the detainees and that they were not responsible for those actions. With regard to this, the Panel has noticed that their conclusions refer to the arrest of women, children and elderly, as well as to the arrest and deprivation of liberty of male detainees of Bosniak ethnicity in Vojno. The evidence presented suggests the contrary.

According to the evidence, it is clear that the accused Radić, Šunjić, Brekalo and Vračević, each of them in his own manner, took part in arresting and capturing several dozens of Bosniak civilians, women, children and elderly in the Vojno prison, the municipality of Mostar, including, among others, the civilians whose names are listed above, as well as that they participated in taking away and capturing male Bosniaks who were imprisoned in Heliodrom. The Panel finds that the detainees were intentionally deprived of liberty in an arbitrary manner and without any legal justification and that their further, intentional and arbitrary imprisonment in Vojno constituted the criminal offence of imprisonment, as Crimes against Humanity.

b. Other inhumane acts

According to the description provided by many witnesses, including Witnesses AI, J, C, D, AD, Ramiz Mačković, Ramiz Bebanović and others, the detainees were held in cramped rooms in which several dozens of detainees were held in a single room. Based on the statements of all the Prosecution witnesses it stems that men were held in a garage and a cellar of a house in Vojno, whereas women were held in the rooms which were located in two neighboring houses. Statements of Witnesses AI, AD, Ramiz Mačković, Ramiz Bebanović and Samir Humačkić indicate that in the garage there were around 50 or 60 male detainees at the same time. Witness Samir Humačkić stated that they basically slept one over the other. Witness Zulfo Humačkić stated that during the time he spent in the garage there were between 65 and 70 prisoners and that there was not enough space and that they mostly did not sleep at all. The same witness noted that there was an ante-chamber within the garage in which shoes were taken off and put aside. Also, Witnesses J, C and D stated they were held in small rooms inside the houses and that between 13 and 30 women, children and elderly were held in one room and that they slept like sardines. Witness Hamza Leto, who was held as a detainee in a cellar, could not precisely specify the number of persons in the cellar, but he also noted that they slept like sardines.

The concrete living conditions in which the detainees were held made the cramped conditions even worse. According to the statements of Prosecution witnesses, the detainees were held locked in their cramped rooms during the night, whereas they would be mostly taken to perform labor during the day. Witness 152 stated that in the cellar where he was held there was no water, no sufficient sunlight, no toilets, there was a bucket in the corner in which he took care of his bodily functions, he slept on some kind of a sponge mattress. This was also confirmed by other witnesses who were held in the cellar. Witness A noted that she was held in a house, in a room that measured 4 by 4 meters, together with five women and eight children, they slept on the floor without any blankets. Witness "J" stated that she was held together with around 22 women and children in a room that measured 2.5 by 2 meters, that there was no electricity and no water in the house, and the floor of the house was made of concrete. Witness "C" stated that she was held in a room of a house together with around 20 women and children. There was no furniture or beds in the room and the room was very small and they were lined there like fish in a can. The detainees were not allowed to move around the building outside their rooms, they were not provided with any toiletries, they were not given any soap, toothbrushes or toothpaste, they could not take a bath or have shower, they did not have warm water to wash themselves. The

only clothes the detainees had were the clothes they were wearing at the time of their arrest. They were not able to wash the few pieces of clothes they had.

Witness Saja Ćorić stated that hygiene conditions were non-existent, that she was unable to have a bath or to change her clothes. Witness J also stated that they were not able to have a bath, they were not provided with any toiletries whatsoever, instead of sanitary napkins women used some pieces of cloth and clothes, they could not change and they were not provided with any clothes. Witness “E” stated that they were not provided with any toiletries whatsoever, whenever they had a chance they would have a bath with cold water with no soap, as for the clothes, they had only the clothes they brought with them. Witness AD stated that he was held in a garage, that the room was packed with people, the place smelled badly since they relieved themselves in a tin bucket, the door was locked with a padlock, while guards were around the garage. This was also confirmed by other witnesses who were held in the garage, including witness Ramiz Mačković, who added that the walls of the garage were covered with blood and that they were not allowed to talk inside the garage, whereas Witness AF noted that they slept on the floor, with no beds and that there were some planks. Witness Samir Humačkić, who was also in the garage, stated that he had a bath only one time during two and a half months, namely on the occasion when disinfection of the room was carried out due to the spread of lice and that they were not provided with any toiletries whatsoever. The same witness said that on one occasion he complained to the accused Marko Radić about the terrible conditions in the garage, that they cannot sleep, after which he answered him with the question: “What kind of conditions are my soldiers in?”, referring to the HVO soldiers captured by the Army of BiH. Witness AF stated that after he was released from the prison he lost the will to live due to the beating, hunger and lack of hygiene he went through in Vojno. Witness AE stated that he washed his feet only on the 36th day after his arrival in the Vojno prison. After that he had a bath only once, prior to his release, with a little water and he stayed in Vojno for 70 days.

The living conditions in the facilities in which they were detained were difficult during the whole time they spent in captivity. The witnesses agree about the description of the conditions there.

The detainees were provided with inadequate food. According to the testimonies of nearly all the witnesses, the daily amount of food was limited to a small piece of bread, a can of fish, with regard to which many witnesses said that it smelled badly, and small amounts of pork, which was insufficient in terms of both its quality and quantity. Many witnesses described that during the time they spent in detention they considerably lost weight, some of them lost up to 35 kilos. Witness “AI” stated that he was taken from the garage where he was held to perform labor on a daily basis, that the food they were given consisted of one can of food which two of them had to share and half a loaf of bread. Witness Saja Ćorić stated that they were provided with food once a day, namely with some broth made with pork, which they do not eat, and that three persons used to share a loaf of bread and two cans of food. Due to the lack of food, they were forced to steal food while they were performing labor. Children were not provided with any milk, or any other type of food. The same witness noted that she weighed 34 kilos when she got out of Vojno, whereas she weighed 64 kilos when she had arrived there. Witness 152, who was held in the cellar, stated that he used to get one can of food and half a loaf of bread per day. When he was

exchanged he weighed only 60 kilos, whereas he weighed between 75 and 80 kilos when he had arrived there. Witness "A" stated that they were given the leftovers from the soldiers. They were given a couple days old bread and on one or two occasions food which included cans of pork, which Muslims do not eat, whereas children were not provided with any special food. Witness "J" stated that after her arrival she got food only on the third or fourth day, namely some fish which smelled badly in a can which they were unable to open, whereas children were not provided with milk or any other food. Witness "F" stated that she stayed in Vojno for 106 days and that by the time she was released she had lost around 30 kilos. Witness "C" said that as far as food is concerned they gave them old moldy bread, as well as cans of pork, which their religion forbids them to eat, whereas children were not given any special food. Witness "E" stated that sometimes they would be given fish in the morning and that sometimes they would give them the leftovers from the soldiers, however that food was made of pork, which is forbidden for them. The same witness stated that during their stay in Vojno only guard Žarko Leko brought some milk for the children on two occasions in a pot. Witness "D" noted that at the moment of the exchange she weighed only 51 kilos. Witness "R" described that food in Vojno was of bad quality, that they were given some tea and 10-day-old bread for breakfast, some cooked stew made of pork for lunch and some fish which smelled badly for dinner. Children were given the same food as the grownups. Witness "AK" was held in the garage and he stated that he was given half a can of food and half a loaf of bread per day. He lost 35 kilos in Vojno. Witness Dika Ćurić stated that they were given food sometimes once and sometimes twice a day and that most often it consisted of some stew and bread which was moldy. Based on the above-mentioned it stems that women and children were given food mostly once or twice per day and that it was inadequate both in terms of quality and quantity. On the other hand, all the Bosniak men who were detained in the garage and in the cellar stated that they were given food only once per day, namely half a loaf of bread and half a can of food, which was completely inadequate for the needs of the men who were taken to perform hard physical work on a daily basis. Meanwhile it should be taken into consideration that during the proceedings, based on the statements of witnesses, it was determined that there was a kitchen for the soldiers in the Vojno settlement, whereas based on the statements of female detainees in the Vojno prison it was determined that they prepared food for different military units deployed in the field, from which it follows that there were sufficient amounts of food for the HVO soldiers. Also, during the proceedings a large number of Prosecution witnesses claimed that medical care in the Vojno prison was inadequate. Witness 152, who stated that he was all beaten up in the Vojno prison and that his three teeth were broken, noted that there was no medical care whatsoever, whereas he was beaten every day or every other day. Witness 153 also stated that he was tortured in the Prison in every possible manner, even with electroshocks, however he did not receive any medical assistance. This was also confirmed by Witnesses AI, AF, Zulfo Humačkić, Ibrahim Šogolj and others who went through different forms of beatings and torture. Witness J, who stayed in Vojno for a month and a half, stated that a doctor paid them a visit only once. Witness "C" who stayed in Vojno from 9 /10 September 1993 until 2 December 1993 noted that a doctor came to see them only on one occasion and that he said that it was impossible for people to live in such conditions and to look like that. Witness "E" stated that they did not receive any medical assistance, including the children, except on one occasion. Also, Witness "R" stated that a female doctor came on one occasion and examined the children. Witness "AK", who stayed in a cellar – a boiler-room in a house in Vojno from 17 November 1993, stated that detainees did not receive any medical

assistance, only the HVO members did. Witness Azer Handžar, who was also detained during a certain period in a cellar of a house in Vojno, stated that he was injured on 1 September 1993 while he was digging trenches for the HVO and that he was taken on this occasion to a local surgery and then transferred to the hospital in Bijeli Brijeg in Mostar. Witness Hamza Leto stated that he arrived in the Vojno prison in November and that he was held in a cellar. He stressed that he was beaten on several occasions in trenches and on one occasion together with other detainees in front of the prison by Mario Mihalj, due to which he was not able to do anything at all, however nobody offered him any medical assistance.

The Defense offered a large number of exculpatory arguments related to the inadequate nutrition of detainees. Through witnesses the Defense claimed that the soldiers ate the same food and had the same number of meals as all the detainees, that the detainees were given food also during the time they performed labor, especially the women who prepared the food for the soldiers, that there was a canteen nearby and that the detainees could buy things there, which some of them did, that as often as possibilities would allow it they gave the children milk, as well as vitamins, all of which, according to the Defense suggested that the detainees were fed with optimal amount of food, considering the circumstances. Also, the Defense denied that the detainees were lying on the floors, that they were held in the rooms with bad conditions and, therefore, it presented evidence through hearing the witnesses who were either owners of the houses in which the detainees were held or who were their closest relatives.

The Panel did not accept the statements of Defense witnesses who testified about the nutrition of the detainees, since the statements of these witnesses are completely contrary to the statements of all Prosecution witnesses. In the opinion of the Panel the statements of the Defense witnesses in that part were not convincing and not true. In view of this, the Panel did not accept as true the statements of witnesses Žarko Leko, Ivan Prole, Rudo Ravlić, Štefica Zovko, Nikola Mihalj, Marica Perić and the others, namely that food was equally distributed, that it was of the same quality and quantity as for the soldiers, as well as that the detainees did not lose their weight to a significant extent. Witness Štefica Zovko claimed that she brought candies to the children, that the detainees had toothpaste, handkerchiefs, chocolate, powdered milk, that some even had beds. Witness Marica Perić claimed that she gave Mirko Vračević milk which he took to the children on a couple of occasions. The statements of these witnesses were unconvincing for the Court, the majority of the witnesses were at that time members of the 1st Battalion, to which the accused persons also belonged, so that they are well-acquainted with them. Their testimonies were not confirmed by the testimony of a single witness detainee. Namely, in the opinion of the Panel, the detainees from Vojno who testified during the trial gave true and convincing statements related to nutrition, in a very precise manner, and they consistently noted the type of food they were given, in which quantity and how many times per day, as well as how many kilos they lost while they were detained in the Vojno prison. Therefore, the Panel finds that, although the amount of food might not be excessive, the detainees were intentionally deprived of adequate amount of available food, due to which the detainees were subject to starvation and the accompanying physiological and physical consequences of malnutrition. Also, for the same reasons the Panel did not accept the statements of witnesses Štefica Zovko and Rudo Ravlić related to the accommodation and hygiene conditions in the Vojno prison. Namely, these witnesses consistently stated that these

conditions were good, that is, that they were optimal for that time period. It is true that only Defense witness Vladimir Zadro stated that there was no electricity, except in the command building, where the generating unit was located, he also said that there was insufficient amount of drinking water, but he noted that these conditions were the same for all.

As it was established through statements of witnesses, medical care in the Vojno prison was inadequate. The following witnesses testified about that: Witnesses 152, 153, J, C, E, R, AK, Hamza Leto and others. On the other hand, the Defense offered the following witnesses: Vajdana Tomić, who was the Head of the HVO 2nd Brigade Medical Corps, as well as doctors Teo Tomić, Zoran Trninić, Ranko Gačić and male nurse Vinko Jurišić. From the statement of witness Vajdana Tomić it stems that she went to the Vojno prison facility on two or three occasions and that women and children used to come to the medical station to receive medical assistance. She said that she did not stay often in the medical station, but that other doctors stayed there more often. Witness Zoran Trninić noted that as a doctor he had contacts with the persons detained in Vojno on at least two occasions, one time in order to determine the state of women and children and the second time due to a medical intervention. He is familiar with the fact that men were also imprisoned in Vojno and that they were provided with medical assistance on at least two occasions when some persons were injured, however he did not keep records of the injuries caused by beating. Defense witness Ranko Gačić stated that doctors worked in shifts which lasted for 15 or 20 days. He personally had around 10 medical interventions in the Vojno prison facility, where civilians were imprisoned. He did not notice that the women and children were underfed and nobody complained to him. They provided the children with diapers and vitamins. Doctor Teo Tomić stated that he did not personally go to Vojno for an intervention or examination, but that women, children and men came to him to the rooms in which medical station was located. On one occasion he provided a detained man with medical assistance because he was wounded, however he did not know anything about the men being beaten. Witness Vinko Jurišić, who was a male nurse in the medical station, stated that he went to the houses in which the detainees were held on three occasions and that some detainees came themselves to the medical station to get medical assistance. As far as he can remember, there were no detainees who were treated for injuries caused by beating. Whenever he visited the facility, there were no guards, men were inside the house. The Panel has admitted the fact that there was a medical station in the Vojno settlement and that it was located a couple of hundred meters downstream away from the Vojno prison. The Panel also established this fact during the inspection of the site. It is also indisputable that during the relevant period doctors and personnel were present in the medical station. The statements of the above-mentioned witnesses show that they were on few occasions visited by the doctors in the Vojno prison, which is partly consistent with the claims of doctors witnesses that they paid them visits. After he was wounded, witness Azer Handžar was taken to the medical station and later on to the hospital in Mostar, which is also consistent with the statements of the doctors witnesses that wounded detainees were provided with medical assistance on two occasions. Also, Witness F stated that on the occasion of the attempted rape and sexual abuse she fainted twice and that she was provided with medical assistance. Witness A also noted that after she thought she was pregnant with Marko Radić, she was taken to Mostar to undergo a gynecological examination. All this indicates that doctors indeed sometimes provided medical assistance to some of the detainees. On the other hand, a large number of witnesses who testified

during the proceedings stated that beatings occurred in the Vojno prison almost on a daily basis, that they were physically maltreated during their stay in the Vojno prison, some of them were severely beaten and that as the consequence of these serious physical attacks they sustained serious injuries to different parts of their bodies, namely teeth, head, ribs, cuts all over the body, and some of the severely beaten detainees died in the prison because they were not provided with medical assistance. All these pieces of evidence, which were admitted by the Court as true and convincing, clearly indicate that there was no adequate medical care and that the claims of the Defense witnesses that the medical care was adequate were not true. This can also be seen from the statements of the above-mentioned Defense witnesses that they did not know anything about the beating of the detainees. Bearing in mind the large number of detained persons who were held in Vojno, as well as the statements of male witnesses who were tortured and beaten, it follows that medical workers did not go to the prison facility often enough and that the detainees were not able to go to the medical station and receive medical care after the beating. Detainees in Vojno were held in different rooms and many of them stayed in the detention camp during different time periods and, bearing in mind the fact that the detainees were held in Vojno during the period of eight months, as well as the number of detainees who passed through the prison and the intensity of physical assaults against them and the fact that they were exposed to fire while they were performing labor, the number of visits of medical workers to the prison and the number of the medical interventions were completely inadequate. Taking into account the above listed pieces of evidence which indicate the conditions in which they were held, as well as the fact that Prosecution witnesses consistently described those conditions, the Panel finds that inhumane living conditions caused serious psychological and physical suffering of detainees of Bosniak ethnicity and that they constitute the criminal offence – other inhumane acts in violation of Article 172(1)(k) of the CC BiH. The Panel holds that inhumane living conditions – including harassment, humiliation, the creation of an atmosphere of fear and other forms of physical and psychological abuse, of which the accused persons have been found guilty, the insufficient supplies of food and water, lack of space, unhygienic conditions of imprisonment and inadequate medical care are, by their gravity, similar to other Crimes against Humanity, and that they were perpetrated with the intention of causing great suffering or inflicting serious physical injuries and damage to health. Considering their position in the Vojno prison itself, as well as in the HVO military structures, the accused persons were completely aware of the conditions in the Vojno prison. They all witnessed the fact that men were held in the garage and in cellars, in which there was no electricity, water or toilets, and in which dozens of detainees were held at the same time, whereas women and children were held in smaller rooms in two houses, which were cramped and in which there was also no electricity, no water, and no toiletries. The accused persons were frequently or on a daily basis in contact with the detainees. Being the Deputy Commander, Šunjić had a role in placing the detainees into the rooms, while Vrančević was taking them to the rooms, the garage and the cellars. All the accused persons used to enter the rooms where the detainees were held, they knew well where and in what kind of circumstances they were held, they knew what kind of food they received, whether it was possible for them to take care of their personal hygiene, they knew with which level of medical care they were provided. Therefore, in the opinion of the Panel all the accused persons bear responsibility for the brutal, humiliating and inhumane conditions in the Vojno prison.

Forced labor

(Count 6. Radić; Count 12 Šunjić; Count 25. Vrančević)

The accused persons are charged with the burden of responsibility for forcing the detainees to perform forced labor in the Vojno prison and the surrounding areas, such as preparing food, washing clothes and dishes, cleaning houses, whereas men were forced to perform forced labor outside the prison near the frontline, where they were exposed to crossfire and sniper fire, to dig trenches, carry the ammunition bags, chop woods and do other work for the benefit of the HVO.

Although pursuant to the CC BiH forced labor with its incrimination belongs to the criminal offence – War Crimes against Civilians, the ICTY jurisprudence holds that it constitutes the criminal offence of cruel treatment, inhumane treatment, persecution and other inhumane acts. With regard to forced labor, the jurisprudence notes the example of inhumane treatment, namely the exposure of detainees to risks by using them to dig trenches, degrading treatment and so on.

In the opinion of the Panel, during the evidentiary proceedings the Prosecution proved beyond any reasonable doubt that detainees in the Vojno prison were used to perform forced labor. This fact was noted by Prosecution witnesses, as well as by a certain number of Defense witnesses. During the proceedings the Defense did not deny that women and men were taken to perform labor. The Defense only denied that it was done with the use of force, believing that the detainees voluntarily performed labor. Also, the Defense stressed that it was the engineering unit, who possessed the mechanical equipment, that dug trenches near the frontline (witness Vitomir Zlatić).

Forced labor represented one of the important functions of the Vojno prison. In addition, just like the men, the women were also taken to perform forced labor. Witness 152 stated that he was taken to perform forced labor and that he dug trenches. Witness Saja Ćorić said that she was taken to perform labor for 70 days and that she did the washing, prepared food, cleaned and so on. On one occasion Mirko Vračević took them to perform labor in Bočine, where they were exposed to fire from the positions of the Army of BiH. Witness A noted that women cleaned houses, did the washing, cooked for the HVO soldiers. They were escorted by the guards when they were taken to perform forced labor. Witness J stressed that all the women went to perform labor which lasted from morning till evening. They did not volunteer. They mostly did the washing, cleaning and cooking. She noted that Šunjić would come in sometimes and say that he needed 2 or 3 women and then he would point with his finger and say you and you. Witness C stated that they were taken to the frontlines where the HVO units were deployed. Witness E stated that the guards took them to perform labor on a daily basis. Witness F said that Šunjić and Mihalj used to come to take the detainees and that they would simply say “You have to come with us”. Witness AD noted that they were taken to perform labor on a daily basis, from the moment they arrived there. He went to perform labor near the Zalihići houses and the Buconjići houses, where he dug trenches, made pillboxes, while that place was located next to the M-17 highway. Witness R stated that Šunjić, Mihalj and a guard would come in the morning and point with their fingers the ones who had to go to perform labor. Witness AK stated that he was taken to perform labor on a daily basis, that they dug trenches in Bočine near the M-17 highway and that they were exposed to crossfire during the labor, so that they were afraid

to stand up. Witness Ramiz Mačković stated that they were taken to perform labor on a daily basis, that they dug and expanded trenches, they did not receive any compensation for the labor, except for perhaps some slapping in the face, and on one occasion Bračević took him to the Neretva River to perform labor; witness Dika Ćurić stated that women were taken to perform forced labor on a daily basis, they did not volunteer and they were too afraid to object. They never received any compensation for the labor, whereas they did everything they were ordered to do, cleaning, washing, cooking for the HVO soldiers; witness Ramiz Mačković stated that on 1 September 1993, while he was digging trenches, he was hit by a sniper bullet which came from direction of the M-17 highway; Ramiz Bebanić said that he was digging trenches near the Zalihići houses and the Leke houses near the motorway. They were taken to these locations by soldiers, who would come with a list and take as many of them as they needed. Witness Semir Humačkić stated that he mostly dug trenches, made pillboxes, mostly on the line of separation, on the motorway. Every day he went to perform labor, except at Christmas, when he did not perform labor one day only. Witness Aziz Suljević stated that he performed labor from the morning until the evening and that he mostly distributed food to the HVO soldiers. Witness 151 stated that they were taken to perform labor on the frontlines towards the positions of the Army of BiH and that they were exposed to the fire from rifles during one period. He did not volunteer and he did not dare to object. He did not receive any compensation. Witness Redžo Ibrahimović stated that the detainees went to dig trenches and fortify the frontlines. Witness AF stated that he was at first engaged to carry ammunition boxes. On one occasion, while they were chopping woods a shot was heard and he saw that Tarik Rizvanović was shot in his hip; witness Aziz Dautbegović said that he performed all kinds of labor, starting from digging, carrying food, chopping woods and everything else that needed to be done. They went to the frontlines which were located next to the highway. During the work they were exposed to cross-fire nearly every day. In this manner, the following persons were killed: Džemal Sabitović, Hamdija Tabaković, Mujo Kahvić, Mensur Salem. Witness AE stated that in Vojno he mostly unloaded railway carriages, dug trenches, made dugouts, chopped woods. They never volunteered, they would just come in and take them, and he did not receive any compensation, except for the beating. The Panel has accepted the statements of the above-mentioned witnesses as credible and reliable, since they were mutually consistent and consistent with the documentary evidence in the case-file, especially with the Records made by the prison Warden and Deputy Warden and with the SVIT Reports, which show that several detainees were killed and injured on the frontlines while they were performing forced labor.

Defense witnesses also stated that the detainees were engaged to perform labor. Žarko Leko stated that the detainees dug trenches and that there were cases in which some of them were killed on those occasions. Witness Ljubo Vukoja noted that the detainees built pontoon bridges and that they were taken whenever something needed to be done. The procedure would be the following: one would go to Mihalj and tell him orally how many detainees were needed and he would order them to perform labor. He used to see women too, who used to come and clean, make beds and so on. Witness Vladimir Zadro just saw that women were going somewhere, but he did not know where.

During the proceedings it was indisputably established that men were taken from Heliodrom to Vojno to perform certain labor duties. That was written on every order in which the taking of the detainees was requested. The detainees themselves knew about that,

since it was a common thing that a large number of detainees were sent from Heliodrom every day to perform different kinds of labor for the HVO units. The inspection of the Order of the Mostar Defense Sector has clearly shown that on 19 August, 2 September and 6 September 1993 over 100 detainees were taken from Heliodrom to the Vojno prison for the benefit of the 1st Battalion of the 2nd Brigade. Also, based on other Orders, the Heliodrom prison log book, the Report concerning the accommodation of the prisoners of war, and the Statement dated 28 January 1994 given by the detainees who were taken to perform labor in Vojno, it stems that Bosniak men continuously arrived in Vojno in groups which took turns and that they were all taken to perform forced labor.

From the statements of the above-mentioned witnesses it indisputably stems that they performed labor forcibly, that they did not volunteer and that nobody asked them if they wanted to do that. It also stems that they could not object to performing labor, because they were afraid of the consequences. During the proceedings it was determined that on one occasion, in front of a machine, Mario Mihalj killed detainee Salim Halilović, who had said that he had been unable to perform labor due to his heart condition. Also, clear and obligatory behavior rules were set in the Vojno prison and the detainees were informed about them as soon as they would arrive there, whereby according to the rules nobody could object the orders. In such atmosphere of fear and uncertainty nobody dared to object to the orders to perform labor.

During the proceedings it was indisputably determined that the detainees performed different kinds of labor, that the women mostly did the washing, cooking and cleaning for the HVO soldiers, whereas the men dug trenches, fortified pillboxes, chopped woods, carried ammunition boxes, blocks and bricks and did all other kinds of labor they were ordered to do. In addition, they performed labor on a daily basis. The men often performed forced labor near the frontline, namely near the M-17 highway. There they dug trenches and made pillboxes. They were exposed to the crossfire and sniper fire from both directions. Many detainees were injured while they were performing labor, whereby some of them lost their lives from sniper bullets.

In the opinion of the Panel, such behavior towards the detainees was cruel, the detainees were every day exposed to the danger of being killed or injured, because they were used for digging trenches, making pillboxes, as well as for cooking and cleaning in the buildings near the frontline. Such behavior, not paying any attention to the lives of detainees in any manner whatsoever, represented an inhumane act committed with the intention of causing serious physical and psychological suffering of the detainees. The fact that detainees were injured and killed did not stop the system of taking detainees to perform forced labor. Everything would go on as if nothing happened. The forced labor performed by detainees lasted during the whole period they were held in the prison, the women were released from the Vojno prison on 2 December 1993 and they performed labor until the very last day, whereas men performed forced labor until the end of the relevant period.

Accused Radić, Šunjić and Vračević, as the persons who controlled the prison and who performed certain duties there, with their behavior actively participated in this inhumane act, since Radić ordered the women to be arrested and requested that male detainees be taken to Vojno to perform labor, and he used to see the same detainees working on trenches while he was touring the frontline. On one of such occasions when he toured the frontlines

his companion was killed in front of all the detainees. Šunjić controlled the detainees going to perform labor, he ordered where each of them was to go to perform labor, on one occasion he personally took the detainees to perform labor on Raška gora, whereas Vračević took the detainees to perform labor and guarded them after they would return. Brekalo took part in arresting and taking the detainees to the Vojno prison, he was on the frontline where he used to see the detainees performing labor. Everybody knew that the detainees were engaged to perform forced labor, everybody personally took part in that engagement and all of them were aware of the fact that it was in the furtherance of the system of abuse and persecution of Bosniak civilians. Therefore, the Panel holds that all accused persons bear criminal responsibility for the inhumane act of forcing detainees to perform labor and exposing them to risks by using them to do different kinds of work near the frontline, with the intent to cause great suffering to the detainees.

KILLINGS

1. Elements of the offense - murder

Article 172 (1) a) of the BiH CC stipulates the act of „deprivation of another person of his life (murder)“. The elements of this offense are:

- 1) depriving another person of life; and*
- 2) direct intent to deprive another person of life; when a perpetrator was aware of his deed but still desired its perpetration*

The Panel concludes that the legal characterization of this criminal offense under Article 172(1)a), corresponds to the legal qualification of the offense in the customary international law at a given time²⁷.

It is not necessary to prove the death of a victim by proving that the body of the victim has been found. As the Trial Panel noted in the Tadić case „Since these were not times of normalcy, it is inappropriate to apply rules of some national systems that require the production of body as proof to death”.²⁸ Proof beyond reasonable doubt that a person was murdered does not necessarily require proof that the dead body of that person has been recovered. ...[T]he fact of a victims’ death can be inferred circumstantially from all of the evidence presented to the Trial Chamber.²⁹ Factors supporting such a conclusion include the following: proof of incidents of mistreatment directed against the individual; patterns of mistreatment and disappearances of other individuals under similar circumstances; the general climate of lawlessness where the acts were committed; the length of time which has elapsed since the person disappeared; and the fact that there has been no contact by that person with others whom he would have been expected to contact, such as his family³⁰. As for the cause-and-effect connection between the perpetrators and the victim’s death, the

²⁷ See e.g. First instance Verdict in Brđanin case, paragraph 381.

²⁸ First-instance Verdict in Tadić case, paragraph 240. See also Prosecutor against Hassan Ngeze, ICTR -97-27, verbal decision, dated 21 June 2001.

²⁹ Case Krnjelac, first-instance Verdict of the Trial Panel, paragraph 326.

³⁰ Id. paragraph. 327.

Panel concludes that the conduct of the accused must be a substantial cause of the death of the victim³¹.

2. Legal and factual conclusions

During the proceedings, the Panel found that a large number of killings occurred in the Vojno prison facility, which were committed both in the Vojno prison facility itself and while the detainees performed forced labour outside the prison, all in the furtherance of the system to maltreat and persecute Bosniaks, in which the Accused willingly and knowingly participated.

Due to the fact that numerous killings with which the Accused are charged under various Counts of the Indictment were carried out the Panel will elaborate on every individual killing, specifying the Section of the Verdict and the accused to whom it pertains. The Panel is of the opinion that this manner of elaborating on this offense will be clear and well structured.

Murder of Mustafa Čilić and Rasim Lulić

/ Count 2 2a, Radić; Count 13 Brekalo; Count 23 Vračević)

In July 1993, the prisoners who were brought from Heliodrom were accommodated in the Vojno prison facility, among whom were Mustafa Čilić and Rasim Lulić.

The Panel found this based on both the testimony of Witness AA, who was brought to the Vojno prison facility together with them, and the Report of Stanko Božić, Warden of the SVIZ (Central Military Investigation Prison), number 676/93 dated 14 September 1993, from which it follows that the 1st Battalion of the 2nd Brigade took 8 prisoners for forced labour on 6 July 1993. Out of these eight prisoners, six were returned while the prisoners Rasim Lulić and Mustafa Čilić were not returned. Moreover, based on the *list of detainees currently on forced labour*, which list was made by the deputy head of the Heliodrom SVIZ, Rasim Lulić and Mustafa Čilić were taken together with the group of prisoners to perform forced labour.

In his testimony, Witness AA said that he came to the Vojno prison facility for the first time on 6 July 1993 with seven other prisoners including Čilić and Lulić, and that he stayed in the Vojno prison facility for 20 days. Witness AA noted that they were taken to perform forced labour on a daily basis, that he was exposed to crossfire, that all of them were beaten, mostly Lulić and Čilić. Witness AA notes that he was digging trenches with Čilić and Lulić in the territory of Bijelo Polje when Lulić and Čilić were beaten up by the Accused Emir Brekalo, who was dressed in a black uniform; he watched this incident from the distance of 20-30 metres. During the beating, the Accused Brekalo made a break and approached Witness AA, gave him a cigarette and afterwards talked to him. After that, he returned again to Čilić and Lulić and continued beating them. Both of them were covered with bruises, complaining that they suffered pains all over their bodies. The Witness got back together with them to the cellar of a house in Vojno in which they were detained. On the same evening at around 23:00 hours somebody opened the door of the cellar and called

³¹ See e.g. First instance Verdict in *Čelebići* case, paragraph. 424. ([“The conduct of the accused must be a substantial cause of the death of the victim”]).

Čilić and Lulić to step out. Witness AA states that judging by the voice it seemed to him that it might have been the voice of Emir Brekalo with whom he had talked on the same day. After stepping out, Mustafa Čilić and Rasim Lulić never returned to the cellar and were never seen alive again. Witness AA stated that he thought that Emir Brekalo was in the Sabotage Unit at that time and that the commander of that Platoon was Marko Radić, whom he met on several occasions during his stay in the Vojno prison facility, noting that he did not see him in the cellar in which they were detained.

In his testimony, Witness Huso Mehremić stated that he was detained from 9 May 1993 and that he stayed in Varda and Heliodrom prisons until 19 March 1994. When he was released, he became the Head of the MUP Forensic Department and one of his duties was to identify dead bodies. As for the Official note of the CSB Mostar dated 10 April 1994, pertaining to the corpse NN 107, the witness confirmed that he had signed that note and that he had personally recognized and identified the dead body of Mustafa Čilić with whom he had spent approximately two months in Heliodrom and with whom he got to know quite well there. Witness Mehremić stated that it was known to him that Čilić Mustafa had been taken somewhere from Heliodrom in early July 1993. The identification of the dead body of Čilić Mustafa was also confirmed by his neighbour Zijad Kladušak. The witness also confirmed that he had also signed the Official note on the dead body NN 108 on the same date and that he had recognized it was Rasim Lulić who was also detained with him at Heliodrom. The identity of the dead body of Rasim Lulić was confirmed by Zijad Kladušak and a relative from Sovići. The review of the Official note of the CSB Mostar dated 10 April 1993 on the examination and identification of the body of Mustafa Čilić reveals that it was the person who had been killed on the locality of the Vojno camp. Moreover, based on the Death Certificate for Mustafa Čilić and based on the Request for the entry into the Register of Deaths dated 3 August 1994, it follows that Mustafa Čilić was killed in July 1993.

According to the Official notes on examination and identification of the dead bodies of Mustafa Čilić and Rasim Lulić, they were killed in the period from 5 to 15 July 1993 in Bočine – Vojno by the HVO soldiers and that their bodies were identified on 10 April 1994. The deaths of Čilić and Lulić are corroborated by Death Certificates for both of them (exhibits T-32, 33 and 34), the Request for the entry into the Register of Deaths for Mustafa Čilić (T-33a) and the entry into the Register of Deaths for Rasim Lulić (T-34a).

The testimony of Witness AA was accepted by the Panel since it was given in a very clear and convincing manner and it is also consistent with the testimony of Witness Huso Mehremić who was at Heliodrom with Čilić and Lulić as a prisoner and who afterwards attended the identification of their dead bodies, and the physical evidence from the case file, including the Official notes on the examination and identification of dead bodies, requests for the entry of deaths and death certificates from the Register of Deaths for Čilić and Lulić. In his testimony, this witness also clearly stated the role of the Accused Brekalo in this event, whom he described and with whom he talked on that day, thus having an opportunity to see him quite clearly. Judging by the voice, Witness AA supposes that Čilić and Lulić might have been taken out by Brekalo, however he did not see him. The assumption of this witness by itself was not sufficient for the Court to conclude with certainty that it was Brekalo who had directly taken these prisoners out. However, the participation of the Accused Brekalo in the whole incident that day is obvious and it

ultimately resulted in the death of prisoners Čilić and Lulić. According to the Panel, Brekalo was the person who beat up the prisoners Čilić and Lulić on two occasions, for no obvious reason, while they performed labour. On that same night, these prisoners were taken from the cellar where they had been detained and following which they were killed. His actions meant the participation in the joint plan or objective to commit inhumane actions, assuming the risk that such actions may lead to the killings. As for the Accused Brekalo, knowing which group he belongs to, the Panel is of the opinion that it was predictable that his acts of disrespect for human life and the acts of inflicting serious bodily injuries might result in these killings. He nevertheless willingly accepted that risk.

In view of the above, the Panel found that on an unknown date in July 1993, Damir Brekalo, in his capacity as the member of the 1st Bijelo Polje Battalion and the Sabotage Unit "Ivan Stanić Čićo", beat up the prisoners Mustafa Čilić and Rasim Lulić while they were performing forced labour, that is, digging trenches for the members of the HVO at the confrontation line in Bijelo Polje. On the same evening, the prisoners Čilić and Lulić were taken out of the cellar in which they had been detained and never to return again; their bodies were identified and exchanged on 10 April 1994.

At the time when Čilić and Lulić were killed, the Accused Šunjić was not engaged in the Vojno prison facility, so that he is not charged with this murder.

Murder of Arif Omanović

(Count 2. 2b Radić, Count 8. 8a Šunjić, Count 13 Brekalo, Count 22 Vračević)

During the evidentiary proceedings, it was indisputably proven that Arif Omanović was detained in the prison facilities of Vojno in August 1993, together with his wife Huma Omanović. The fact that the spouses Arif and Huma were in the Vojno prison facility was mentioned by a large number of witnesses who were imprisoned in Vojno.

In his statement, Witness A.A. stated that he remembers Arif Omanović, whom he saw in front of the garage the first day upon his arrival and that on that occasion Arif Omanović was brought there together with some other person, when they were ordered to pull up their shirts for us to see their bruises and open wounds inflicted on them by severe beatings.

In his testimony, Witness Azer Handžar also stated that they were first met by Mario Mihalj and Dragan Šunjić upon their arrival to the Vojno prison facility in August 1993 and that they were then lined up. After that, they brought two or three prisoners from the cellar telling them to pull up their shirts so that they could see bruises on these people to know what would happen to them if they did not obey the orders. The witness notes that he could see well the bruises on these people, that he did not know their names and that he was afraid in that moment that the same would happen to him. The same witness states that he was afterwards detained in the cellar of a house together with people who had been brought before them.

Witness 151 stated that he had seen Arif Omanović in the Vojno prison facility. This witness was also present when Mario Mihalj and the Accused Dragan Šunjić brought two prisoners showing their bodies which were black and blue because of the beating and told them that everybody would look the same if they did not obey the orders. The witness

recalls the names of two prisoners who were brought out and states that the name of one of them was Arif Omanović, while the other one was Witness 153. He also notes that Mario Mihalj and Dragan Šunjić were beating some prisoners at the time. Witness 151 states that he saw Dragan Šunjić beating Arif Omanović several times, asking him about the whereabouts of his son since they knew that he was a member of the BiH Army. During the cross examination, Witness 151 noted that he saw when Arif Omanović was beaten up in the garage and that it was done by Dragan Šunjić and Mario Mihalj. Arif Omanović died as a consequence of continuous beatings. According to the statement of Witness 151, Arif Omanović died at night and was buried by a group of prisoners. In his testimony, Witness 153 stated that he had been in the garage of the Vojno prison facility together with Arif Omanović and that he lied in the garage until he died. It is known to him that during one night shift when 7-8 prisoners remained in the garage, Mirko Vračević entered and called Arif Omanović to come with him. On that occasion, Arif Omanović was beaten up; we could hear his screaming and cries, 'please, don't, don't'. When they brought him back, he was deformed like a sack, swollen, covered with blood, having no control over his body. Judging by voices, he recognized that he had been beaten by Mario Mihalj and one of the Kordić brothers. He did not see his corpse, but when he came back from the forced labour one day, they did not find his body in the garage.

In her testimony, Witness Saja Ćorić stated that she had personally seen Arif Omanović in the camp at the moment when the HVO soldiers tortured him and that she afterwards learned that both Arif Omanović and his wife Huma Omanović had been killed.

The death of Arif Omanović in the Vojno camp was also confirmed by both Witness E and Witness F, who stated that it was known to them that Arif Omanović had been killed, taking into account that Witness F stated that she had heard that from the guard named Kuna.

During the trial, the defence witness, Žarko Leko, who was a guard in Vojno, stated that the son of Arif Omanović, Miralem Omanović, was responsible for the killing of three prisoners, Croats, who had been arrested by the BiH Army forces. This allegation of the witness wants to say that the HVO members, including also the Accused, had a strong motive to kill Arif Omanović.

The testimony of Witness Huso Mehremić, who attended the identification of bodies delivered from the Vojno area in his capacity as the Head of the Police Forensic Department, shows that the identity of Arif Omanović was confirmed on 21 April 1994 by his son Miralem Omanović. Moreover, it follows from the Official note of the CSB Mostar on the examination and identification of the dead body of Arif Omanović that the identification was carried out by his son Miralem Omanović and that Arif Omanović was killed in the Vojno camp near Mostar, in September 1993.

Taking into account the above evidence of the witnesses which are mutually compatible and complementary and which were accepted by the Panel as true and reliable and which were also confirmed by the documentary evidence from the case file, the Panel found that the commander of the Vojno prison facility, Mario Mihalj, the Accused Dragan Šunjić as the deputy commander and other HVO soldiers beat up the detainee Arif Omanović in

August or September 1993, who succumbed to the injuries sustained. His body was exchanged and identified on 27 April 1994.

Murder of Mesud Dedajić

(Counts 2. 2c. Radić, 8. 8d. Šunjić, 13. Brekalo, 23. Vračević)

During the proceedings, it was indisputably established that the detainee Mesud Dedajić was held and killed in the Vojno prison in August 1993.

In his testimony, Witness Azer Handžar stated that he was held in the Vojno prison facility from 18 August 1993 and that he came from the Heliostrom camp with a group of detainees. He spent eleven days in the Vojno camp when he was wounded by a sniper while performing forced labour. He notes that the prisoner Mesud Dedajić was killed two days before he was wounded, at the moment when they were on the confrontation line where they were digging trenches. He attended this event and he concluded that the bullet came from the area with the HVO soldiers, based on the side from which Mesud Dedajić was shot. The body of Mesud Dedajić was buried together with two or three other prisoners, several meters from the place where he was shot.

During the cross examination, Witness AD also noted that he was present when Mesud Dedajić was killed and that the bullet was fired by the soldiers who were near the Zalihići house. The same witness marked the place where Mesud Dedajić was buried.

It follows from the review of the Official note of the CSB Mostar dated 5 July 1994 on the examination and identification that Ismet Dedajić, father of Dedajić Mesud, identified his son. The same Official note states that Mesud Dedajić was killed on 28 August 1993 by the HVO soldiers, in the locality near the Zalihići house, in Potoci near Mostar.

It follows from the testimony of Witness Huso Mehremić, Head of the MUP Sector of Crime Police Mostar, that he was present during the identification of the dead body of Mesud Dedajić, and that Hadžiomerović, who was one of the prisoners who had buried the killed Mesud on the critical occasion, showed him the place where Mesud Dedajić was buried. The review of the Report made by SVIZ Warden Stanko Božić, number: 363/93 dated 3 September 1993, reveals that the detainee Mesud Dedajić was killed. According to the same Report, on 19 August 1993, 50 detainees were handed over for forced labour to the 1st Battalion of the 2nd Brigade. The detainees were guarded by Dragan Šunjić.

In his testimony, the Defence Witness Žarko Leko, who was a prison guard in Vojno, stated that the men, prisoners in Vojno, were used for digging trenches and that on these occasions several of them were killed.

It follows from the compatible testimonies of all the witnesses for the first-accused, who gave their statements about the responsibility zones of individual battalions within the 2nd HVO Brigade, that the space between the Zalihića house and the Monastery was within the responsibility zone of the 1st Battalion of the 2nd HVO Brigade, commanded by the Accused Marko Radić.

Having reviewed all the above evidence, the Panel accepted the testimonies of the above witnesses as truthful and reliable, taking into account that they are compatible and complement each other, being also in accordance with the above mentioned documentary evidence. Based on all the above evidence, the Panel indisputably established that an unidentified HVO soldier shot dead Mesud Dedajić while performing forced labour on the confrontation line in Bijelo Polje, Mostar municipality, on or about 28 August 1993, after which three detainees buried the body of Mesud Dedajić near the place where he was killed. His body was exhumed between the Zalihića house and the Monastery, exchanged and identified on 5 July 1994.

Murder of Aris Začinović, Enver Kajtazi, Husnija Ćorajević and Željko Čakalević
(Count 2. 2d. Radić, 8. 8e Šunjić, 13. Brekalo, 23 Vračević)

Based on the testimonies of the witnesses and documentary evidence attached to the case file, the Panel established that Aris Začinović, Enver Kajtazi and Husnija Ćorajević, together with several other detainees, were brought from the Heliudrom camp to the Vojno prison facility in September 1993.

Among the detainees who were brought from Heliudrom on that occasion, there was Witness AB. The above witness was not heard at the trial, but his testimony was submitted to the Prosecutor's Office under number KT-95/05 on 10 August 2006 and read at the trial pursuant to Article 273(2) of the BiH CPC.

During the investigation, in his testimony, Witness AB stated that he was taken to the front line together with a group of men on the critical date to dig trenches. Enver Kajtazi, Husnija Ćorajević, Željko Čakalović and Aris Začinović were in that group. They were in the vicinity of the frontline when, at one point, Marko Radić, who Witness AB had heard was the commander of that Brigade, came to visit the line. A shot was heard which hit and wounded the soldier escorting Marko Radić. Afterwards, they were ordered to carry the soldier to the medical station. However, since this HVO soldier died in the meantime, they were blamed for the soldier's death allegedly because they did not bring the body fast. Afterwards they were subjected to the beating by Jure Kordić, Mario Mihalj and the third person, whom he described in his first testimony, who, based on his description, the Prosecutor concluded might have been Emir Brekalo. He did not know the name of the third person. On that occasion, these three soldiers were beating him and these four mentioned prisoners in succession, by kicking, punching them and hitting them with police batons, because of which Kajtazi lost his consciousness. Mario Mihalj tried to regain his consciousness. As he did not manage to do so, he pulled a knife out of the holster asking them to look at the wall. Then, he heard the wheezing. In his opinion, Mihalj and the unknown person knelt down above Kajtazi. At that moment, Kordić was in the vicinity and it is possible that he also knelt above Kajtazi. Afterwards they covered the body of Kajtazi with a blanket and continued kicking and hitting them with police batons. On that occasion, Ćorajević also fell down and they also tried to regain his consciousness by pouring water. Since they failed, they deprived him of his life in the same manner. The witness could not exactly see who exactly slit Ćorajević's throat. After that, the door of the garage opened and a rather tall man with black hair parted on the side entered the garage. Mario Mihalj addressed him by the name "Dragan". At that moment, Mario Mihalj, Jure Kordić and the third person, together with Dragan left the garage, instructing them to look

at the wall and not to move. When they were alone, he immediately stepped into the hall to see whether he could open the window. He states that he saw a female prisoner pour the water on Mario Mihalj's knife to clean it. After that, he heard the sound of the guitar and singing. All the time he tried to find the way how to escape. Ariz Zaćinović agreed with him to escape, while Željko Čakalović said that he would stay. When he heard that the soldiers were on their way back to the garage, he jumped out and escaped together with Aris Zaćinović. He heard the soldiers run after them shooting. On that occasion, one bullet hit him in his left arm. On that occasion he managed to escape, spending about thirteen days in the Neretva Canyon until he was found by the BiH Army.

In his testimony, Witness AA stated that on one occasion when he was returning to the camp from forced labour, two prisoners escaped from Vojno, out of whom one managed to escape and that he heard shooting and some turbulence, seeing them drag one of them back to the garage and that he was wounded when he tried to escape. Then he saw Mario Mihalj approaching him with a knife and slitting his throat. Furthermore, Witness AA noted that he had seen a lot of blood when he entered the garage and people who buried them told him that the bodies of four killed persons had been buried.

This event was also mentioned in his testimony by witness Ramiz Bebanić, who, while returning from forced labour heard Aris Zaćinović, whom he knew quite well, begging Mario Mihalj not to kill him. This witness stated that he afterwards heard the wheezing which reminded him of a sheep being slaughtered. Afterwards, looking from the garage in the moonlight, he saw four bodies lying on the ground, covered with blankets.

Witness AD also noted that he heard shooting and shouts coming from the garage while returning from forced labour to the Vojno prison facility and that upon his arrival at the garage he saw the same dead bodies among whom he recognized the body of Željko Čakalović by his uniform. The same witness stated that the walls in the garage were covered with blood that night.

In his testimony, Witness AI stated that one day upon their return to the prison facility, they were ordered to stop in front of the garage and put their hands behind the back and to look to the ground. Then he heard one prisoner screaming for help, saying, *Sir, please, don't do that*, and then he heard wheezing, which was why he assumed that his throat had just been slit. On that occasion, he also heard Dragan Šunjić saying that he had shot one prisoner in his leg when he started running away. The witness states that he afterwards heard that the man who was shot in his leg stayed alive and managed to cross to the left bank of the Neretva River. When they afterwards entered the garage, it was all covered with blood, that is, there were pools of blood.

In his testimony, Witness 153 stated that he had seen a lot of dead bodies of prisoners when he returned to Vojno from forced labour. On that occasion, Mario Mihalj told them that they wanted to run away. He saw Damir Brekalo and Dragan Šunjić beside the crowded bodies. Brekalo was squatting beside the drinking-fountain washing his hands, while Šunjić was standing.

The testimonies of Witness Huso Mehremić, Head of the MUP crime police Mostar, show that he was personally present during the identification of Aris Zaćinović's body, which

was carried out by his brother's son Šemsudin Začinović. The body of Željko Čakalović was also identified by his wife's brother. Witness Mehremić stated that the pocket on the plastic bag with the dead body contained a piece of paper on which it was written that it was the body of Enver Kajtazi. However, it was subsequently established that it was the body of Željko Čakalović. It is not known to the witness who wrote the names of the bodies, which were transported for identification, since he was informed that it was done by the workers of the "Park" company. Witness Mehremić was also present during the identification of Husnija Čorajević, who was identified by his brother Arif. The same witness stated that the name of Enver Kajtazi was written on two pieces of paper on the bodies and that none of the bodies was identified under this name.

It follows from the review of the Official Note of the CSB Mostar dated 25 April 1994 that the identification of the dead body of Aris Začinović was carried out by his brother's son Šemsudin Začinović. The same Official Note says that Aris was killed in the Vojno prison facility by the HVO soldiers. It was a male corpse who was jugulated, with the length of the cut being 8 cm. It stems from the Official Note of the CSB Mostar dated 25 April 1994 that the identification of the dead body of Husnija Čorajević was carried out on that day, which was done by his son Arif Čorajević and that he was killed on September 1994 in the Vojno prison facility by the HVO soldiers. The skull of this corpse was completely severed from the backbone, and it was not possible to notice the injuries on the body because of the decaying condition of the corpse. It follows from the Official Note of the CSB Mostar dated 25 April 1994 that the body of Željko Čakalović was also identified on that occasion on, which had a tag with the name of Enver Kajtaz, who was recognized by his son-in-law Rezedin Prguda. It was a male corpse whose skull was completely severed from the backbone. According to the same Official Note, Čakalović was killed in the Vojno prison facility in September by the HVO soldiers. The killing of these four prisoners in Vojno stems from the Report of the SVIZ Commander Stanko Božić dated 14 September 1993, which, inter alia, states that Husnija Čorajević, Enver Kajtazi, Haris Začinagić and Željko Čorić were killed. This Report was sent by Mario Mihalj. In addition, the review of the List of killed prisoners dated 6 January 1994 made by the Lodging for War Prisoners revealed that these persons were killed.

The Panel believed the testimonies of the above witnesses, finding them credible and reliable since they were compatible, complementing each other and were in accordance with the presented documentary evidence. The Panel established that on an unknown date in September 1993, after one HVO soldier was shot and killed in the vicinity of the frontline, the HVO soldiers ordered the detainees, Witness AB, Aris Začinović, Enver Kajtazi, Husnija Čorajević and Željko Čakalović to carry the body to the medical station in the place of Vojno, which they did, but were blamed for the HVO soldier's death allegedly because they did not bring the body fast enough, after which the mentioned prisoners were brought to the garage in Vojno, where they were beaten by Jure Kordić, Mario Mihalj and an unknown soldier. After the prisoners Enver Kajtazi and Husnija Čorajević had fallen down, they were deprived of their lives by throat slitting. After that, the door of the garage opened and Mario Mihalj and HVO soldiers went out; both prisoners, Witness AB and Aris Začinović, tried to escape; prisoner AB succeeded but Aris Začinović was captured and deprived of his life in front of the garage in the presence of other prisoners. Afterwards, 4 dead bodies, including that of Željko Čakalović, were seen in front of the garage; the

bodies of Začinović, Čakalović and Čorajević were identified and exchanged on 25 April 1994.

The Panel did not establish that the third HVO soldier, who participated in the killing of these four prisoners, was the Accused Damir Brekalo, as stated in the Indictment of the Prosecutor's Office since it was not mentioned by any of the examined witnesses. The description that was given during the investigation by Witness AB, based on which the Investigator said that it was Damir Brekalo, and the allegations of Witness 153 according to which he saw Brekalo on that occasion washing his hands at the drinking-fountain, are not sufficient for the Panel to establish beyond any doubt the immediate participation of Brekalo in the killing of these four prisoners, as stated in the Indictment of the Prosecutor's Office. However, the very presence of Brekalo in the above event, his behaviour (washing his hands in the vicinity of the killed prisoners) and his affiliation to the group that participated in the joint plan or objective to commit inhumane actions, including killings, indicate that those killings were predictable for the Accused Brekalo and that he willingly accepted that these killings take place.

Murder of Asif Čakrama and Salim Halilović

(Count 2. 2e. Radić, Count 8. 8f Šunjić, 13. Brekalo, 19. 23. Vračević)

During the proceedings, based on the documentary evidence existing in the case file and the testimonies of witnesses, the Panel established that the killing of the prisoner Asif Čakrama happened on the way to the Vojno prison facility in September 1993 and that it was carried out by the Accused Mirko Vračević and that the killing of Salim Halilović took place in the Vojno prison facility by Mario Mihalj. The Panel bases such a conclusion on the following evidence:

a) Murder of Asif Čakrama

In his testimony, Witness Ramiz Mačković stated that in late September, together with 50 other prisoners, he was transported from Heliodrom to the Vojno prison facility, where he spent some 45 days. They were transported by truck. On their way to Vojno, in Đubrani, they were intercepted by Mario Mihalj, Dragan Šunjić and Mirko Vračević. In Đubrani, they were tied up two by two with a wire. He was tied up with a wire personally by Mario Mihalj. He saw Dragan Šunjić tying up the other prisoners. They were ordered to keep their free hands above their heads. Whenever somebody's hand fell down, the Accused Vračević would hit them with a rifle butt. They escorted them tied up to Vojno. The witness states that on the way to Vojno, Mirko Vračević recognized a prisoner named Nuhan Makaš to whom he said "*Have you come again? Tomorrow, you will dig a grave for yourself and I will come to kill you.*"; then, he asked Mario Mihalj if he could kill Nuhan Makaš. When Mihalj replied positively, Mirko Vračević asked prisoners "*How do you, Muslims, say grave?*" Asif Čakrama replied "*mezar*", after that Vračević suddenly turned around and fired, at close range, his rifle to Čakrama's head, which instantly caused his death. The bullet which exited Asif, wounded prisoner Junuz Kovačević, who was admitted by the medical staff upon his arrival in Vojno. At the moment when Mirko Vračević fired and killed Asif Čakrama, Dragan Šunjić was standing on the side. The witness further notes that he knew Asif Čakrama quite well; they slept bed to bed in the camp. They brought the body of Asif Čakrama and buried him in an orchard, in the place

in which some other bodies were also buried. The body was subsequently exhumed and the witness notes that he showed the graves of people killed in the Vojno prison facility. He used to see Mirko Vračević very often later on in the Vojno prison facility performing the duty of a guard. He described him as a person with a faulty eye.

In his testimony, Witness Aziz Suljević stated that he was in the prison at Heliodrom and that fifty of them, the prisoners, one day were taken to the place of Vojno. They reached Vojno through Đubrani. In Đubrani, he saw Mario Mihalj and Dragan Šunjić for the first time. In Đubrani, they were tied up with a wire two by two and this is how they got to Vojno. The witness states that the killing of Asif Čampara is known to him and that he was killed by Mirko, whom he described as a man of lower height, about 48 years old. He notes that Mirko Vračević killed Asif from his rifle, by shooting once, without reloading the rifle, from the distance of about one metre and a half and that there was a possibility that he was intoxicated. He did not see the injury on the body of Asif Čakrama but he assumes that he was shot on his chest. The witness states that he thinks that Dragan Šunjić was also present when Asif Čakrama was killed. They left Asif and started towards Vojno, where they were packed into a garage upon their arrival. Afterwards, he dug Asif's grave with three other prisoners and buried him. He also used to see Mirko later on, standing guard

Witness Damir Lukić was a member of the HVO Military Police and he escorted the group of 50 prisoners from Heliodrom to the Vojno prison facility. Witness Lukić could not state the exact date when he escorted the prisoners from Heliodrom to Vojno, but he confirmed that this abduction was carried out through Đubrani, that he did not go further but that he stayed in Đubrani, which was on the way to Vojno. He notes that he handed over the group of 50 prisoners to Mario Mihalj in Đubrani since he was told that Mario Mihalj would wait for him there. Apart from Mario Mihalj, there was also a blond man there, in a camouflage uniform, who might have been about 20 years old. The description of this young man by Witness Lukić absolutely matches the description of Dragan Šunjić.

Witnesses Ramiz Mačković and Aziz Suljević were explicit when they said that this killing was committed by Mirko Vračević. Both witnesses claimed that the admission and escorting of prisoners from Đubrani to Vojno were also carried out by Dragan Šunjić. Both witnesses stated that Šunjić was present during the killing, while witness Suljević said that he thought that Šunjić had seen it.

Out of the documentary evidence tendered into the case file pertaining to the death of Asif Čakrama, the Court reviewed the death certificate for Asif Čakrama dated 30 June 1996, submitted by the MUP, stating that he was killed in Vojno in September 1993. It follows from the Official Note on the examination and identification of the corpse carried out by the CSB Mostar on 25 April 1994, that the name of Haris Balić was written on a tag in the pocket of the plastic bag containing one dead body. According to the detainees, there is a possibility that it was Asif Čakrama's corpse. However, this corpse was not identified on that occasion so that it is not possible to conclude with certainty on the basis of the Official Note of the CSB Mostar dated 25 April 1994 exactly whose corpse it was. It follows from the statement of Witness Huso Mehremić, who, in the capacity of the official person attended the identification of dead bodies exhumed in Vojno and the surrounding places, that the woman whose name was Sanija recognised subsequently her husband Asif on the

photographs. Witness Mehremić was not present when the wife recognised her husband, but his log book contains the date of 30 July 1993 when this recognition was made.

The Court reviewed the attached log book which was made at Heliodrom, whose page number 01535329 says that they took 50 prisoners to the 1st Battalion of the 2nd Brigade from Heliodrom, that it contained the names of the killed Asif Čakrama, Witness Ramiz Mačković and Aziz Suljević and that the escorting of the transferred group was done by the military police officer Damir Lukić. The above page of the log book does not contain the date of departure of these prisoners to the 1st Battalion. However, the next pages of the log book contain the dates of 26, 27 and 28 September 1993. Based on these dates it is possible to conclude that the event in question took place in late September 1993. The same List of prisoners made at Heliodrom contains the name of Mahan Nukaš under number 14, which is the person mentioned by the witness who was addressed by the Accused Mirko Vračević before the killing of Čakrama.

The Defence pointed to different statements of witnesses speaking about the time when this event took place because Ramiz Mačković said that it happened on 26 September 1993, while Aziz Suljević said that the event took place in October. The Defence also pointed to the differences regarding the place where the bullet shot Asif Čakrama, whether it hit his head or chest and whether Asif was killed at closed range or with one bullet only. As for the time of the event, it follows from the testimony of Witness Mačković and other documentary evidence cited by the Court under this Count of the Indictment and especially from the log book on departures and arrivals of prisoners from the Heliodrom camp that this killing took place in late September 1993.

Based on the witness statements compatible in all essential elements and the above log book, the Court indisputably established that the witnesses Mačković and Suljević had been taken together with Asif Čakrama from Heliodrom to be transferred to the Vojno prison facility, the 1st Battalion of the 2nd Brigade. It indisputably follows from the testimonies of witnesses Mačković and Suljević and the testimony of Witness Damir Lukić that these prisoners were taken over by Mario Mihalj in Đubrani. Witness Lukić claims that at the time Mario was accompanied by a blond young man, about 20 years old. The Court accepted compatible testimonies of witnesses Suljević and Mačković that they had also seen Dragan Šunjić and Mirko Vračević in Đubrani standing beside Mihalj since these witnesses afterwards spent dozens of days at the Vojno prison facility where they were seeing these two soldiers regularly and where they found out their names. Anyway, the description given by Witness Lukić matches the description of the age and colour of Dragan Šunjić's hair. Witnesses Mačković and Suljević also rather accurately described the physiognomy of the Accused Vračević. It is a fact that Dragan Šunjić and Mirko Vračević performed some duties at the Vojno prison facility in late September, that Šunjić was the deputy commander and Vračević was a guard in the prison. Therefore, the Court finds acceptable that the two of them came to Đubrani together with Mihalj, who was the commander, to take over the prisoners and to take them to the Vojno prison facility. Taking into account that the corpse of Asif Čakrama was not identified, the Panel could not precisely establish whether the bullet shot him in his head or chest or reliably establish the number of bullets fired at him. However, the Panel established beyond any reasonable doubt that Asif Čakrama was killed on that occasion by Mirko Vračević who fired a bullet from firearms and that this event took place on the road between Đubrani and Vojno in

September 1993. On that occasion the bullet which exited Asif Čakrama wounded another prisoner in his chest.

b) Murder of Salim Halilović

During the evidentiary proceedings, the Court established that the detainee Salim Halilović was deprived of life by Mario Mihalj on an unknown date in the month of September during his stay in the Vojno prison.

In his testimony given during the investigation before the Prosecutor's Office of BiH, Witness Junuz Halilović stated that he is the brother of Salim Halilović with whom he was detained together at Heliodrom and transferred to Vojno for forced labour in the territory of Bijelo Polje. Upon their arrival in Vojno, they were met by the camp commander, Mario Mihalj. The prisoners were lined up and asked whether they were capable of working. His brother Salim said that he could not perform forced labour due to his heart ailment. Afterwards, Mario Mihalj ordered him to step out of the line and fired at Salem's head. When Salem fell down, he fired another bullet and shot him in his heart, due to which Salem died instantly.

After that, he ordered four prisoners to bury Salem's dead body, which they did at the place with six more graves of buried prisoners. The witness also recalls Marko Radić a.k.a. Maka, Dragan Šunjić a.k.a. Petar and Mirko Vračević a.k.a. Srbin, who all participated in the killings in their own way. The witness states that 55 people were brought to Vojno at a time and were all detained in a 16-m² garage, where they had a bucket for urination and for relieving themselves. Witness Junuz Halilović states that he had a misfortune to be imprisoned 3 times for twenty days in Vojno. His brother was buried in the vicinity of the place where the prisoners were detained. Witness Junuz Halilović gave the same statement in Zenica before the Investigative Judge of the Higher Court in Mostar on 6 September 1996. This witness was not examined at the main trial because of serious illness. Pursuant to Article 283(2) of the BiH CPC, it was decided to read both his testimony given before the Investigative Judge of the Higher Court in Mostar dated 6 September 1996 in the case Ki 6/96 dated 6 September 1996 and the statement given before the Prosecutor's Office of BiH dated 18 May 2006.

The testimony of this witness is corroborated by the documentary evidence tendered into the case file of the Court. Based on the Report of the SVIZ Warden Stanko Božić, number 698/93 dated 22 September 1993, it can be seen that Dragan Šunjić, in the capacity of the commander of the Vojno prison made a Report dated 15 September 1993 in which Salem Alilović's killing is mentioned (father's name Selim). The fact that he was the brother of Junuz Halilović is corroborated by the same name of their father, which is Selim. This Report says that this prisoner was buried immediately after he was killed.

The review of the Official Note on the examination and identification made by the CSB dated 25 April 1994 shows that a male corpse was brought for identification from the Vojno locality in a plastic bag with an inscription bearing the name of Salih Alilović. The corpse was not identified on that occasion and it was only stated that it might have been the corpse of Salih Halilović. The dead body was buried as the body of an unknown person under number NN 120. Witness Huso Mehremić, who signed this Record in the capacity of the official person, stated that the identity of this corpse was not confirmed. The review of the Decision of the Basic Court in Zavidovići dated 28 April 1997 shows that the death

of Salim Halilović was confirmed on 14 September 1993 in the place of Bijelo Polje, Mostar municipality, and the reasoning of the same Decision shows that the death of Salim occurred in the manner and at the time as stated by Witness Junuz Halilović during the investigation. In addition, the List of war and civilian prisoners who were killed, which was made by the KRZ Heliodrom Warden Stanko Božić, among other names, also includes the name of Salim Alilović under number 27.

Taking into account the testimony of Witness Junuz Halilović whose testimony was accepted by the Panel as truthful and reliable and which was fully corroborated by the documentary evidence tendered into the case file, the Panel established that on an unknown date in the month of September 1993, prisoner Salem Halilović was killed in Vojno by the prison commander Mario Mihalj. The Court did not accept that the death of Halilović occurred in the manner as stated in the relevant Record made by Dragan Šunjić, in which members of the enemy forces are blamed for the death. Analysing all the Records on the death of prisoners coming from the Vojno prison facility, the Court concluded that there existed a generally accepted practice to blame the MOS forces for all the killings of prisoners in order to conceal the actual cause of death of prisoners and evade a possible responsibility of persons in charge of the prison. However, this Record shows that Halilović was killed from a firearm. The same cause of death, firearm, was also mentioned by Witness Junuz Halilović, an eye-witness to the event. Since the Official Note on the examination and identification of the dead body which bore the name of Salih Halilović shows that this corpse was killed by throat slitting, the Court does not consider that it is the corpse of Salim Halilović, especially because that corpse has never been identified. While testifying, Witness Junuz Halilović had a very poor perception of the time when certain events took place, by claiming that he had been captured already in 1992 but not in 1993 when the conflict started. The same witness said that he had been coming to the Vojno prison three times and stayed there for twenty days each time and was returning in the meantime to Heliodrom, which is why the Panel was not able to establish with certainty the time of death of his brother Salim Halilović based on his testimonies given during the investigation. However, Witness Junuz Halilović gave a very precise description of the garage where he was detained, the labour he performed, conditions of their stay in the garage and stated the names of persons who were in charge of Vojno as HVO members. He also gave a very detailed description of the manner in which Mario Mihalj had killed his brother in the Vojno prison facility, which is why the Panel is of the opinion that this witness indeed was held at the Vojno prison facility at the relevant time and that he testified on the event in question truthfully and reliably.

Murder of Avdo Jelin

(Count 2. 2f) Radić, 8. 8b. Šunjić, 13. Brekalo, 23. Vračević)

During the proceedings, the Panel established that the killing of Avdo Jelin occurred in late August or early September, and that he died because of consequences of beatings and maltreatment. The fact that Avdo Jelin was in the Vojno prison facility during the relevant period stems from the testimonies of numerous witnesses who were transferred together with him to Vojno from the Heliodrom camp.

Witness AD notes that he was brought to Vojno from Heliodrom in late August 1993 and that he spent 13 days there. Two soldiers came for him, Emir Brekalo, who he

subsequently found out has changed his name into Damir, and Mario Mihalj. About 30 or 40 prisoners arrived in Vojno on that occasion. Upon their arrival in Vojno, they were met by Mario Mihalj and Dragan Šunjić, who asked them to introduce themselves. If the prisoner first said his last name first and his first name last, Mihalj and Šunjić would hit him with the police baton. That beating lasted for about three hours. It is known to him that a number of people were killed in Vojno, including Avdo Jelin. He saw with his own eyes that Avdo Jelin was beaten up by Mario Mihalj in the garage, without being able to stand on his feet or sit for three days, only lying there on the floor, groaning. The witness states that he was among those who buried Avdo Jelin.

In his testimony, Ramiz Babanić stated that he was brought to Vojno from Heliodrom on 2/3 March 1993 by 2 or 3 soldiers who chose them and took them by truck to Vojno. He stayed in Vojno for 11 days. Upon their arrival in Vojno, they lined them up in front of the garage asking them to introduce themselves. Dragan Šunjić was also there together with Mario Mihalj, whom he knew from before, standing at the side and watching. Avdo Jelin had the worst luck; he was beaten up and died of the wounds. They heard Jelin groaning. He was beaten by Mario Mihalj, being in such a condition that he could not even go to the garage alone. They had to carry him into the garage. Avdo Jelin eventually died of the beating. The witness notes that Mirko Vračević told him on the third day when they came to Vojno and when they returned from forced labour, that he needed four volunteers. He brought the volunteers into the garage and there he saw a wrapped body of Avdo Jelin. They buried him in a hole. Witness AD buried Avdo Jelin together with them.

In his testimony, Witness Zulfo Humačkić states that he came to Vojno from Heliodrom in late August together with fifty prisoners, including Witnesses AD and AA. They were met by 10-15 soldiers including Dragan Šunjić and Mario Mihalj. They lined them up shouting at them, threatening them, asking from them to bow their heads. He also heard that they were supposed to pass the 'entrance exam' to enter the garage. They were given orders by Mario Mihalj and Dragan Šunjić. He stayed in Vojno for 10 days. They were all placed in a garage, without being able to leave it. The guards were in front of the garage, including a certain Mirko who introduced himself as a Serb. When they lined them up that first night, they asked them about their first and last names and if they did not introduce themselves correctly, that was the motive for them to torture and hit the prisoners, which would last until the moment when these people realized how to introduce themselves. Since he knew how to introduce himself properly, they did not hit him. When he entered the garage, Mario Mihalj asked him when he was born. Given that he did not know how to say the name of the month in the Croat language, Mihalj and Dragan Šunjić gave him a terrible beating. Dragan Šunjić was hitting him in his head; they beat him with some kind of hand-made police batons looking like the ones used in baseball, which inflicted severe injuries on him so that he could not stand on his feet for four days. He was intensively beaten during the first four days. Apart from Mario Mihalj and Dragan Šunjić who were beating him all the time, three or four other soldiers came together with them on the third or fourth day. Immediately after entering the garage, they started beating them up. He recalls that 6 prisoners were killed during his stay in Vojno including Jelovac, Kajtazi, Čorović and Želja; he cannot remember the names of the other two persons. They returned from Vojno without these six killed prisoners. The Witness notes that the HVO soldiers did not know the names of the killed prisoners and that they asked them to provide the names of the

prisoners killed. They did it by trying to remember their names. Those who knew some of these killed prisoners would try and come up with the names.

Witness AI stated that he had been arrested on 2 September 1993 and brought to Vojno. There, they were met by Mario Mihalj and Dragan Šunjić who greeted them by saying „Welcome to the hell, not many of you will leave this place“. They lined them up beside the garage and then started interrogating them. Those who did not know to introduce themselves correctly would be beaten up by Mario Mihalj and Dragan Šunjić. These two punched and kicked him too, hitting him with batons. He was beaten on a daily basis, becoming worse and worse. It was worst when the guard Mirko a.k.a. *Srbin* brought him to a house where Mario and Dragan already waited for them. They tied up his hands with electric wire which was connected to a telephone that caused electric current to go through his body. The job with the electric current was done by Mihalj while Šunjić was jumping on him. Witness AI stated that Avdo Jelin, was brought into that room immediately after that, being tortured in the same way. During that time, they threw Witness AI into the next room from where he could hear that they did the same to Avdo Jelin. Afterwards, they brought Avdo Jelin to that room and then returned both of them to the garage. In the morning, Jelin tried to stand on his feet, but he was not able to, falling down all the time, probably because his balance was damaged. They continued to beat him for a couple of days, saying that he was only pretending. Once, when they returned from forced labour, they did not find Jelin in the garage any more.

It follows from the review of the Report of the SVIZ Warden Stanko Božić, number 676/93 dated 14 September 1993, that on 2 September 1993, 50 persons were handed over to the 1st Battalion of the 2nd Brigade for forced labour. They were escorted by Dragan Šunjić. On 11 September they received information from the so-called „private prison“ in Bijelo Polje that the detainees from Heliodrom had been killed. Under number 3, that list with seven killed detainees also included the name of Avdo Jelin. The Report on the killing of these detainees was sent by the commander of the „private prison“, Mario Mihalj. Based on the final list of killed soldiers made by Stanko Božić dated 6 January 1994, the name of Avdo Jelin is written under number 15. The fact that Avdo Jelin died follows from the Death Certificate of the MKU number 04/II-15 issued under the name of Avdo Jelin by the Registry Office Mostar - Stari grad where it is written that the death occurred on 8 September 1993. Moreover, the Official Note made by the CSB Mostar on 25 April 1994 shows that this was the date when the body of Avdo Jelin was identified by his brother Jadran Jelin. The same Official Note says that Avdo Jelin died on 8 September 1993 as a consequence of beating by the HVO soldiers in the Vojno prison facility near Mostar. The fact on identification of the dead body of Avdo Jelin was also mentioned in the testimony given by Witness Huso Mehremić, who, as an official person signed the Official Note in question, stating also at the trial that Jadran Jelin had confirmed that he had identified his brother Avdo Jelin.

Based on all the foregoing witness testimonies, which were accepted as credible and reliable since they are both internally harmonised and consistent with the documentary evidence tendered into the case file, the Panel established that dozens of detainees came from the Heliodrom camp to Vojno in late August or early September, including Avdo Jelin. Many of them were physically maltreated, beaten and tortured by Mario Mihalj and

the Accused Dragan Šunjić. Due to the physical maltreatment, Avdo Jelin died a couple of days later. His body was exchanged and identified on 25 April 1994.

The Defence for Dragan Šunjić contested that Šunjić was at all in the Vojno prison facility at the time when the murder took place, noting that at that time he was on leave as a military police officer. That was the reason for attaching the Report of the II Company of the V Battalion to the file of the Court, where it is said that there was the rotation of the Goranački Platoon of military police officers in Đubrani on 28 August 1993 and that it lasted until 5 September 1993. However, it follows from the Order dated 2 September 1993 that Šunjić escorted 50 persons, who were brought to Vojno. The testimonies of the Prosecution witnesses, who were brought to the Vojno prison facility as prisoners on 2 September 1993 (AI, AG, Saja Ćorić, Ramiz Bebanović) show that Dragan Šunjić was present from the very beginning of their arrival. In addition, the witnesses who were brought to Vojno in late August (AD, Zulfo Humačkić) claimed that Dragan Šunjić was in Vojno at the time. Taking into account the compatible testimonies of witnesses regarding the presence of Šunjić in Vojno at the time when Avdo Jelin was killed and the documentary evidence supporting the above, the Panel did not accept the defence for the second-accused stating that he was not present at the time when Avdo Jelin was brought, beaten up and maltreated or that he was on leave.

Murder of Džemal Sabitović, Hamdija Tabaković and Enes Nurko

(Counts 2. 2g. Radić, 8. 8c. 8g. Šunjić, 13 Brekalo 23. Vračević)

During the proceedings, the Panel established that the detainees Džemal Sabitović and Hamdija Tabaković were killed at the relevant time while performing forced labor. At that time, they were detained in the Vojno prison facility. The Panel also established that Enes Nurko was also killed in the prison facility where he had been brought.

a) Murder of Hamdija Tabaković

As for the killing of Hamdija Tabaković, several witnesses were examined during the trial, testifying on this circumstance.

In his testimony, Witness Hamza Leto stated that he had been brought to Vojno together with the other detainees from Heliodrom in November 1993, where they were met by Mario Mihalj, who introduced himself as the commander, saying that Dragan Šunjić was the deputy commander. They put him in a cellar of a house. The cellar was locked and the guards were in front of it. He cannot remember the names of these guards but he knows that one of them had a nickname *Srbín* and that he had only one eye. He saw him once or twice when he took him to forced labour. He went for forced labour every day. The witness states that it is known to him that Hamdija Tabaković was killed. He described that this killing had occurred about 100 metres away from him while he performed forced labour. The same witness stated that together with other prisoners he buried the body of Hamdija Tabaković.

In his testimony, Witness AL stated that it was known to him that Hamdija Tabaković was killed during his stay in Vojno and that he heard about his death when he returned from

forced labour on one occasion. He did not see the murder of Tabaković himself, but learned that he was killed about 50 metres away from the trenches. Together with several prisoners, he buried the body of Hamdija Tabaković and he personally put a gravestone next to his head. In addition, the same witness notes that Hamdija Tabaković said that he had been beaten up by Mario Mihalj and Dragan Šunjić. This witness states that he left Vojno on 25 January 1994.

In his testimony, Witness 154 states that he was transferred to Vojno in mid-November 1993. He spent most of the time in the garage. They went to the frontlines where they were digging trenches and bunkers. He heard from soldiers that Mario Mihalj and Dragan Šunjić were the bosses in Vojno. He was seeing Dragan Šunjić very often. He did not inflict any injuries on him, but he saw him hitting the other prisoners with the rifle butt. He saw Dragan Šunjić twice beating the prisoners for no reason whatsoever. It is known to him that Hamdija Tabaković was also killed in Vojno while he was there. He saw his dead body while they were carrying him on the stretchers.

In his testimony, Witness Aziz Dautbegović also stated that Hamdija Tabaković, whom he described as a large well-built person, was killed in the Vojno prison facility and that he was in the cellar of the Vojno prison facility.

Witness Ibrahim Šogolj stated that he was transferred to Vojno on 17 November 1993 since he wrote down that date. Mario Mihalj and Dragan Šunjić met them in the Vojno camp. The witness stated that Dragan Šunjić personally beat him up at least seven or eight times. When they performed forced labor, he would always beat somebody. The witness stated that it was known to him that among others Hamdija Tabaković was also killed during his stay in Vojno. On that occasion, Dragan Šunjić asked from him and other prisoners to sign a document where it was written that Tabaković had been killed by the BiH Army.

A written document dated 27 May 1996 (Exhibit No. 22), made by the Head of the MUP Crime Police Sector, clearly shows that Hamdija Tabaković was killed in Vojno and that his body was found and identified. In addition, it follows from the Death Certificate (Exhibit 21b) for Hamdija Tabaković and the Decision on permission to enter the death of Hamdija Tabaković into the Register of Deaths in the Mostar municipality that Hamdija Tabaković died (Exhibit No. 22c). The death of Hamdija Tabaković was ascertained by the Panel based on the Report of the SVIZ Warden Stanko Božić dated 31 January 1994, where the killings of several prisoners were mentioned, including that of the prisoner Hamdija Tabaković (Exhibit No. 18b). The commander of the Vojno prison facility, deceased Mario Mihalj, also made a Record on 30 January 1994 where it was said that Hamdija Tabaković had been killed during the time when he was a prisoner in Vojno.

It follows from all the foregoing witness testimonies, which are accepted by the Court as reliable and credible because they are consistent with each other and with the documentary evidence as well, that Hamdija Tabaković was killed in late December 1993 or in early January 1994, while he performed forced labour at the confrontation line in Bijelo Polje. The body of Hamdija Tabaković was exchanged and identified on 10 April 1994.

b) Murder of Džemal Sabitović

During the proceedings pertaining to the killing of Džemal Sabitović, ample evidence was found.

Witness 154 stated that he was personally present when this killing occurred. The same witness notes that he was taken to the forced labour in the Andora warehouse on the critical day together with Džemal Sabitović and Aziz Dautbegović, to dig the blocks necessary for building bunkers. On that occasion he heard a shot, lifted his head and saw a motionless body of Džemal Sabitović, who was hit by a bullet in the back of his head. The foregoing warehouse is located on the other bank of the Neretva River near the confrontation lines. They waited for the nightfall to carry out and bring the dead body of Sabitović to the camp. They buried him during the dark, 50 meters away from the garage, where some other bodies were also buried.

In his testimony, Witness Hasan Trtak states he was transferred from Heliodrom to Vojno in mid-December 1993, together with 60 other prisoners. On that occasion, they were met by Mario Mihalj and Dragan Šunjić, who was the deputy commander of the camp. In Vojno, he was detained in a cellar. They were dispatched for forced labour from Vojno where they were digging trenches at the locations of Bijelo Polje, Potoci, Livač and Vrapčići. When two prisoners escaped, he was beaten by Dragan Šunjić. It is known to him that Džemal Sabitović was killed during his stay in Vojno, adding that there were some other killed prisoners there. Sabitović was killed somewhere on the line; he did not see that but he saw when they carried him back.

In his testimony, Witness Aziz Dautbegović also stated that it was known to him that Džemal Sabitović was killed during his stay in the Vojno prison facility, adding that he was personally present when it happened. They were on their way to forced labour. Džemal Sabitović walked in front of him and he saw that at some point he was hit in the head. He does not know who killed him. In the evening, they brought Sabitović's body to the Vojno prison facility. He knows that Sabitović was afterwards buried in a lot near the camp, that he was buried by prisoners, but he himself was not among those who buried him. On their way back to the camp, they saw a group of HVO soldiers who had previously captured Enes Nurko.

There exists documentary evidence on the death of Džemal Sabitović. The review of the Official Note on the inspection and identification dated 10 April 1994 reveals that the body of Džemal Sabitović was exchanged and identified on 10 April 1994 under number NN 104, and that he was killed as a prisoner in the Vojno prison facility. In addition, the death certificate from the Register of Deaths for Džemal Sabitović and the report on the death of the above person show that he was killed and that his body was found and exchanged. Taking into account the foregoing evidence, which the Court fully accepts since it is fully consistent, the Panel established that Džemal Sabitović was hit by a bullet in his head in late December 1993 or early January 1994, while carrying bricks near the confrontation line and the Andora warehouse, which caused his death. Aziz Dautbegović and Witness 154 then carried his body to the Vojno prison facility. The body of Džemal Sabitović was exchanged and identified on 10 April 1994.

c) Murder of Enes Nurko

The killing of Enes Nurko was described by the testimonies of the Prosecution witnesses Aziz Dautbegović and Witness 154, who were eye-witnesses to that event.

Witness Aziz Dautbegović and Witness 154 were consistent in saying that the killing in question had occurred on the same night when they brought the dead body of Džemal Sabitović to the Vojno prison facility.

Witness 154 stated that Enes Nurko was killed two or three metres away from him. The same witness notes that they were joined by Enes Nurko, who had just been captured, while they were carrying the body of Džemal Sabitović towards the garage. The killing occurred in front of the garage in the Vojno prison facility. He remembers that it was dark; he does not remember the exact date but that it could have been about one or one month and a half after he had arrived in Vojno. When they arrived at the garage, Dragan Šunjić stepped up in front of them and asked Enes something; then he went to the premises where he talked to an unknown person by phone. Afterwards, Dragan Šunjić got out with a rifle and killed Enes Nurko with one bullet in his head and with two bullets in his chests. He had no obvious reason to kill him. This killing was also seen by his brother and some other prisoners. Nurko had some blanket in his bag, which they pulled out, wrapped him in that blanket and buried him in the same hole where they had previously buried Džemal Sabitović. The bodies were in the same grave but separated with stones. The witness stated that he knew Enes Nurko only for one or two hours, saying that he was dressed in civilian clothes, undernourished, bent down and that he found out that he had lost his way among the lines and thus landed in captivity.

In his testimony, Witness Aziz Dautbegović stated that he also eye-witnessed the killing of Enes Nurko and that he was killed in front of the Vojno prison facility where they were detained. The witness states that this killing occurred in the night when they brought Džemal Sabitović, which was done by the Accused Dragan Šunjić, by killing Nurko from the automatic rifle. Enes Nurko was captured on the same day. The HVO soldiers, who imprisoned him, said that it was his name. Before he killed Enes Nurko, the Accused Šunjić had talked to somebody by phone. When the killing occurred, he was about 4 or 5 metres away. He was not among those who buried Enes Nurko and did not see where he was hit by bullets. It is known to him that Enes Nurko was buried together with Džemal Sabitović, that his brother was one of the persons who buried them and that the place where they were buried was near, on a land plot. It is not known to him whether the corpse of Enes Nurko was ever found.

No documentary evidence exists regarding the death of Enes Nurko. The body of Enes Nurko has never been identified. There exists a Record on the inspection of the dead body of Nijaz Nurko, however, it follows from the Record that this body has never been identified under that name. That is the reason for which the description of the corpse of Nijaz Nurko was not relevant to the Panel.

Witness Huso Mehremić, who was present as the head of the Crime police during the identification of dead bodies brought from the Vojno prison facility, stated that the name of

Nijaz Nurko was written on the piece of paper that was placed in the bag but that the identity was never really established. The same witness stated that it was not known to him who had written these names and placed them into the pockets of the bags which contained the exhumed bodies but that there was information that it had been done by workers of the Park company. Witness Mehremić also stated that the names of several dead bodies were incorrect during their recognition. For instance, the pocket of one plastic bag contained the name of Enver Kajtaž. That body was subsequently identified as Željko Čakalović. Or, in the other example, the name of Haris Balić was written in the pocket of a bag and the body was subsequently identified as Asif Čakrama. This witness states that a piece of paper was found during this identification near two bodies with the name of Enver Kajtaž but none of the bodies was identified under this name.

The Court accepted the testimonies of Witness Dautbegović and Witness 154, since their testimonies were consistent in all essential details pertaining to the place, manner and person who committed the killing. These witnesses eye-witnessed the event, being only a couple of metres away from the spot. They described the same event convincingly, providing a large number of details, so that the Panel got the impression that their testimonies were credible and reliable. The Panel also took into consideration that these witnesses were blood relatives but that fact did not cause their testimonies to be dismissed. Taking into consideration that their testimonies about the killing of Džemal Sabitović show that they were together on forced labour on that day and that they worked together when Džemal was killed. Given that the event with Enes Nurko happened on the same night, in the opinion of the Court, these witnesses were able to see exactly under which circumstances the killing really occurred.

Murder of Mujo Kahvić and Mensur Selman.

(Count 2. 2h. Radić, 8. 8h. Šunjić, 13. Brekalo, 23 Vračević)

The Panel established that an unidentified HVO soldier a.k.a. “Roki“ deprived of life Mustafa Kahvić in December 1993 while he performed forced labour near the confrontation line in Bijelo Polje. The Panel established such a factual description based on the following evidence:

a) Murder of Mustafa Kahvić

In his testimony, Witness Hamza Leto stated that in mid-November he was brought with a group of prisoners from Heliodrom to the Vojno prison facility for forced labour. He was in the cellar of a house where they found a young man who was black and blue and covered with blood. He went for forced labour every day. He was beaten many times, mostly in trenches. Once, he was beaten up by Mario Mihalj when two Bosnians escaped. The witness notes that it is known to him when Mujo Kahvić was killed and that it happened when they went together for forced labour. On that occasion, they were escorted by an HVO member. On their way, they met another soldier who started insulting and hitting them. Witness Leto states that he was walking in front of him when the above soldier started hitting him with a butt, kicking him with his boots. Then, the same soldier continued hitting Mujo Kahvić since he was in line right after him. He then stepped back for some 15 metres and started firing. He killed Mujo Kahvić who fell down near the witness. Mujo died immediately. The person escorting them ordered him to carry him to

the prison. The witness notes that the prisoners mentioned that a certain Roki killed Mensur.

Witness Ibrahim Šogolj confirmed that it was known to him that Mujo Kahvić had been killed while performing forced labour in Zalihići as a prisoner. According to a number of prisoners, he was killed by the soldier with a nickname Roki. He personally got to know this soldier, his feature being his habit to hit the prisoners in the heads when introducing himself.

Witness 154 and Witness Aziz Dautbegović also mentioned the death of Mujo Kahvić in their testimonies. Witness Aziz Dautbegović stated that he had heard that Kahvić was killed by some HVO soldier with a nickname "Roki". Witness Hasan Trtak stated that it was known to him that Mujo Kahvić was killed in Vojno.

In his testimony, Witness Samir Humačkić stated that it was known to him that during his stay in Vojno Mustafa Kahvić was killed.

Protected Witness AL stated in his testimony that Mustafa Kahvić from Teslić was killed during his stay in the Vojno prison facility.

The case file contains ample documentary evidence on the death of Mustafa Kahvić. The review of the Report made by the SVIZ Warden Stanko Božić, dated 31 January 1994, shows that several prisoners from Heliodrom were killed in Vojno, including Mustafa Kahvić. It also follows from the Record dated 30 January 1994 made by Mario Mihalj that Mustafa Kahvić was killed as a prisoner in Vojno. It follows from the List of prisoners made by Ibrahim Šogolj that Mujo Kahvić was killed, among other prisoners, during his stay in the Vojno prison facility (under number 73) and that Hamza Leto, Ibrahim Šogolj, Witness 154, and some others were imprisoned in the Vojno prison facility at that time.

Witness Huso Mehremić, who officially attended the inspection and identification of exhumed corpses, which were brought from Vojno, stated that the body of Mustafa Kahvić was identified on 10 April 1994 and that the identification was carried out by Munib Dizdar and Kemo Zuhrić, about which there also exists an Official Note signed by this witness and attached to the case file of the Court. All the above evidence, accepted by the Court as credible, clearly indicates that an unidentified soldier with a nickname *Roki*, deprived of life the prisoner Mustafa Kahvić in December 1993 while he performed forced labour near the confrontation line in Bijelo Polje. The body of Mustafa Kahvić was exchanged and identified on 10 April 1994.

b) Murder of Mensur Salman

The Panel also established that the detainee of the Vojno prison facility Mensur Salman was killed in November 1993 while he performed forced labour. Ibrahim Šogolj, Hamza Leto, Aziz Dautbegović, AK and others testified in connection with the killing of Mensur Salman during the proceedings.

In his testimony, Witness Ibrahim Šogolj stated that he was present when Mensur Salman was killed. The killing occurred while they worked together in a bunker in Zalihići. On that occasion, he was shot with a sniper bullet in his neck which the witnesses assumes came

from the direction where the forces of the BiH Army were positioned. Salman died immediately of that bullet.

Witness Hamza Leto stated that he worked on the same frontline on that day. When he returned from forced labour, he and another prisoner were told to bury „*that balia, who was killed by yours*“. On that occasion, he identified the dead body of Mensur Salman, whom he buried in the vicinity of the place where he was killed.

In his testimony, Witness AK stated that Mensur Salman a.k.a. *Menso* from Ljubinje was detained with him and that it was known to him that he was killed on the third day after his arrival in Vojno while they were building a bunker. The witness states that he was standing near Mensur when the bullet hit his head, of which Mensur died. The same witness notes that he caught Mensur while he was falling on the ground, but he was already dead. Four prisoners carried him through trenches. One soldier from the Third company established that he was dead. The bunker where Mensur was shot was between the Zalihići houses and the old monastery in Bijelo Polje. Mensur's body was buried 50 metres away from the place where he was left.

Witness Aziz Dautbegović also stated that it was known to him that Mensur Salman was killed during his stay in Vojno.

In his testimony, Witness AL stated that Mensur a.k.a. *Menso*, who originated from Herzegovina, was killed during his stay in the camp.

The review of the Report made by Stanko Božić, Warden of the SVIZ, dated 31 January 1994, shows that Hamdija Tabaković, Mensur Salman and Mustafa Kahvić were killed during their stay in the Vojno prison facility. The Record dated 30 January 1994 made by Mario Mihalj reports that Mensur Salman was killed as a prisoner in Vojno. According to the evidence from the case file, the body of Mensur Salman has yet to be identified.

Based on the statements of all the above witnesses, which have been accepted by the Court since they are mutually consistent and complementary, and were confirmed by the documentary evidence reviewed by the Court, the Panel established that Mensur Salman had been killed on an undetermined date in November 1993 as a detainee of the Vojno prison facility, while performing forced labour near the Zalihići house in Bijelo Polje.

RAPE, SEXUAL VIOLENCE AND TORTURE

Rape and sexual violence

Rape and sexual violence are defined under Article 172/2/g/ of the CC of BiH as:

- *Coercing another by force or by threat of*
- *Immediate attack upon his life or limb, or the life or limb of a person close to him*
- *To sexual intercourse or an equivalent sexual act (rape),*
- *Any other form of sexual violence of comparable gravity.*

The *actus reus* of this criminal offence in the ICTY jurisprudence, as accepted by this Court, is found to be sexual penetration, however slight:

- a) of the vagina or anus of the victim by the penis of the perpetrator or any other object used by the perpetrator; or
- b) of the mouth of the victim by the penis of the perpetrator;
- c) by force or by threat of force against the victim or a third person
- d) where such sexual penetration occurs without the consent of the victim.

The *mens rea* is the intention to effect this sexual penetration, and the knowledge that it occurs without the consent of the victim.

The criminal offence of Sexual Violence the way it is defined in the ICTR and ICTY jurisprudence, as accepted by this Court, is not reduced only to an attack against human body and need not necessarily involve penetration, or even physical contact (cases *Akayesu*, *Kvočka*). National jurisprudence in the case of *Lelek* defines sexual violence as any act of grave abuse of sexual nature against the integrity of a person by the use of force or threat of force or by intimidating the victim so as to humiliate and degrade him/her.

The *actus reus* that satisfies all the elements of rape or sexual violence may at the same time satisfy the elements of the criminal offence of Torture.

Article 172/2/f/ of the CC of BiH provides that *torture means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused ...*

It follows from the presented evidence that the accused were aware of and willingly participated in the wide-spread attack on Muslim civilians in the Mostar Municipality, and by their actions committed the criminal offences of Rape and Torture in violation of Article 172/1/g/ and f/ of the CC of BiH. The Court concludes that the cumulative convictions for rape and torture that follow the same pattern of behaviour are allowed, since each of the criminal acts contains a special element that requires to be proved by specific facts, which is not required to be proved for the other criminal act. Specifically, for rape it is sexual penetration, for torture it is prohibited intent (like obtaining information or confession, punishment, intimidation or exerting pressure on the victim or a third party, or any other form of discrimination). Rapes of the victims-witnesses X, L, A, E, D, AG, C, J, B, AM and F also satisfy the legal requirements of torture in violation of Article 172/1/f/ of the CC of BiH, since the Court holds that those rapes resulted in severe physical and mental pain and suffering. Those offences were committed willingly and with the prohibited intent, by discriminating against the victims (all of them Muslims) on ethnic grounds. The victims were unlawfully arrested in their flats in the western part of Mostar and brought to Vojno, solely because they were of different ethnicity than the accused. All the women were victims of violence only because they were not of Croat ethnicity.

Rape and sexual violence against witness X
(Counts 4, 4a, 5 Radić, 17, 17b, 18 Brekalo)

The Indictment charges the accused Radić with sexual violence committed on 23 July 1993 against the witness X who was 15 years old at that time. A day after or about this date the accused Damir Brekalo raped witness X in Bijelo Polje.

In her statement, witness X said that she was Bosniak and that she lived in the western part of Mostar, where on 23 July 1993, together with her older sister, witness L, who was 16 at the time, her mother and her ten-year-old brother, she was arrested by Emir Brekalo, Jure Kordić, Nedžad Čorić and an individual whose nickname was Bura. She was fifteen at that time. She already knew Brekalo, Kordić and Čorić, since they lived in the same part of the town in which she lived. They were first brought to a house in Rudnik, where Emir Brekalo started to question them about the ABiH, military actions and about similar things, swearing at them, pulling them by their hair, shouting. After that, she and her sister were taken by Brekalo and Kordić to a flat in the area of Avenija in Mostar. It was written “Kažnjenička bojna” (Convicts’ Battalion) on the door. Emir Brekalo offered them some alcohol and cigarettes there, so that they would better sing out, he ordered her to smoke, to drink, taking out his knife and pistol. She was forced to light a cigarette, although she never smoked before, and to drink some alcohol. She begged him not to do that, but he harshly ordered her. At one moment, Brekalo got up and took her sister to another room, while she remained in the room with Kordić. She heard Brekalo yelling in the other room, her sister crying and begging, but Brekalo got louder and louder. Half an hour later, Brekalo pulled her sister out of the room and she saw that her sister was crying and that her clothes were creased. After that, both of them returned her and her sister to the house in Rudnik. Her sister got sick in the house and they took her upstairs, while Emir Brekalo drove her, her mother and brother to Vojno. Before the war, she lived in a place close to Vojno, so that she knew that area well. They were first brought to the water company facility called *Studenac* and soon after that, they were taken to the left bank of the Neretva river over an improvised bridge, to a week-end house in Bočine. One soldier took her from the week-end house and told her that he was taking her to Marko Radić for questioning. They brought her to a house in Bočine, a bit north from the week-end house in which she was previously held and they brought her in a basement where there were a number of soldiers. Marko Radić ordered the soldiers to get out, only two soldiers stayed and then he introduced himself as the commander. Ivek Kolobara was also in the room. The witness said that she knew Marko Radić before by sight, since he too lived not far from the place where she spent one part of her childhood. He asked her the same questions about the Army, about her father and at one moment he asked her if she had a boyfriend and if she was a virgin. She told him that she was a virgin and that she was only 15. Then, he took her to a room on the other side of the corridor, pushed her on the bed and told her to undress. She begged him not to do that, but he only smiled. But he then changed his mood and told her that he would take off her clothes if she did not do it. Radić then ripped off all her clothes and told her to sit on a chair and turn so to face him and Kolobara. Then they humiliated her and criticised her. Radić told her to sit on the bed between the two of them. Kolobara pulled her by her hair, took out his knife and started to cut fingernails. Then Radić ordered Kolobara to get out. He asked her if she felt like having sex. The witness begged him to let her alone because she was just a child, that she was innocent, but he was

totally indifferent and told her to choose between oral sex and sex. Radić took his shirt off and then the phone rang. He answered the phone, turned around and told her to get dressed, that she was lucky this time, but that she would not be lucky next time. They brought her back to the week-end house where her mother and brother were held. She spent the night there. The following day, Jure Kordić took her to the main road where she again saw Emir Brekalo and Ivek Kolobara, who slapped her. The day after, she was taken to a house which was north of the week-end house. There were soldiers there, including Emir Brekalo. Brekalo took her to a room, telling her that he would rape her and every other Muslim woman from 7 to 77 years old. He forced her to undress. She was crying and asking him not to do that, but he laughed. He took out his knife, threatening to cut her throat. At one moment, he ripped off her clothes, threw her to bed, took off his trousers, grabbed her and pushed her down on her back, spread her legs and bestially raped her. She was screaming, it hurt her, but he covered her mouth. He penetrated her. While doing that, Brekalo pulled her hair, held her by her arms and slapped her once in the face. After that, she got sick, they poured water on her, put her clothes on and carried her to another house. The house in which she was raped was in Bočine, around 300 meters far from the house where Marko Radić was. After that, she was brought to the week-end house, where her mother was held and then to a house in Vojno, where Muslim civilians were held. Soon after coming to Vojno, she was wounded in both legs and transferred to an infirmary and from there to the hospital in Mostar. She saw Emir Brekalo in the hospital, he came to visit someone there, and he told her that he could not wait for her to return to Vojno, which additionally motivated her to flee. Fifteen years after that, she still suffers, she is still scared.

The testimony given by the witness X was confirmed by her older sister, witness L, who testified to have been arrested on 23 July 1993 together with her younger sister, witness X, her mother and younger brother by Nedžad Ćorić, Jure Kordić and Emir Brekalo. Jure Kordić told her that she would be taken to the Vojno camp, which was under the command of Marko Radić and that they were acting upon his orders. They first took them to Rudnik, where they brought them to a house and started to question them. After that, they took her and her sister to a flat in Mostar and they saw “Kažnjenička bojna” (Convict’s Battalion) written on the door. Emir Brekalo took her to a room where he sexually abused her, while her sister was in the other room with Jure Kordić. After that, they returned them to the house in Rudnik. As a consequence of everything that happened in the flat in Mostar, she got sick and fainted in the house in Rudnik, so that they left her there, while her mother, brother and sister were taken to the Vojno camp.

It follows from the consistent testimonies of witnesses X and L that they were arrested on the relevant day by Damir Brekalo and other individuals, that Brekalo and Kordić took the witnesses to the house in Rudnik and to the flat in Mostar, where Brekalo sexually abused witness L and that witness X was taken to the Vojno camp that day with her mother and younger brother.

In her statement, witness F said that she was brought to the Vojno Camp on 15 August 1993, that she found a 10-year-old boy there and she learned that he was witness L’s brother.

Witness Saja Ćorić also said that she knew that witness X was in the Vojno prison, where she was sexually abused. When she was released from the prison, she heard that some women were raped and abused.

Having inspected the List compiled by the Initiatives Board of Female Prisoners of the Vojno Camp, Bijelo Polje, dated 1 May 1996, it was established that witness X was detained in Vojno, that her mother was also there and that she was exchanged on 14 August 1993, as well as her younger brother, who was exchanged on 1 September 1993, and that witness X was transferred to the hospital. The Discharge Letter bearing the name of witness X shows that she was admitted to the hospital in Mostar on 25 July 1993 because she was wounded, she got perforating wounds in her both legs, and that she stayed there until 23 August 1993.

The testimony of witness X was very convincing. She described in detail what happened to her and her physical and psychological pain and suffering. The Panel finds that it is completely proven that she was taken to the Vojno prison together with her mother and younger brother, since there are witnesses who later on found her brother in Vojno when they came there. The list of women and children who were detained in Vojno, as documentary evidence, also confirms that witness X's mother was also in the prison and that she was exchanged 15 days before her son. The act of sexual violence by the accused Radić and the rape by Emir Brekalo were not corroborated by any eye-witness. Witness Saja Ćorić and witness L stated to have heard about it subsequently. The Panel has found the testimony of witness X to be very honest. It was not her intention to accuse someone at any cost. She was sincere when she said that Jure Kordić did not sexually harass her in the flat in Mostar. She was also honest when she said that Marko Radić did not rape her in Bočine, that he ill-treated her and wanted to coerce her to sexual intercourse. She was raped by the accused Emir Brekalo and she described the act using the words of a girl who experienced it all and really went through it. Her testimony was consistent with her other testimonies. In the cross-examination, the Defence attempted to refute the authenticity of her allegations and to discredit the witness by confronting her with her earlier statements, which differed in some small details not so relevant to the main incident. The witness was still convincing when stating that she gave her statements ... */Translator's note: sentence incomplete/*. Bearing in mind all the foregoing, the Panel has accepted the testimony of witness X as credible and reliable and found that it followed from her testimony that on or about 23 July 1993, Radić ordered the soldiers to bring him a fifteen-year-old X to a house near the prison. When she was brought there, Radić ordered the soldiers who were there to leave the house and he stayed there with witness X and Ivica Kolobara. He then told her to take off her clothes and said that he would give her a special pleasure, despite her crying and begging him not to do that. Radić just laughed at witness X, pulled her by her hair, ripped off her clothes and told her to sit naked between himself and Ivica Kolobara; then he told Ivica Kolobara to leave and when he left, Radić told her that she could choose between having a sexual intercourse with him or orally satisfying him, but since Radić received a phone call he was not able to do what he intended to do and he told X that she got lucky that time, but she would not get so lucky next time. The Panel has found that the act constitutes sexual violence, given that there was no penetration, however, the Panel has taken into account that Radić wanted witness X, who was under age at that time and only 15 years old, to take off her clothes in order to have a sexual intercourse, that he himself ripped off her clothes afterwards, that he pulled her by her hair, wanted her to sit naked

between the two men and that he told her to choose between oral and vaginal sex. The Panel has concluded that all this constitutes the act of grave sexual violence, which satisfies all elements of the offence of torture, since the witness was subjected to physical and psychological torture which resulted in bodily and mental pain and suffering.

It was also established in the proceedings that the accused Damir Brekalo raped witness X two days after that in a house in Bijelo Polje. He penetrated her and by using force and threats he performed the entire sexual intercourse. In so doing, the accused Brekalo disregarded the fact that witness X was under age, that she had no sexual experience, he slapped her in the face, threatened to kill her by his knife, he pulled her hair, held her by her arms and during the sexual intercourse he deliberately caused her severe pain which made her scream.

Rape of witness A

(Count 4, 4b Radić, 11 Šunjić, 18 Brekalo 26 Vračević)

During the proceedings, the Panel has established that Marko Radić raped witness A two times on or about 15 August 1993 at his command post in Bijelo Polje and that he raped witness A again 15 to 20 days later at Mario Mihalj's command post. The Panel has established such account of fact on the grounds of the following evidence.

In her testimony, witness A stated that she was Bosniak by ethnicity, that she lived in a flat in the western part of Mostar up to 15 August 1993, when she was arrested and taken to the Vojno camp. She could remember that on 15 August around 4 p.m, HVO and HV members came to her mother's flat, in uniforms and armed, among them she recognised Ivek Kolobara, Amer Hadžiomerović a.k.a. *Doktor* and Tinjak and that she made sure in the camp that those were precisely the three men. The witness was taken away together with her 16-month-old son and her 33-month-old daughter. Mario Mihalj met them in Vojno and told them to line up two by two. There were around 10 of them, all Bosniaks, the youngest among them was 16 months old, the oldest around 60. He brought them to a room and wanted them to say their names. They were supposed to say it properly - their first name first and after that their last name – if someone said it the other way round, he/she would be slapped in the face. Then Mario Mihalj placed them in the rooms of one of the houses. She was in a room with her two under age children. After some time, when the children got asleep, Mario Mihalj appeared at the door and told her to go with him because the commander wanted to talk to her. Accompanied by two guards, she was taken away together with a person whose pseudonym is E. The commander was Marko Radić. At that moment she did not know who Marko Radić was. She recalled being taken away with the individual E, along a path and across a river to a house which was in the dark since there was no electricity. It took them 20-25 minutes to reach that house walking. Three soldiers were sitting on a couch in that house - Marko Radić, a soldier from Croatia whose name was Ivan and another soldier whose name she did not know. When they entered that house, they told them to introduce themselves and asked them about their family. She was asked about her husband, where he was. Then Marko Radić introduced himself by saying his name and he told them that he was commander of the Bjelopoljska Brigade. He then told person E to go to the kitchen to wash the dishes, while he told her to go upstairs to tidy the room. She went to the room, a candle was lit there and she saw that the room was tidy. After some time, Marko Radić came in and told her to undress, but she refused and asked

him why she should do it. He then tried to rip off her shirt, then she started to take off her clothes and in the meantime, he undressed and lied in bed. She felt miserable and desperate. Marko Radić pulled her toward him and told her “haven’t you longed for a man beside you because you have not been with your husband for a long time”. After that, Marko Radić raped her as many times as pleased, penetrating her. When he satisfied himself, he got dressed, went downstairs and told her to stay in the room. Then, a soldier whose name was Ivan entered the room, told her to get dressed, said that he would not harm her, he stayed in the room an hour and a half and talked to her. After that, Ivan went downstairs, Marko Radić told him “what happened, you could not do anything to her” and told her to get back to the room, to undress, she did it and he raped her again. After that, he told her to put her clothes on and to go downstairs with him. Escorted by two soldiers, she was returned to the camp, to the house in which she was admitted when she came. She was sick after everything she went through, since no animal would do to her what he did. She felt bad, so that she vomited and they took her to an infirmary, to a female doctor who saw that she was in poor condition. They returned her to the camp, where Mirko Vračević met her, searched her things and told her to go with him to another house, 30 meters far, where other people were. There she found some people she knew, F, B, D and others. She spent 107 days in that house. In addition to the earlier two rapes, Marko Radić raped her one more time. That happened 15-20 days after she arrived in Vojno, one afternoon a guard came and told her to go to the camp command. She went with him, they brought her in a room where she found Marko Radić, Branko Božić, Mario Mihalj, Dario Sušac and she thought that Dragan Šunjić was there as well. When she entered, they told her to sit down and Marko Radić asked her how the things were there for her. Branko Božić got away from the room, he could not listen to that because he knew her late husband. She did not dare to say anything and Marko Radić told her to go to the adjacent room, it was a bedroom, a VCR was there playing a porn film and he came into the room after her. He told her to undress, he had a pistol by his belt, she did as she was told, he also started to undress and told her to watch the porn movie and to do to him everything she saw in the movie. She could not do that, he enjoyed himself and raped her again. The witness remembered that the prisoners B, D, E and AG were also raped and she was sure that they were raped because when they returned to the room, they looked exactly the same as she did when that happened to her. They need not tell her that they were raped, the way they looked and behaved told her everything. She was not physically ill-treated in any other way. On one occasion, she had a medical check-up because she thought that she was pregnant. Marko Radić called her to talk to her and told Mario Mihalj to take her to Mostar for a check-up. Mario Mihalj had to obey the order and he took her to the hospital by night, where they examined her under a false name. Since she had an IUD, she was not pregnant. She knew Dragan Šunjić as deputy commander of the camp since he personally introduced himself like that. Dragan Šunjić and Mario Mihalj’s superior was Marko Radić, she heard that while she was in the camp, since everyone was saying that Marko Radić was in charge. Apart from when he raped her, she saw Marko Radić in Vojno several times, when he came to inspect the camp. Dragan Šunjić was always in the prison. She saw Mirko Vračević at all times, except when he stood guard. Damir Brekalo looked familiar to her, she saw him occasionally in Vojno, but she did not know what his role was. She was released from Vojno on 2 December 1993, when an exchange took place which was arranged by Marko Radić. When she was released from Vojno she weighed 55 kg, while she weighed 90 kg when she was arrested. Although her children were small, they still suffer consequences, her son undergoes

psychotherapy and he began to talk only when he was six. The witness said that she never returned to her pre-war flat.

Witness E testified to have been arrested also on 15 August 1993, when she was taken to the Vojno camp. She recognised Ivek Kolobara among those who took her away. She came to the Vojno camp together with witness F and her two little girls and witness A with her two small children. Mario Mihalj met them there and said that he was commander and Dragan Šunjić who introduced himself as deputy commander. Mario Mihalj questioned them on that occasion, while Dragan Šunjić was writing something. After that, they were placed in a house and when the children fell asleep, Mario Mihalj entered her room and told her to get out to the corridor, she did as she was told and she saw witness A waiting in the corridor. Mario Mihalj told the two of them to go with the soldier to see Marko Radić to give statements. They went over a bridge made of barrels and reached a house in Bočine, where the command of the First Battalion was located, the Battalion was under the command of Marko Radić. When she entered the house, she saw three soldiers in camouflage uniforms sitting on the couch. Marko Radić introduced himself as commander of the area and told them that they should give statements. After that, he told her to go to the kitchen and witness A to stay there, allegedly for questioning. There were many dishes in the kitchen and when she washed them up, she asked the soldier what to do next. After that, Marko Radić asked her questions about her son who was in the HVO. Fifteen minutes afterwards, he told a soldier to take her back to the camp. The soldier who brought her back had a nickname *Jež*. The night when she returned to Vojno, witness A did not come back, she knew that because she heard witness A's children crying and she supposed that their mother was not there. She saw witness A the following day around 11 a.m, when two soldiers were rather carrying, then escorting her. She was crying pushing her children away and she did not look normal. After a while, witness A told her that she had been raped by Marko Radić. Witness E remembered that witnesses A, B and AG were also raped in the prison and those were the women who shared the room with her. She knew that because when they came back, they were in tears, nervous and their faces showed everything.

Witness F testified to have been arrested on 15 August 1993 in her flat in the western part of Mostar and that Kolobara, Tinjak, Hadžihasanović and a guy called *Zec* arrested her. Witness A was also arrested at that time, together with her two minor children, as well as witness E with her two sons. When they arrived in Vojno, Mario Mihalj met them there and told them that he was commander and Dragan Šunjić was introduced as deputy commander. They had to introduce themselves and who did not know how to do it properly was slapped in the face. After that, Mario Mihalj placed them in rooms and she shared the room with witness E the first night, while witness A was in another room. After some time, she heard Mario Mihalj telling witness A and witness E to get out, he took them out to the corridor and she did not know where they left afterwards. Around 2 or 3 o'clock after midnight, she saw that witness E returned and she also heard witness A's child crying. Witness A did not come back before morning. She said that witness E told her that she and witness A were taken to Marko Radić's command. Witness A was brought back the following day, around 11 o'clock, she saw that two soldiers were dragging her. At that moment, she was beside herself. She came into the room, pushed her children away, she was in tears and dishevelled. They had to fight with her to embrace her children again. They did not ask her anything, they put two and two together. According to this witness, in addition to that first night when they came to the camp, witness A was later on taken to the

prison command and when she came back, they asked her what happened, she said that the beast came to the command and they found out that she referred to Marko Radić. Witness F stated that witness A often cried, that she once said that she was most probably pregnant and that she was only with Marko Radić. She also heard witness A saying then that she had an IUD and if she was pregnant, she could deliver only an abnormal child. Mario Mihalj then took witness A to Mostar for a check-up. When she came back, she said that she was not pregnant and that she had some stress-related disorder.

Witness C was brought to the Vojno prison in early September 1993. She testified to have known that other women were raped, including witness A, and she learned that from other women who were raped, while for some of them who shared the room with her she could tell it according to their looks.

In the cross-examination, the Defence attempted to prove that the allegations made by witness A were false and to discredit her. To that end, they confronted her with the differences between her statements at the main trial and during the investigation. The Defence pointed out that the witness claimed during the investigation that ten days passed between her first rape by Radić and the next rape by him, but she stated before the Court that thirty days passed, or fifteen or twenty days. The Defence also recalled the earlier statement by witness A, when she said that she was brought to Radić and learned his name afterwards. The Defence particularly insisted on the statement given by witness A before the court in Mostar and pointed out the differences between that statement, her later statements and the statement given at the main trial. The Defence Counsel also argued during the proceedings that at that time, witness A was Mario Mihalj's mistress. Mindful of such assertions by the Defence, the Court analysed all statements given by this witness and found that witness A was a credible witness and that her testimony was honest and reliable. The testimony of witness A was consistent with the testimonies of witnesses E and F in all important elements. In her testimony, witness A confirmed the identity of Marko Radić by stating that he personally introduced himself as commander. With regard to the statement given by witness A before the court in Mostar, the Court has accepted her allegation that it was a summary of her statement given immediately after the war and that it is corroborated by the fact that all her subsequent statements were much more detailed and comprehensive. Also, when she talked about all important details, she provided a clear sequence of events that happened to her in the Vojno prison, including the rape by the accused Marko Radić. The Panel has not specifically evaluated the assertion made by the Defence that witness A was allegedly Mario Mihalj's mistress, which was entirely denied by witness A, since the Panel has found this fact to be irrelevant. The Panel has concluded that the differences between her earlier statements and the statement given at the main trial are not so important and that they contain minor discrepancies that often concern not so relevant details. After the witness was directly examined, the Panel concluded that the statement given at the main trial was accurate and credible. This conclusion is additionally substantiated by the fact that the testimony of witness A at the main trial was consistent with testimonies of other witnesses, particularly with the testimony of witness E, who was taken to Marko Radić's command together with witness A the first night. Witness F corroborated what both witnesses A and E said when they testified, that Mario Mihalj took them out of room the same night, that witness E returned first, while witness A did not come back until 11 a.m. the following day. Witnesses E and F, who shared the room with witness A, confirmed that she told them that Radić had raped her, not only the first night when she

was taken away, but also some time after that, and that her looks and behaviour told them what happened to her. Witness F confirmed that witness A was taken to a doctor's when she thought that she got pregnant to Marko Radić, and it clearly follows from the testimony of this witness that witness A was raped by Marko Radić while she was there. Given that witness A gave a very detailed account of the events, that it was corroborated by statements of other witnesses who shared the room with her at that time, the Court has accepted the testimony as credible and reliable. It follows from the presented evidence that witnesses A and E were brought to Marko Radić's command post in Bijelo Polje on or about 15 August 1993, where the two witnesses were separated under the pretext that witness A had to clean the room on the first floor of the command post; Radić entered the room soon after witness A, forcibly ripped off one part of her T-shirt, raped her and then ordered an HVO member whose name was Ivan to rape witness A by telling him: "You can do with her whatever you please", Ivan came into the room in which A was and told her that he would not rape her, but that he had to stay in room so that Radić would think that he raped her. After a while, Ivan left the room and witness A accompanied him to the basement, but Radić saw her and told her to return to the first floor, where he raped her again. Some 15 or 20 days after that, witness A was brought again to Mario Mihalj's command post, allegedly for interrogation and there she found Branko Božić, Dario Sušac, Mario Mihalj, Dragan Šunjić and Marko Radić. When she came there, Marko Radić told her to go to another room, there he told witness A to undress and to do what the woman in the porn film that played in the room was doing, witness A refused it and Marko Radić raped her again.

Rape of witness D

(Count 4, 4c, 5 Radić, 11 Šunjić, 17, 17d, 18 Brekalo, 26 Vračević)

During the main trial, the Panel has established that Damir Brekalo and Dario Sušac brought witness D to Marko Radić's command post on an unspecified date in September 1993, where Marko Radić sexually abused and raped the witness, then ordered an unidentified HVO soldier to rape her, but he did not do it. The Court has established such an account of facts on the grounds of the following evidence:

In her testimony, witness D stated that she was a Muslim, that she lived in the western part of Mostar and that in the first week of September 1993 Ivek Kolobara and Nedžad Tinjak arrested her together with her daughter and mother-in-law and brought her to the prison in Vojno. Mario Mihalj met them there, he said that his deputy was Dragan Šunjić and she also saw Mirko Vračević on that occasion. They were placed in a room. Once before nightfall, Emir Brekalo came into that room with four more prisoners, he was accompanied by Mario Mihalj, Dragan Šunjić and two more individuals, who she learned later on were Dario Sušac and Marko Radić. Emir Brekalo said that he was their neighbour. He asked her where her husband was, told her to go with him and to leave her child behind. They brought her to the prison command, to a room there, Emir Brekalo came in and told her to take her clothes off. She begged him not to do that, but he took out his knife, put it beside the door and started to insult her. Then he grabbed her, threw her to the bed and started to tear off her clothes. She resisted, but he slapped her in the face two times, took his pistol and threatened to bring her child and cut his throat, she was still begging him not to do that, but he slapped her one more time, ripped off her clothes and raped her. That time he penetrated her. After that, she heard him telling Dario Sušac "now it is your turn". Then Dario entered the room, he also raped her and he penetrated her as well. After that, Emir

Brekalo entered the room and threatened her not to dare to tell anyone about that, otherwise he would kill her child. They returned her to the Vojno prison. She did not dare tell what happened to her, but she was distressed, crying and Saja Ćorić consoled her.

According to the witness, she was raped again two or three days afterwards. Guard Ljubo Radić came in the evening and told her to go with him. When she went out to the corridor, Emir Brekalo showed up and told her to go into a room and there he told her to undress. She begged him not to do that, but he ripped off her clothes and raped her as he did the first time, then called Dario again and told him that it was his turn. Dario raped her as well and after that, they threatened her not to dare to tell anyone. The guard took her back to the prison. Several nights later, a guard came again, told her to go with him, brought her to the command and told Emir "here she is, I brought her again". There she saw Mario Mihalj, Dragan Šunjić and Dario. It was dark, they took her from the command, she could remember that they crossed a stream, entered a house, when Emir said "Maka, here she is, we brought her to you". Then Emir and Dario left and that "Maka", Marko more precisely, told her to sit down, he sat beside her, asked her what her name was, where she worked, if she had any children and so on. He then told her that his name was Marko Radić, that he was in charge of everything, that his soldiers obey what he said, so that others had to do the same thing. After that, he told her to undress. She begged him not to do that, but he pulled her by her hair, unbuttoned his trousers, pulled out his sexual organ and put it in her mouth. She begged him again not to do it, but he again pulled her by her hair and forcibly pushed his sexual organ into her mouth. She felt sick, he then threw her on the bed and raped her. After the rape, he threatened her not to tell anyone what happened. He left and soon afterwards an HVO soldier whose name she did not know showed up and told her "take your clothes off". That same soldier told her that Marko ordered him to rape her. She begged him to not do that, but he kept repeating that he had to do it. However, that soldier did not rape her then because she begged him. This incident happened during the first month of her stay in Vojno. The house in which she was raped was on the other side of the Neretva river, she thought that it was in Bočine, after that they returned her to the prison. Witness D stated that she worked in a canteen for some time and that soldier Dragan Galić was in charge of the canteen at that time. Once when she was in the canteen, she saw Tinjak passing by and Emir Brekalo in front of him. She froze in fear and started to cry. Dragan Galić saw her and asked her why she was crying and she told him that she thought that she saw Tinjak and the accused Brekalo. She was shaking with fear, so that Dragan brought her inside the house. She did not tell him that Brekalo raped her, but he could figure it out according to her behaviour, since she said at one moment "not again, can it be that they will come tonight to take me away again".

Witness Saja Ćorić testified to have been in the Vojno prison, sharing the room with witness D and that once Emir Brekalo came to the camp with Mario Mihalj, Dragan Šunjić, Marko Radić and another soldier whose nickname was *Jež*. Brekalo introduced himself and asked witness D about doctor Mujić. Witness D held her child in her arms, he told her to get out and asked her about her husband. She left her child and went out. When she came back, witness D was horrible, she was crying, sat down in the corner and did not want to take her child. That day, witness D told her that she was raped by Damir Brekalo and that he threatened her not to say anything to anyone. Witness Saja Ćorić stated that it was not the only time witness D was raped. According to her, witness D was raped by Marko Radić as well and witness D told her so when she returned to the room.

In her testimony, witness J said that she shared the room with witness D in the Vojno prison. She said that she personally saw when witness D was taken away. She remembered that she was taken away once at dusk, when Marko Radić, Emir Brekalo, Dragan Šunjić and Mario Mihalj came there. Emir Brekalo told witness D to leave her child there and to go with them. When she came back, she was in a terrible condition, she said that she was raped and threatened that her child would be killed if she told anyone what happened to her. Emir Brekalo was among those who raped her.

Witness C testified to have known that many women were raped in the Vojno prison, that women were taken away from the prison, including witness D.

Witness K stated that during her stay in the Vojno prison, women were taken away by night. One night, a group of soldiers got in, including Mario Mihalj, Dragan Šunjić, Marko Radić, Emir Brekalo and a soldier whose nickname was *Jež*. Emir Brekalo introduced himself then, he approached witness D who held her child and told her to go with him. It was the first time she saw Emir Brekalo. She saw witness D when she came back. She was in tears, dishevelled and she confessed that she was raped. The rape took place maybe two to three days upon the arrival in Vojno. The witness said that she was arrested in early September 1993 and that witness D, Saja Ćorić, witness F and others were brought to the Vojno prison the same day.

Witness A testified to have shared the room with witness D and that it was common knowledge that witness D was among those witnesses who were raped. She could tell that according to the way they looked when they returned to the room, they looked the same as she did when it happened to her. They need not tell her that they were raped, their looks and behaviour told her everything.

It follows from testimony given by witness Dragan Galić that he was a member of the First Bijelo Polje Battalion and that he was in charge of the canteen. He recalled having met a person whose pseudonym was D or F in the canteen, he was not sure about the pseudonym since they had the same name. That person had a little girl. On one occasion, when Damir Brekalo came to the canteen, her behaviour changed, she started crying and said that Damir Brekalo had raped her.

Based on the foregoing statements, the Panel has concluded that the testimony of witness D about the rapes she experienced in the Vojno prison was reliable and convincing. It follows from all the mentioned testimonies that witness D was in the Vojno prison at the relevant time, that she was taken out from the room where she was and that she was raped after that. The witness provided a very detailed and convincing account of the location and of how she was raped and pointed to the individuals who raped her then. Her testimony was substantiated in all its relevant parts by testimonies of other witnesses, specifically witness Saja Ćorić and witnesses C, J and K. All these witnesses stated to have seen witness D being taken away, brought back and they described the way she looked then. They also said that witness D told some of the women there that she had been raped and who had raped her.

Rape of witness AG

(Count 4, 4d, 5 Radić, 10 Šunjić, 17, 17c, 18 Brekalo, 26 Vračević)

The accused Marko Radić, Dragan Šunjić and Damir Brekalo are charged with the rape of witness AG, and to that end the Panel has established the following:

Witness AG did not testify before the Trial Panel. It stems from the Expert Evaluation Report drafted by dr. Alma Bralo-Mehmedbašić, an expert witness neuropsychiatrist, that witness AG suffers from ... and that she is extremely traumatised as a consequence of repeated rapes she was subjected to while she was imprisoned in the camp. She is mentally capable of understanding questions asked before the Court, but due to her strong affective investment in the traumatic experiences in the camp, when she confronts them, there is an increase of anxiety, psycho-motoric excitement, escape from further facing with the subject, and inability of further recollection and verbalisation of the traumatic experiences, due to her intense affective reaction (fear, anger, rage, guilt), and affective narrowing of consciousness. The court summons caused repeated traumatisatisation and deterioration of ..., with intensified symptoms of The patient's current condition reveals intensified symptoms of For the purpose of preventing a more severe ..., the expert witness proposes that she does not take part in the court proceedings as a witness, because it would cause another strong secondary traumatisatisation. Dr. Alma Bralo-Mehmedbašić and Prof. Dr. Abdulah Kučukalić, expert witnesses neuropsychiatrists, submitted their written findings and opinion about witness AG, and their report contained the expert evaluation report dated 19 September 2007 by Dr. Senad Hrlić. It says that during the war in 1993, the witness was taken to the camp Vojno, where she was sexually abused a number of times, which resulted in significant mental health sequels. According to Dr. Senad Hrlić, after receiving another court summons to testify, there was another traumatisatisation, symptoms of ... intensified, and a severe ... occurred. Taking into account the current mental state of the patient, the expert witness' opinion is that she is not able to answer the court summons and testify as a witness. The written report contains also the opinion of the psychologist, Andrej Drino, dated 19 September 2007, who stated that witness AG never asked for professional help due to her fear of a lack of understanding and of getting the social label of a „raped woman“. In July 2006, when she received the court summons, she experienced re-traumatisation. From that day until April 2007 she received regular treatments. Several days ago, she received a new summons to testify, which intensified her symptoms. Her husband was also a camp detainee. They never spoke about the period spent in the camp, which has caused additional frustration of the patient and created a tense atmosphere in the house. In the opinion of the same psychologist, any new exposure to stimuli symbolizing the traumatic events might result in significant deterioration. In view of such a report by expert witnesses neuropsychiatrists that was presented to the Court by neuropsychiatrist Doc. Dr. Alma Bralo-Mehmedbašić, which was admitted by the Court in its entirety as professional, objective and truthful, the Panel decided on the ground of Article 273/2/ that earlier statements given by witness A.G. be read out at the main trial.

Witness AG gave a statement before the Higher Court in Mostar on 12 April 1996. She stated that she was arrested by Ivek Kolobara and Nedžad Tihak on 2 September in her flat in the western part of Mostar together with her husband, her under age child, her father, father-in-law and grandmother. They put them on a truck full of civilians and brought them

to Đubrani, then they told them that they were taking them to the Vojno camp. Mario Mihalj, Dragan Šunjić and Emir Brekalo were those who mostly abused women who were in the Vojno camp. Every morning, they were taken for labour to military locations, to do the cleaning, cooking, to cut firewood and so on and all that time they were humiliated and abused. Emir Brekalo and Mario Mihalj came one night to take her away and they took her over a bridge to a house, gave her an injection, so that she was half conscious and they raped her. Mario would bring unknown soldiers to select women they would take away and rape them and he charged soldiers 100 Marks for that. A number of women were raped like that, she could not remember their names. The witness concluded her testimony by saying that she could not remember the method and manner of abuse and that it was a real ordeal to remember everything she went through.

In the statement she gave to the ICTY investigators on 28 June 2002, the witness said that she came there on her own free will, although it was very hard for her, that she was willing to give her statement about what she experienced while she was imprisoned in the Vojno camp and that she would give the information the way she remembered it. The witness repeated what she said in her statement given earlier before the Court in Mostar, about being arrested and brought to the Vojno camp. When they arrived in Vojno, Mario Mihalj and Dragan Šunjić met them there and started insulting them “*Balijas*, now you will see what the hell is like”. Mihalj said that he was camp commander and that Šunjić was his deputy. They questioned men first, beating them up during the interrogation, and after that they took them to a garage and then to a basement of one house. She was questioned by Mario Mihalj, Marko Radić and Dragan Šunjić. They did not beat her that time, but they threatened her. Mario Mihalj had a big knife in his hand and he was telling her that it was a knife *Ustashas* use to cut people’s ears and that they would also do it. On that occasion, five young women were taken to another room, including herself, where they were raped. They kept her husband in the garage. Guard Zdravko Šunjić allowed her to see her husband once when Mario Mihalj was not there. She noticed then that he could not stand because they tortured him using electricity, they beat him up so that they broke 7 of his ribs. In September, the prisoners from Vojno were taken to Heliodrom. They had to go to Đubrani on foot. On the way, her grandmother suddenly fell and she stopped to help her, which is when a soldier whose name was Mirko from Vojno told her to leave her grandmother behind and that the grandmother would get a bullet. Mario Mihalj escorted them to Heliodrom, where men were admitted in Heliodrom, while women and children were sent back to Đubrani. When they returned, their legs would not bear them since they had to go on foot for a long time, so that they brought a doctor whose name was Goran to examine them. During her three-month-long stay in Vojno, there were only five days when she was not raped. They would take her out by night and rape her, but also in the daytime when she went to work in the houses. Marko Maka Radić raped her three times, they would bring her to the camp HQ, where he would rape her. He was commander of the First Bijelo Polje Battalion, Vrapčići. Maka Radić did not beat her, but he threatened her under age daughter who was with her in the camp. When she says rape, she means that she was forced to a sexual intercourse with the men who raped her. Sometimes they would bring her to the HQ building and she was raped by three or four men in a row. Mario Mihalj also raped her in the HQ. Mihalj was camp commander. Mihalj was the worst among all. He was brutal and he would slap her in the face while raping her. His deputy, Dragan Šunjić also raped her, as well as Emir Brekalo. Vojno was a camp consisting of plain houses. The witness mentioned that she made a sketch of the camp in Vojno. The house marked with number 1

was used as the camp HQ and Mario Mihalj worked there. She was kept in house No. 2, other women in house number 3, while men were in house No. 4. Men were also kept in the basement of house 2. A railroad track ran upwards from that place. They went to the houses which were across the river to work there as well. She marked this area with number 6. She was exchanged on 2 December same year and she crossed to the territory controlled by the Army of BiH. Attached to the statement is the sketch made by witness AG where she marked the house she previously described.

Witness Saja Ćorić testified to have known that witness AG was among the women who were raped and sexually abused. Witness Saja Ćorić knew that because some women had told her so when they were released from the prison and she learned about some other women when they met at work.

Witness A testified to remember that other female prisoners were also raped in the Vojno camp, she was positive that witness AG was among those who were raped. She could tell that because when they returned, they looked exactly the same as she did when it happened to her. They did not need to tell her that they were raped because their looks and behaviour told her everything.

Witness C stated to have known that other women were also raped, that witnesses were taken out from the rooms, including witness AG. With regard to witness AG, she said that she had been taken away, that the whole neighborhood knew about it and that she suffered a lot. Other women said the same thing about witness AG.

Witness F testified to have known that witness AG was among the women who were raped in the Vojno prison. This witness said that witness AG was in the same house with her, but in another room, so that she did not see when she would come back, but she found out that she was sexually abused. According to her, witness AG was taken away every night.

Witness E said in her testimony that other women were raped too while they were in the Vojno prison. She could remember that witness AG, who was in her room, was raped. When the women would come back, including AG, their faces spoke for themselves, they were in tears and nervous. On one occasion, witness AG showed her a needle prick on her left arm, so that she assumed that witness AG was given drugs.

It followed from the testimony of witness B that she shared the room with witness AG, while AG's daughter and her grandmother were in another room.

During the proceedings, the Defence refuted the accuracy of allegations made by witness AG.

In view of the testimonies of all witnesses heard, that were mentioned earlier and that are consistent with and complementing each other, the Panel has concluded that there was no doubt that witness AG was in the Vojno prison during the relevant period, from September to early December 1993, with her family and other witnesses who testified about her rape, those who knew that witness AG was raped while she was in the Vojno prison. Among those witnesses, the testimony of witness F in particular corroborated the allegations of witness AG – that she was taken away almost every evening. Witness E also confirmed in

her testimony what witness AG said, that she saw a needle prick on her arm. Since the testimonies of these witnesses were mutually consistent and corresponded to the statement of witness AG, the Panel has concluded that witness AG was taken away from the room while she was held in the Vojno camp, which is when she was raped. The testimony of witness AG about the individuals who arrested her, brought her to Vojno, about how she was treated there when she arrived, the work she had to do, departure for Heliodrom, return to Vojno and the sketch she drew, corresponds to the statements given by all Prosecution witnesses who were in the Vojno prison together with witness AG at the same time. Therefore, the Court has no reason whatsoever not to believe witness AG and to question the accuracy of her allegations. That is why the Court accepted the testimony of witness AG as reliable and truthful and concluded that witness AG was raped three times by the accused Marko Radić during the relevant period, to whom she referred as the commander of the First Bijelo Polje Battalion, that the accused Dragan Šunjić raped her once and to whom she referred as deputy commander of the Vojno camp, while the accused Damir Brekalo also raped her once. The Panel noted that the witness provided a very brief account of the rape by the mentioned individuals. However, it follows from the expert report by the expert witness neuropsychiatrist that any examination of this witness about the events intensifies her physical problems because of her PTSD. In the opinion of psychologist Amra Džino, the witness was afraid of getting the social stigma of a „raped woman“. The witness never spoke with her husband about their stay in the camp, which caused her additional frustration and created a tense atmosphere in the house. Witness AG's husband was born in the area close to the place where she was imprisoned and raped, and he knew some of the individuals the witness mentioned in her testimony. The witness also lived in the vicinity of the location where the criminal offences were perpetrated.

Having in mind the conclusion reached by expert Doc. Dr. Amra Bralo-Mehmedbašić, that the witness is unable to further recollect and verbalise the traumatic experiences due to her intense affective reaction (fear, anger, rage, guilt), and that she suffers from a form of affective narrowing of consciousness, the Panel has found that she was in such a mental condition both when she was examined before the Court in Mostar and by the investigators, because she on both occasions stated, and also did it before the court in Mostar, that she could not remember any longer the way and method used to abuse her and that it was agonising for her to recall everything she went through. When examined by the ICTY investigators, she told them that it was very difficult for her to come to testify. In view of everything said here, the Panel has concluded that the witness provided an accurate and truthful account of the events that happened to her in the Vojno prison and that she gave reliable information about who among the accused raped her and how many times. Having considered all the mentioned reasons, the Panel has accepted her statement as credible.

Rape of witness L

(Count 5, Radić, 17, 17a Brekalo)

The Panel has established that witness L was raped two times by the accused Damir Brekalo on or about 23 July 1993. The Panel has reached this conclusion on the grounds of the following:

Witness L said that she was Muslim and that she lived in her uncle's house on the right bank of the Neretva River in July 1993. On 23 July 1993, she and her sister were on their way back from a visit to a colleague, when they came across Nedžad Ćorić and Jure Kordić, whom she knew and who told her that they came to take her family away. Nedžad Ćorić told her then that a prison was created in Vojno, that the commander was Marko Radić, that they were acting upon his orders and relocating all Muslims. When she came to the house, she saw Emir Brekalo who had a pistol in his hand and a knife. She knew him as well because they were neighbours. He was 16 at that time, her sister was two years younger, while her brother was 10 years old. Emir Brekalo, Nedžad Ćorić and Jure Kordić escorted them from the house, with a man whose name was *Bura*. Her mother and brother entered one car, while her sister and herself got in the other car. They drove them through the town of Mostar. She realised that she and her sister were brought to Rudnik, where they stopped in front of a house, when Jure Kordić called his mother to throw him a key. When she entered the house, she found her mother and brother there. Emir Brekalo questioned them there, about where the Army of BiH was, about their activities and so on. The questioning lasted for half an hour and after that he told her that she and her sister should go for additional questioning. He brought them to a flat, Jure Kordić was with him and he was driving on the way to that flat. On the way, Emir Brekalo offered them cigarettes and wanted them to smoke. She said that she did not smoke, but he told her to do as she was told, so that she took a few puffs and she started feeling dizzy. They were taken to that flat and saw that *Convict's Battalion* was written on the door. They brought her in a room, Emir Brekalo took some alcohol, poured it in glasses and told her and her sister to drink. After that, Brekalo said that they would be questioned separately, took her to the bedroom, brought the glasses and went on drinking alcohol and smoking cigarettes which stank. A few minutes after that, he told her to undress, she took off her clothes and felt embarrassed. She was sad, humiliated and it was hard for her. Emir Brekalo then took off his clothes, he was drunk, stoned, he held a knife and told her to lie down. She got on top of her, rolling and dribbling and such a humiliation was tough for her. She was stiff, but he tried to penetrate her. All her muscles were rigid, so that he could not completely penetrate her because of such physical condition of hers, but he was still rolling and dribbling. His sexual organ was touching hers and he then had a penetration. After that, he also tried to penetrate her, but he could not, she was stiff. That lasted for half an hour. At one moment, he got off her, lit a cigarette and went on drinking. He told her to get dressed. He took her out and brought her to a room in which her sister was with Jure Kordić. The two men talked there about the Vojno camp and about the people they took away earlier. After that, they brought them back to the house where they found their mother and brother. She could not tell them anything because her mother was in a terrible physiological condition. As a consequence of everything that happened, her legs and arms stiffened and suddenly she lost her consciousness, so that she did not know where she was. When she came about, she remember that her sister, mother and brother were still there. Nedžad took her upstairs and told her later on that her sister, mother and brother were taken to the Vojno camp, that it was done on the order of Marko Radić, and that Emir Brekalo was a patrol leader. When it got dark, Emir Brekalo returned to the house where she was. He threw out Nedžad and stayed in the room with her. He made her take a shower, then take her clothes off, he did the same as in the previous flat. He kept on drinking alcohol, he was drunk and wanted to humiliate her no matter if he would penetrate her or not. He undressed and his sexual organ touched hers, but he could not penetrate, he was heavy, he dribbled and the witness said that she was completely stiff. In addition to the sexual abuse, Emir Brekalo threatened her

to kill her by knife, he moved her legs and after that, he got dressed and left. She was in a severe state of shock that night. In the morning, Nedžad Ćorić unlocked the door and told her that she was free to go. She did not know where to go and how. She remembered a Croat and went there, she stayed there for two or three days, he then drove her to the *Hit* Department Store and told her to cross the junction and go to the other side, where she saw the Army of BiH. She said that her mother was exchanged later on and that she was in a terrible condition. Her brother was in the camp for some time, while her sister was wounded. Her brother and mother, as well as her sister, were in the Vojno prison. When asked by the Prosecution if there was penetration the first time, if his sexual organ thrust into hers, the witness said that his organ penetrated only partly, but that it did not completely enter. When asked by the Court, the witness clarified that the second time everything was as the first time, meaning that he entered only a little bit.

In her testimony, witness X said that she lived in her uncle's house in the western part of Mostar and that she was arrested on 23 July 1993 by Emir Brekalo, Jure Kordić, Nedžad Ćorić and an individual whose nickname was *Bura*, together with her older sister, witness L, who was 16 and a half at that time, her mother and brother who was 10. She was 15 at the time. She already knew Brekalo, Kordić and Ćorić, since before the war they lived in the same part of the town. They were first brought to a house in Rudnik, where Emir Brekalo started questioning them about the Army of BiH, military actions and so on and, while doing that, he swore at her, pulled her by her hair and shouted. After that, Brekalo and Kordić took her and her sister to a flat in Avenija in Mostar. "Convict's Battalion" was written on the door. Emir Brekalo offered them some alcohol and cigarettes there, so that she would better sing out, he ordered her to smoke, to drink, taking out his knife and pistol. She was forced to light a cigarette, although she never smoked before and to drink some alcohol. She begged him not to do that, but he harshly ordered her. At one moment, Brekalo got up and took her sister to another room, while she stayed in the room with Kordić. She heard Brekalo yelling in the other room, her sister crying and begging, but Brekalo got louder and louder. Half an hour later, Brekalo pulled her sister out of the room and she saw that her sister was crying and that her clothes were torn and creased. After that, both of them brought her and her sister back to the house in Rudnik. Her sister got sick in the house and they took her upstairs, while Emir Brekalo drove her, her mother and brother to Vojno.

Witness F testified to have been brought to the Vojno prison on 15 August 1993, where she found a 10-year-old boy, who she learned was witness L's brother.

Witness Saja Ćorić also said that she knew that witness L was in the Vojno prison, where she was sexually abused. She learned about that after she was released from prison, which is when she heard that some women were raped and abused.

Having inspected the List compiled by the Initiatives Board of Female Prisoners of the Camp "Vojno" Bijelo Polje, dated 1 May 1996, it was established that witness L's mother was detained in Vojno and that she was exchanged on 14 August 1993, as well as her under age brother who was exchanged on 1 September 1993.

Having in mind all the evidence, the Panel accepted the testimony of witness L as credible and truthful, since it was consistent with the statements given by other witnesses heard,

particularly with the testimony of witness X, who confirmed that witness L was in the same room with Emir Brekalo, that she heard him shouting in that room, that she heard her sister crying and begging him and that when her sister came out of the room, she saw that her clothes were creased and torn. Taking into account that witness L gave an almost identical account of what was going on inside the room when she was with Brekalo for the first time, the Court has found that, notwithstanding it was a privileged witness, the testimony of witness L was convincing and reliable. Other statements given by this witness about the situation when her mother, brother and sister were taken away and brought to the Vojno camp, were also corroborated by other witnesses, so was her testimony about their release from the camp. The testimony of this witness is convincing because she did not accuse other people of rape, she accused Brekalo only, and she provided a very precise and detailed account of that act, she described all her reactions while all of that was going on, noting that Brekalo did not fully penetrate her, only partially. The Court has found that it followed from the account of the rape provided by the witness that she really experienced it and that it was not a made up story.

Rape of witness C

(Count 5, Radić, 11, Šunjić, 17, 17e Brekalo, 26 Vračević)

In 1993, witness C lived in a flat in the western part of Mostar. Together with her husband, she was evicted from her flat on 9 or 10 September 1993, when 6 HVO soldiers armed with weapons, knives, even axes, raided her flat. They were looking for weapons, asking for her family before she got married and gave her a pencil and a piece of paper to write down where they were and where they lived. Then, a soldier whose name was Tinjak a.k.a. *Žuti*, asked her if she was pregnant and immediately after that, started slapping her in the face. The four soldiers who entered the flat wore black uniforms. She recognised Emir Brekalo among them, he had a letter U on his cap, which is an Ustasha insignia. She knew Emir Brekalo rather long since before getting married, she lived in Bijelo Polje, so that she knew him for 10 years before the war broke out. She and her husband were not members of any military formation. When they arrested them, they told them that they would go to join their people on the other side. They also rounded up her sister and another sister of hers with her husband and two children. They took them away in a van, there were 7 of them in the van. They came to Vojno in that van and then Brekalo drove them in a small car to the camp command in Vojno. In the corridor of that house, she recognised Mario Mihalj, Dragan Šunjić, Mirko Vračević and another soldier whose name was Kuna. The witness said that when they had to introduce themselves to Mario Mihalj for the first time, they were supposed to say their names first and then their last names, but since they were unaware of that, they were ill-treated. All their personal documents were taken from them, together with gold, jewellery and money. They found some money and gold on her sister and took everything away from her, while they took those things from the witness' wallet in her flat already. They told them that they would return those things to them once they left that location. Emir Brekalo searched them and he took the money from her sister. Mirko Vračević searched them as well. She did not know what they did with the money and jewellery. They took them for labour to the front lines, they went with soldiers. Guards safeguarded them in the houses where they stayed. Among the guards, she could remember Rudo, Kuna and Mirko Vračo. She described Mirko as a short man around 50 years of age, with moustache, he was shorter than a rifle, thin, with brown hair. She used to see him often in Vojno and every time he was in Vojno, he was in that house. On one occasion,

when they came back from labour, members of *Poskoci* (sand vipers) ill-treated 4 women by slapping them in the face, putting pistol to their temple and Mirko Vračević told the three sisters that they would not come back. My sister was slapped hard across her face. Mario Mihalj was commander of the Vojno camp, Dragan Šunjić was deputy commander, while Marko Radić was superior to all of them. She met Marko Radić when one soldier told her that he was taking her to see commander Marko Radić. When she came there, she was terrified, she introduced herself and Marko Radić told her that she had a real *Balijska* name and surname. In addition to her, her two sisters and children were also brought for an interview with Marko Radić, actually it was an interrogation. She was selected once to bring some mail from Marko Radić to certain Hećim, who was a member of the Army of BiH and she did so. While in Vojno, they had to do everything they were told, wash, cook, clean and anything else HVO soldiers needed. They went for labour and came back on foot, escorted by soldiers. They did not go for labour on their own free will, soldiers would come to the camp in the morning hours and ask for several women to take them for labour. She was exchanged in early December. When she was released, she lost a lot of weight. Once, she was taken to the Command by soldier Rudo Ravlić, whom she already knew. Dragan Šunjić, Kuna and another two soldiers were there. They told her that she had to do something, she asked for a receipt that she was going for labour, but Dragan Šunjić screamed at her telling her that she had to do some night work, that she had no rights and that she was in the hell itself, as she herself realised at that moment. She already knew Kuna, but she did not know Dragan Šunjić before that. Two soldiers brought her to a house, to a room where Emir Brekalo was with a tall soldier who had a white birthmark and whose name was Marko. One of them told her then to undress, she begged them not to do that, but they threatened her by knife which they stabbed in the table, so that she had to take off her clothes. She was very scared and frightened. When she undressed, they told her to play with herself, they watched and laughed. She begged them to let her go, they talked her into drinking alcohol, but she refused. She had to do everything they told her to do. After some time, they dragged her into the kitchen, where they forced her to put their sexual organs into her mouth. She stayed there long and then they dragged her to another house where that soldier Marko slapped her in the face repeatedly, they threw her on the bed and Marko told her that she had to satisfy them. Then, they had to go to some assignment. Rudo Ravlić took her from that house to the rooms where other women were held. She was depressed and miserable. Several days after that, she met a soldier whose name was Marko, who wanted to check if she remembered him. She did not tell anyone about that. She was exchanged at Gruban and sent to the other Neretva bank. Marko Radić was in charge of the exchange. After the exchange, she did not return to her flat.

Witness R stated that she was arrested on 13 September 1993 and that she was placed in a house in the Vojno prison, where she found witness C with her two children, among other women. According to the witness R, witness C and other women were already in that house when she came to Vojno. This witness testified that she had not been personally ill-treated in Vojno, but that her mother and others were ill-treated, including witness C, who was taken by Mirko Vračević to a military unit where the *Poskoci* were stationed, which is when she and her sister were slapped in the face there, which she could tell because they were red in the face. According to witness R, women were taken away by night by guards, who would enter the rooms with the sole purpose to take them away. She did not see what they did to those women, but she could guess. She would see the women upon their return. Witness C was among the women who were taken away.

In her testimony, witness Dika Ćurić said that she was arrested in October and brought to the Vojno camp, where she found witness C among others.

Witness Saja Ćorić stated that witness C was among those women who were raped in the Vojno camp.

According to witnesses J and D, witness C was among the women who were imprisoned in the Vojno camp. Witness D stated to have been in the prison together with other women, including witness C. This witness remembered that women were taken away almost every night and that each of those women should tell what happened to her personally.

In the cross-examination, the Defence wanted to discredit the witness and the truthfulness of her allegations. When cross-examined, this witness stated that she remembered the interview with Radić, that she said her last name first and he told her ‘first name first, you *Balija* woman’. Marko Radić was Mario Mihalj’s superior, as she heard from others. She did not see Marko Radić issuing orders to Mario Mihalj during her stay in Vojno. People were saying that Marko Radić was commander of that area. There were other HVO units there as well, she remembered that *Poskoci* were there. In her opinion, according to what she heard, Marko Radić commanded over all those units, but she never saw him issuing orders to any of those units. She saw Dragan Šunjić the day she was brought there. She remembered his words “Take those animals away”. Women told her that it was Dragan Šunjić, deputy commander of the camp. She could not remember precisely whether Dragan Šunjić introduced himself personally as deputy. She described Dragan Šunjić as a tall and slim man, who was around 30 at that time. She never asked protection from Dragan Šunjić. Emir Brekalo and Mirko Vračević searched them, but she did not know who exactly took the money from her sister. On one occasion, when they complained about the conditions in the camp, Dragan Šunjić beat her and put his pistol against her temple. Mario Mihalj and Mirko Vračević were also present there, as well as witness R and her two sisters. It is not true that she offered herself to Dragan Šunjić. Dragan Šunjić beat her, slapped her in the face and it was precisely that Dragan Šunjić who was sitting in the courtroom that day. She knew Damir Brekalo for about 10 years before the war. They lived in the neighbouring parts of the town and he often passed by her house. She used to come across him, they were not either on bad or on good terms. In her opinion, he could be around 25 at that time and she did not think that her husband knew him. She had a brother and he too knew Brekalo, but she did not know if her sister-in-law knew him, or that they were very good friends, or that they had a love affair. The witness clarified the discrepancies between the statements. Emir Brekalo tried to rape her for the second time, she was ashamed and did not mention the rapes in her statement to the police. As for the persons to whom she gave statements in the police, she stated that she did not know Adis Nuspahić, while she knew Juso very well. Damir Brekalo did not coerce her to forced labour, he did not beat her or deprive her of water or food. They were exchanged for civilians. She met Mirko Vračević in the Vojno camp, she did not know him before.

It undoubtedly follows from the consistent statements given by the above mentioned witnesses that witness C was imprisoned in the Vojno camp during the relevant period. The Panel has found that the Defence failed to discredit the witness and her testimony as to the crucial facts about the rape she presented at the main trial. Despite certain discrepancies

between her testimony at the main trial and her earlier statements, the Panel holds that the discrepancies were satisfactorily explained in the cross-examination, when the witness stated that she was ashamed to mention the rapes when she was examined in the MUP for the first time and that she was ashamed because she knew certain Juso. Although Juso did not affix his signature as an investigator, that in no way means that he was not present when she was giving her first statement. Also, her earlier statements, particularly those given before the investigation, are far less important than the statement she gave at the main trial, under the oath and cross-examined. The above mentioned witnesses confirmed that women were frequently taken away in the Vojno camp at that time and, when those women returned, they looked miserable and depressed. Witness R stated that witness C was among those women. Witness D said that she was in the prison with witness C, that women were taken away almost every night and that each of them should personally say what happened to her. The Panel considers that witness C gave a very convincing statement which contained many details and that her testimony was consistent with testimonies of other witnesses, therefore the Panel has found her testimony to be honest and reliable. Other prisoners did not know about her rape because she kept silent and did not dare to talk about it. Given that the accused Brekalo put his sexual organ into witness C's mouth, the Panel has found that this act satisfies the requirements of rape, since penetration of the perpetrator's penis in the victim's mouth constitutes the *actus reus* of rape.

Rape of witness B

(Count 5 Radić, 11 Šunjić, 18 Brekalo, 26 Vračević)

Witness B stated that she was a Bosniak, that she lived in Mostar West with her husband and 2 children until mid-August, when she was taken to the Vojno camp. She was in her flat with her 2 children. Two masked soldiers came and deprived them of liberty. Those soldiers were Nedžad Tinjak and Dario Stupar. She knew the names because they introduced themselves, she did not know them before. Her two cousins were in her flat with her, they went out and left home, while she got on the truck with her two children. Her older son was 4-5 and her little girl was 1.5 years old. When she was arrested, she was not a member of any army. Emica Ćurić, her daughter and mother were in the truck, so were Zejna Mirica with her two daughters and husband, Edita Pehilj and several other women whose names she could not remember. There were around twenty people there, including children. All those people were Muslims. They were taken to Vojno via Đubrani, upon arriving in front of a house in Vojno the women would go inside the house to give statements. That was Mario Mihalj's and Dragan Šunjić's Command. Mario and Dragan Šunjić met them there and told them to introduce themselves, she first said her surname and then her name and Mario slapped her in the face two times. He slapped Edita in the same way. After that, Mirko Vračević took her, her two children and Edita to one house, where she was locked in. She learned those names when she entered and Mario Mihalj said 'I am Mario Mihalj, camp commander, and this is Dragan Šunjić next to me, he is deputy camp commander' and that they should address them like that. Mirko Vračević introduced himself and he said 'you *Balija* women have no idea where you just came'. There were other soldiers there that night, but she did not know who they were. The house where they were held was around 50 meters far from the Command. The house had a basement, a floor and a ground floor. She was on the ground floor. There were witnesses A, E, F, AG as well. Emica Ćurić, Edita, Zejna with her two daughters, witness AG's daughter and grandmother were in the other room. She stayed in that room 100 days. They were locked

all the time. The night when they arrived in Vojno, prisoners were in the basement. Dragan Šunjić and Mario Mihalj went downstairs to the basement with a cassette recorder. Music could be heard together with screams of the prisoners. That night Mirko Vračević came to the house and he introduced himself as Mirko called Srbini, he had a rifle with engraved “*Only survivors will survive*” and told us to always have that in mind. They were scared, their legs went numb, but they had to put up with it because of their children. Having come in and said that, Mirko Vračević went from one room to another saying that same thing “*Only survivors will survive, I am a black adder*”. They would leave the house when they were taken for forcible labour. She would go for labour to the police. One day, Dragan Šunjić came and told her to get out. A red car was waiting in front of the Command and a soldier Sergej was standing there. Dragan Šunjić told Sergej “take this *Balija* woman and she is all yours”. She got in the car with Sergej and Šunjić. Sergej was driving. She realised that they were on the way to the Police Station. They started humiliating her and were rude already in the car. Dragan Šunjić mentioned “*jastučenje*” (“pillowing”) to Sergej. It was the first time that she heard that expression and in her opinion that meant that they could do to her what they actually did at the Police Station. Dragan Šunjić asked her how many openings she had in her body, told her that they would fill in all of them and that she would have an *Ustasha* child. She had to be silent and bear it. They took her to the Police. She got out of the car. Sergej followed her, while Dragan Šunjić stayed. Sergej told her ‘*Balija* woman, take some fire wood and start a fire, then return and take a bucket of water for the dishes and for yourself’. When she washed the dishes, Sergej told her to come and sit beside him and she had to do that. There were alcohol and drugs on the table and he asked her if she was taking anything. After that, Sergej told her to tidy three rooms. She entered the bedroom, it was a big room with a twin bed. Sergej said “*Balija* woman, take your clothes off”. She begged him not to do that, but he took a knife, put it under her neck and told her to choose between herself and her two children. She had to undress. Sergej took his clothes off, threw her on the bed and brutally raped her, during which she also had to take his sexual organ into her mouth. It hurt her, but she did not dare to resist and she was silent. After that, Sergej got up and another soldier came in, his name was Dario Mihalj and he was Mario Mihalj’s brother. All of them said their names. Dario Mihalj also raped her and she also had to take his sexual organ into her mouth. Then, certain Babo came in, after him Tomo Ančić and after that Nedžad Tinjak, called Necko. Each of them raped her once vaginally and she had to take sexual organs of all of them into her mouth. All those who raped her penetrated her vagina. One of them would finish and leave, another one would come and all of them raped her. When it was over, Sergej came in and said “*Balija* woman, get dressed”. She did not know how she managed to get dressed. Sergej brought her back to the Command, Dragan Šunjić was there and when he saw her he asked her if there was any “*jastučenje*” (“pillowing”). Šunjić brought her inside the house, witnesses A, E and F were there and they asked her what happened. She told them that she was in the Police and that she was raped. Zdravko Šunjić a.k.a. Kuna came then and she told him Dragan Š took her to the Police and that she was raped. She asked Kuna to call a doctor because she was in such a condition that she could not get up. Kuna left and Mario Mihalj entered the room and asked her where she was and what they did to her. She told him that they raped her, then he slapped her hard in the face two times, turned around and threatened her not to tell anything. That was the only incident when she was raped. She was released on 2 December 1993, in an exchange. During the exchange, she saw Maka Radić standing in a trench. Maka read out their names and surnames. She was a meter or two meters far from Maka Radić. She had met Marko Radić when one prisoner escaped.

Mario Mihalj, Dragan Šunjić, Emir Brekalo and Maka got in the room where they were staying. They thought that they were hiding the prisoner and he then introduced himself as Maka Radić. She did not know Maka Radić before, but she used to see him in the northern part of Mostar. She knew Emir Brekalo because Emir Brekalo and Ahmet Brekalo were brothers and they worked in the *Šipad* company with her husband. Emir Brekalo would come to Vojno and enter the room where she was with her grandmother and children. She said that he wore black clothes, a beret, black belt, he had a gold cross attached to his ear, he took out his pistol, put it against her temple, asked her whose wife she was, and she told him.

The Defence contested the reliability of her allegations and the credibility of the witness by asking her in the cross-examination numerous questions with that purpose. They presented to the witness her statements given to the ICTY, Prosecutor's Office of BiH and Higher Court in Mostar. The witness stated that her husband was a member of the First Battalion and that he was arrested precisely on 2 July 1993. She placed Marko Radić in the context of the two incidents and said that she saw him two times, while she did not say a word about that in her earlier statements. The witness said that she saw Maka Radić and that she heard from soldiers that Maka Radić was in charge. She did not say that before, either at the Prosecutor's Office or at the Higher Court in Mostar. With regard to the incident involving the escape of a prisoner and arrival of the accused persons, the witness said that it happened around 4-5 o'clock, in the daytime, no flash light was necessary. Witnesses A, E and F were also in the house. They busted into our room. She saw Marko Radić two times and that was it – however, the Prosecution Record, page 11 on numerous occasions on numerous occasions I saw our inmates being abused The witness said that she could not remember either if anyone was on crutches, or a person whose name was Ibrulj. The witness stated that the room where she was held had no furniture, there was only parquet flooring. Both men and women went for labour in the morning, she did not know the men, they dug trenches and she would see them when she was taken to Bočine for labour. With regard to the differences contained in her statement given before the Cantonal Court in Mostar on 28 March 1996, the witness said that it was only a formal information. When she was confronted with her statement given to the Prosecutor's Office of BiH, specifically pages 8 and 9, where the witness claimed to have been taken away by soldier Babo, as opposed to what she said before this Court, that Sergej took her away together with Dragan Šunjić, the witness explained that she confused those names, that she now maintained that Sergej was the one who came to take her away and that the truth was what she stated at the main trial. The witness was presented the statement she gave in Mostar in 1996, where she also stated that Babo was in front of the exit, that Dragan Šunjić was not mentioned. The witness said that the truth was that Dragan Šunjić came to take her away. Dragan Šunjić did not rape her or physically ill-treat her. In the cross-examination, the witness stated that Damir Brekalo worked with her husband before the war. She described Sergej as a medium tall, fair-haired and fat man. When the Defence noted that she did not mention the accused Mirko Vračević in her earlier statements, the Prosecution objected by saying that the witness mentioned the accused Mirko Vračević a number of times in the previous statements. The witness responded that it was true that Mirko Vračević took her to the room and she understood his words - "be careful about what you are saying" - as a threat. Mirko Vračević did not abuse her, but he ill-treated her. When asked some additional questions, witness C replied that she was ill-treated by Mirko Vračević when he came to the room and took out her, Emica Ćurić and Zejna in front of

the house door and then brought some blood-stained blankets from the garage. Mirko stood there with his M-48 rifle in his hand and told them to wash that, otherwise someone else would be washing their blood. He ill-treated them on other occasions as well, when he entered their room, threw in some mouldy bread and told them 'eat it pigs, you *Balijs* women'.

In her testimony, witness A stated to have been placed in the same room with other women and children, including witness B. The witness could remember that, in addition to her, prisoners B, D, E and AG were also raped in Vojno. She knew that they were raped because when they returned, they looked exactly the same as she did when it happened to her. There was no need to tell her that they were raped, since their behaviour and looks spoke for themselves. Witness F testified to have known that witness B was raped and abused. The same witness stated that witness B told her once when she returned that she was taken to the Military Police and that four men raped her. When witness B told them that, Mario Mihalj entered the room and slapped witness B two times in the face. When cross-examined, witness F said that witness B was saying that she had been raped, that four soldiers had raped her, including Dario Mihalj. She saw her when she came back to the room, she was in a horrible condition, crying and exhausted.

Witness E remembered that witnesses A, B and AG were raped and that those were the women from her room. She knew that because when they returned it was written all over their faces, they were in tears and nervous.

Having inspected the List compiled by the Association of Female Prisoners of the Camp Bojno /as written/ Bijelo Polje, the name of witness B was also recorded among the names of women who were in Bojno during the relevant period.

It follows from the consistent testimonies of witness B and witnesses A, F and E, that witness B was raped while she was in the Vojno camp by Tomo Aničić, Dario Mihalj and soldiers whose names were Babo and Sergej. The Court accepted the testimony given by this witness as credible and reliable, since she provided a very detailed account of events, which shows that the witness was indeed raped by the four individuals. The testimony of witness B about the rape was corroborated by the testimonies of witnesses A, F and E, who shared the room with witness B and who were consistent in stating that they knew that witness B was raped, that they saw her looking bad when she came back to the room and that they could tell it by her looks that she was raped.

Rape of witness AM

(Count 5, Radić, 11 Šunjić, 18 Brekalo, 20 Vračević)

Witness AM did not testify at the main trial. Having given her statement to the Prosecutor's Office of BiH in the course of investigation, she and her husband left for America, where her children live. Since the witness stayed in America and did not return to Bosnia and Herzegovina, the Court decided on the ground of Article 273/2/ of the CPC of BiH that her statement given to the Prosecutor's Office be read out, since it would be impossible or very difficult that she appear before the Court due to the mentioned reasons.

In her statement given to the Prosecutor's Office of BiH on 7 December 2006, the witness asked to be granted protective measures because she did not want her husband, children and public to find out that she was sexually abused and to avoid being physically affected by testifying, since she was sensitive and nervous. She stated that she was in the Bojno camp from 7 September to 2 December 1993 and that she was forcibly taken away from her flat in Mostar. Three soldiers in HVO uniforms took her away, nine people in total were rounded up, including her mother, husband, sister, brother-in-law, brother, sister-in-law and their two children, all of them Bosniaks. Together with the nine of them, they loaded on the truck another ten women and children that day. Upon arriving in Bojno, one HVO soldier told them to stand by the wall, later on they brought them inside the house and all of them stood in the corridor. They told them to say their name and surname each and after that they brought them one by one in a room where they searched their belongings and took away what they pleased. They spent the first night in a rather big room, women and men together. The following morning, one soldier took the men away, while around 30 women with children stayed in the room. They had to sleep lying crossways, so that someone's head was next to someone's feet. The room was locked from the outside and the windows were boarded up. They were given some blankets and they had three meals in the Vojno camp. The witness stated that she was sexually abused by Mirko Vračević, who guarded her room and she did not know him before. She described him as a rather slim man whose one eye was a bit closed and he had dark complexion. She could not remember how many times Mirko Vračević sexually abused her, but she said that it happened a number of times. First time, Mirko Vračević took her to a room with two beds, so that she assumed that guards slept there. He took her out from the room she shared with other women. Since she was assigned to make coffee that day, she was in a house where Mirko Vračević also happened to be. That first night when Mirko took her away for the first time, he entered the room where she was and said that the woman who made coffee that day had to go with him, looking at her. Then he brought her into that room for guards, he was armed. He told her to undress and to lie on the bed. She was helpless and had to do it. He performed a sex act on her and returned her to the room. It was a vaginal intercourse and he penetrated her. When she came back to the room, she did not tell anyone that she was raped because other women were also taken away and they neither said anything about it, nor did anyone ask them anything. The women were taken away by night. When Mirko Vračević raped her for the first time, she did not dare to resist because she thought that he would kill her if she did. That incident happened maybe 20 days after she came there. Every time he raped her, he followed the same routine – enter the room and take her away. He was also armed. Except Mirko Vračević, no one else raped her. On one occasion, Mario Mihalj, a deputy commander, came to the room where she was, set fire to a part of one woman's clothes and threatened to burn them all. He went from one woman to another, burning parts of their clothes. Someone told his father what he was doing and then someone came and took him out of their room. Mario frequently entered the room and slapped the women in the face. When he would see a lit candle, he would slap them all in the face and question them about who brought the candle. Dragan Šunjić was Mario Mihalj's deputy and in Mario's absence, Dragan was his substitute. Her husband came to the camp on crutches, but the day he arrived there someone told him that he would not need them any longer. He had to go and dig trenches even in such condition. According to the witness, she was taken for labour in the morning hours almost every day, to the houses where HVO soldiers stayed, and that was not on her own will. They were given assignments sometimes by guards, sometimes by some HVO members. They were not

allowed to complain. When asked by the Prosecutor to clarify how many times approximately she was raped, witness AM stated that she could not remember, and that she preferred not to mention numbers, since she did not know precisely how many times she was raped. The Prosecutor then asked her if that happened more than two times, the witness said it did and when further asked by the Prosecutor whether Mirko Vračević raped her more than three times, the witness said that it happened several times, but she did not know precisely how many times. She was frightened back then.

Witness Saja Ćorić testified to have known that witness AM, who shared the room with her, was among the women who were sexually abused in the camp, and that she could tell that they were raped by their looks when they returned. The same witness stated that witness AM said that Mirko Vračević had raped her more than 40 times. She saw Mirko Vračević coming by night and taking away witness AM, but she also saw him taking her away around dawn. She would come back depressed, in a terrible condition and did not want to talk.

Witness J said in her testimony that she came to the Vojno camp together with witness AM. Witness C testified that other women were raped and that the witnesses were taken away, including witness AM. Witness AM was in her room and she eye-witnessed when Mirko Vračević took her away.

In her testimony, witness D stated to have been in the prison together with witnesses CJ, KR, AM with her husband, Saja Ćorić and others. Witness Dika Ćurić said that when she arrived in the Bojno camp, she found there C, D, K, AM and others. She saw Mirko Vračević in Bojno several times and he most frequently took away witness AM. She did not know why he took away this witness or how many times exactly he did that. She remembered that when witness AM would return, she was depressed and dishevelled.

It follows from the List compiled by the Initiatives Board of Female Prisoners of the Camp “Bojno” that witness AM was among the women who were in the Bojno camp.

In view of the testimony given by witness AM to the Prosecutor’s Office and testimonies of the above stated witnesses, the Panel has concluded that witness AM was in the Vojno camp from 7 September through late November 1993 and that the accused Mirko Vračević raped her at least three times during that period. He did so by taking away witness AM in the evening hours from the room in which she was imprisoned to a house within the camp perimeter and raped her there. The Panel has established such account of facts on the ground of testimony of witness AM, which the Panel accepted as truthful and reliable, since the witness gave a convincing account of the events surrounding the rape she suffered. The allegations of witness AM were substantiated by witness Saja Ćorić, witness J and witness Dika Ćurić, who were consistent in stating that they eye-witnessed the taking away of witness AM by the accused Mirko Vračević from the room they shared and that they also saw when witness AM was returned by Mirko Vračević to the same room in which she stayed and that she was dishevelled and depressed. Considering that witness AM could not remember how many times Mirko Vračević raped her during her stay in Vojno when she was giving her statement under the investigation, the Court has concluded that it followed from her statement that she was raped at least three times.

Rape of witness F

(Count 5 Radić, 11 Šunjić, 18 Brekalo, 26 Vračević)

Witness F stated that she was Bosniak by ethnicity and that Ivek Kolobara, Tinjak, Hadžihasanović and a guy who was called *Zec* took her and her two minor children from her flat in Mostar on 15 August 1993 and brought them to the Vojno camp. When they arrived in Vojno, Mario Mihalj met them there and introduced himself as the commander, together with Dragan Šunjić, who was deputy commander. They took away all their belongings and documents. Soon after their arrival, a soldier came to the door and told her and witness E to get out of the room, to go to the basement to dust some blankets. After that, a soldier took her to the Command where Mario Mihalj was and she was told to go inside and tidy up a room. When she entered, she realised that the room was already tidied up. A soldier told her to undress, but she refused. Mario Mihalj heard it and he told her to take off her clothes. She refused again and Mario Mihalj slapped her in the face two times, told her to get lost, to go back to her children and she left. The same night, Mirko Vračević entered the room and told her to go with him for questioning by Marko Radić. Mario Mihalj, Dragan Šunjić and another two soldiers who she did not know were there. Marko Radić introduced himself and started to question her. He asked her about her age, how many children she had and if she would give birth to one *Ustasha*, she said that she would not, but then he said that they would see about that and that they would all give birth to one. He also asked her if she knew a gentleman who was there, but she did not know him. That gentleman told her to take a cigarette and to go back to her children, while Marko Radić smiled and told her to thank Jež for that. Ten days after that, she met Marko Radić for the second time, when one prisoner escaped from the prison. Marko Radić, Mario Mihalj and Dragan Šunjić came to the room that night, with a man for whom the other women said that it was Emir Brekalo. Her third encounter with Marko Radić happened when she was taken to the First Battalion for labour, she had to cook for the soldiers. He said on that occasion that *Balijs* women made good pies and that they always would. She saw him for the fourth time on 2 December 1993, during the exchange and he gave a speech immediately before the exchange took place. She was not taken to perform labour only for 10 days and after that, they were taken for labour on a daily basis. They did not volunteer, guards would come, mostly Mario Mihalj and Dragan Šunjić and say who had to go. They were not allowed to complain because they were told right away that they had to obey orders. They did the laundry, cooked, cleaned and had to do everything else. Witness F stated to have been sexually abused on several occasions. First time, it happened on the fourth day upon her arrival, when Edita brought her to the camp Command, to Mario Mihalj, who told her to go to a room where a man was waiting for her to give him some love. Mihalj then opened the door of the room and there was a naked man lying on the bed. When she saw that, she fainted with fear. When she regained her consciousness, she saw Edita washing her face, she was wet and she saw Dragan Šunjić standing there and a soldier who was called *Slovenac*. After that, Edita and a guard Kuna took her back to the camp. Five days after this incident, Rudo Ravlić came to the door and told her to get out because she had to go to clean a house. Two men escorted her and on the way, they asked her how old she was and when she had a bath. They went over a small bridge made of barrels, crossed to the other side of the Neretva river and got to a cottage. They brought her inside, there were a lot of soldiers in one room who were watching a porn movie. One bald soldier with an ear-ring came to her and asked her if she enjoyed when doing it. He told her to go with him, brought her to a room, told her ‘take off your clothes, you *Balijs* woman’,

she refused, but he took out his pistol and told her that he would kill her. Then he ripped off her T-shirt, she repeated that she did not want to do that, he slapped her in the face and she fainted. When she came around, there was another soldier standing there who said 'leave her to me, Brekalo, leave her to me Emir' and told her to undress. She refused again and then a fair-haired, tall man appeared and told them to let her go. The one who told her to undress the second time said that his name was Dario Sušac, that he would come to take her away the following day and that if she failed to dig a 12 meters long channel, he would cut her children to pieces and throw them into the Neretva. The bald man who tried to rape her first was Emir Brekalo. She was never actually raped, every time it was only an attempt. Emir Brekalo ill-treated her on one more occasion, it was when Mirko Vračević told her and witness A to clean a house. They arrived at the house with a soldier and they found four soldiers sitting inside. She was told to do the laundry and clean the bathroom, while witness A had to make lunch. She found out that she was on the Military Police premises. One soldier told her to warm up some water, when she entered a room, she saw witness A, naked and a soldier who was standing beside her, asked her for some warm water and then told her to undress as well. She refused and he rushed at her, looking like an animal. She fainted and when she regained consciousness, she saw witness A. Soldiers were there and they addressed each other as Sergej, Žuti, Dario. After that, a doctor gave her an injection and the two of them were returned to the room immediately after that, then Mario Mihalj and Dragan Šunjić entered their room and Mario said that it would be better next time. The soldier who told her to undress was Dario Mihalj called *Zela* and guard Kuna told them that he was Mario Mihalj's brother.

When cross-examined, the witness said that she gave several statements before. She said that Marko Radić ordered them to return to Vojno and when she heard that she was at Starčevina (part of Mostar). With regard to her statement that Marko Radić ordered prisoners to bang their heads against the wall, the witness F said that she did not mention that before because she could not remember every detail. The witness stated that Mostar was attacked by soldiers who had HVO and HV insignia. The Vojno Camp consisted of two houses and a garage, it did not have a wire fence, but there were guards in front of the house doors. When she was taken to Vojno, Marko Radić was not present, they were given no order signed by Marko Radić, they were not told why they were taking them. She met Brekalo for the first time when he entered the room after one person escaped from the prison. She did not know him before the war. He had a cross ear-ring, wore a black beret, he had no hair. The Defence presented to the witness some discrepancies in her statements in relation to the food and the witness said that they received food once a day. She saw the men who were in the garage, they came from various places, she cleaned the basement where the men were incarcerated and she saw blood on the walls. When asked how many times she saw Damir Brekalo, the witness maintained to have seen him three times and described those encounters. She was also asked to clarify the differences in her statements given earlier as to whether she used to see Mirko Vračević in Vojno, since she did not mention him before and the witness said that she used to see him and that he had '*only survivors will survive*' incised in his rifle. She said that he used to bring breakfast and that his nicknames were Srbin and Čoro. He took the women for labour and gave them orders.

Witness E was arrested on 15 August 1993, together with witness F and her two little girls. She said that they were placed in the same room when they arrived in Vojno and that one of witness F's girls cried all the time during their first day there. The witness stated that she

once went with witness F to the basement to dust some blankets, that she could sense a strong stench and that she saw a small container used as a toilette.

In her testimony, witness A said that she was arrested on 15 August 1993 and that on the way to Vojno, she saw witness F with her two minor children. Upon arriving in the camp, she moved to another house and found some familiar people there, including witness F. Witness C stated that she was arrested in early September 1993, that she was in the Vojno camp and that she knew that other women were raped as well, that they were taken away and raped, witness F included.

Witness B said that she was in the basement of a house in Vojno together with other women, including witness F.

The Panel has found that it follows from all the mentioned testimonies that witness F was sexually abused while she was in the Vojno camp by the accused Damir Brekalo and Dario Sušac the way witness F described it – that she was taken to a cottage on the left-hand side of the Neretva river. All the above mentioned witnesses were consistent in stating that there was no doubt that witness F was in the Bojno camp during the relevant period. Witness Saja Ćorić and witness C said that they knew that witness F was among the women who were sexually abused and that is consistent with the testimony of witness F. The witness F was sexually abused by exactly the same individuals who raped witness D. Also, the house on the left side of the Neretva river in the place of Bočine, which was referred to by witness X as the place where female inmates were raped and sexually abused and witness X stated that Emir Brekalo raped her there. The Court has taken into account all the presented evidence about sexual abuse of witness F, particularly the consistent testimonies given by the heard witnesses who confirmed that the witness was in Vojno during the relevant period and since the witness also stated that she was abused by the individuals who perpetrated the same offences in the same area, the Panel has accepted the testimony of witness F about those incidents as plausible and reliable. On the other hand, the Panel has not accepted the part of testimony given by witness F in which she stated to have been sexually abused by an individual whose nickname was Žuti. Witness F said that witness A was also there during the incident and that it happened on the premises of the Military Police, but witness A did not mention that in her testimony, so that the Panel has not accepted this portion of witness F's testimony. Since that portion of the testimony given by witness F was not corroborated by the individual to whom witness F referred as to the eye-witness, the Panel has concluded that the Prosecution failed to prove beyond doubt that witness F was abused also by the soldier whose nickname was Jež, as it was alleged in the Indictment.

Rape of witness E

(Count 5 Radić, 11 Šunjić, 18 Brekalo, 26 Vračević)

Witness E said that she was Bosniak and that she was taken away from her flat in Mostar to the Bojno camp on 15 August 1993 by Ivek Kolobara whom she knew from before, another soldier whose nickname was Žuti and two more soldiers whom she did not know, all of them were members of the HVO. They went to Bojno via Đubrani and when they arrived there, Mario Mihalj and Dragan Šunjić met them. Then, Mario Mihalj questioned them, while Dragan Šunjić was writing something down. Mario Mihalj told her and

witness A that same night to go to see Marko Radić, so that they went over a bridge and came to the house where the First Battalion Command was and where Marko Radić introduced himself as the commander of that area. On 25 August 1993, witness E and another prisoner whose name was Hubana were taken from the camp to clean some houses. The name of one of the soldiers who took them away was Dinar and she remembered that the other one had long hair tied in a ponytail. When they arrived there, they told her to stay in the basement, while Hubana went upstairs. Half an hour later, Hubana came downstairs in tears. She was told to go to another room and immediately after that, the other soldier came in, grabbed her, threw her on the bed and told her 'don't you know why you are here, you are here for sex'. She had her period that day, he threatened her by his rifle, put the rifle to her neck and threatened to kill her if she lied. He suggested her to satisfy him in another way, but she refused that by telling him that he could kill her, but he would not get what he wanted. Then, the soldier whose nickname was Dinar and who heard their quarrel, rushed into the room and asked about the noise and what was going on. After that, they took her to another room and offered her some fruits and sweets. She told witness A about the incident, who told it to Marko Radić and he called her an hour later to the Command. Dragan Šunjić was there with another two soldiers and she had to tell them everything that had happened to her and to write a statement. On 27 August 1993, she and Rahima Makaš were taken to the Command to see Marko Radić. Marko Radić told the witness to go with Mirko Vračević and to do whatever he told her to do, otherwise, he would kill her children. When they returned to Vojno, Mirko Vračević came, told them to go with him and to do whatever they are told because those were the orders. Witness E said that she begged him not to take her away because her child did not feel good, but Mirko told her cynically "so what, you will not pickle cabbage in it, will you". She remembered that they came to a house, Mirko Vračević knocked on the door, a man came out and her said 'here she is, I've brought her'. The man told her that she was there for sex, that his wife was imprisoned on the left bank, going through the same thing. He raped her after that and she knew that his name was Mirko Bukara. She did not know his name at that time, but she found out later on. She knew that he was an HVO soldier and that he worked as a taxi diver before the war.

Rape of witness J

(Count 5 Radić, 11 Šunjić, 18 Brekalo, 26 Vračević)

In her testimony at the main trial Witness J said that she was Bosniak, that she lived on the western side of Mostar in May 1993 in a flat that was owned by a person whose pseudonym was K. She was in her flat in the western part of Mostar until 7 September 1993, when she was taken to the camp by four HVO soldiers. She knew two of them, Kolobara a.k.a. Ivek and Emir Tinjak a.k.a. Žuti. When arresting her, they did not tell her where they were taking them and why they were arresting them. Emir Tinjak told her that she would be the first one to be raped when they get to the place they were taking her to. The person whose pseudonym was K was arrested together with her and her grandmother who was 73 at that time. The youngest among the arrested people was a year and a half old and it was witness D's child, while the oldest ones were her grandmother and another old woman without one hand/arm, who was between 70 and 80 years old. Among the people who were on the truck, she knew D, J, K, AM, Saja Ćorić, Merhunisa Ćorić, Dina Handžo, Fatima and Aida Ćišić, Zejna and Emir Tihak – she knew them all. They took them to the place called Đubrani in the evening and when it got very dark, they loaded them on another

truck and took them to Vojno. Upon arriving in Vojno, they ordered them to get off the truck, lined them up in front of one house and told them to take out all their personal belongings. Then, they brought them to a house, lined them up in the corridor, where they waited for questioning to start. Mario Mihalj and Dragan Šunjić met them there, she did not know them before that, but she heard from the women who were from Bijelo Polje that those were them. They introduced themselves and said “welcome to the hell itself”. Mario Mihalj said that he was commander, Dragan Šunjić deputy commander and that they had to address them as sir. Questioning started and they had to introduce themselves first. He asked D to introduce herself, she said her surname and then her first name, which was incorrect in their opinion, so that Dragan Šunjić swore her *Balija* mother, asked her what school she went to and told her that she had to say her name first and then her surname. A guard was in the corridor, his name was Mirko and his nickname was *Srbin*. After some time, Marko Radić came with Dario Sušac and another soldier she did not know, they started entering the room, one at a time, for questioning. Emir Tinjak went in first and when he got out, he was covered in blood, blue, he had blood on his mouth and after him, others went inside, one by one. When she entered the room they took away her hand-bag with documents. Marko Radić said that he was commander of the First Battalion, the whole sector in the Vojno camp. Mario Mihalj, Dragan Šunjić, Dragan Sušac were in the room and maybe 1 or 2 soldiers she did not know. Marko Radić was sitting and he started to question her. He took her hand-bag, inside she had a copy the Qur’an, an amulet and he asked her what that was and what she believed in. Marko Radić ordered Dragan Šunjić to search her, he did so by touching her breasts, searching her underwear to check if she hid anything. Then they told her to get out. That questioning lasted maybe half an hour, or an hour, but it seemed like ages for her. Marko Radić was the only one to question her and it was then when he said that he was commander. After the questioning, they were taken to another house, to a room that was 2.5 meters wide and 2 meters long and they all spent the night there. In the morning, they took the men away, while around 22 women and children stayed in the room. The second or third night, Rudo Ravlić came, he knew the witness and told her to go to clean a house. Person K asked to go instead of her, but he did not allow her. She was taken to the house and told to clean something. She entered the house, a room with a twin bed, there was Dragan Škobić sitting on the bed and he told her to sit down. He knew who he was and what her name was. He told her that he liked a photo of hers. She begged him and tried to stop him, but he took out his pistol and said “take off your clothes, it’s better that I do it then 10 others”. He then raped her once. When she left the house, she heard someone from the dark calling Dragan’s name. Later on, she asked someone she knew what that soldier’s name was and she told her that his name was Dragan Škobić, that his house was there and that she remembered that he had a pitted face. That was how she found out who raped her. She did not dare to say anyone in Vojno that she was raped because he threatened to kill her loved ones if she did. Other women did not talk about their suffering either. Only person D told her that she was raped. She spent a month and a half in Vojno and was released. Her neighbours Mate Divić and Miro Glibić called Zuka went to the Command to see Marko Radić and they said that Glibić would marry her, but it was just a pretext to get her out. They returned and told her that she would leave that night. When she left the camp, her health was bad, she still suffers gynaecological problems, she will never have children, she got a hormone disorder, all of that as a consequence of psychological stress. Marko Maka Radić was superior to Mario Mihalj and Dragan Šunjić, the camp Command was located in Vojno, while the Main Command was in Bočine where the witness stayed while she was doing some labour. She saw Marko Radić in Vojno 3

times, Emir Brekalo once when he took away person D, while she saw Mirko Vračević almost every day, or every second day.

The Prosecution presented to the witness her statements given before the investigative judge of the Higher Court in Mostar. When clarifying the differences in her statements, the witness stated that she did not mention only the act of rape because the investigative judge was an elderly man she knew and it was hard for her to talk about her experience. She gave a statement before the ICTY investigators as well and before the Prosecutor's Office. She confirmed that all the three statements that she signed were hers. With regard to the discrepancies in her statements about who arrested them, since she stated before the Higher Court in Mostar that those were three HVO soldiers she did not know at the time, the witness explained that she was in fear of those people and that she could not remember everything.

Witness Saja Ćorić testified to have known that witness J was raped during her stay in the Vojno camp and that witness J was raped when she was taken to a house where artillery positions were, but she did not know who did it. Witness Saja Ćorić said that she could tell that witness J was raped because of her looks.

Witness C stated that she knew that witness J was on one occasion taken out by a soldier, she could not remember who it was, that he took her out of the room and that witness J returned after a while that same night, that she was dishevelled and looked awful. Witness D testified that she came to the Vojno camp together with witnesses J and K. She could remember that women were taken away almost every night, but that each of them could say what happened to her. According to witness R, she was in the prison together with witness J. She knew that witness J was also taken out by night, like some other women. Witness K was in the Vojno prison together with witness J, she is witness J's mother and she stated that her daughter was raped by Dragan Škobić while she was in the Vojno camp, that guard Rudo Ravlić took her out of the room and brought her back.

The Court has found that it follows from the entirely consistent testimonies of all the above mentioned witnesses who testified and whose statements are accepted as credible, that witness J was raped during the relevant period by Dragan Škobić, an HVO soldier.

The Defence contested the credibility of this witness and truthfulness of her allegations, since they believed that the witness agreed with others about the contents of her testimony beforehand. When cross-examined, the witness stated that, after her first appearance before the court, she did not have any contacts or talk to anyone about her testimony. Concerning her taking away from the flat by the two individuals she knew, she described Tinjak as a 1.90 m tall man who was slim, had fair complexion and brown hair and Ivek Kolobara as having a long thin hair. She knew those people from 1992, they were soldiers when she worked in the kitchen at the *Sjeverni Logor*, they had HVO Military Cards. Niko Perić was in charge of the kitchen, he was the kitchen chief. She did not mention the rape to the judge in Mostar because she was embarrassed as they lived in the same town. She testified on two occasions before the ICTY, in 1997 and 1998, in the case that concerned the Vojno camp and they told her that the suspects were Tuta et al. When describing Marko Radić, she said that he had black, grizzled close-cropped hair in 1993, he weighed maybe 90 kg. There was no water in the house and there was a stand-pipe behind the house. She stated to

have been in the Vojno camp, but she did not know why she was not on the list. Witness R said that Marko Radić raped her and threatened her, she also clarified the discrepancies in her statements given to the ICTY investigators. The witness repeated that witness R told her that Marko Radić raped her. She also explained the discrepancies relating to her being taken away from the flat. She did not know Marko Radić before 1993. When he questioned her, he personally introduced himself and that was how she learned who he was. Marko Radić did not personally abuse her, either physically or mentally. Dragan Šunjić searched her. She did not know him before. She described him as a fairly slim man with dark eyes who had long brown hair at that time and she said that it was the man sitting next to the defence counsel Kočo. The witness said that he had searched her from top to bottom, touching her breasts. After that, she described the Vojno site, the house in which they were, said that there was no barbed wire there, that there was a stand-pipe behind the house and that she could wash her face there. She knows Damir Brekalo, she met him in 1993 in the camp, she did not know him before that. One day, he came to the room, took away one of the women and then the other women told her that it was Emir Brekalo. Saja Ćorić told her that it was Damir Brekalo. He took person D out of the room and she said later that Emir Brekalo had raped her and taken her away once or twice. She clarified this by saying that he took her away once for sure. She described Brekalo as a short and chunky man. He personally did not ill-treat her, nor did he ill-treat anyone else in her presence. She did not know Mirko Vračević before, she did not refer to him as to Mirko Vračević, but she mentioned him as Mirko Srbin called Ćoro and she described him as a tall man of 1.70 m, who did not have one eye, while his other eye was squint, he was thin, slim, wore a camouflage uniform, had a rifle and she recognised the individual in the courtroom. She saw him for the first time when they arrived in Vojno. He told her then “the fox is brought to the furrier”, she did not know why because she did not know him before that.

Notwithstanding the attempts to discredit the witness in this manner, the Panel has found the testimony given by witness J to be convincing and reliable and free of inconsistencies. In her earlier statements, witness J stated to have been taken to Dragan Škobić, who told her to undress, wanted to have sexual intercourse with her and threatened her by pistol, she took off her clothes, but Škobić let her go when she told him that she had her period. The witness provided a reasonable and acceptable explanation by saying that she was ashamed to say that she had been raped because she knew the man who interviewed her. When she was interviewed before the ICTY investigators in 1997, witness J stated that she had been raped by Dragan Škobić. Later on, in her other statements, as well as at the main trial, she was consistent with her earlier statements. Taking all this into account, the Panel has concluded that witness J provided a plausible and reliable account of both the identity of the individual who raped her and all the circumstances surrounding the incident. Witness J was forced to a sexual intercourse, she was threatened and the act of rape was committed without the consent of the victim.

Rape of witness L

(Counts 4 and 5 Radić, Counts 17, 17a Brekalo)

Witness L stated to have lived in her uncle's house in Mostar when they came to take them away on 23 July 1993. She was at a friend's place with her sister and around noon, on their way back, she met Nedžad Ćorić and Jure Kordić, going in their direction. She had known Nedžad Ćorić all her life, he was her neighbour, while she had known Jure Kordić for a

year or two. Ćorić said that they came to take away them and their family and that they would be taken to the Vojno camp which was established. They said that the camp commander was Marko Radić, that they were acting on his orders and relocating all Muslims. They were armed, wore HVO uniforms and had rifles. After that, they started towards her uncle's house, where her brother and mother were. Emir Brekalo was in the house, with a pistol and a knife, threatening that every Muslim should be killed, that they should not be alive and told them to get ready. She knew Brekalo before the war, he was her next door neighbour. She was 16, her sister 14 and her brother was 10 years old at that time. Emir was hurrying them, they took some basic stuff and put them in a small hand-bag. Four soldiers took them away from the house – Emir Brekalo, Nedžad Ćorić, Jure Kordić and a man called Bura. Her mother and brother got in one car, while she and her sister got in another car. She believed that Jure was driving the car, while Emir was facing her all the time, holding his weapons. They drove them through the town, towards Rudnik and private houses. They arrived in front of a low house. Jure called his mother who went out and threw him a key. When they went inside, she found her mother and brother there. Emir Brekalo, Jure Kordić and Nedžad Ćorić questioned them there. Emir was asking stupid questions, where the Army of BiH was, what it was doing, why they were Muslims and so on. Brekalo questioned her around half an hour and said that she and her sister had to undergo additional questioning. Then he took them in a car to a flat, they drove for several minutes before they reached the flat and Jure Kordić was driving. There were four of them in the car – she, her sister, Emir Brekalo and Jure Kordić. On the way, Emir Brekalo was saying nasty things, offered cigarettes, forcing them to smoke. She told him that she did not smoke, but he told her to do as told. She took a few puffs and she started feeling dizzy. She was sure that it was not just an ordinary cigarette because it had an unusual smell. They were taken to that flat and saw that *Convict's Battalion* was written on the door. They took them to the living room, Brekalo, poured some alcohol into glasses and told her and her sister to drink. After that, Brekalo said that they would be questioned separately, took her to the bedroom, brought a glass and wanted her to drink alcohol. He went on drinking alcohol and smoking those cigarettes, he was walking along the room with a knife, threatening her, told her that he had noticed her, but that her parents watched over her, she was helpless and had to do what he told her. She asked him about the parents, his wife, she was telling him to try to understand that she was just a child, that they knew each other, but he told her to shut up, otherwise he would cut her throat, put her in a bag, put some stones inside and throw her in the Neretva. A few minutes after that, he told her to undress, she took off her clothes and felt embarrassed, humiliated. Emir Brekalo then took off his clothes, he was drunk, stoned, he held a knife and told her to lie down. He got on top of her, rolling and dribbling, she was paralysed with fear, all her muscles were rigid, he tried to penetrate her, but he could not completely penetrate her and he kept rolling and dribbling. His sexual organ was touching hers, he then had an erection, all that all lasted for about half an hour, she just turned her head, looking at the knife and praying to god that it finish as soon as possible. After that, at one point, he got off her, lit a cigarette and went on drinking. He told her to get dressed. He took her out and brought her to a room in which her sister was. She felt ashamed and pretended that nothing happened. Her sister was in the room, on the bed with Jure Kordić. She asked her if everything was all right, she did not answer, just shook her head. The two men talked there about the Vojno camp and about the people they took away whom she did not know. After that, they returned them to the house where they found their mother and brother. She was in a terrible mental condition, her legs and arms/hands stiffened and suddenly she lost her consciousness. Then, they took her

upstairs. Nedžad asked her if she was all right, she asked about her family and he told her that they were taken to the Vojno camp, that it was done on the order of Marko Radić. He tried to apologise in a way by saying that he acted upon Emir Brekalo's orders. After that, she was taken to the basement. That night, Emir Brekalo returned to the house where she was. He threw Nedžad out, locked the door and stayed in the room with her. Before that, Nedžad said that there was nothing he could do and left. She knew that Emir would try to finish the rape, he made her take a shower, then take her clothes off, but again he could not penetrate her. He did everything the same as before in the flat. He kept on drinking alcohol, he was in a poor condition, drunk and wanted to humiliate her no matter if he would penetrate her or not. He undressed and his sexual organ touched hers, but he could not penetrate, he was heavy, he dribbled and the witness said that she was completely stiff. In addition to the sexual abuse, Emir Brekalo ill-treated her, threatened to kill her by knife, he moved her legs and after that, he got dressed and left. She was in a severe state of shock that night, she could only remember that when she opened her eyes, she realised that the morning came. Nedžad Ćorić told her that she was free to go. She remembered one Croat and ran there, she stayed there for two or three days and he then drove her to the line of separation, close to the blue bank building near the *Hit* Department Store and she crossed over to the side controlled by the ABiH. Witness L stated that half the town was expelled before them. She knew nothing about her mother, brother and sister. Several days after that, she met her father. Her mother was exchanged from the Vojno camp a month or two later and she was in a terrible condition, she only sobbed. Her brother stayed in the camp, her sister was wounded. Her brother was exchanged later on, her sister even after him. Finally, the family reunited. When her sister came back home, she told her what she went through, but they did not talk much about it. She knew that her sister was taken to Vojno, questioned, taken to the Command, that she was wounded and taken to the hospital. She suffers the consequences even at present, it was very difficult for her to get back to some kind of normality, she could not shed a tear for years. When asked by the Court and the Prosecution if there was penetration when she was with Brekalo, the witness said that during both incidents his organ penetrated only partly, but that it did not completely penetrate.

In her testimony, witness X said that she lived in her uncle's house in the western part of Mostar and that she was arrested on 23 July 1993 by Emir Brekalo, Jure Kordić, Nedžad Ćorić and an individual whose nickname was *Bura*, together with her older sister, witness L, who was 16 and a half at that time, her mother and brother who was 10 years old. She was 15 at the time. She knew Brekalo, Kordić and Ćorić at that time since before the war they lived in the same neighbourhood. They were first brought to a house in the settlement of Rudnik, where Emir Brekalo started questioning them about the Army of BiH, military actions and so on and while doing that, he swore at her, pulled her by her hair and yelled. After that, Brekalo and Kordić took her and her sister to a flat in the Avenija locality in Mostar. "Convict's Battalion" was written on the door. Emir Brekalo offered them some alcohol and cigarettes there, so that she would sing better, he ordered her to smoke, to drink, taking out his knife and pistol. She was forced to light a cigarette although she had never smoked before and to drink some alcohol. She begged him not to do that, but he harshly ordered her. At one moment, Brekalo got up and took her sister to another room, while she stayed in the room with Kordić. She heard Brekalo yelling in the other room, her sister crying and begging, but Brekalo got louder and louder. Half an hour later, Brekalo pulled her sister out of the room and she saw that her sister was crying and that her clothes

were torn and creased. After that, both men returned her and her sister to the house in Rudnik. Her sister got sick in the house and they took her upstairs, while Emir Brekalo drove her, her mother and brother to Vojno.

Witness F testified to have been brought to the Vojno prison on 15 August 1993 and that she found a 10-year-old boy there. She learned that he was witness L's brother. Witness Saja Ćorić also said that she knew that the witness L was in the Vojno prison, where she was sexually abused. When she was released from the prison, she heard that some women were raped and abused. Having inspected the List compiled by the Initiatives Board of Female Prisoners of the "Vojno" Camp, Bijelo Polje, dated 1 May 1996, it was established that the witness L's mother was detained in Vojno and that she was exchanged on 14 August 1993, as well as her underage brother who was exchanged on 1 September 1993.

Having in mind all the evidence, the Panel accepted the testimony of witness L as credible and truthful, since it was consistent with the statements given by other witnesses heard, particularly with the testimony of witness X who confirmed that witness L was in the same room with Emir Brekalo, that she heard him yelling in that room, that she heard her sister crying and begging him and that when her sister came out of the room, she saw that her clothes were creased. Taking into account that witness L gave almost identical account of what was going on in the room when she was with Brekalo for the first time, the Court has found that the testimony of witness L was convincing and reliable. Other statements given by this witness about the taking away of her mother, brother and sister to the Vojno camp and their subsequent release, were also corroborated by other witnesses. The testimony of this witness is convincing because she did not accuse other people for rape, she accused only Brekalo and she provided a very precise and detailed account of that act, she described all her reactions while that was going on and said that Brekalo did not fully penetrate her, only partially. The Court has found that it follows from the account of the rape provided by the witness that she really experienced it and that it was not a made up story.

The Defence challenged the credibility of this witness alleging that there were inconsistencies between her testimony at the main trial and her statements given during the investigation and before the ICTY investigators. To that end, the Defence pointed to some discrepancies with regard to knowing the people who arrested them, the house they were brought to, the door of the flat on which *Convict's Battalion* was written. The witness L stated that she gave several statements about the event, but she could not remember precisely to whom she gave them. She maintained her testimony given at the main trial and her allegation that *Convict's Battalion* was written on the door, and she also described the house that she thought had temporarily been used by Jure Kordić. The Panel has found that there were no major inconsistencies in the testimony of witness L that would affect the credibility of her testimony. The Panel has concluded that some minor inconsistencies in testimonies, particularly of victims of rape, may occur as a result of the trauma suffered, so that the witness could not every time remember everything and provide the same testimony, even to the smallest detail, every time. In the opinion of the Panel, the testimony of witness L is credible and reliable in its key parts, those relating to the identification of the accused and the overall description of events.

The Panel has concluded that it follows from the testimonies of witnesses L and X that on 23 July 1993 Emir Brekalo raped two times witness L who was sixteen at that time, first time in a flat in Mostar, second time in a house in the settlement of Rudnik. Witnesses L and X were consistent in stating that they were arrested on 23 July 1993 by the accused Brekalo and others and that Brekalo's identity was very well known to the witnesses since they lived in the same neighbourhood. The fact that in July in Mostar Brekalo, together with other soldiers, was arresting the remaining Bosniaks, who lived in Bijelo Polje before the war, was substantiated by documentary evidence as well, primarily by the statements given by Ivica Kolobara and Mario Mihalj on 8 July 1993, who mentioned precisely Brekalo as the individual who carried out those activities. The statements given by Kolobara and Mihalj also corroborated the testimony of witness L, who testified that Nedžad Ćorić told her that they did everything on the orders of Marko Radić and that they would take them to the Vojno camp which was established and where Radić was the commander. It clearly follows from their statements that the order to arrest Bosniaks in Mostar came from the Command of the First Battalion of the Second Brigade and there is no doubt that Marko Radić was the commander of the Battalion in the relevant period. It was established in the proceedings that there was a prison for Bosniaks in Vojno in July. The Official Note of 13 December 1993 drafted by the CSB Mostar (evidence 02-43), relating to the release of 57 Bosniaks on 2 December 1993 from the Vojno camp, mainly women and children originally from Bijelo Polje who remained in the parts of Mostar controlled by the HVO, is yet another proof that witness L was arrested together with her family by the individuals who were arresting people in Mostar under the order of Marko Radić. It is stated in the same Note that people were arrested on the orders of the Commander of the First Battalion – Marko Radić -Maka by Emir Brekalo, Ivek Kolobara, Nedžad Ćorić, Tinjak and others. It follows also from the testimony of witness F, as well as from the List of Female Detainees of the Vojno Camp that was compiled in 1996 by the Association of Female Detainees, that the witness' mother, sister and brother were imprisoned in the Vojno camp, that their mother was exchanged before the brother and that her sister was wounded and taken to the hospital.

The Panel has found that the testimony of witness L about being raped by Brekalo is very convincing, clear and that it contains a lot of details, which indicates that the witness actually experienced everything she was talking about. In addition, witness L did not attempt to accuse Brekalo of rape at any cost. She gave a very sincere account of his condition when the rape took place by saying that he was drunk, possibly on drugs and that he wanted to penetrate her even though she was stiff. According to witness L, his sexual organ did not completely penetrate hers, however, having in mind the ICTY practice in a number of cases (Furundžija, Kunarac, Kvočka), sexual penetration existed no matter how slight it was. Given that the witness both times stated that Brekalo's sexual organ penetrated her sexual organ only partly, not completely, the Panel has concluded that the penetration took place. According to the testimony of witness L, the accused Brekalo applied force by spreading her legs apart, ill-treating her, threatening by knife to cut her throat, which all implies that Damir Brekalo coerced the witness both times to have sexual intercourse with him, that he partly penetrated her, whereby he perpetrated the act of rape two times. The Panel has found that Brekalo perpetrated both of the rapes wilfully and with a direct intent, which is obvious from his overall behaviour during the rapes and from his words that he would cut her throat if she refused, put her in a bag and throw her into the Neretva.

The actus reus that satisfies all the elements of rape and sexual violence may at the same time satisfy the elements of the criminal offence of Torture.

The Panel is of the opinion that the rapes and sexual violence the women suffered while they were in the Vojno prison or on their way to that prison, contain also the elements of torture, since rape and sexual abuse are inevitably associated with inflicting strong pain and suffering. (See: Kunarac, Kovač, Vuković, ICTY Appellate Panel of 12 June 2002, pages 149, 150).

Article 172/2/e/ of the CC of BiH provides that torture means:

1. The intentional infliction
2. of severe pain or suffering, whether physical or mental,
3. upon a person in the custody or under control of the accused

The International Criminal Tribunal for Rwanda and ICTY have established that it follows from international customary law that inflicting severe pain or suffering has to be done for a prohibited purpose, such as "the intent to obtain information or a confession, to punish or intimidate, humiliate, coerce or discriminate on any ground against the victim or a third person." Some acts by themselves imply that the victims subjected to such acts will suffer. Rape constitutes such an act ... sexual violence inevitably causes severe pain and suffering, so that it satisfies the elements of torture as well.

The events surrounding the rape and sexual abuse of witnesses L, X, A, E, D, C, AM, AG, B, J and F definitely caused severe suffering, mental pain and disgust in the victims. The mere fact that all the raped women were Bosniaks, that they were mainly taken by night to various places where they were raped, both by the accused and by other armed members of the HVO, that they threatened physically and psychologically not only the victims, but their families as well, that the victims were imprisoned precisely to be subjected to sexual and physical abuse, certainly caused and was intended to cause horrific suffering and the feeling of helplessness with the victims who were kept at such a place, helpless and unable to protect themselves or to avoid that. The witnesses described repeated or brutal sexual abuse they were subjected to by the accused and other members of the HVO who raped and sexually abused them.

Witnesses L and X were under age, almost children, when they were raped and sexually abused. They were terribly humiliated, ill-treated, inflicted physical pain, which all resulted in severe physical and mental suffering. According to witness L, the fear made her stiff and she could not completely recover long after that. Her fear and stiffness obviously did not affect the accused Brekalo, who raped this sixteen-year-old witness two times. Witness X stated that the accused Brekalo raped her brutally, causing her terrible pain, that she was humiliated both times by Radić and Brekalo, intimidated and that she felt helpless and miserable. The Panel has found that during the rape and sexual violence both witnesses, L and X, were also subjected to torture.

Witness A, who was raped by Marko Radić three times, was also subjected to both physical and mental suffering over a fairly long period, she was ill-treated, humiliated and

she was requested to act as a porn actresses. Between two rapes, the accused Radić wanted a HVO member whose name was Ivan to rape her as well, which all shows a real ordeal he put witness A through. Witnesses Saja Ćorić and F stated that when she returned, witness A did not want to take her children in her arms, that she looked beside herself, in tears and dishevelled. Witness A skipped her period as a consequence of stress, so that she thought that she got pregnant, but it turned out that she was not.

When being raped by the accused Marko Radić, witness D was also sexually abused. He ill-treated her, pulled her by her hair, forced her to have both oral and vaginal sex with him. She felt sick. After that, he ordered one unidentified soldier to rape her as well. Prior to that, Damir Brekalo raped the same witness two times, together with Dario Sušac. When that happened, the accused Brekalo took out his knife and put it by her neck, he insulted and humiliated her, slapped her two times in the face, ripped off her clothes, threatened her by his pistol to kill both her and her child, then after he raped her, he told Dario to do that too, and he did so. They did the same thing two to three days later. Witness Saja Ćorić said that after being raped, when witness D returned, she looked terrible, in tears, she did not want to take her child in her arms. This all implies that the witness was subjected to a severe physical and mental agony. Witness E was taken away by guard Mirko Vračević to Mirko Bukara's house, who raped her. Prior to that, the same witness was called by Marko Radić who told her that she had to do everything she was told to do. Since he begged him to spare her, he told her "you won't pickle cabbage in it, will you". Witness E was helpless, for her Radić was in charge, but he ignored her begging, he was merciless, there was no one to protect her. When she was brought to Bukara, who was an HVO member, he raped her.

Witness AG was raped almost every day and during her overall stay in the prison, only on five days she was not raped. Among others who raped her, she named the accused Radić who raped her three times, Brekalo who raped her together with Mihalj and Dragan Šunjić. Witness AG stated that Brekalo and Mihalj jabbed her with a needle and that she felt sick. She also stated that Mihalj procured her out to other soldiers for money. Doc. Dr. Alma Mehmedbašić-Bravo, an expert witness neuropsychiatrist, testified about the consequences this witness suffered after being raped almost daily. She stated that the witness suffered from ..., which occurred as a result of what she had experienced in Vojno and that she was in no condition to testify before the court about that any more.

Witness J was raped by Dragan Škobić, who was a member of the Convict's Battalion and whose commander was Marko Radić. Škobić brought her to a house, told her to do some cleaning, he already knew her name. He told her that he liked a picture of hers that he saw. Before that, the witness described how she was questioned upon arriving in Vojno by Marko Radić and that he took her purse away and searched her belongings. She begged Škobić not to do that, but he took out his pistol and told her that it was better if he did it, than 10 others. Witness J apparently did not have any choice, it was clear that she did not have anyone to protect her and that she was not selected just by chance. The Panel has found that she was raped and that she was helpless and terrified.

Witness C was raped by Damir Brekalo and a soldier whose name was Marko. When she went to Marko Radić for questioning, he told her that she had a real *Balija* name. Before the rape, when they told her that she had something to do, she requested a receipt but

Dragan Šunjić told her that she had no rights and that she was in the hell itself. She was taken to Brekalo and a soldier whose name was Marko. She begged them not to rape her, but they threatened her by a knife they stabbed in the table. When she undressed, they told her to play with herself, she was frightened and they watched and laughed. They forced her to drink alcohol. After some time, they dragged her into the kitchen, where they forced her to put their sexual organ into her mouth. She stayed there long and then they took her to another house where Marko slapped her in the face, threw her on the bed and told her that she had to satisfy them sexually. Then, they suddenly had to go to an assignment, so that they stopped. She was depressed and miserable and she obviously had more than enough reason to feel so. The Panel has concluded that witness C was raped and in the process she was physically and mentally tormented by the two individuals over a fairly long period during that day.

Mirko Vračević raped witness AM at least three times. The witness stated that it happened several times, but she could not remember the precise number. Due to the distress that she still felt when the incident was mentioned, the witness gave short answers, obviously wanting to talk about it as short as possible. She stated that Mirko Vračević always had weapons. She was raped in a room within the Vojno prison and always by night. Many women saw her being taken away by Mirko Vračević at night and bringing her back to the room later on. Witness AM's husband was imprisoned in the Vojno camp in the same period. The witness did not dare to resist. She felt helpless and had to agree. She was humiliated. In the opinion of the Panel, all this implies that the witness was repeatedly raped over a rather long period and subjected to mental trauma. She was also tortured during the rapes.

Witness B was raped by soldiers Babo and Sergej, as well as Tomo Aničić and Dario Mihalj on the premises of the Police and she was raped by all four HVO soldiers on the same day. Before that, the accused Dragan Šunjić took her out of the room and brought her in a car to the house where she was raped, talking about "the pillowing" on the way there and she understood the meaning of that word only after the rape. While they were raping her, she was begging them not to do that to her. Sergej took a knife, put it under her neck and told her to choose between her children and herself. She had to undress and not only that he bestially raped her, but she had to put his sexual organ into her mouth. After Sergej, Dario Mihalj came in and she had to do the same thing all over, after him certain Babo and after Babo, Tomo Aničić. They entered the room one by one and she had to satisfy them all both orally and vaginally. When it was over, Šunjić brought her back to the room. The Panel holds that such a rape by four individuals, who ill-treated, threatened and humiliated the witness contains all elements of the offence of torture.

Witness F was sexually abused by Damir Brekalo and Dario Sušac. She was brought to a room where she found a number of soldiers watching a porn movie. Brekalo told her to go the room with him, then to take off her clothes and when she refused, he took out his pistol, told her that he would kill her and then ripped off her T-shirt. She refused again, then he slapped her in the face and she fainted. When she came around, another soldier came, it was Dario Sušac, who told him to leave her to him. He told her to undress again, she refused and a man showed up at that moment, she heard that his name was Stipe and he ordered them to let go off her. It follows from the testimony of this witness that she was not raped, but she was obviously subjected to acts of sexual violence. As a consequence of

such abuse, witness F lost her consciousness, which is a clear sign of her mental trauma and the intensity of her anguish. Therefore, the Panel finds the witness was tortured, as well, when she was subjected to sexual violence.

It arises from the presented evidence and looking at it from the perspective of a widespread and systematic attack on Muslim civilians in the Mostar municipality and persecution of Bosniaks on political, ethnic and religious grounds, the accused wilfully participated in it, committing the criminal offences of Rape and Sexual Violence, together with the criminal offence of Torture in violation of Article 172/1/g/ and f/ of the CC of BiH. The Court has concluded that the cumulative convictions for rape and torture for the same behaviour are allowed, since each of the criminal offences contains a specific element that has to be proved by facts, which does not have to be proved for the other offence. Specifically, for rape it is sexual penetration, while for torture, it is prohibited intent. The rape of the witnesses X, L, A, E, D, AG, C, J, B, AM and F also satisfy legal requirements of torture in violation of Article 172/1/f/ of the CC of BiH, since the Court has found that the rape caused severe physical and mental pain and suffering of the victims. The acts were perpetrated wilfully and with a prohibited intent, that is, the discrimination of victims on ethnic grounds – all of them were Muslims. The victims were illegally arrested in their flats in the western part of Mostar and brought to the place of Vojno, only because they were of different ethnicity than the accused. All the women were victims of violence only because they were not of Croatian ethnicity.

It follows from the foregoing that all the accused committed rape, while some of them also sexually violated the women who were in Vojno. Therefore, the accused committed some of the offences, while some rapes and sexual torture were perpetrated also by other members to the Joint Criminal Enterprise. The accused were aware of the unlawful acts of other individuals who committed rape and they also knew which goals were behind the rapes of the mentioned witnesses and they wanted that goal to be achieved. Since the Panel has concluded that when the victims were raped and sexually violated, they were at the same tortured, the intent of the accused included such an implication as well.

Torture and other Inhuman Acts

a) Elements of the of the Criminal Offence of Torture

According to the definition under Article 172 (2) f) of the BiH CC, the Torture, within the meaning of Article 172 (1) f), is *the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under control of the accused; except for the pain or suffering arising only from lawful sanctions.*

Therefore, the specific elements of the criminal offence of Torture pursuant to Article 172 (2) f) are the following:

- 1) intentional infliction;
- 2) of severe physical and mental pain or suffering; upon
- 3) a person in the custody or the control of the accused.

The Panel notes that these elements differ from the elements of torture in the customary international law and how it is defined in the jurisprudence of ICTY and ICTR, at the time when the alleged criminal offences in this case were perpetrated. More precisely, according to the customary international law, one more element is required based on which the charged act must be aimed at extortion of information or admission, punishment, intimidation or exerting pressure on the victim or a third person, or discrimination against the victim or a third person on any basis.

This additional element established by the ICTY, the requirement of “*the prohibited purpose*“, is not contained in the definition of torture under Article 172 (2) f). The finding that neither the court precedents nor conventional law give sufficiently precise definition of the criminal offence of torture as the violation of international humanitarian law, applying Article 2, 3 and 5 of the ICTY Statute, and Article 3 and 4 of the ICTR Statute, trial chambers of ICTY and ICTR consulted international conventions on human rights to establish legal elements of torture pursuant to the customary international law. Namely, the trial chambers inferred that Article 1 of the Convention on Torture reflects the customary international law to a great extent. The Trial Chamber in the *Čelebići case* notes that the definition under Article 1 of the Convention on Torture includes the definition from the Declaration on Torture and is the basis of the definition in the Inter-American Convention on Torture and therefore it reflects the consensus which is a characteristic of customary international law. The Trial Chamber in the *Furundžija case* further supports its conclusion noting that the UN General Assembly adopted the Declaration on Torture by consensus, that the Convention on Torture contains all required elements which are implicitly contained in the general conventional prohibitions of torture, and that the definition from the Convention on Torture was applied by the Special Reporter of the United Nations and adopted by the ECtHR of Human Rights (ECtHR) and the United Nations Commission for Human Rights. Considering the conclusion of the Trial Chamber the Appeals Chamber in the *Furundžija case* agreed and found that *the definition given in Article 1 of the Convention on Torture reflects the customary international law*. Having considered the aforementioned conventional definitions and the definition of torture in the ECHR on Human Rights (ECHR), the Trial Chamber in the *Kunarac case* agreed that in this regard “*it should be accepted that the Convention on Torture has the status of the customary international law*”.

Having consulted the appropriate instruments and court jurisprudence, the Panel also concludes that it should be considered that the Convention on Torture reflects customary international law related to the criminal offence of torture in the given time period. More precisely, as for the elements of “*the prohibited purpose*“, the Panel also submits that the ICRC Commentary of Article 147 of the Geneva Convention relative to the Protection of Civilians in Time of War (IV Geneva Convention), is a convincing authority with respect to the significance of this element for the criminal offence of Torture. The IRCC Commentary deals more with the purpose than with the gravity of the offence of torture itself and points out that *what matters is not the pain as such, but the purpose for which it was caused*. As for the specific *prohibited purposes* as a requirement for the criminal offence of Torture, the Panel infers that the purposes mentioned in the Convention on Torture also constitute customary international law, and that they are sufficient for the needs of these proceedings. The Panel also notes that the prohibited purpose does not have

to be the only or the main purpose, it is enough for it to be a part of the motivation which is behind the given conduct.

Accordingly, having applied Article 172 (1) (f) of the BiH CC on the facts found in these proceedings, the Panel concludes that, in addition to the specified elements under Article 172 (1) (f) of the BiH CC, which have been proven beyond doubt, the evidence further established that the offences and omissions were committed for the prohibited purpose.

The element of suffering under Article 172 (2) (f) of the BiH CC stipulates that it has to be “great” pain or suffering, the standard which is inevitably imprecise and dependant on the context. Namely, the definition of torture as an offence which causes great pain and suffering has to be compared with lesser offences of inhumane treatment and other inhumane offences where “severe” pain or suffering are required. Although it is impossible to establish the clear difference between “great” and “severe” pain and suffering, it is clear that the term Torture is reserved for more limited, worse subgroup of inhumane acts. The severity of pain or suffering should be considered also objectively and subjectively in the light of all circumstances surrounding the offence. The Trial Chamber established the following, but not the final, objective issues: *the nature and context of the pain causing, the intent and institutionalization of maltreatment, the manner and methods used and the inferiority of the victim and that an individual is maltreated during the long period of time or that he or she was subjected to the repeated and various form of maltreatment, the severity of the offence should be accompanied by a pattern or the same forbidden goal and demonstrated that this long period of time and repetition of the offence are mutually connected.*” Similarly, the Trial Chamber in the *Kvočka* case recognizes that the subjective, individual circumstances of the victim should be taken into account in evaluation of the severity of pain and suffering: *the physical and mental consequences which such treatment caused to a victim and in some cases the factors such as the age and gender of the victim or his/her health condition.* The causing of permanent injury is not required for an offence to cause a sufficiently strong pain or suffering to be considered as torture. The Human Rights Commission also concluded that the mental torture includes threats of cutting off limbs. Article 3 of the ECHR stipulates that *No one shall be subjected to torture or to inhuman or degrading treatment or punishment.* The ECtHR concluded that *a special stigma of torture (is only attached) to deliberate inhuman treatment causing very serious and cruel suffering.* The Court concluded that a number of different types of maltreatment amount to torture, including: hanging of the victim by his arms tied behind his back (“Palestinian hanging”), Aksoy; repeated punching, kicking and hitting with objects, requesting that he orally satisfies a male policeman before he urinates at him, the threat by a burner and syringe; application of “falake” (“falange”) and breaking of the breast bone; electric shocks, hot-and-cold water torture, hits in the head and psychological pressure.

b) Elements of other Inhuman Acts

The elements “of other inhuman acts” as Crime against Humanity under Article 172 (1) (k) of BiH CC are the following:

- 1) the acts by their nature have to be similar to those which are listed under Article 172 (1)(a)(1);
- 2) the acts have to cause a great suffering or serious physical and mental injuries or damage the health; and
- 3) the acts have to be committed with an intention to cause a great suffering and serious injuries.

The legal issues which were previously explained regarding inhuman acts equally refer also to the analysis which the Panel made regarding the allegations and facts in this section.

Inhumane living conditions may cause enough suffering or injuries and may be sufficiently severe that based on the degree of gravity they amount to other forms of inhumane acts such as crimes against humanity. The ICTY also concluded in *the Krnojelac and the Kvočka cases* that inhumane living conditions may amount to crime against humanity. As for the other offences under Article 172 (1) (k) of the BiH CC, the key issue is if the offences are similar, based on their gravity, to the criminal offences listed in that Article and if the offences caused serious injury or great suffering.

Torture of Witness AI

Count 3. Radić, 9. Šunjić, 15. Brekalo, 24 Vračević

The witness AI testified that he was arrested on 2 September 1993 in his apartment in Mostar together with his wife, his six-year old daughter, father and his father-in-law. They were arrested by members of the HVO Bijelo Polje Battalion among whom he knew Ivica Kolobara well and a person whose name he knew to be Tinjak. He was taken first to the location of Đubrani where Kolobara and Tinjak demanded money from him, and when he said that he did not have any money they sent him to collect money from other prisoners, all the money they had on them. During the night they came from Đubrani to Vojno, where they were received by Mario Mihalj and Dragan Šunjić who told them: “*Welcome to hell, only few of you will get out of here*“. The witness then stated that he was taken for interrogation and that he was beaten there by Mario Mihalj and the Accused Šunjić who punched, kicked and hit them with a baton, and one HVO soldier put a pistol in his mouth. At the time he thought that it was all over and that his life came to an end. This beating lasted for twenty minutes. He sustained many injuries while he was in the Vojno Prison and each day it became harder and harder. Apart from this beating, the witness stated that on one occasion he was taken in front of the garage and together with Kajtaz he was beaten again so that due to that beating he was not able to stand up, his mouth was hurting, his head and nose were bleeding. He did not ask for medical help and he could not get any. The witness stated that in Vojno he was detained in a garage and that they were taken to perform labor, and after they returned to the garage, they regularly beat them up. He recalled one incident when they were ordered to hit their heads against the metal door and they had to repeat that several times. This witness found another incident striking and it happened one evening when Mario Mihalj and Dragan Šunjić came into the garage where they were held with torches in their hands and they hit whomever they could reach. Before that they had asked who was from Vrapčići and they beat the witness so badly, breaking several of his ribs. His father who died after he had been released from the prison was also beaten up on that occasion. On that occasion he was beaten by Mihalj i Šunjić, but there were other persons who beat him, whom he did not know. Then he was ordered to lie down

on the floor and kicked him with his booted feet. Among all beatings the witness stated that the worst one for him was when a guard by the name of Mirko came who took him to the house where Mario and Dragan were and then he thought that it was his end. They tied his hands with wire and produced electric power. Mario was doing that while Dragan was jumping over him. These electric shocks seemed like eternity to him. One second seemed like a year.

The witness AG who is the wife of witness AI, confirmed in her statement that was read out at the trial, that she was taken the Vojno Prison together with his husband and other family members. She stated that her husband was held in the garage. One day a guard Kuna allowed her to see him. He was not able to stand on his feet because he had been tortured with electricity. He was also beaten up and he had seven ribs broken. Those fractures did not heal properly, because the proper medical assistance had not been provided to him in Vojno.

The witness Ramiz Bebanović testified that after he had arrived to Vojno he was interned in the garage where he found around ten detainees. The same witness stated that these detainees were in a bad shape. They were not registered by the Red Cross, thus they could do with them whatever they wanted. The protected witness AI was also in that group.

The witness Zulfo Humačkić said that after he had arrived he was interned in the garage. They found 10 to 15 detainees who were in terrible shape. They suffered from malnutrition. They were injured and beaten up. He saw that they had head injuries and bruises. He stayed in the Camp for ten days.

The witness Aziz Suljević testified that on one occasion Mihalj and Šunjić entered the garage with a torch, and at that moment all of them had to stand up, and they looked for bigger men whom they would beat. Also, the same witness stated that then Mihalj told the detainees to hit their heads against the wall and the door, and that all detainees had to hit their heads against the wall that evening. The witness said that on that occasion Mihalj beat him up.

The witness Mačković Ramiz testified that the incident from the garage when Mario Mihalj ordered them to line up and to move one step from the garage wall, put their hands behind their backs and hit their heads against the wall. They had to hit their heads so hard until they fractured their skulls. If they failed to do so then the HVO soldiers grabbed their hair and hit their heads against the wall. There were around 35 of them in the garage who had to hit their heads against the wall. Apart from Mihalj, Dragan Šunjić was also in the garage.

The witness 153 stated that he knew the person under the pseudonym AI and that he was in the Camp with him. He pointed out that also other detainees were subjected to the electric shocks, but he did not know which ones. He was released from the Vojno Camp together with the witness AI.

Findings and Opinion of the specialist, which was made in the Regional Medical Center *Dr. Safet Mujic* in Mostar, Secondary Medical Protection, of 13 September 1996 indicate that the ribs of the witness AI were broken from I-V, *sin* and from IV to VII *dex*. Also, the Findings and Opinion regarding the witness AI issued by the Neuropsychiatric Ward of the

Dr. Safet Mujic Regional Medical Center show that in 1996 he was diagnosed with a phobic anxiety disorder.

The Panel accepted the statement of the witness AI as credible and reliable, as it is consistent with the statements of other mentioned witnesses, as well as with the documentary evidence. Other witnesses for the Prosecution, too (Saja Ćorić, witness J and D, Ramiz Mačković, witness AD who said that he was beaten with a baton by Mihalj upon his arrival) mentioned the beatings upon arrival to Vojno during the interrogation in the rooms where Mihalj and Šunjić were, thus the Panel believes that the testimony of the witness AI in stating that he was beaten up upon his arrival to prison is credible, too. The incident described by the witness AI regarding the hitting of prisoners who were in the garage against the garage wall and door was also described by the witnesses Ramiz Mačković and Aziz Suljević, who stated that other detainees had to do it, too, and that that the heads of many prisoners were covered in blood. The beating up of the witness AI in the garage when his ribs were broken was confirmed by the witness AG, and it can also be seen in the medical documents bearing the name of the witness AI that his ribs had been broken. The witness AG confirmed that the witness AI was connected to the electric power, having in mind that other witnesses for the Prosecution also testified that they were tortured in the same manner (Saja Ćorić, the witness 153), so that was evidently a torture method used in Vojno. Based on all the aforementioned, having in mind that the witness AI was maltreated during a longer period of time and was subjected to repeated and various types of maltreatment, including electric shocks, and the consequences the witness suffered (broken ribs and anxiety disorder), the Panel believes that the witness AI, while he was in the Vojno Prison, was inflicted severe physical and mental pain and suffering by members of the prison staff, including the Accused Dragan Šunjić. All this was happening at the time when the witness AI was in the Vojno prison under their control, and that there was a clear intention to inflict on him severe physical and mental pain, and make him suffer as much as possible. These actions were aimed at the discrimination on ethnic grounds, which is why the Panel qualified these acts as the Criminal Offence of Torture under Article 172 (1) (f) of the BiH CC.

Torture, Witness 153

(Count 3 Radić, 9. Šunjić, 15. Brekalo and 24 Vračević)

The witness was arrested on 15 August 1993 in Mostar and taken to the Vojno Camp. The witness was only 16 years old, and his mother and his younger brother who was 6 at the time, were also arrested by the HVO soldiers. He recalls that there were four of them, Kolobara nicknamed Ivek, Jež, Ćorić and Tihak. He knew Kolobara from before and he knew his name even before the arrest. He found out the names of the other three persons while he was in prison. The witness also knew that those soldiers were members of the HVO Bijelo Polje Brigade. He knew that because he used to see them before the arrest. They were taken out of the apartment through Đubrani to the Vojno Camp. They were transported by a small *zastava* van together with other families. The witness knows that Mario Mihalj was the Vojno Camp Commander, a Dragan Šunjić whom he knows by the nickname of *Petarda* was the Deputy Commander. Mario Mihalj and his Deputy Dragan Šunjić received the witness on the first day in the Vojno Camp. He testified that on that first day while he was introducing himself he was hit and a slapped by Mario Mihalj and that the Accused Šunjić was present, too. He was interned in the garage, where he stayed

for about one and a half months, and he saw Mirko Vračević there on daily basis. While he was in Vojno the witness was beaten up several times, and the result of those beatings was concussion and hearing impairment. The witness 153 pointed out that one day after Mirko Vračević had taken Arif Omanović from the garage who was brought back malformed from the beatings, as ordered by Mihalj, Mirko Vračević came for him and took him to Mario Mihalj. The witness went with him to a room which was empty. He was received by Mario who ordered him to strip to the waist and then the beating started which lasted for about two hours. The beating lasted for about 2 hours. During the beating the witness managed to bear all the hits and he remained standing on his feet, which made Mario mad who then continued beating the witness who eventually fell on the ground due to the hits he received. Subsequently, he let him go, but it should be noted that he used two police batons, a black and white ones, part of a curtain rod and a handle of a tool and that he beat him with all those objects. After that beating, Mirko Vračević took the witness to the garage when the witness lost his conscience. Then other prisoners helped the witness because he was covered in blood. He could not move due to the pain. They lifted him up to prevent him from suffocating in his saliva and blood. The other situation was when Mario Mihalj connected the witness to the electric power. Apart from Mario, the Accused Dragan Šunjić and Mirko Vračević were also present on that occasion. The witness was brought to a room where Dragan Šunjić was already playing a guitar, and Mario told the witness: "You are going to sing now". There was a cable in the room which they connected to the witness's fingers and started turning the electricity on and off, subjecting him to electric shocks in that manner. Apart from those electroshocks, the witness was pricked by Mirko Vračević several times with a bayonet. During that time Dragan Šunjić laughed at his suffering, playing the guitar. The witness did not know how long all that lasted, but it was an eternity to him. In addition to these beatings, the witness was beaten up two more times, once in front the garage when they were carrying the food. Mario ordered him and another two detainees to do the push ups, and then he ordered them to stand up upon which Mario hit him twice and as a result he fell down. Then Mihalj rushed and kicked him in his chin, consequently his head hit a bar and it was then when he suffered concussion. The witness was beaten up by Mario Mihalj while he was cleaning the toilette when Mario ordered him to tell him: "*Mr. Commander, you are Ustasha*", which the witness had to do because he threatened him that on the contrary he would kill him. Then Mario beat him up because he had insulted the Commander. The beatings happened on a daily basis. They would come to the garage and beat them up. He never received any medical aid. The witness 153 pointed out that other detainees, too, were subjected to electroshocks, but he does not remember which ones. He saw Marko Radić in Vojno 4-5 times, out of that number twice when he came to the Command to visit Mihalj, and a couple of times when he took the food to the front, as he had to pass by his Command. Once Marko Radić came to Mihalj together with Emir Brekalo. He saw Emir Brekalo around 5-6 times. On one occasion he asked him to bite off an ear of a prisoner, but he did not do that. He saw Dragan Šunjić on daily basis. While he was in Vojno on one occasion he was ordered to show his injuries, together with Arif Omanović, in front of detainees who had just arrived, to see what would happen to them next. He could hardly take off his shirt, as his body was black and blue, his head was swollen. Arif was in even worse condition. He was released from Vojno in late September 1993, when all men were taken to Heliodrom.

The witness 151 testified that after the arrival to Vojno, he was received by Dragan Šunjić and Mario Mihalj. Then they brought before them two prisoners among whom one was

Arif Omanović, and the other was the witness 153. He saw that they were black and blue due to blows, and they were told that they would all be like them if they did not carry out their orders.

The witness Handžar Azer who came to Vojno in the second half of August stated that upon his arrival he was received by Mihalja and Dragan Šunjić, and that 2-3 soldiers were brought before them and ordered them to remove their clothes for them to see their bruised bodies. In addition, they said that they should know what would happen to them next if they did not obey. Those men were brutally beaten up. The witness stated that he did not find out the names of the prisoners. He spent 11 days in Vojno.

The witness E whose son was the witness 153 testified that she personally was not physically maltreated, but her son was, as well as other women. The witness E was, as all other women in the Vojno Camp, separated from the men, and she saw her son on one occasion shortly before the exchange. She saw that he his forehead was broken and that he had a big wound on it, and that at the moment he lifted his hand to his head to hide the wounds.

The witness F said that she saw when the son of the witness E lifted his t-shirt in front of the line of prisoners, and on that occasion she saw bruises on his back which made her blood ran cold.

The Panel accepted the statement of the witness 153 as credible and reliable, as it is consistent with the statements of other mentioned witnesses. Beatings upon arrival to Vojno at the reception and interrogations by Mihalj and Šunjić were mentioned also by other witnesses for the Prosecution (Saja Ćorić, the witness J and D, the witness AI, Ramiz Mačković, the witness AD who stated that Mihalj after he had arrived beat him with a baton) thus in the opinion of the Panel, the statement of the witness 153 that he was also beaten up after he had arrived in prison, is credible. The Panel also accepted the statement of the witness 153 that he was subjected to electroshocks on one occasion, given that the statement was presented convincingly, with many details, in the manner suggesting that the witness personally experienced that event. Apart from that, the connection to the electric power as one of the prisoner torture methods in the Vojno Prison was mentioned by other witnesses for the Prosecution who pointed out that they were tortured in the same manner (Saja Ćorić, witness AI) therefore it was evidently a method of torture used in Vojno. Other maltreatments and beatings of the witnesses in the Vojno prison, that caused numerous injuries were proven through the witness 151, Handžar Azer and the witness F who consistently stated that they saw the witness 153 when he took his clothes off in front of the newly- apprehended prisoners, and that on that occasion, they saw many injuries on his body. Based on all the mentioned, and having in mind that the witness 153 was maltreated for a long period of time, that he was subjected to repeated and various types of maltreatments, including electroshocks, as well as the consequences the witness suffered, such as numerous bodily injuries, the Panel submits that the witness 153 in the Vojno Camp, while he was under the control of the Accused, suffered severe physical and mental pain, and that on that occasion there was a clear intent that the strongest possible pain and suffering should be inflicted on him, and to make him suffer as strongly as possible. The purpose of this beating and torture was to intimidate other detainees and to discriminate

against the witness 153 on ethnic basis. Therefore, the Panel qualified these acts as the criminal offence of Torture under Article 172 (1) (f) of the BiH CC.

Maltreatment of Enver Tihak,

(Count 3. Radić, 9. Šunjić, 15. Brekalo, 24. Vračević)

During the examination the witness Saja Ćorić stated that Zejna and Enver Tihak were arrested in Mostar in the Avenue, and then together with others they were transferred through the location of Đubran to the place of Vojno where they were detained. Mirko Vračević, Mihalj and Dragan Šunjić received them in Vojno. Mihalj told them in Vojno: “Welcome to hell”. Then all of them had to introduce themselves. Whoever did not “properly” introduce himself he would be hit and they were beaten most by Mario Mihalj. The witness stated that Enver Tihak was severely beaten on that occasion, who was all covered in blood. When he was brought into the room, music was heard, and then Enver’s cries and screams were heard. When the witness entered into the interrogation room, she saw there Mihalj, Dragan Šunjić, Dario Sušac and another soldier.

The witness J in her statement said that Zejna and Enver Tihak were among the arrested persons, and that they were transferred to Vojno by truck. Upon arrival in Vojno they were told: “Welcome to hell”, and then they started interrogating them. Enver Tihak was the first to enter the room. When he appeared from that room Enver was all covered in blood, and his mouth was bleeding and his shirt was all covered in blood. Having seen Enver, they were petrified because the interrogation of the others followed. The witness stated that present in the room at the time were Mario Mihalj, Dragan Šunjić, Marko Radić and Dario Sušac.

The witness D also testified that Zejna and Enver Tihak were also among the arrested persons and that, together with other civilians, they were transferred by a vehicle with tarpaulin top through the village of Đubrani to the village of Vojno. Mihalj, Dragan Šunjić and Mirko Vračević received them in Vojno. Mihalj then said: “Welcome to hell”. All civilians were interrogated in the command post of Mario Mihalj and Enver Tihak was the first among them who was severely beaten up on that occasion. While Enver Tihak was in the interrogation room, she heard him screaming. They were beating him and he saw him coming out and he was all covered in blood. As soon as the witness D entered the interrogation room, she saw Mihalj and Dragan Šunjić there.

Based on the testimonies of the aforementioned witnesses which the Court accepted as credible as they are mutually fully consistent, the Panel established that immediately after the arrival in the Vojno Prison, the detainee Tihak Enver was beaten up who on that occasion sustained obvious injuries. This beating took place in the Command building of the Vojno Prison, in the room where the interrogation was conducted. When they arrived in Vojno, the Accused Šunjić and Vračević received them, while Dragan Šunjić was in the room where they were interrogated that evening. All witnesses saw Tihak entering the interrogation room, and then his screams and cries were heard. Also, all witnesses confirmed that at the moment when Tihak got out of the room he was all covered in blood. The witness J stated that the blood was running from his mouth and his shirt was also blood-stained.

The Panel considers that by these acts, a severe physical injury was caused to Enver Tihak and great suffering. Given that this act was committed against this person once, and that while this violence was committed, he was crying and screaming, and that the injuries could be seen on his face, the Court holds that the acts were committed with the intention to cause great suffering and serious physical injuries. In the opinion of the Panel, this act was intentional, entirely planned, as the perpetrators right in the beginning informed the prisoners that they had come to hell. By the same act severe physical injury was caused to him, which can be concluded by the abundance of blood, as well as the fact that Tihak was all covered in blood. Great suffering was established having in mind that the beating up was evidently rather painful, as Tihak, while he was beaten up, cried and screamed. In doing so, the severity of the inflicted pain and suffering, in the opinion of the Panel, was not sufficient for those acts to amount to torture. The Panel had in mind that the threshold of the inflicted injuries and suffering in the case of inhumane acts is lower than the injuries and suffering needed for the offence to be qualified as torture. Therefore the Panel finds that by these acts the offence of Other Inhumane Acts under Article 172 (1) (k) of the BiH CC, was committed.

Maltreatment Zejna Tihak

(Count 3 Radić, item 15 Brekalo, Count 24. Vračević)

The witness J stated that one day in the room where the detainees were held, Mario Mihalj and Dragan Šunjić burned the sweater of Zejna Tihak, who started burning at that moment, and they started suffocating because of the smoke because they did not allow them to extinguish the fire. On that occasion Mario and Dragan did not have any reason to burn Zejna's sweater, it was only their hatred towards all prisoners who were Muslims. The witness C stated that she saw the guard Mirko maltreating Zejna whose surname she could not recall precisely. When Zejna asked him for a cigarette, Mirko started shouting at her, and he pointed his rifle at her and, doing so, he pushed her out of the room.

This event was described in her statement also by the witness Saja Ćorić who said that Vračević at the moment when Zejna Tihak asked him if he could give her a cigarette, he started beating her by the rifle butt, due to which Zejna fell down, and she thought that she was assisted to stand up by the witness K.

The witness K described this event in the investigation and said that Mirko Vračević on one occasion beat up with the rifle butt and kicked Zejna Tihak. The same witness who was in the room with Zejna Tihak said that Mario Mihalj burned the sweater of a woman and threw it on the blankets which started burning, producing a dense smoke. They started suffocating, looking for the way out, and one woman managed to extinguish the fire.

The witness B stated that Mirko Vračević entered the room and took out her, Zejna Tihak and Emica Ćurić in front of the house, where he brought blood-stained blankets from the garage. On that occasion he held the M-48 rifle and told them to wash the blankets, and if they failed to do so, someone else would wash their blood from them.

It follows from the statements of the mentioned witnesses that the detainee Zejna Tihak was intimidated in the Vojno prison and that she was abused. The Court did not find that the Accused Šunjić was present personally in the room when Mihalj burnt Zejna's sweater,

as that fact was not stated by any other witness. However, the Panel established that clothes were burnt in the room where the female detainees were, by Mihalj, and that it was the sweater of Zejna Tihak, which caused a dense smoke and fire. Based on the statement of the witnesses this incident upset all women present in the room, including Zejna Tihak, who started suffocating due to the dense smoke, and they were in danger of catching the fire too. In the opinion of the Panel this offence was violence against Zejna Tihak and other detainees in the room. Also, from the consistent statements of the witnesses Saja Ćorić and K, it ensues that Mirko Vračević on one occasion, when she asked him to give her a cigarette, he physically attacked her, hitting her by a rifle butt. That event was also confirmed by the witness C who said that Mirko Vračević, when Zejna asked a cigarette from him, started shouting at her, pushing her out of the room with his rifle pointed at her, however the same witness could not be precise regarding this event, stating that she could not remember if Zejna Tihak was taken out of the room, thus the Panel concludes that the statements of Saja Ćorić and the witness K about this offence, is much clearer regarding the description of acts. After all, the witness C, too, classified these acts as the abuse of the detainee Zejna Tihak, which suggests that the act left a vivid impression in the memory of the witness. In *the Radisav Ljubinac case, No. X-KR-05/154*, hitting of detainees with rifle butts is an inhumane act. This hitting with rifle butts, did not result in serious physical injuries, but the Panel had in mind that the same act was taken against an elderly woman, that the act was taken by an armed man, that there was no serious reason at all for such act and that evidently it was violence against a helpless woman while she was in prison. In the opinion of the Panel this hitting with the butt was meant to cause great suffering to Zejna Tihak and due to the fact that the blows with the rifle butt were delivered by a man, who was evidently angry while doing so, and that Zejna due to the blows received fell down and was beaten up, suggest that by this offence great suffering was caused to her. The Panel accepted as credible also the statement of the witness B, too, that Vračević gave to her, Emica and Zejna Tihak blood-stained blankets from the garage to wash them, that he was armed and holding a M- 48 rifle and told them that they had to wash these blankets, and if they fail to do so, it might happen that someone else would have to wash their blood. More specifically, from numerous witness statements for the Prosecution it follows that the garage was covered in blood. The witnesses who spoke about the cutting of throats of two prisoners in the garage in Vojno, testified that the garage was totally covered in blood. Also the witnesses who stated the events regarding the hitting of the prisoners' heads against the garage wall and door, said that many of them had bleeding injuries. All that clearly suggests that blood-stained blankets were in the garage. It is also proven in the proceedings that the women detainees in Vojno, among other chores, also washed all that was necessary for the HVO, therefore it is entirely acceptable that three prisoners, including Zejna Tihak herself were ordered by Vračević to wash these blood-stained blankets in the garage. The act of washing the blankets itself was not pleasant, particularly because the detainees knew that it was the blood of male detainees, with whom they shared the same destiny. This is why Mirko Vračević threatened that they had to wash those blankets, because if they did not do that someone else might wash their blood. By doing so, Vračević holding the rifle in the hand seriously intimidated the detainees, including Zejna Tihak. Having in mind all these maltreatments that Zejna Tihak experienced, that she was subjected to various form of maltreatment for a long period of time and by many persons, that these offences were committed while she was in prison and that they were mutually connected, and also, having in mind the consequences that resulted from them, that is great

suffering of this detainee, the Panel holds that by these acts another inhumane act was committed under Article 172 (1) (k) of the BiH CC.

Maltreatment of the Witness AA

(Count 3. Radić, 9. Šunjić, 15. Brekalo, 24. Vračević)

Witness AA stated that he was arrested on 13 June 1993 in the village of Rotimlja by the HVO members. After the arrest he was taken to the Gabela Camp, and he was later transferred to the Heliodrom Camp where he stayed for nine months. During his detention in the Heliodrom Camp, the witness was taken to perform forced labor to the village of Vojno. During the first coming to Vojno, on 6 July 1993, he was interned in the basement of a house; there were eight of them prisoners who came to Vojno and later on this number increased. The witness stated that for the first time he stayed in Vojno for twenty days, and that each day they were taken to perform labor. They did the works mainly on the separation lines between the two warring parties and they were often exposed to cross-fire. The witness was beaten up several times during his first detention in Vojno and the soldier nicknamed *Bačva* took the most active part in it. Apart from often being beaten up by this soldier nicknamed *Bačva* the witness stated that he and other prisoners were beaten up by all those who were there. The second departure to Vojno happened in mid August when Mario Mihalj and Dragan Šunjić arrived there and personally selected 80 prisoners to work in Vojno. He found out the names of these two from the prisoners who had already been in Vojno and returned again to Heliodrom. After arrival in Vojno, one group of prisoners, around 30 of them was immediately beaten up, and they were mostly beaten by Mario Mihalj. On that occasion the witness too, received a strong blow by Mario Mihalj. The witness recalls guard Mirko, who had problems with one eye and who permanently yelled and beat the prisoners. Mirko did so following the order of Mario and Dragan Šunjić.

The witness Zulfo Humačkić in his statement confirmed that together with him in Vojno there was also the witness AA. When they came to Vojno they were brought in a garage, and they were lined up and interrogated, which was more a provocation than real interrogation. Whoever could not introduce himself well he would be beaten. They used baseball bats for the beatings.

The witness AD stated that he was held in Vojno in a garage together with other 35 prisoners. After arrival in Vojno, Mario Mihalj beat them with baseball bats, which lasted for about three hours. The witness stated that on that occasion Emir Salčin, Ibro Omerika and the witness AA were brutally beaten up.

From the statements of the said witnesses, which are consistent and mutually complementary, and which the Court accepted as credible, it follows that during his detention in Vojno the acts of violence were committed against the witness AA on several occasions. The witness was in the Vojno prison twice and both times he was subjected to physical assaults. The first time he was beaten up by the HVO soldier nicknamed *Bačva* and that happened in July 1993. In the same month among eight prisoners who were brought in upon the request of the 1st Battalion there were Čilić and Lulić who were brutally beaten up by the accused Brekalo, and on the same evening they were taken from the basement. He was beaten for the second time in August by Mario Mihalj. This time the

witness AA received a strong hit by a baseball bat. This was confirmed by the witness AD who stated that it was the witness AA who was beaten severely on that occasion. Out of 30 apprehended prisoners who were maltreated by Mario Mihalj the witness AA was among the three who were brutally beaten up. Zulfo Humačkić who was brought to Vojno in late August, together with the witness AA, stated that upon arrival they were beaten up with a baseball bat. As the witness AA was beaten up several times in Vojno in the presence of other prisoners, and as at the time of maltreatment he was detained in inhumane conditions, as Mihalj hit him strongly with a baseball bat without any reason, in the opinion of the Panel those acts toward this witness were committed with an intention to humiliate and cause great suffering. Based on the strength of the blows it was evident that the result was produced, too, as it was evident that a strong hit with the baseball bat by a special unit member causes a great suffering. By these acts the witness was humiliated and violence was committed against him, by beating him up, and among the instruments used for that purpose was also a baseball bat, as an object which causes great suffering on the part of the witness. The Panel considers that by these acts the criminal offence of Other Inhumane Acts under Article 172 (1) (k) of the BiH CC was committed against the witness AA.

Torture of the Witness AB

(Count 3. Radić, 9. Šunjić, 15. Brekalo, 24 Vračević)

The witness AB whose statement was read out at the trial testified that he particularly recalled the incident he survived on the fourth day after his arrival to Vojno. On that day one group was taken to the front line for reinforcement of trenches from the brick factory to the Convent. The witness saw Marko Radić near a bunker escorted by an HVO soldier who was his bodyguard. At one moment a sniper hit the bodyguard of Marko Radić. The prisoners who were at the time working on the front line were ordered to retrieve this HVO soldier out and take him to the outpatient clinic. Enver Kajtazi, Husnija Čorajević, Željko Čakalović, Aris Začinović and he were in that group. However, given that this HVO soldier died in the meantime, they were blamed for his death because they did not take him immediately. Then they were subjected to beatings by Jure Kordić, Mario Mihalj and a third person whom he described in the first statement given in the investigation, and for whom the investigator concluded that it could have been Emir Brekalo. He did not know the name of the third person. On that occasion those three HVO soldiers beat him in turns and these four mentioned prisoners with truncheons, and they kicked and punched them, too. Due to these blows Kajtazi lost his conscience first, and then Mario Mihalj attempted to make him regain his consciousness, and as he failed, he took a knife from a case, and told them to face the wall, and then he heard the rattling in his throat. Subsequently, they covered Kajtazi's body with a blanket, and continued kicking them and hitting them with truncheons. Then Čorajević was knocked down whom they also attempted to make regain his consciousness, and as they failed, they killed him too, in the same manner. Then a person entered the garage whom Mihalj addressed by the name *Dragan*, and then they got out of the garage together, telling them to face the wall and not to move. Then he heard the sound of the guitar and singing. All this time he was thinking how to escape. Ariz Začinović agreed that the two of them should run away, while Željko Čakalović said that he would stay. When he heard the HVO soldiers were returning to the garage, together with Aris Začinović he jumped out and ran away. He heard the HVO soldiers running and shooting after them. On that occasion one bullet hit his left arm. Then he managed to

escape and he was in the Neretva canyon for about thirteen days, until he was found by the BiH Army.

The witness AA also confirmed this event who stated that two prisoners escaped from Vojno, and one of them managed to escape and then he heard the shooting and hustling, and saw them pulling one of them back in front of the garage and that he was wounded in the attempted escape. Then he saw Mario Mihalj approaching him and cutting his throat. Furthermore, the witness AA pointed out that after he had entered the garage he saw a lot of blood around, and the persons who buried them told him that the bodies of four murdered persons were buried there.

Also, this incident was mentioned by the witness Ramiz Bebanić too, who on his way back from the forced labor heard Aris Začinović, whom he knew well, begging Mario Mihalj not to kill him. This witness said that he then heard the rattling of the throat like cutting of the throat of a sheep. Later from the garage he saw under the moonlight four bodies covered with blankets. The same witness said that the witness AB was detained together with him in Vojno.

The witness AD also pointed out that he heard the shooting and screaming coming from the garage when he was coming back to the Vojno Camp from the forced labor, and when he arrived in front of the garage he saw four bodies in front of it, among which he recognized also the body of Željko Čokalović by his uniform. Also, the same witness stated that on that night the garage walls were covered in blood.

The witness AI testified that one day after his return to the Camp, he was ordered to stand in front of the garage and to put the hands behind their backs, looking at the ground. Then he heard a prisoner crying: "Please Sir, don't do that" and then he heard rattling, thus he assumed that his throat was cut. On that occasion he also heard Dragan Šunjić saying that he shot one in the leg because he started running away. The witness said that he heard later that the man who had been shot survived and that he reached the left bank having crossed the river Neretva. When they entered the garage after that, it was all covered in blood. There were pools of blood all around.

The witness Zulfo Humačkić in his testimony also confirmed the murder of the four prisoners who were slaughtered because on that day a HVO soldier had been killed.

The witness Saja Ćorić knew that the witness AB had escaped from the Vojno Camp. She said in the evening she saw Damir Brekalo in Vojno.

It follows from the statements of the mentioned witnesses that the witness AB was in the garage of the Vojno camp when four prisoners were slaughtered. The act of murder of the four prisoners is established by this Verdict and reasoned in the previous chapters. This murder happened after the beating up of the witness AB and other persons killed by Mihalj, Kordić and another HVO soldier. They beat up all five prisoners in turns, they kicked and punched them and beat them with batons. The intensity of the beating was such that two persons fell down due to the beatings and then they were slaughtered. The witness AB too was subjected to such beating by the three HVO soldiers. When he started running away the HVO soldiers from the Vojno prison shot after him and he was shot in the arm. The

witnesses AA and AD also confirmed that on that occasion the shooting after the runaway detainees indeed happened. The witness AI said that he heard Dragan Šunjić saying that he had shot one of the runaways in the leg, and that he heard later on that the prisoner survived. The witness Saja Ćorić confirmed that on that occasion the witness AB ran away from the Vojno prison.

Having in mind that on this occasion the witness AB was subjected to extremely severe beating in the garage of the Vojno Prison on that occasion, who was charged among others with the death of the bodyguard of Marko Radić, that three persons committed the beating and that, while doing so, they used hands, feet and bats, that they beat the prisoners until they knocked them down, and then they cut their throats, the Panel submits that by these acts, the witness AB who was beaten up at that time was intentionally caused severe physical and mental pain and suffering. The witness AB was under the control of the persons who beat him. He was detained in the prison garage. All the accused had authority over him. This severe beating by three persons who kicked, punched and hit him with bats until they were knocked down, resulted in a terrible physical pain. Also the cutting of the throats of his fellow-sufferers, the detainees with whom he was beaten together, and listening to their throats rattling when their throats were cut also resulted in the severe mental pain. In addition to that, the witness AB was wounded in the arm while he was running away by the HVO soldiers who were shooting after him. That injury, too, caused the physical pain. This beating of the prisoners including the witness AB, and the cutting of throats of some of them was intentional aimed at punishing them because they were accused of the death of the bodyguard of the Commander Marko Radić, whom allegedly they had not taken to the outpatient clinic quickly. For the same purpose the witness AB should have been prevented from running. From the all aforementioned, the Panel considers that in the case at hand all elements of the criminal offence of Torture under Article 172 (1) (f) of the BiH CC are satisfied, due to which it qualified this offence as Torture.

Maltreatment of Ramiz Mačković

(Count 3. Radić, 9. Šunjić, 15. Brekalo, 24. Vračević)

The witness Ramiz Mačković was taken prisoner on 25 June 1993 in his apartment in the area of the municipality of Maglaj by the HVO members. Those days around 426 prisoners were captured who were bussed to the village of Vitina in the municipality of Ljubuški. Two and a half months later they were transferred to the Heliodrom Camp. They were sent to perform forced labor from the Heliodrom Camp. The witness recalled that in late September 1993 they were transferred to the village of Vojno and stayed there for 45 days. Around 50 prisoners were transferred on that occasion. They were transferred there via the village of Đubrani and then were met by Mario Mihalj, Dragan Šunjić and Mirko Vračević. In Đubrani they tied them up with a telephone cable in two groups of 25 prisoners. Being tied like that, they started on foot in the column toward Bijelo Polje. They had to keep the left hand above their heads and all those who would put the hand down would be hit by a rifle butt in the back or in the chest. After the arrival to Vojno they interned them in a garage and on the first night there they were taken to the Command to Mario to be interrogated, when they had to introduce themselves and all those who would say their family names before the first name and those who would say *hiljada* instead of *tisuća* (*both words mean thousand but the latter is exclusively used in Croatian*) would be hit by a

rifle butt by Dragan Šunjić and Mirko Vračević. Then they would take the prisoners to the garage and teach them good manners. The witness addressed Mario Mihalj with the term “Professor” and conveyed to him why the prisoners were beaten up for the improper behavior. The witness was slapped on a regular basis and on one occasion Dragan Šunjić slapped him only because he did not turn out the pockets on a jacket for him to see that there was nothing there. In addition to that beating the witness recalls that one soldier, who was wearing a black uniform, who was called “*crnokošuljaš*” (*black shirt*) maltreated and beat them. The witness Mačković stated also the events when Mirko Vračević “convicted” him to execution by a death squad because he was a teacher, and therefore engaged in the campaign of hatred against the Croats in Bosnia. The witness Mačković Ramiz recalled the incident in the garage when Mario Mihalj ordered them to line up and to move one step from the garage wall, to put the hands behind their backs and to hit their heads against the wall. They had to hit the wall so strongly until their heads started bleeding. If they failed to do so, then the HVO soldiers grabbed their hair and hit their heads against the wall. There were around 35 of them in the garage who had to hit their heads against the wall. Apart from Mario, Dragan Šunjić was also there on that occasion. The same witness saw them both hitting the prisoners’ heads against the wall. The witness recognized the accused Šunjić in the court room. He also noted that the garage walls were stained with blood running from their heads and that Marko Radić could see that when he visited the garage on one occasion.

The witness Aziz Suljević in his statement said that he came to Vojno in the same group as Ramiz Mačković. The same witness also stated that once in the Vojno Prison he was subjected to minor beating and the next time he was severely beaten up. It happened when one evening the Accused Šunjić and Mihalj entered the garage with the torches. On that occasion Mario beat him until he knocked down. Apart from that he told all of them to hit their heads against the garage wall and door. Mačković Ramiz was there, too. He also hit his head against the wall, and showed him the scars on his head caused by that.

The witness AI testified that after they had come back to the garage they were beaten on a regular basis and he recalls an incident when they were ordered to hit their heads against the iron garage door and they had to do that several times.

On the basis of the testimonies of the aforementioned witnesses the Panel established that during their stay in the Vojno Prison Mačković Ramiz was physically maltreated. The Panel accepted the statement of the witness Mačković as credible and convincing as the witness gave his statements consistently, his testimony was consistent and not contested at cross-examination, and that his testimony about hitting his head against the garage wall was confirmed also by the statements of other witnesses mentioned in this part of the Reasoning. Namely, it is entirely established through the consistent statements of the mentioned witnesses that in the material time one of the methods of physical maltreatment of prisoners was to make them hit their heads against the garage wall and door. Witness Mačković together with other detainees was forced to hit his head against the wall until its fracture. This was confirmed clearly and credibly by the witness Suljević who saw on that occasion Mačković Ramiz hitting his head against the wall, and after this Mačković showed him the scars on his head. The Panel gave credence also to the statement of the witness Mačković, where he stated that Šunjić slapped him only because he failed to turn out the pockets when he returned from work. Namely, the witnesses for the Prosecution

stated that as a rule of conduct the prisoners were prohibited to bring anything from work. Therefore, there was a check of the prisoners in this regard. Women were also prohibited from bringing food or cookies for the children. Bearing in mind these rules and the attitude toward the prisoners, in the opinion of the Panel, the testimony of the witness Mačković is entirely credible that the accused Šunjić slapped him because after his arrival he did not turn out the pockets. The Panel admitted as credible the testimony of this witness that the accused Vračević threatened him that he would shoot him because he had the hatred against Croats as a teacher. Namely, it is also established in the proceedings that Vračević threatened also other detainees in the prison, such as the witness J, the witness 152, the witnesses K, Zejna Tihak, Emica Ćurić, and that the Panel accepted the statement of Mačković that he, too, was threatened and intimidated by Vračević.

The Panel submits that all these acts were committed against the witness Mačković with the intention to humiliate him and cause great suffering to him. Based on the strength of the hits against the wall, due to which his head was covered in blood it was evident that this consequence was produced as the witness Mačković was forced to hit his head against the wall until he injured it. By these acts the witness was humiliated and the act of violence was committed against him. The manner in which he was humiliated indicates the absence of any humanity on the part of the executors, that is, it is a cruel treatment by which the victims were forced to cause themselves physical injuries. This conduct, in particular toward a person who was a teacher by Mihalj who was very young, causes a great suffering and humiliation. Having in mind other maltreatments which the witness stated regarding the slap and the threats that he was going to be shot dead, the Panel considers that by these acts against the witness Mačković Ramiz a criminal offence Other Inhumane Acts under Article 172 (1) (k) of the BiH CC was committed.

Torture of the Witness AF

(Count 3. Radić, 9. Šunjić, 15. Brekalo, 24 Vračević)

The witness AF in his statement stated that he was arrested on 3 July 1993 in Stolac by the HVO members. After the arrest, he was taken to the Gabela Camp and then to the Heliodrom Camp. They took the prisoners from Heliodrom to perform forced labor on several locations in the area of Mostar. The witness was transferred in January 1994 in the village of Vojno. The witness does not recall the exact date when he was transferred to Vojno. A group of 25 prisoners was transferred to Vojno on that occasion. Upon arrival in Vojno they were received by the HVO members among whom he remembered Mario Mihalj, Dragan Šunjić, Emir Brekalo and Marko Radić who was in Vojno at that moment. Mihalj told them immediately to carry ammunition boxes to the firing positions. It took them two and a half hours to move all the ammunition boxes. In Vojno they interned them in the garage which was locked and guarded. He stayed there for about two months. They received food only if a soldier took pity on them. Those were mainly leftovers and in the best case a half of a can for two persons. In Vojno he was taken to perform forced labor on a daily basis. He dug trenches, reinforced front lines, chopped the wood. The beating up in the garage happened on a daily basis. The witness was beaten up in Vojno four times, and he was beaten by Mario Mihalj, Dragan Šunjić and Emir Brekalo. The first beating happened when Mario Mihalj and Dragan Šunjić lined up all the prisoners and then hitting them with a bat and kicking them, they tried to knock them down. Then he received two hits with a bat and ten kicks. He was beaten by Mihalj, and Dragan Šunjić then beat other

prisoners. The second beating was a pure sadistic abuse when Mihalj, Dragan Šunjić and Emir Brekalo lined up them up in two rows and then started hitting with bats and kicking the prisoners. The witness AF stated that the first hit knocked him down, while the detainee Huso was knocked down after the third hit. Then Mario Mihalj ordered the detainee Huso Ivković to tattoo a cross on the witness's shoulder as the tattoo of the former JNA was on his right shoulder. Huso made that quickly because it was very painful to the witness, and Mihalj, Šunjić and Brekalo laughed loudly and enjoyed in his suffering. Then they beat up the witness and Huso severely and then the witness AF lost consciousness. Then the witness was splashed with water to regain consciousness and when he came to, Huso was ordered to remake the cross into lilies, and Huso did that again. After the tattoo of the lilies, the beating of the witness continued and they said "Why do you have lilies on the shoulder?" He lost his consciousness again due to the beating. As a result of such brutal and painful beating the witness was unable to stand up for 24 days. The witness AF stated that he still has that tattoo, and on that occasion he showed the tattoo to everybody present in the courtroom which he previously described, including how it was made. The third beating happened in front of the garage in the evening when he returned from work. In front of the garage he stumbled on a wire and fell down, and then Mihalj and Dragan Šunjić came to him and started kicking him in the face, ribs and kidneys. The fourth time they were collectively beaten up prior to the return to Heliodrom. Then Mihalj, the accused Šunjić and Brekalo came to the garage with a razor and ordered them all to shave. After the shaving they were lined up in two rows and then all three of them started hitting them with baseball bat and kicking them. He was beaten by Mihalj with the bat, and when he fell on the floor, he could not tell any more who beat him. Šunjić and Brekalo also beat the prisoners who happened to be there. As a consequence of these beatings his back and joints still hurt and he feels pain when the weather changes. After he was released from Vojno he was all filthy and beaten up, and he did not want to live. The Vojno prison was the worst of all prisons he was ever detained in, because of the beatings, hunger and poor hygienic conditions.

The Defense contested the credibility of this witness, stating that there were some inconsistencies in the testimony he gave at the main hearing when compared with the statement given in the investigation. The witness AF explained some differences in the statements claiming that he saw Marko Radić three times while he was in Vojno, and that, among others, Dragan Šunjić beat him, too. He also stood by his statement that Damir Brekalo kicked him, hit him with the bat and did other similar things. After the war he met all the Brekalos, and he knows also Adis Brekalo. He said that Damir Brekalo used to wear sometimes camouflage sometimes black uniform. When he was beaten up he lost one tooth. The witness did not claim any compensation for the damage he suffered.

The Panel accepted the testimony of the witness AF in its entirety as credible and reliable. More specifically, the witness gave his testimony convincingly, and his statement was consistent with the one he previously gave and in conclusion, the statement of the witness was confirmed also by the evidence he had on his body, and that was the tattoo which the detainee Huso made on his skin following Mihalj's order, and in the presence of the Accused Šunjić and Brekalo. The statement of this witness is entirely consistent with the treatment of the prisoners that prevailed in 1994 in the Vojno Prison. Namely, the joint statement of all detainees in the Vojno Camp who were returned to Heliodrom on 28 January 1994, indicates all the ways in which the detainees were physically and mentally

maltreated and tortured, mostly by Mihalj and the Accused Šunjić. All events in the time period to which the given Statement refers, are entirely identifiable in the statement of the witness AF. Also, this witness stated the same persons participated in his maltreatment. Therefore, the Panel, based on the statement of this witness and other mentioned evidence, established that he was maltreated in the material time and that serious physical and mental suffering was caused to him by Mihalj and the Accused Šunjić and Brekalo. The witness AF clearly stated that while being forcibly tattooed he felt a great pain, and that he lost a tooth during the beatings and he also stated he did not wish to live after being released from prison because of the beatings, hunger and poor hygiene. The Panel submits that the institutionalized maltreatment of prisoners existed in the Vojno Camp, as all witnesses testified about numerous cases of maltreatment they had been through. The intent existed on the part of the accused to maltreat the prisoners, as the maltreatment started immediately after their arrival, and very often with the sentence "Welcome to hell". In the case at hand the maltreatment of the witness AF lasted for a long period of time, that is, for a couple of months, and he was subjected to the repeated and different types of maltreatment. These maltreatments were conducted based on the pattern, which included beating up of the detainees by kicking, punching and hitting by bat. Due to all these acts, the witness AF had physical and mental consequences. He felt strong pain. He lost one tooth and after he had been released from prison he did not wish to live. As the witness was beaten up several times and that on that occasion he was repeatedly punched, kicked and hit by batons and that he was subjected to the forcible and painful tattooing of the cross and then the lilies, the Panel holds that all these acts in their entirety and in mutual connection constitute a criminal offence of Torture under Article 172 (1) (f) of the BiH CC.

Torture of the Witness 152

(Count 3. Radić, 9. Šunjić, 15. Brekalo, 24. Vračević)

The witness 152 in his statement said that he arrived to Vojno on 11 October 1993 and that he was arrested in his apartment by two persons among whom one was Tinjak a.k.a. *Žuti*. At the time he was not a member of any military formation and he was only 17. Upon his arrival to Vojno he was met by Mario Mihalj whom he knew even before the war from school. Mario Mihalj took his personal information and when he did not say properly the year of birth, Mihalj and Šunjić started hitting him. These hits knocked him down on the floor, he was unconscious for a while and on that occasion they knocked his three teeth out. Due to this beating he was all black and blue, battered, and he was not able to open his eyes. Mihalj tortured him with electric power, electroshocks, connecting the wires to his fingers and then to the phone. He begged them not to torture him but to kill him. Then Mihalj gave him a pistol telling him to commit suicide, which he did not do. Then they gave him another pistol and he refused it again. Then Dragan Šunjić gave him a knife telling him to kill himself, and he did not want to, and then Šunjić tripped him and he fell down. Then Dragan Šunjić took him out of the room, outside the house, took a position if he was about to cut his throat, and at that moment a guard appeared who told him to stand up and took him to the solitary confinement. He was interned in a basement of a house where the women and children were. The first morning when he got up the guard Mirko Vračević entered the basement who introduced himself and told them the rules of conduct. The next day Mihalj came and started cutting his hair with a knife. He ordered him to drink the liquid from the bucket where he relieved himself, which he was not able to do. Then he poured the feces from the bucket on him. He was beaten up almost every day and there was

not any medical assistance. On one occasion Dragan Šunjić told him to do the push ups and then he hit him, and then he started playing and he had to be singing "*I don't like you Alija, only because you are balija*". Then Dragan took him out and told him to clean the rifle, and he responded that he did not know how to do it, and then he beat him up with the rifle butt. On one occasion Mihalj came in the room where he was, and told him to speak up and then he cut off the buttons from his shirt with a knife and then he stabbed his arm and then he felt the blood running down his arm. Then Mihalj cocked the pistol and fired. He fell but he was not shot. Then Mihalj brought other detainees in the basement and he heard him introducing him to them and saying that he would be together in the basement with him. He saw the Accused Marko Radić once when he arrived to the Vojno Prison. Then Mihalj opened the basement door and told him to get out. When the Accused Radić went out, who was standing with a soldier, he asked him what had happened, and then he responded that it was nothing, because he did not dare say what had happened to him. Mario said that he had fallen of the ladder and he confirmed it. Then Radić asked him whose son he was and when he responded Radić said: "*That is why you look like that*". At the time he his nose was broken, his teeth knocked out, the hair partially cut and the shirt torn. He used to know Marko Radić before the war. He was his professor in the secondary school. He was exchanged on 2 December 1993 together with the women and children. On that day he was about start to work and he introduced himself to the persons who came to collect him and then he was taken to a house where Radić who was speaking over the phone to someone and said: "*He is here, he will be exchanged.*" Marko Radić then told him that he should go with a group of women and children to be exchanged. The witness 152 said that he had seen Dragan Šunjić often and that he beat him up, but he could not recall how many times. Mirko Vračević then hit him with a rifle and provoked him saying that he had cut his aunt's throat and that he was going to cut his, too. After his release from prison, he sought medical help particularly the nose operation, about which he has medical documents.

The witness Saja Ćorić stated in the investigation that this 17-year-old boy was isolated in the basement, and that he was in the house where the women's prison was located. He was continuously beaten up. He was exchanged with them. They asked for the exchange to be stopped until the witness 152 joined them.

The witness AL stated in his statement that in the basement of the house where he was the detainee under the pseudonym 152 was held. The said that at the time he was 16, and that he looked terrible. This witness said that the witness 152 had told him that he was beaten most by Mario Mihalj and a person nicknamed *Slovenac*.

The witness AD said that the witness 152 was in the Vojno Camp, that he was underage at the time and that he was in the other facility.

The witness Ćurić Dika who is related to the witness 152 stated she had been brought to the Vojno Camp together with him. She saw them bringing the witness 152 in the interrogation room. Then she heard crying and his voice, but she did not see when he went out. She was transferred to a house where the witness 152 was not detained. She was exchanged with the first group.

The witness Hamza Leto stated that after arrival to Vojno he was interned in the basement and that he found a young man there, whose name he did not know and who was all bruised and covered in blood. That young man was exchanged later. Mario Mihalj told them to contact him. Having reviewed the List of Detainees in the Vojno Camp made by SIS of the Second Brigade, it is evident that this witness arrived in Vojno on 17 November 1993.

The witness Hasan Trtak also stated that after the arrival to Vojno, he was interned in the basement where he found a prisoner who was brutally beaten, and who was young. Having reviewed the List of Detainees in the Vojno Camp made by SIS of the Second Brigade, it is evident that this witness arrived in Vojno on 17 November 1993.

Among other documentary evidence admitted into the case file, the Medical Findings and Opinion of 11 April 1996 by the RMC Gradska Bolnica Mostar regarding the witness 152 indicates that his nose bone was broken. This Opinion states that the nose bone structure was moved to the right. The patient has difficulties with breathing which is why the surgical reconstruction was recommended. Having reviewed the photo documents made by SIPA on 9 June 2006 regarding the taking photos of the scars, they can be seen on the nose, forehead on the right arm the front teeth are knocked out and the scars are also obvious on the left side of the body of the witness 152 in the region of ribs. The medical documents from 2000 issued by the Clinical Center in Sarajevo and the Dr. Safet Mujić RMC in Mostar indicates that the witness had a ... which was the reason why he was operated on.

Based on all statements of the witnesses which the Court accepted as credible as they are mutually consistent and they are also in accordance with the documentary evidence, the Panel established that the witness 152 while being detained in the Vojno Camp was beaten up several times and physically maltreated. The Panel holds that the statement of the witness 152 is credible as the witness's statements were consistent, and in the course of the cross-examination the Defense did not contest the averments of this witness. Also, the statement of the witness 152 is entirely consistent with the statements of the witnesses who saw him in the Vojno prison and testified about his appearance, as well as the documentary evidence in the case file, meaning the medical documents bearing the name of the witness 152, and the photo documents clearly showing the injuries the witness sustained while being physically maltreated. The Accused Šunjić and Brekalo directly participated in causing injuries and physical and mental maltreatment of the witness 152. The Accused Marko Radić saw all these injuries and told the witness 152 that he was in that state because of his father. It is evident from the statement of the witness 152 that he sustained serious bodily injuries such as broken nose bone, knocking out of several front teeth, injuries of the stab in the hand, then the injuries on the forehead and similar injuries. All these injuries were caused to the witness 152 intentionally. The perpetrators of these acts while causing them were aware that they would cause severe physical pain and suffering. All injuries were caused at the time when the witness 152 was in the Vojno Prison, and he was detained there by the accused and was under their control. The goal the perpetrators had in mind was to punish of the witness for his father who was a member of the BiH Army and the discrimination on the ethnic basis. The Panel particularly notes that at the time when these injuries were inflicted and when the incriminating acts were committed, the witness 152 was underage. The witness 152 was maltreated for the long period of time, that is, for three months. While he was maltreated he was subjected to various types of

maltreatment, including electroshocks which was one of the torture methods in the Vojno Prison. The consequences of the maltreatment the witness has are evident, as the photo documents made in 2006 still show the mentioned injuries. Having in mind the age of the witness at the time when the evident physical injuries were inflicted, then their gravity and the fact that a series of the various maltreatments were committed against the witness 152, that he witness was beaten up first until he lost consciousness then he was electro shocked and then he was given a pistol and knife to kill himself. The Accused Šunjić took him out and straddled him as if he was going to cut his throat, the hair from one half of his head was cut, and he was forced to drink from the bucket where he relieved himself, and the contents of the bucket was poured over him, he was stabbed in the arm, he was shot above the head: The accused Šunjić made him do push ups, sing songs about Alija and he was physically maltreated. The Accused Mirko Vračević hit him with the rifle and provoked him saying that he had cut his aunt's throat and he was going to do the same to him. All these acts in their entirety and in the mutual connection are, in the opinion of the Panel, the acts of torture, due to which the Panel qualified this offence as the offence of Torture under Article 172 (1) (f) of the BiH CC.

Mirko Vračević, Inhuman Acts and Torture

(Count 24 Vračević

Witness J

In the proceedings the Panel established that on the undetermined date, in early September 1993 in the hall of the Command post of Mario Mihalj in the Vojno Camp, Mirko Vračević approached the witness J and put a knife at her throat telling her: "The fox is brought to the furrier", which terribly scared and upset the prisoner. The witness J stated that she was arrested on 7 September 1993 in the apartment whose owner was the protected witness K. Four HVO soldiers arrested her among whom she recognized Ivek Kolobara and Emir Tihak a.k.a. *Žuti*. After they had been arrested together with other civilians from the western part of Mostar, they transferred them to the village of Vojno. They were met by Mario Mihalj i Dragan Šunjić in Vojno. Mario then said that he was the Commander and Dragan the Deputy Commander. All prisoners had to address them with *Mister Commander and Mister Deputy Commander*. All of them had to give statements and before that they introduced themselves. While they were waiting to give statements they were standing in the hall of the house where the Command of Mario Mihalj was situated. Together with them there was a guard in the hall by the name of Mirko a.k.a. *Srbin*. The witness stated that later on she found out that his family name was Vračević. At one moment Mirko turned to the witness telling her: "The fox is brought to the furrier", and took the knife out and pressed it at the witness's throat. The witness stated that she had not known Mirko Vračević before and she assumed that he had mistaken her for another person who was similar to her or perhaps Mirko had known her before. The witness J pointed out that she felt terrible at that moment, that the blade was so close to her neck that she thought what he would stab her. The witness described physical appearance of the Accused Vračević at the time, and then she identified him in the courtroom.

The witness K who was brought to the Vojno Prison together with the witness J and who is the mother of the witness J testified that upon arrival to the Vojno Camp she saw two guards armed with rifles and hand grenades. While they were waiting in the hall to give their statement, one of the guards of whom she later found that his name was Mirko Vrač

aka Ćoro or Srbin who was short, at one moment approached the witness J and asked her how he knew her, and then he took a flick knife out of his pocket and put it at her throat. At that moment the other guard who she found out was named Kuna, told Mirko to put the knife down.

The description of this event by the witness J was consistent with the statement she had given earlier before the High Court in Mostar on 30 March 1996. Then the witness said that the guard by name Mirko a.k.a. Srbin, immediately after arrival while she was in the hall of the Camp Command took out the knife and put it at her throat telling her: “Balijka (*derogatory for Muslim woman*), this will finish you off!”, which to her was a mental torture.

The Panel accepted the testimony of the witness J as credible and reliable as it was presented in detail in the manner which suggests that the witness truly had gone through this. The same testimony was confirmed by the testimony of the witness K. The same evening the Accused Vračević maltreated also a 17-month-old baby girl of the witness D, which also suggests that he treated the brought in Bosniak civilians cruelly at that occasion. The offence was committed immediately after the witness J had come to the Vojno Prison by an armed person who carried out the duty of a guard. The witness J did not prompt such conduct of Vračević in any way. The Panel submits that pressing a knife against the witness’s throat, with the sentence that *the fox was brought to he furrier* was an intentional act of the accused, which was meant to cause the witness a great suffering. The witness stated that at the moment she felt terrible, and that the blade was so close to her throat that she thought the he was going to stab her. Such conduct of the Accused Vračević is an act of violence and intimidation of the victim, whereby the victim was tortured mentally by undertaking an act which implies a threat of death and violence. If one takes into account the statement of the witness J that on that occasion apart from Vračević the Commander Mihalj and the accused Šunjić received them there, and that they were met with the sentence: “*Welcome to hell*“, the ambiance of fear created in that manner immediately after her arrival provided the witness J with an additional reason to objectively be afraid of all these acts of the Accused, and to feel great suffering. After all, in the case at hand it was a girl who was arrested on that day and brought in prison, and the victim’s age and gender are factors which also contributed to the great suffering. Based on all the aforementioned, the Panel finds that by these acts the Accused Vračević committed Other Inhumane Acts under Article 172 (1) (k) of the BiH CC.

Child of Witness D

During the proceedings the Panel found that on an undetermined date in September 1993 while the detainees were waiting for the interrogation in the hall of the Command of Mario Mihalj in the Vojno Camp, Mirko Vračević approached the 17-month-old child of the witness “D“, giving her a hand grenade in hands asking her: “*Does your father have the same in the house?* “ The witness D, mother of the girl, who held the girl in her arms, moved the girl away to protect her, and that scared and upset all the detainees present there. The witness D stated that she was arrested in September 1993, and that she could not recall the exact date. She was arrested in her apartment on the west bank of the river Neretva, and she was arrested by the HVO-a members. There were four of them, among whom she recognized Ivek Kolobara and Nedžad Tinjak. At the time the witness was in her

apartment with the 17- month-old daughter and elderly mother-in-law who was 68 at the time. Following the arrest together with other civilians they were transferred to the village of Vojno in the area of Bijelo Polje. They were received by a HVO member whose name was Mirko Vračević. He was a guard and he told them to enter a house for questioning. The witness recalls that Mirko was also known as *Srbin* or *Ćoro*. When they entered the hall they stood one next to the other in the hall. The guard who was wearing a camouflage uniform, who was rather short, skinny, kept constantly passing by them saying something. And he also insulted them. At some point while passing by them he stopped in front of the witness who was holding a 17-month-old child in her arms and said: *"Look at this little girl, how beautiful she is, do you want uncle Mirko to give you an apple"*. The witness was petrified when she saw that Mirko was holding a hand grenade in his hand. A child did not have a clue what it was, and Mirko kept saying to the girl: *"Did your father give you this? Did he show you this? Did you see this beautiful apple? Take it"*. At that moment the witness pressed the child tightly against her chest and turned around to prevent her from extending her arms and this lasted for several minutes. In the course of the cross-examination the witness D again stated that Mirko Vračević gave a hand grenade to her 17-month-old girl, but the child did not take it as the witness held her tightly. She pointed out that it was an extremely difficult situation.

The witness J stated that in the beginning of September she was arrested and that she was brought to the village of Vojno together with other civilians from the western part of the city of Mostar. They were met in Vojno by Mario Mihalj and Dragan Šunjić. Then all of them had to give statements and before that they had introduced themselves. While they were waiting to give statements they were standing in the hall of the house where the Command of Mario Mihalj was. On that occasion the guard Mirko a.k.a. *Srbin* was in the hall with them. At one moment Mirko approached little Dina who was one and a half years old then and took a hand grenade and asked the child: *"Does your father have this at home?"* and the child thought at the moment that it was a bonbon, and it said: *"Boba, boba"/candy, candy/,* and in fear the person D moved the child away. The witness clarified this statement and she confirmed once again that this event happened the first night upon her arrival to Vojno, and the child thought it was a bonbon and as it babbled the child said: *"Bona, bona"*.

The witness Saja Ćorić stated that the witness D too was arrested with her and her 17-month-old baby. The witness stated in her testimony that she met Mirko Vračević the first day of after her arrival in Vojno. She recalls that he lined up all the prisoners in the hall and that they were waiting for the Commander to question them. The witness D was standing near the witness Ćorić who was holding a child in her arms, and at one point Mirko Vračević approached her and asked the girl *"What's your name? Do you want uncle to give you a bomb? Would you like to bite an apple?"*, and her mother moved the child away in fear.

In her testimony the witness K also described the event when Mirko Vračević was giving a hand grenade in the hall of the prison command building to the daughter of the witness D. telling her to take the candy. The same witness stated that it scared all of them.

Having in mind the testimonies of the witnesses given regarding this circumstance, and which are mutually consistent, the Panel accepted these statements as credible and reliable

because they were presented in detail in the manner suggesting that the witness had really been through the given incident. In addition, this event was confirmed by the testimonies of the witnesses J, Saja Ćorić and the witness K. The Accused Vračević maltreated the 17 month-old girl of the witness D, which also indicates that he treated the detained Bosniak civilians cruelly. He committed the offence immediately upon the arrival of the witness D in the Vojno Prison. When the offence was committed he was armed and he performed the duty of a guard. The witness D did not prompt such conduct of Vračević in any way. The Panel opines that giving a hand grenade to a child which was a baby to take it along with the sentence “Do you want an apple to bite?” is an intentional act meant to intimidate the witness D as well as others present persons and to cause great suffering. The witness stated that at the moment she was petrified, and she pressed the child closer to her chest and moved it away from the Accused to protect it, and that it lasted for several minutes. She also said that it was an extremely difficult situation. In addition, the witness K said that the incident scared everyone. Such behavior of the Accused Vračević is an act of violence and intimidation of the victim whereby the victim was mentally tortured by undertaking an act which implies a threat of death and violence. If the consistent testimonies are taken into account of the witnesses D, J, Saja Ćorić and K that they were met with the sentence “Welcome to hell“, and the ambiance of terror created in that manner immediately upon their arrival, provided an additional reason for the witness D and others present to objectively get scared of these acts of the Accused, and to feel a great suffering. After all, in the case at hand, the 17-month-old child was used to intimidate her mother and others. The Panel notes that on the same day all the apprehended detainees were arrested and that it was their first encounter with the prison and staff. The fact that a hand grenade was given to a child who was unaware of the situation and who can take it in its hands, surely increased the fear on the part of all present, mostly the mother of the child, the witness D, and having in mind that most of the detainees were women and children, the age and gender of the victims were additional factors which contribute to great suffering. Based on the all the above mentioned the Panel believes that by these acts the Accused Vračević committed Other Inhuman Acts under Article 172 (1) (k) of the BiH CC.

Witness 152

In the course of the proceedings the Court established that on an undetermined day in late October 1993, in the Vojno Camp compound, while the detainees were cleaning it, he approached underage witness 152, telling him that he was going to cut his throat as he had done so to his aunt. Subsequently he hit him with the rifle butt. As for the witness 152, the Panel established the acts through which he was tortured while he was in the Vojno Prison and it described it in the Reasoning of this Verdict under the title: *Torture of the Witness 152*. Therefore all presented evidence would not be stated here related to the torture of the witness 152. In doing all the acts which led to the offence of torture, the described act also happened and was committed by the Accused Mirko Vračević, who told the witness that he was going to cut his throat as he had done so to his aunt, and subsequently hit him with the rifle butt. These acts taken individually are the intimidation of the witness by the death threat and to his close relative. The offence of violence which is reflected in the hitting of the witness by a rifle butt does not amount to the offence of torture. However, having in mind other evidence suggesting all what the witness had been through, which have already been described, and what he looked like due to the maltreatment and abuse, that he was maltreated for a long period of time, that he was subjected to various types of

maltreatment, including the electroshocks, suggest that this act of the Accused Vračević is only a part of all the acts which were taken against this witness by the members the joint criminal enterprise. At the time when the witness 152 was abused he was underage. The witness was beaten up until he lost his conscientiousness, and then he was electro shocked and then he was given a pistol and knife to kill himself. The Accused Šunjić took him out straddled him as if he was going to cut his throat, he cut half of his hair. He was forced to drink from the bucket where he had relieved himself and the contents of the bucket were poured over him. His arm was stabbed, he was shot above the head, and the Accused Šunjić made him do push ups, sing songs about Alija. He was physically maltreated on a daily basis, the Accused Mirko Vračević hit him with his rifle and provoked him saying that he had cut the throat of his aunt and that he would do same to him. The Panel notes that the accused Mirko Vračević as a guard in the prison had the knowledge of daily events in the Vojno prison, meaning also with respect to the witness 152; then he was tasked to guard him, and based on his physical appearance and the place where he stayed, he was aware that he was severely maltreated. In the opinion of the Panel these acts of the Accused Vračević together with all other acts in their entirety and in their mutual connection are the acts of torture, due to which the Panel qualified these acts as the offence of Torture under Article 172 (1) (f) of the BiH CC.

Arif Omanovic and Witness 153

In the course of the proceedings the Panel found that on an undetermined day in late August or early September 1993, Mirko Vračević took out of the garage within the Vojno Camp compound the prisoner Arif Omanović and took him to Mario Mihalj's Command post where Arif Omanović was severely beaten by Mario Mihalj due to which Arif Omanović's body was all covered in blood, bruised and swollen. Then Vračević pulled him to the garage because Omanović was in such a bad condition that he was not able to walk on his own. On the same day, Mirko Vračević brought also the witness 153 from the garage within the compound of the Vojno Camp where the Bosniaks were unlawfully detained to the Command Post of Mario Mihalj, handed him over to Mihalj, and subsequently Mario Mihalj ordered the witness 153 to strip to his waist, and then he hit him with the police baton, wooden curtain rod and a tool all over his body. Due to these hits the witness 153 was all covered in blood and bruised, and then the witness 153 fell down due to the hits received and then Mario Mihalj ordered Mirko Vračević to take the witness 153 to the garage. The Panel also found that on an undetermined date in late August and early September 1993, Mirko Vračević took the witness 153 out of the garage in the Vojno Camp where the Bosniaks were unlawfully detained and brought him to the Command Post of Mario Mihalj and handed him over to him. Then Mario Mihalj, holding an electrical cable in his hand, wrapped the bare wires around the fingers of the witness 153 and in that manner electro-shocked him, while Dragan Šunjić was playing the guitar, and Mirko Vračević pricked the witness 153 all over his body with bayonet, causing grave physical suffering to him.

The witness 153 was arrested on 15 August 1993 in Mostar and taken to the Vojno Camp. The witness 153 stated that he was detained in the garage and that Arif Omanović whom he knew as an elderly man of 50 or 60 years of age was also detained with him. The witness recalls that one day seven or eight detainees stayed in the garage and on that day Mirko Vračević arrived and called the name of Arif Omanović telling him to follow him, and he

did so. He took Arif to the house where the Command of Mario Mihalj was situated. Shortly afterwards the cries were heard, Arif's begging, "*Please don't, please don't*". Arif's crying lasted for a while and it was not easy at all to listen to his cries. One starts being scared and one wonders if one was the next. Two or three hours later they brought Arif to the garage, the man was malformed. He only asked for water and he almost looked like a sack. He didn't have any control of his body, and he was unable to stand on his feet. Then the witnesses who were in the garage gave him some water, including the witness, and they saw that Arif was covered in blood and swollen. Arif was not given any medical help. He died in the garage in the place where they lied him down.

After that he heard the voice of Mario Mihalj who said that the witness 153 should be brought in. Then Mirko Vračević entered the room telling the witness to come with him to Mario Mihalj. The witness entered one of the rooms which was empty, he sat down, and then Mario Mihalj entered the room and told him to stand up and strip to the waist. He stripped and then the beating up started which lasted for full two hours. In the beginning there was a kind of stubbornness on the part of the witness and he did not fall down immediately, although he was subjected to various blows. The witness stated that when he figured out that the matter was getting serious, he fell down and started pretending and begging to leave him alone and to stop beating him. After a while, he probably got tired, and then he left him alone. During those beatings Mario used two police batons, a black and a white one. Apart from the baton Mario beat him with a wooden curtain rod which he believes was a tool handle. He used all these tools on him, and he also kicked and punched him. After the beating up Mirko Vračević brought the witness back to the garage, where the witness lost his consciousness for a short while. He was not able to move due to the pain. The detainees tried to help him lifting his head up to prevent his choking in his own blood, because he was bleeding and saliva was running out of his mouth. He did not get any medical help. The witness 153 stated that while he was detained in Vojno, Mario Mihalj once connected him to electric power. The witness said that he did not recall who had brought him into the room where Mario Mihalj was. As soon as he entered the room, Mihalj told him that he was going to start singing then. Apart from Mario Mihalj and Dragan Šunjić Dragan Šunjić and Mirko Vračević were also present. Dragan Šunjić had a guitar. There was a cable in the room which they connected to his fingers and then they turned the electric power on and off. In that way they electro shocked him. On that occasion Dragan Šunjić was playing the guitar and doing so, he mocked him. Apart from electroshocks on that occasion, Mirko Vračević pricked the witness several times with a bayonet. The witness did not know how long it lasted, but for him it was an eternity. The mentioned events were already described in this Reasoning, in the part where the murder of Arif Omanović was described and the torture of the witness 153. All the analyses of the presented evidence regarding these events, evaluation of the evidence and the conclusions the Panel reached in that regard pertain also to this Count of the Indictment. Therefore it will not be separately elaborated in this part. In the proceedings the Panel found it incontestable that Arif Osmanović and the witness 153 were in the Vojno prison at the same time, and that both of them were brutally maltreated, that due to their physical appearance and condition they were taken before other newly arriving detainees, so that the prison staff would show them what to expect there. There is abundant evidence about these facts which have already been stated in the Reasoning and they are mentioned here only in a fragmentary manner for the sake of illustration:

The witness 151 stated in his testimony that after arrival to Vojno he was received by Dragan Šunjić and Mario Mihalj. They brought two prisoners before them one of whom was Arif Omanović, and the other one witness was 153. He saw that they were black and blue as a result of the blows sustained, and they were then told that all of them would look like them if they failed to obey the orders. The witness 151 also stated that he knew that Arif was often beaten up and that Mario Mihalj and Dragan Šunjić did that most frequently.

The witness Handžar Azer, who came to Vojno in late August stated that he was met by Mihalj and Dragan Šunjić, and that they brought in front of them 2-3 prisoners and ordered them to lift their clothes up for them to see the bruises on their bodies. They also told them that they should know what would happen to them if they did not obey. Those men were badly beaten up. The witness stated that he did not know the names of the prisoners. He spent 11 days in Vojno.

The witness Saja Ćorić stated that she knew that Arif Omanović was badly beaten up while he was in the Vojno Camp.

The Panel accepted the testimony of the witness 153 that on the relevant day the Accused Mirko Vračević took Arif Omanović from the garage first to the premises of the Command to Mario Mihalj, who beat up Arif Omanović beastly, due to which he was totally malformed and unable to walk. Then he pulled him to the garage, and then immediately he took the witness 153 to the Command to Mihalj, who beat up this witness in the same brutal manner with various tools, upon which Vračević brought the witness 153, too, to the garage. In addition, the Panel accepted as credible the testimony of the witness 153 that Mirko Vračević was present when Mihalj electro shocked him and that Vračević pricked him with a bayonet. In the opinion of the Panel, all these acts were committed knowingly, with an intention to cause those persons severe physical pain and suffering. These persons were detained in Vojno, and as such were under the control of the Accused Vračević. The Accused Vračević was aware when he took Omanović and the witness 153 to Mario Mihalj that they would be beaten up badly as based on a set pattern Mihalj always beat the prisoners in the Command. He could hear their cries after they had been brought in, and also he was able to see what they looked like when he brought them back from the Prison Command. The proof that his role was not only to bring and to take prisoners upon the commander's orders is the fact that at the time when Mihalj tortured the witness 153 with electricity, Vračević pricked him with the tip of a bayonet, causing him even more serious suffering. All the aforementioned indicates that the Accused Vračević, in addition to the bringing and taking of the prisoners to these tortures, also took an active part in them. We have already stated in the Reasoning that the Panel qualified all acts committed against the witness 153 as the offence of Torture, therefore the reasons for such qualification will not be reiterated here. As for Arif Omanović, it has already been established that he died as a result of the brutal beating. This beating up was intentional, and was committed by the prison staff which controlled it, and in doing so, serious physical pain was caused to the victim. Arif Omanović was in the inferior position of a victim, as well as all other prisoners who were beaten up, he was exposed to the repeated maltreatments. At the time he was around 60, therefore this beating, which was cruel and brutal and which caused severe physical pain, he was unable to endure. In the opinion of the Panel he had been tortured in the Vojno prison before he succumbed to the torture. The act the Accused Vračević took

against Arif Omanović and the witness 153 the Panel qualified as the offence of Torture under Article 172 (1) (f) of the BiH CC. Having in mind that Arif Omanović died of that torture, the Panel found all the Accused guilty of his death on the ground of and within the joint criminal enterprise, as explained in this Verdict.

Witness AI

The Panel found that on an undetermined date, in the early September 1993, Mirko Vračević took the witness AI out of the garage which was within the Vojno Camp compound and took him to a nearby house where Mario Mihalj and Dragan Šunjić met him, placed him on a chair and then tied his hands with electrical wire which was connected to the phone, and then Mario Mihalj started winding the phone handle which caused the electrical power to run through the body of the witness AI, which inflicted terrible pain and suffering to the captive, and then they pulled him barely conscious to the garage.

The witness AI testified that he was arrested on 2 September 1993 in his apartment in Mostar together with his wife, six-year-old daughter, father and father-in-law. They came to Vojno where Mario Mihalj and Dragan Šunjić met them saying: *"Welcome to hell". Only few of you will leave this place!*" The witness was beaten up very often in the Vojno Camp, but of all the beatings he was subjected to, this witness stated that the worst one was when one evening a guard by the name of Mirko came to take him to the house where Mario and Dragan had been and then he thought that it was the end of the world. The witness knew that the nickname of the guard Mirko was *Srbin*. They tied his hands with wire and produced electricity. Mario did it, and Dragan jumped all over him. Those electroshocks seemed to last an eternity. One second seemed like a year. He saw Mirko Vračević almost every day. He mainly stood by the door opening and closing it. The witness recognized Mirko Vračević in the courtroom and described what he looked like at the time of his detention in the Vojno Prison. The torture of the witness AI has already been mentioned in the Reasoning of this Verdict, in the Section concerning the witness AI. All the evidence mentioned in that part of the reasoning, the evaluation of the evidence, including the conclusions the Court made, also pertain to this case which is described in the same part of the Reasoning. The Panel considers that the Accused Mirko Vračević was aware of his acts of taking of the prisoner AI to the room where he was electroshocked, and that he was aware of the consequences these acts would cause. The Accused Vračević as a guard in the Vojno Prison had the knowledge of the incidents in the prison. He knew what the prisoners went through when they were brought to Mihalj, and he also personally participated in some of the torture together with Mihalj. Accordingly, in the opinion of the Panel, his intent has been proven. The Panel characterized the acts Vračević took against the witness AI as acts of Torture under Article 171 (2) (f) of the BiH CC.

Rape of the Witness E

(Count 26. Vračević)

The Panel established that Mirko Vračević on 27 August 1993 in the evening hours took the witness E from a house within the Vojno Camp compound where the witness E was detained and took her to the house where the Command was situated, where Marko Radić ordered her to go with Mirko Vračević telling her to do whatever she was told to do. Then Mirko Vračević took her to Mirko Bukara a HVO member, handed her over to him saying: “Here she is!”, and then Mirko Bukara forced the witness E to sexual intercourse.

The witness E testified that on 27 August 1993 upon her return from the Command of Marko Radić, Mirko Vračević collected her telling her that Marko Radić called her to the Prison Command. The witness together with Mirko Vračević went to the Command, and on that occasion Marko Radić told her that she had to go where Mirko was taking her and that she had to do what she was told to do, on the contrary her children and she would be killed. She asked him not to do that, because her child did not feel well, but Radić said cynically “so what, you are not going to make sour cabbage there, you have to go because I order you to do so“. Mirko walked in front of her. They crossed the river on the pontoon bridge, and reached a house where only one floor was completed. Mirko Vračević stopped by that house and she followed him. Vračević knocked at the door and then a man appeared whom she recognized as a person who had taken her and Rahima Makaš across the river to the Camp by boat. Vračević told the man: “Here she is, I have brought her” and the man told her to come in. Then he raped her and later on she found out that his name was Mirko Bukara.

This event related to the rape of the witnesses E was described and explained in this Verdict. Therefore, all the presented evidence relating to the acts undertaken when the witness E was raped, the evaluation of evidence and the conclusions the Court pertain to this Count, too. The act undertaken by the Accused Vračević falls within the acts of rape of the witness E. The Accused Vračević knew where the witness E, was supposed should be taken and to whom she was to be handed over and what was going to happen to her. Taking women out of the prison at night was frequent, and it resulted in their rape by various persons including the accused. It was established throughout the proceedings that Vračević took the witness AM based according to the same pattern and raped her several times. Accordingly, in respect of the witness E, Vračević brought HVO members intentionally to commit the crime of rape. The Panel has already given the legal qualification of the offence with respect to the witness E, stating that it was the offense of Rape under Article 171 (2) g) of the BiH CC.

PERSECUTION:

The Indictment charges the accused Radić, Šunjić, Brekalo and Vračević with having committed the criminal offence of persecution, in violation of Article 172(1)h) of the CC BiH, with their actions described in detail under the counts of the Indictment, with regard to which the Panel has established their liability.

Elements of persecution

The criminal offence of persecution in violation of Article 172(1)h) of the CC BiH is defined as “persecutions against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law, in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina”. Article 172(2)g) clarifies that “persecutions” are “the intentional and severe deprivation of fundamental rights, contrary to international law, by reason of the identity of a group or collectivity”. According to this, pursuant to Article 172(1)h) of the CC BiH the elements of the criminal offence of persecution as Crimes against Humanity are the following:

- 1) the intentional and severe deprivation of fundamental rights;
- 2) contrary to international law;
- 3) by reason of the identity of a group or collectivity;
- 4) against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or sexual gender or other grounds that are universally recognized as impermissible under international law; and
- 5) in connection with any offence listed in this paragraph of this Code, any offence listed in this Code or any offence falling under the competence of the Court of Bosnia and Herzegovina.

The ICTY Appellate Chamber has defined the elements of persecution as Crimes against Humanity as acts or omissions which are:

- 1) de facto discrimination and which deprive or violate a fundamental right defined in customary international or treaty law; and
- 2) perpetrated willfully, with the intent of discrimination on one of the above-mentioned grounds, more precisely on racial, religious or political grounds.

Having inspected the jurisprudence and the relevant instruments, the Panel finds that the definition of persecution by the ICTY properly reflects customary international law during the relevant period. The Panel further finds that the definition of persecution under customary international law is completely incorporated in the definition of persecution set forth in Article 172(1)h) and paragraph (2)g) of the CC BiH.

However, the Panel would like to note two important issues. Firstly, the discriminatory ground established by the ICTY, namely racial, religious and political grounds, represent the exclusive ground recognized by customary international law during the relevant time

period, so that it represents the only ground that can be considered by the Panel during these proceedings. Secondly, even more importantly, although the element “in conjunction with” is not required pursuant to customary international law, considering the fact that it is included in Article 172(1)h), the Panel is obliged to apply this element. As the first and general issue, the Panel finds that all the crimes as established above represented intentional and serious violation of the fundamental rights contrary to international law, whereby the first and the second element of the criminal offence of persecution have been satisfied. In addition, considering the fact that the crimes as previously established constitute crimes set forth in Article 172(1) of the CC BiH, the Panel finds that, clearly, the element “in conjunction with” has been satisfied as well. The Panel will consider the third and the fourth element of the criminal offence of persecution during the analysis of the criminal liability of the accused persons as members of the systemic joint criminal enterprise, in the text that follows.

The Panel agrees with the reasoning of other Panels of the Court of BiH and with previous jurisprudence applied in other cases in that multiple commission of the act of persecution can be considered a single criminal offence of Persecution as Crimes against Humanity, even if those acts individually represent other Crimes against Humanity (see e.g. Verdict in the *Stanković* case, page 34; Verdict in the *Kovačević* case, pages 43-44; the *Rašević and Todović* case and the *Tanasković and Dragan Damjanović* case).

While considering the criminal liability of the accused persons, the Panel will consider whether each of the above-mentioned and established acts was committed with a discriminatory intent.

First of all, the Panel in general finds that all the above-mentioned and established crimes were committed with intent and that they represent severe deprivation of fundamental human rights contrary to international law, whereby the first and the second element of the criminal offence of persecution have been satisfied. In addition, considering the fact that the above-mentioned and established crimes constitute the criminal offences set forth in Article 172(1) of the CC BiH, the Panel finds that the element “in conjunction with” has been also satisfied. The Panel finds that victims under all counts were Muslims and that none of these crimes was committed against any person found to be of Croat ethnicity.

The Panel has concluded that each of the incriminating actions committed by the accused persons was committed with a special discriminatory intent and treatment of victims by the accused, and this special intent suggests that the intent of all the above-mentioned offences was precisely discrimination – treating a victim in a different manner on the grounds of different ethnicity, nationality, religion and political orientation, which certainly is contrary to the rules of international law. This conclusion is based on actual words and acts by the accused persons during the commission of these crimes.

CRIMINAL LIABILITY: THE SYSTEMIC JOINT CRIMINAL ENTERPRISE

The accused persons were found personally criminally liable as co-perpetrators in the commission of the criminal offence of persecution against the detainees in Vojno, which was used as a detention camp during the period July 1993 – March 1994. The accused persons bear personal criminal liability for the commission of the criminal offence within the joint criminal enterprise of a certain type, which will here be called the systemic joint criminal enterprise.

With regard to the accused Radić and Šunjić, the Prosecutor's Office charged them with having committed the referenced criminal offence also according to the principle of command responsibility, since they were direct superiors and since they had control over their subordinates, including the guards and other HVO soldiers who used to come there and who had access to the detainees and to the rooms in the prison, namely because both of them were in a superior-subordinate relation with those who participated in the *actus reus* of the crime, they both knew about the crimes and none of them undertook the necessary legal measures to prevent the crimes or to punish the perpetrators.

Deciding on the possibility to accept the principle of command responsibility with regard to these two accused persons in relation to the joint criminal enterprise, the Panel bore in mind the second-instance Verdict of the Appellate Panel of this Court in the *Mitar Rašević and others* case number X-KRZ 06/275, which in the reasoning part says that a convicting verdict on both grounds is not possible. Being ruled by this practice of the Court of BiH, the Panel has found that the accused persons bear the responsibility for the commission of the criminal offence within the joint criminal enterprise. Although the elements of both kinds of criminal liability are part of the charges, the category which best describes the manner in which the criminal offences were committed is co-perpetration within the systemic joint criminal enterprise.

A. GENERAL PROVISIONS: THE JOINT CRIMINAL ENTERPRISE PURSUANT TO THE LAW OF BiH AND CUSTOMARY INTERNATIONAL LAW

1. The applicable law of BiH: Joint Criminal Enterprise

a. Article 180(1) of the CC BiH

Article 180 of the CC BiH stipulates the type of responsibility which the Panel needs to establish in order to convict a person for the criminal offences listed specifically in Article 180 of the CC BiH. This Article is part of the Indictment, in conjunction with Article 29 of Chapter V of the Criminal Code, which prescribes the manner of perpetration and the degree of liability for the perpetration of criminal offences. Article 180(1) of the CC BiH was derived from Article 7 of the ICTY Statute and they are identical. The ICTY Statute represents an international regulation, since it was developed pursuant to the authority of the United Nations. The generally accepted principle of international law stipulates that, once international law is incorporated in national laws, "national courts must take into account the original principles of international law and their international court interpretations and definitions". When Article 7 was rewritten into the Code of BiH, it

came together with its international sources and international interpretations and definitions by courts.

Joint Criminal Enterprise – Article 7.1 of the ICTY Statute is incorporated in Article 180(1) of the CC BiH. The Criminal Code of BiH prescribed the acts with regard to which persons can be prosecuted and the manner in which the commission of these acts can represent personal criminal liability. With regard to the acts committed in violation of Chapter XVII of the CC BiH (“Crimes against Humanity and Values Protected by International Law”), the manner of commission which imputes criminal liability is subsumed in Article 180. Article 180(1) prescribes the manner in which a person becomes personally criminally liable for certain criminal offences set forth in Chapter XVII, including Crimes against Humanity (Article 172) the accused persons are charged with. Article 180(1) in the referenced part reads: “A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or execution of the criminal offence referred to in Article... 172 (Crimes against Humanity) of this Code, shall be personally responsible for the criminal offence. The official position of any accused person, whether as Head of State or Government or as a responsible Government official person, shall not relieve such person of criminal responsibility nor mitigate punishment.”

Article 180(1) was derived from Article 7.1 of the ICTY Statute and they are identical. Article 180(1) became part of the CC BiH after Article 7.1 became effective and following the interpretation by the ICTY that it includes, specifically, joint criminal enterprise as a manner of co-perpetration that carries personal criminal responsibility. In the commentary on Article 180(1) of the CC BiH it is noted that, with this Article, international law is incorporated in national laws:

“The text of the provisions set forth in paragraph 1 (of Article 180) is completely the same as the text of Article 7(1) of the ICTY Statute. It is obvious that the Legislator followed the basic rules of criminal liability which stem from international criminal law and the provisions of the ICTY Statute, as well as from Article 25(3)a) through e) of the Rome Statute, since the Legislator has significantly expanded the possible acts of commission and complicity in the commission of the criminal offences”.

Regarding the term “perpetration,” as interpreted by courts internationally, Article 7.1, which is incorporated in the national law as Article 180(1), specifically stipulates: (1) that the joint criminal enterprise represents a form of co-perpetration which includes personal criminal liability; (2) that, pursuant to Article 7.1 of the ICTY Statute (and therefore also pursuant to Article 180(1) of the CC BiH), “perpetration” includes knowing participation in the joint criminal enterprise; and (3) that the elements of the joint criminal enterprise are established in international law and that they are recognizable. While applying the term “perpetration” set forth in Article 180(1), this Panel must take into consideration the definition of this term within the meaning it had at the time it was copied from international law into the CC BiH.

b. Criminal liability for participation in the systemic joint criminal enterprise also represents part of customary international law the accused persons are subject to

As it has been already elaborated, the concept of joint criminal enterprise represents principles established in customary international law, before April 1992. Customary international law is part of the law of BiH.

As the general principle “it seems that all national legal systems accept customary international law as a constituent part of national laws”. However, in addition to this, since 1899 customary international humanitarian law has been explicitly included in the agreements on humanitarian law, which BiH is a signatory to through the so called “Martens Clause”. The most recent example of the inclusion of the “Martens Clause” dates back from 1977 and it is given in the Protocol Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts dated 1977 (Additional Protocol I), which includes the following text as Article 2.

“In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom.”

Bosnia and Herzegovina is a signatory to the 1949 Geneva Conventions and both Additional Protocols, as it was reaffirmed in the Constitution of Bosnia and Herzegovina, Article II.7 and Annex 1. Article III.3.b) of the Constitution of Bosnia and Herzegovina stipulates that “the general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities”. The Constitutional Court of BiH reaffirmed that the Geneva Conventions and the Protocols thereto “enjoy the status equal to constitutional principles and apply directly in Bosnia and Herzegovina.” In addition to this, Article 3 of CC BiH specifically lists the criminal offences prescribed by international law.

Therefore, the accused persons are correctly charged pursuant to the applicable Criminal Code of Bosnia and Herzegovina as members of the systemic joint criminal enterprise:

- 1) since customary international law, which provides for the joint criminal enterprise, applies to them, and
- 2) since the legal regulations of BiH apply to them, specifically Article 180(1) of the CC BiH, which includes the concept of joint criminal enterprise.

2. The conviction of the accused persons as co-perpetrators in the systemic joint criminal enterprise is in accordance with the principle of legality

The fact that they are subject to liability according to the principle of joint criminal enterprise does not mean that their liability for the commission of criminal offences in the past can automatically be supported with the theory of joint criminal enterprise. The accused persons are charged with having committed criminal offences starting from July 1993, before the applicable Criminal Code and the Constitution that is now in force were adopted. Pursuant to the principle of legality, the accused persons cannot be held liable according to the theory of responsibility which did not exist at the time the criminal offences were committed. Therefore it has to be determined beyond reasonable doubt that joint criminal enterprise was part of the law that the accused persons were subject to during

the period July 1993 – March 1994. Acting pursuant to the principle of legality requires evidence that the accused persons were criminally liable in accordance with the principles of the law they were subject to at the time the criminal offences were committed and that, at that time, it was possible reasonably to foresee that the accused persons would be held criminally liable pursuant to that principle.

a. The accused persons were subject to the rules of customary international law at the time the criminal offences were committed

Customary international law has been accepted for a long period of time as a source of international law along with international treaty law and “the general legal principles accepted by all civilized nations”. The foundations of customary international law are dual: the objective element which represents the case law of countries; and the subjective element called *opinio juris*, which refers to countries’ accepting the fact that case law is part of international law. The evidence that a rule has become customary international law can come from different sources, including the case law of international courts, and national courts which apply international law. Because of the manner in which a rule of customary international law becomes law, it is never possible to determine with certainty the exact moment of its inclusion in international law. However, the existence of this rule can be followed by means of documentary evidence proving its existence in the case law of countries and their reaction to that case law.

As it has been already elaborated in detail, the systemic joint criminal enterprise was part customary international law during the relevant period. Considering the fact that those principles were part of customary international law at the time the criminal offences were committed, the accused persons were subject to those principles.

Long before 1992, customary international law was “a constituent part of national laws” accepted by the all national legal systems. In addition, the former Yugoslavia and its successor states have signed the agreement on international humanitarian law, including the Geneva Conventions of 1949 and both Additional Protocols, and are, therefore, subject to the “Martens Clause” which appears in different forms in these agreements and protocols. Being a part of the applicable treaty law, the “Martens Clause” explicitly puts civilians and combatants under the protection of the principles of customary international humanitarian law. Article 210 of the Constitution of SFRY, which prescribed direct application of treaty law, says: “International contracts shall be applied from the day they became effective, unless determined differently by the document on ratification or a contract based on the authority of the relevant body. International treaties which have been promulgated shall be directly applied by the courts of law.”

The accused persons were explicitly subject to “the principles of international law derived from the established custom” at the time the criminal offences were committed, so that the courts were obliged “directly to apply” that law.

b. Criminal liability and prosecution of the persons accused of having committed criminal offences in the capacity of co-perpetrators within the systemic joint criminal enterprise could be foreseen at the time of the commission

In its interpretation of Article 7 of the European Convention, the European Court of Human Rights held that, in order to find a person guilty pursuant to the principle of liability, it was necessary not only that the principle be part of the law the accused persons were subject to at the time the criminal offence was committed, but also it had to be logically foreseeable that they would be prosecuted for the commission of the criminal offences pursuant to these theories of liability. ¹⁰⁷ As it has been elaborated here, the Panel finds that the systemic joint criminal enterprise was part of customary international law at the time the accused persons committed the criminal offence of persecution in the manner established in this Verdict, as well as that they were subject to the rules of customary international law at the time they committed those criminal offences. The Panel also finds that, pursuant to the theory of criminal liability, prosecution could be foreseen at time the criminal offences were committed.

The European Court was often in a position to decide on the principle of legality set forth in Article 7 of the European Convention. Their dispositions did not specifically deal with the application of customary international law in the context of national trials. By its nature, international law is not written and it is developing constantly. However, the European Court has had the opportunity to review the application of Article 7 in national criminal codes, which is also changing and which is not specific. In these cases the Court checked whether there existed an “established” body of jurisprudence that is public and available, in which the legal requirements were clarified. In cases when such body of public and available jurisprudence existed, it was considered that accused persons had sufficient information about the fact that their acts are subject to criminal sanctions, so that they could have adjusted their conduct to the legal regulations. In these circumstances, the rights set forth in Article 7 were not considered to be violated.

In July (in August with regard to the accused Šunjić) 1993 and subsequently, the accused persons could have logically foreseen that they could be held criminally liable as co-perpetrators due to their participation in the specific systemic joint criminal enterprise which existed in the Vojno prison. The accused persons were members of the HVO, the accused Radić held the position of the Commander of the 1st Bijelo Polje Battalion within the 2nd Brigade of the HVO, he was the Commander of the “Ivan Stanić Čićo” Sabotage Unit and later on he was the Commander of the 2nd Brigade of HVO whose zone of responsibility covered the entire region of Bijelo Polje, as well as the village of Vojno in the municipality of Mostar. The accused Šunjić held the position of the Deputy Commander of the Vojno prison, the accused Vračević was a prison guard in Vojno, whereas the accused Brekalo, as a member of the 1st Battalion and the “Ivan Stanić Čićo” Convicts Battalion, arrested and brought in the detainees and had free access to the prison and very frequently he used to come and stay in the prison facility, as well as in the area where the prison was located, on which occasions he committed the relevant criminal acts. In the opinion of the Panel, the Vojno prison operated as a detention camp and all the accused persons were aware of the fact that it had all the forms and elements of a detention camp. The infamy which was a characteristic of the cases of Nazi concentration camps was

well-known in all the countries which fought during World War II, as well as the fact that many persons who were responsible for running such detention camps were tried and that they were punished for their participation in enforcing the system of concentration camps. These were the cases in which court proceedings were public, which were covered with many reports and which were internationally supervised and prosecuted in Germany and in the places which were relatively close to the former Yugoslavia, while the jurisprudence and conclusions of these courts were public and available.

In addition, the accused persons could have logically foreseen the criminal liability for their acts in maintaining and furthering the criminal system based on the existence of the written provision of the Yugoslav law of 1992. Article 62 of the Criminal Code of the Socialist Federative Republic of Yugoslavia says:

“Whoever forms or uses an organization, a gang, a conspiracy, a group or any other association for the purpose of perpetrating criminal offences shall be criminally responsible for all the criminal offences which resulted from the criminal plan of those associations and shall be punished as if he perpetrated them himself, regardless of whether he directly participated in the perpetration of one of the offences and in which capacity.”

In the comments which refer to this part it is repeated that a perpetrator was convicted based on the following provision:

“1) responsible for the actions which were directly included in the plan of a criminal group, as well as for those actions which represent a result of this plan if they are of such nature that their perpetration was in pursuance of the realization of the group’s goals.
2) responsible for individual criminal offences which were perpetrated, even if he/she did not take part in their perpetration in any manner whatsoever
3) will be tried in the same manner as the perpetrator of the criminal offence.”

The comments further describe the general criminal plan of a group as a plan that is usually “unwritten”, detectable through conclusions:

“If the goals of a group are known, a conclusion on the existence of the general criminal plan of the group can be drawn based on that (knowledge). In this manner it is possible to determine which actions are covered directly by the plan, the actions which must be committed are usually not specifically noted or individualized, the content of a criminal plan is determined based on the general goal of the group.”

Taking into account the similarity between the basic elements of written national laws which were effective at that time and the systemic joint criminal enterprise in the form in which it existed in international law at that time, there is no doubt that the accused persons had more than sufficient information about the fact that they were risking to be prosecuted as perpetrators due to their participation, together with others, in enforcing the system through which the detainees in the detention camp were subject to persecution, in violation of international humanitarian law.

Article 7.2 of the European Convention reads: *“This article 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 the general principles of law recognized by civilized nations.”

Article 7.2 of the European Convention is reflected in Article 4a. of the CC BiH: “*Articles 3 and 4 of this Code 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.*”

This concept was also part of the law of SFRY and its successor states in April 1992. Article 15.2 of the International Covenant on Civil and Political Rights is reflected in Article 4a. of the CC BiH and Article 7.2 of the European Convention and it prescribes trial and punishment of persons for the acts that are considered criminal offences “according to the general principles of law recognized by the community of nations.” The former Yugoslavia became a signatory of this agreement in 1971. The accused persons were aware of the fact that they could be prosecuted pursuant to the principles of international humanitarian law at the time the criminal offences were committed.

3. The systemic joint criminal enterprise was part of customary international law in 1992 and it still represents part of customary international law

Evidence that a rule has become customary international law can come from different sources, including the jurisprudence of international courts, as well as national courts which apply international law. By 1950, a significant record of jurisprudence and articulated acceptance by states of the principle of the systemic joint criminal enterprise, based on which it is possible to charge, try and punish, as the main perpetrators, the persons accused of having violated international humanitarian law, who knowingly contributed to enforcing the system of criminal maltreatment of detainees in concentration camps. By 1992, when the accused persons started the commission of the criminal offences charged against them now, the systemic joint criminal enterprise developed into the theory of liability that was accepted by international humanitarian law. Due to the manner in which a rule of customary international law becomes law, it is never possible to determine the exact moment of its inclusion in international law. However, the existence of that rule can be followed by means of the documentary evidence proving its existence in the jurisprudence of countries and their reaction to the jurisprudence. Trials of persons who were accused of having aided the maintenance of concentration camps in the Nazi Germany offer a possibility to inspect the evidence which suggests that the systemic joint criminal enterprise was accepted by states as a theory of personal criminal liability as part of customary international law, and that those states used it while applying that law. The concentration camps held by the Nazis and trials of war criminals who ran those detention camps are well-documented and well-known. During the two main series of trials of persons who were involved in running four such detention camps: Dachau, Mauthausen, Belsen and Auschwitz, the Tribunals, which were established and monitored by the international community, charged and convicted a large number of persons for their participation in what we today call the systemic joint criminal enterprise.

At the trial against Josef Kramer and 44 others (the *Belsen* case), with regard to 45 persons it was claimed that they were staff members in the concentration camps in Belsen or

Auschwitz and that they “all knowingly participated in a common plan to operate a system of ill-treatment and murder in these camps.” The listed victims were from 10 different European countries and although the proceedings were held by the British Military Court, “seats were provided behind the bench for each of the ten nations”. Thirty accused persons were found personally guilty of having committed war crimes according to the theory of criminal responsibility to which we refer as the joint criminal enterprise.

In the meantime, while the trial was ongoing in the *Belsen* case, additional trials were held before the Basic Military Court in the American zone against Martin Gottfried Weiss and 39 others (the *Dachau concentration camp* case). Forty accused persons in this case were charged with having “acted in pursuance of a common design to commit acts hereinafter alleged and as members of the staff of the Dachau Concentration Camp ... [and] participate in the subjection of civilian nations to cruelties and mistreatments”.

The United Nations legal reports show that the Court determined the three following elements which must be established for the existence of personal criminal liability according to the theory of perpetration: “(1) that there was in force at Dachau a system to ill-treat the prisoners and commit the crimes listed in the charges, (2) that each accused was aware of the system, (3) that each accused, by his conduct...participated in enforcing this system.”

These elements were reconfirmed at the trial against Hans Alfudisch and sixty others (the *Mathausen Concentration Camp* case) three months later. Sixty-one accused persons were found personally criminally liable for having knowingly participated in the system of maltreatment of detainees. This personal criminal liability was established with regard to “each official of government, military or civilian authority and each of the employees there, regardless of whether he was a member of the Waffen SS, the Allgemeine SS or a guard, or a civilian...” Reconfirming the need to establish actual knowledge of the criminal practice which constituted the system, that Court established that evidence about the crimes committed against the detainees was so obvious that the existence of the knowledge was established beyond any doubt.

There is no doubt that during 1993 and 1994 the principle of the joint criminal enterprise, which included knowing participation in the systemic commission of War Crimes and Crimes against Humanity against the detainees in concentration camps, was significantly part of customary international law. This form of the systemic joint criminal enterprise as part of customary international law was also accepted and confirmed by the ICTY, first by the Appellate Chamber in the *Tadić* case, and then by Trial Chambers and Appellate Chambers in a whole series of cases. The Appellate Chamber in the *Tadić* case established that the systemic joint criminal enterprise constitutes a specific manifestation of the general joint criminal enterprise recognized by customary international law. In addition to this, the Appellate Chamber in the *Tadić* case established the existence of a third form of joint criminal enterprise and called it the joint criminal enterprise 3. However, considering the facts in this case, this Panel is interested only in the systemic joint criminal enterprise which is accepted in customary international law as a form of the general joint criminal enterprise.

4. Elements relevant to the establishment of criminal liability for participation in the systemic joint criminal enterprise

If the accused persons are charged with co-perpetration in the criminal offence that is part of the joint criminal enterprise, the Prosecutor must prove beyond doubt that the criminal offence was indeed committed, that it was committed through common actions within the joint criminal enterprise and that the elements necessary for the establishment of the accused person's liability for the commission have been satisfied. As it has been already noted, joint criminal enterprise in general, and especially the systemic joint criminal enterprise, was already part of customary international law by April 1992 and its elements and definition were already established. The Trial Chamber in the *Tadić* case explicitly recognized this in its Verdict dated 7 May 1997. Since then, Trial Chambers and Appellate Chambers of the ICTY had several occasions to apply the concept of the joint criminal enterprise, and in particular of the systemic joint criminal enterprise, in cases pertaining to detention camps which existed in the entire territory of Bosnia and Herzegovina during the period between 1992 and 1995. In this manner they advanced, but did not change the understanding of the general joint criminal enterprise and the systemic joint criminal enterprise in the context of the conflicts in the former Yugoslavia. The ICTY decisions are not binding for this Panel. However, the Panel is satisfied that the qualification of the systemic joint criminal enterprise, its elements, *mens rea* and *actus reus*, as developed by the ICTY, correctly reflects the state of customary international law in April 1992 and later on.

Elements of the general and systemic joint criminal enterprise

The Appellate Panel in the *Tadić* case is the first Panel in the ICTY which established and clearly articulated three categories of the joint criminal enterprise which existed in international law during the relevant period. This case refers only to the first two categories.

The first category is the general form of the joint criminal enterprise and, according to the Appellate Chamber, it is represented in the cases in which a group of people act together pursuant to "a common plan" and have the same criminal intent. If the criminal offence was committed by such a group pursuant to that common plan, persons who voluntarily participated in some aspect of that plan with the intent to bring about the criminal result can be considered personally criminally responsible as co-perpetrators. The second category of the joint criminal enterprise, the systemic joint criminal enterprise, is "a variation" of the general joint criminal enterprise and, according to the ICTY: "it embraces the so-called concentration camp cases. The notion of common purpose was applied to instances where the offences charged were alleged to have been committed by members of military or administrative units such as those running concentration camps, i.e. by groups of persons acting pursuant to a concerted plan. Cases illustrative of this category are *Dachau Concentration Camp*, decided by a United States court sitting in Germany and *Belsen*, decided by a British military court sitting in Germany. In these cases the accused were responsible for having acted in pursuance to a common design to kill or mistreat prisoners and hence to commit war crimes. In his summing up in the *Belsen* case, the Judge Advocate adopted the three requirements defined by the Prosecution as necessary to

establish guilt in each case: (i) the existence of an organized system to ill-treat the detainees and commit the various crimes alleged; (ii) the accused's awareness of the nature of the system; and (iii) the fact that the accused in some way actively participated in enforcing the system, i.e., encouraged, aided and abetted and in any case participated in the realization of the common criminal design.”

Elements of joint criminal enterprise that can be distinguished from customary international law are easily recognized. The *actus reus* requires the following: plurality of persons, common design and participation of the accused in contribution to that goal. When this is specifically applied to the facts in the systemic joint criminal enterprise, the common goal is to commit one or several specific criminal offences realized through “the organized effective system”. The participation that is necessary for contribution to the common goal of the system need not be in the form of actual commission of the underlying criminal offence, providing that the participation of the accused actively contributed to enforcing the system. The *mens rea* for the systemic joint criminal enterprise requires: personal knowledge of the effective organized system and its common criminal goal and the intent to further this system. If the common criminal goal includes perpetration of a criminal offence which requires special intent, e.g., persecution, then a participant must share that special intent. However, the common intent and even the special intent can be derived.

B) THE SYSTEMIC JOINT CRIMINAL ENTERPRISE IN THE VOJNO PRISON

1. Introduction

The evidence proves beyond doubt that during the relevant period, that is, from July 1993 to March 1994, the systemic joint criminal enterprise, which included several persons from several military units and authorities, existed in the Vojno prison. The common purpose of the systemic joint criminal enterprise was persecution of Bosniak civilians by unlawfully arresting and imprisoning them in Vojno, holding them in inhumane conditions and finally removing them from the region in which they were lawfully present until that period, subjecting detainees to interrogations, beating them on a daily basis, torturing, maltreating and humiliating them, sexually abusing them, killing certain detainees, and by inflicting serious mental, emotional and physical injuries to detainees. By having participated and contributed to this system of persecution, knowing about the common purpose to carry out the persecution, the criminal offences which were committed and the discriminatory intent of those offences, as well as by having the intent personally to participate and contribute to the system of persecution, the accused persons are guilty of the criminal offences as established in the sections of the Verdict as co-perpetrators in the systemic joint criminal enterprise.

2. The systemic joint criminal enterprise

a. History of the establishment of the Vojno prison as the systemic joint criminal enterprise

Having inspected the crime scene and through consistent statements of all witnesses, it was established that the Vojno settlement in which the detained persons were held is located in the region of the Mostar municipality, to the north of Mostar, on the right bank of the Neretva river, a couple of hundred meters away from the Sarajevo-Mostar road. In a broader sense, the Vojno settlement belongs to the Bijelo Polje settlement. The Vojno prison consisted of the command building, which was located in a privately-owned house, next to the command there were two privately-owned houses in which women and children were imprisoned, while men were held in the basement of one of the houses, as well as in a garage located in the yard of the house in which the prison command was located and in which detainees - men were held. Therefore, there were three privately-owned houses and a garage, while in terms of space all these houses were concentrated in the same area with fences separating their yards. The prison compound was not fenced with wire, there were no observation posts, but the rooms in which the detainees were held were locked while armed guards were outside. The exact date when this prison was established could not be precisely determined during the proceedings, since there is no clear documentary evidence of that.

Based on the Report of the SVIZ /*Central Military Investigative Prison*/ Warden Stanko Božić number 676/93 dated 14 September 1993 it ensues that on 6 July 1993 the 1st Battalion of the 2nd Brigade took 8 detainees to perform labor. Out of these 8, 6 detainees were returned, whereas detainees Rasim Lulić and Mustafa Čilić were not returned. The same Report says that on 11 September 1993 information was received from the so-called Commander of the privately-run prison in Bijelo Polje, Mario Mihalj, that 7 detainees who had been brought from SVIZ were killed. Based on the Order of the Mostar Defense Sector dated 19 August 1993 it follows that 50 detainees were taken from the SVIZ Heliodrom for the needs of the 1st Battalion of the 2nd Brigade and that Dragan Šunjić was responsible for them. With regard to this, there is also the SVIZ Report number 636/93 which says that, on 19 August 1993, 50 detainees who were secured by Dragan Šunjić, were handed over to the 1st Battalion of the 2nd Brigade. The Report of the SVIZ Warden No. 698/93 of 22 September 1993 shows that the prison in Bijelo Polje was “a privately-run prison”. In the same Report, with regard to the accused Dragan Šunjić, it was noted that he had sent a letter as the so-called Commander of this prison. Enclosed with this Report is also the letter dated 15 September 1993, written and signed by Prison Commander Dragan Šunjić, in which he reported that on 15 September 1993 detainee Selim Alilović had been killed while digging a ditch in Vojno. In addition, the Report of the SVIZ Warden dated 18 September 1993 stated that there were many cases of abuse of detainees in “the privately-run prison” in Đubrani. The Report on the visit of ICRC to the POW accommodation facility, which was made by the HR HB /*Croatian Republic of Herceg-Bosna*/ Ministry of Defense, No. 02-4-1/94-104 dated 31 January 1994, shows that 60 detainees performed labor in Vojno, whereas Mario Mihalj, a member of the Bijelo Polje Battalion, abused his position, abused the detainees and killed them. Among the documentary evidence related to the existence of the prison in Vojno, the Prosecutor’s Office also tendered into the case file

the Statement of the detainees who returned from “the Vojno prison” having arrived in Vojno in two groups on 8 November 1993 and on 17 November 1993, and returned to Heliodrom on 28 January 1994. The certified copy of the Helidrom Log Book shows that on 7 March 1994, 25 prisoners returned to Helidrom from the Vojno prison. The return of these detainees took place based on two Orders of the 2nd Brigade Commander Marko Radić, dated 27 January 1994 and 6 March 1994, who issued an order to all units of the 2nd Brigade that all the detainees be returned to the Heliodrom detention centre, based on the Washington Agreement, with the aim of releasing the detainees and normalizing the relations.

Also, many witnesses who were heard noted in their statement the time when they were taken to the Vojno prison. Witness “L” stated that together with her sister Witness “X” and other members of her family, she was arrested on 23 July 1993 by Nedžad Ćorić, Juro Kordić and Emir (Damir) Brekalo. Nedžad Ćorić told her that the Vojno detention camp was established in which Marko Radić was the Commander and that they were following his orders. In the apartment where they took her they talked about the Vojno detention camp, about the persons whom they had taken to the detention camp earlier, and Nedžad Ćorić told her that her mother, brother and sister were taken to Vojno. Witness X consistently stated that she was arrested on 23 July 1993 and that she was taken to Vojno together with her mother and brother. Mićo Kordić told them that he was taking them to Vojno where a detention camp was being established; they entered the ground floor of a house where it was dark; she had heard that a Sinanović family and the family of Doctor Kreso stayed there. In that house she saw some people, more civilians were there. In her statement a witness for the principal accused with the pseudonym “001” stated that she was a Bosniak and that in July 1993, approximately 14 days after the conflict between the Army of BiH and the HVO broke out, together with her husband, her two underage sons and her mother she was taken by three HVO soldiers to the Vinko Šunjić’s basement in Vojno. There were people from all places there, from Stolac, Čapljina, Prozor, and they were all Bosniaks except one. After some 15 days Vinko Šunjić’s sons took them to the basement of Buco Cigić, who did not want a detention camp to be located in his house and who requested that they be transferred; so in mid August they were transferred to the Jurić’s house, in which women and children stayed on the first floor, whereas men stayed in the basement. Other witnesses who stayed in the Vojno prison also gave their statements about the time they were brought in, the manner in which they were apprehended and also about the time they were exchanged.

The statement of Ivica Kolobara and Mario Mihalj given to the Military Police Administration shows that on 7 July 1993, together with Damir Brekalo and Anđelko Zlatić, following the order of the HVO 1st Battalion Command they came to Mostar in order to round up the remaining persons of Muslim ethnicity who maintained residence in the region of Bijelo Polje, Vrapčići and Raštani. According to their personal military records, all these persons were members of the 1st Battalion, 2nd Brigade and the “Ivan Stanić Ćićo” Convicts Battalion and these units were commanded by Marko Radić. The fact that during this period the HVO forces were persecuting the citizens of Bosniak ethnicity from parts of the territory under their control also follows from the Report of Ivica Rotim, the Assistant Commander of the SIS 2nd Brigade, dated 24 August 1993, which states that families of Muslims members of the 2nd Brigade should be protected in

order to avoid a situation where men would come back from field missions and not find anyone at home.

Based on all these pieces of evidence which are consistent and supplement each other, the Panel found that the first detainees stayed in Vojno in July 1993, that women, children and elderly were also among the detainees, as well as men who were brought from Heliodrom and that the captured Bosniaks were kept in the Vojno prison until 7 March 1994.

The Panel also found that civilians of Bosniak ethnicity were deprived of liberty by members of the HVO in their homes and in other locations, that women, children and elderly were transported directly to the Vojno prison facility, whereas men from Heliodrom were brought upon the request of the 1st Battalion of the HVO 2nd Brigade and the 2nd Brigade requesting assignment of detainees for the needs of the units. The Panel finally concluded that these arrests were carried out in a systematic and well-organized manner, noting that the persons were deprived of liberty during the operation of mopping up Mostar quarters and the broader area, arresting and persecuting the citizens of Bosniak ethnicity.

Through the statements of witnesses, as well as through documentary evidence, it was established that members of the 1st Battalion of the 2nd Brigade and the “Ivan Stanić Ćićo” Sabotage Unit supervised and controlled the Vojno prison at all stages of its existence. Namely, during the proceedings, based on the consistent statements of all the Prosecution witnesses, including witnesses AI, J, 152, F, Semir Humačkić and others, as well as based on the documentary evidence, it was indisputably established that Mario Mihalj was *de facto* Commander of the Vojno prison, that the accused Dragan Šunjić was his Deputy Commander, that Mirko Vračević was a guard in Vojno, that Damir Brekalo was a soldier of the 1st Battalion and the Convicts Battalion who frequently used to come to Vojno from the beginning until the end of its existence. During the relevant period the accused Marko Radić was the Commander of the 1st Battalion of the 2nd Brigade, the Commander of the Bijelo Polje Battalion, the Commander of the “Ivan Stanić Ćićo” Convicts Battalion, and, since early December 1993, the Commander of the 2nd Brigade. According to their function and the position they held during the relevant period, all the accused persons were present in Vojno during the period in which the prison existed, that is, for as long as the captured Bosniaks were held in Vojno.

Through the evidence it has been established that systematic arrests and imprisonment of Bosniak civilians in the Vojno prison represented a part of organized and methodical persecution of Bosniaks from the region of Mostar and from the wider area. This persecution system was carried out by civilian and military authorities, including the relevant authorities of the HZ HB, as well as by the military and police authorities of the HVO. The accused persons knowingly participated in all this and they had their role in the system.

b. The common purpose of the criminal system

Women, children, elderly and men of Bosniak ethnicity from Mostar and the surrounding area were imprisoned in inhumane conditions in Vojno, as part of the process which was the common purpose of the criminal system. Bosniak civilians were arbitrarily imprisoned in the Vojno prison without any legal procedure, whereby interrogations of women, men

and elderly were carried out most frequently in the building of the prison command. During this process, the detainees remained imprisoned in Vojno in inhumane conditions and, during the interrogations and their stay in the prison, a large number of detainees were subject to beatings, torture, sexual abuse in the command building, as well as in the rooms in which they were held, and in the places near the frontline where they performed labor and in other buildings used by the HVO members. Also, the detainees were killed, whether on the occasion of performing labor on the frontline or inside the prison compound itself, either as a result of serious and frequent beating, or from fire or cold weapons by the persons who controlled the camp. From the moment the Vojno prison became operational, for as long as women were held there, a large number of women were raped or went through different forms of sexual violence, while some of them were underage (X and L). During the whole period of their captivity, the detainees in Vojno were held in inhumane conditions and they were subject to cruel beatings with the aim of punishment, revenge or only for discriminatory reasons, the detainees were forced to perform labor in different locations and very frequently near the frontline. All these crimes were committed with the intent to discriminate the Bosniak detainees on national, ethnic, and religious grounds, so that the detainees were discriminated on these grounds. Therefore, the common goal of the persecution system foresaw and included all types of criminal offences described in the sections of this Verdict. There was an organized system of abuse of detainees and commission of the type of crimes established in all sections of the Verdict.

Arrest, admission, interrogation of detainees

Stage one, which we can say lasted throughout the relevant period, represented the process of unlawful arrest of civilians, mostly women, children and elderly, who lived in the western part of Mostar and their transfer to the Vojno prison. In their statements many Prosecution witnesses noted that they were arrested as civilians in their apartments in Mostar, that they were arrested together with their families and that the arrests were carried out by members of the HVO who took only civilians of Bosniak ethnicity out of their apartments. The characteristic of these arrests of civilians across Mostar is that a large number of them were originally from Bijelo Polje, which is the place where the Vojno hamlet, in which the prison was located, is situated. It is also characteristic that civilians, that is, women, children and elderly from Mostar who were held in Vojno, were mostly arrested by the same persons, including Ivica Kolobara a.k.a. Ivek, the accused Damir Brekalo, Jure Kordić, Nedžad Ćorić a.k.a. Nečko, Amel Hadžiosmanović a.k.a. Doktor, Nedžad Tinjak a.k.a. Žuti and some other unknown soldiers of the HVO. These persons were members of the 1st Battalion and the “Ivan Stanić Ćićo” Convicts Battalion, over which the accused Radić had command. The arrests of the civilians, who were taken to Vojno, across Mostar commenced in July 1993, while they most frequently occurred in August and September of the same year. These facts were confirmed by many witnesses in their statements and they are also confirmed by the existing documentary evidence. Witness AI stated that he was arrested in the western part of Mostar by Kolobara and Tinjak and that he was taken to Vojno together with his wife, his underage child, his father, mother and his father-in-law. His building was mostly occupied by residents of Croat ethnicity, however they were not the ones who were arrested. They themselves were not presented any arrest order and they were not told where they were being taken to. Witness Saja Ćorić was arrested and taken from her apartment in Mostar in early September 1993 together with her underage niece by Kolobara, Ćorić and Žuti. After she was taken away,

only two Bosniaks remained in her building, namely a mentally retarded person and a bed-ridden man. Witness 152 stated that he was arrested in October 1993 and taken from his apartment in Mostar, he was not told why he was arrested. He was arrested by Tinjak, whereas he did not know the other military police officer. They were stopped at the check-point and Tinjak said that he had an oral order from Marko Radić and they immediately let them proceed. In the building in which he was arrested there were other citizens of Croat ethnicity who were not arrested on that occasion. Witness A was arrested in mid-August 1993 in her apartment in Mostar together with her two underage children by Kolobara, Hadžiomerović a.k.a. Doktor and Tinjak, who told her that she was going to be exchanged. Witness J noted that she was arrested in early September in Mostar by Kolobara and Tinjak, whom she knew, and that they did not tell her where they were taking her. Witness C stated that she was arrested in the apartment in Mostar either on 9 or 10 September 1993 by six HVO soldiers among whom she recognized Tinjak and the accused Brekalo, whom she knew for a long period of time, since she had lived in Bijelo Polje before she married. On that occasion her two sisters were also arrested, as well as the husband of one of them and two children. Witness F noted that she was arrested in mid-August in Mostar by Ivek, Kolobara, Tinjak, Hadžihasanović and another young man. Witness Dika Ćurić said that she was arrested on 11 October 1993 in her apartment in Mostar together with Witness 152 and that at the check-point she heard Tinjak say that he did not have any written orders to take the civilians to Vojno, but only an oral order by Marko Radić, after which they immediately let them proceed. Witness L stated that she was arrested together with Witness X, her mother and her younger brother on 23 July 1993 by the accused Brekalo, Jure Kordić, Nedžad Ćorić and another person, and that they were told that they would be taken to the Vojno prison, which was formed by Marko Radić. This fact was also confirmed by her sister, witness L. Therefore, based on the consistent statements of these witnesses, and all other Prosecution witnesses who were arrested in the Western Mostar gave similar or the same statements, it is undoubtedly established that a group of the HVO members, whose names are listed above, unlawfully arrested and took civilians, women, children and elderly from Mostar to Vojno. During the same time period, Bosniak male detainees from the Heliodrom detention camp were taken to the Vojno prison. This taking away commenced in July and it lasted until January 1994. They were taken in groups, mostly consisting of several dozens of men. All the male detainees who had previously stayed in the Heliodrom prison confirmed in their testimonies that they were taken to the Vojno prison and there are also numerous pieces of documentary evidence corroborating this.

Upon their arrival in the Vojno prison, all detained persons went through the admission and interrogation procedure. Namely, it was mostly Mario Mihalj, the Camp Commander, who met all the detainees on their arrival personally together with his Deputy Commander Dragan Šunjić, while guard Mirko Vračević was often present as well. Interrogations of some detainees would sometimes be carried out by Marko Radić, the Commander of the 1st Battalion of the 2nd Brigade, and later on of the 2nd Brigade Commander. The abuse of detainees would commence immediately upon their arrival in the Vojno prison, namely in pursuance of a certain system and pattern which was repeated with each newly-arrived group. In their statements, all the Prosecution witnesses noted that they went through the “welcoming” or “admission” procedure, as well as that they were interrogated on that occasion. The admission first included the line-up of the newly-arrived detainees in front of or inside the command building of the detention camp or in front of the garage, where they were met by the Prison Commander Mario Mihalj, who would introduce himself, together

with Dragan Šunjić as Deputy Commander. During the admission, Mario Mihalj would often tell the detainees: “Welcome to the black hell”, then detainees would introduce themselves individually. The detainees had to introduce themselves in accordance with the rules which were in force in the Vojno prison, and the detainee who did not know how to introduce himself in that manner would be beaten on the spot. Namely, it was requested that the detainees first say their first name and then their surname, so whenever a detainee would first say his surname, he would be beaten. This rule applied to men, as well as to women and elderly. Also, there was a rule in terms of saying one’s year of birth. Since Bosniaks most often use the term *hiljada* to refer to “thousand”, whereas the term in Croatian language which denotes “thousand” is *tisuća*, those who failed to say *tisuća* would be beaten. In addition to the previously mentioned introductions, the “welcoming” also implied that the detainees were given instructions how to behave during their stay in the prison. These instructions were often given by Mario Mihalj and sometimes by Mirko Vračević; according to these instructions the detainees had to call each of the soldiers *sir*, they were not allowed to talk to each other, they were not allowed to look at the soldiers when they were spoken to, they had to hold their hands behind their backs and so on. Many witnesses testified about this admission to Vojno, however we will note only some of them. Witness AI said that upon their arrival in Vojno they were met by Mario Mihalj and Dragan Šunjić who “greeted” them with the words: “Welcome to hell”. Then they lined them up by the garage and then they took them to a room to be interrogated, where they beat each of them who would say his surname first while introducing himself. Witness Saja Ćorić stated that upon the arrival in Vojno her group was first lined up in two lines in the yard of a house and that Mirko Vračević then told them to go inside the command building where the Commander would interrogate them. As they entered the hall of one of the houses, at one point Mario Mihalj and Dragan Šunjić entered, and Mihalj told them: “Welcome to hell, I am the black Satan”. Then Mihalj introduced himself as the Commander and he introduced Dragan as Deputy Commander. Then they started taking them one by one into a room where they had to introduce themselves and whoever did not know how to introduce himself would be slapped. Mihalj beat them then and called them “stupid Balijas”. Then the interrogation would follow and it would turn into beating and battering. Mirko Vračević, as a guard, informed them about the behavior rules in the prison, the manner of saluting, standing with one’s head bowed down. Those rules also applied to the children. Witness 152 noted that upon his arrival in Vojno he saw his school friend Mario Mihalj, he greeted him and asked him what was going on, and then he answered that he would now know what was going on. Then they took him to a room where he had to introduce himself to Mihalj, and after he used the word *hiljada* to tell them the year of his birth, all the soldiers who were present started beating him, including Mihalj, Dragan Šunjić, Tihak and others. Witness A stated that Mario Mihalj met them in Vojno and told them to line up in pairs in front of a house. Afterwards he took them inside the house and asked them to introduce themselves and whoever did not know how to do that would be slapped. That is what happened also when they told them the year of their birth. Witness J confirmed that, upon their arrival, Mihalj told them “Welcome to hell”, that the accused Dragan Šunjić was there as well and that introductions and interrogations followed. Witness C stated that, upon her arrival in Vojno, she was taken to the hall of a house where she recognized Mihalj, Dragan Šunjić and Mirko Vračević, then the introduction followed, as well as the search of their belongings when all their personal documents were taken away, along with gold, money and jewelry. The search was carried out by the accused Brekalo and Vračević. Witness F said that Mihalj and Dragan Šunjić,

who was standing by him and smiling, were the ones who met them in Vojno. After that they started introducing themselves and then they took away all the belongings they had. Witness E said that, upon the arrival in Vojno, they were lined up in front of a house and then two soldiers came out, one of them was Mihalj who introduced himself as the Commander, whereas Šunjić introduced himself as Deputy Commander. After that Mario Mihalj started interrogating them, while Šunjić was writing something down, and before that they had taken away all their belongings. Witness AK stated that, upon the arrival in Vojno from Heliodrom, Mario Mihalj and Dragan Šunjić met his group of detainees and Mihalj immediately introduced himself and beat one of the prisoners. Witness Ramiz Mačković noted that, on the occasion of their transport from Helidrom, Mario Mihalj, the accused Šunjić and Vračević met them in Đubrani, where they tied them with wire and escorted them to Vojno on foot. In Vojno they immediately started interrogating them and whoever did not know how to say the year of his birth properly would be beaten. On the following morning Mario Mihalj told them how they had to behave, primarily to walk with their heads bent and their hands behind their back, to line up obligatorily next to the wall prior to entering the house. Witness Azer Handžra also noted that, upon his arrival in Vojno, Mario Mihalj and Dragan Šunjić waited for them. Mihalj introduced himself as Deputy Commander and told them the rules of behavior. Witness Semir Humačkić said that, upon the arrival in Vojno, Mario Mihalj and Dragan Šunjić met them, then they informed them about the behavior rules, wrote down their names and yelled at them. Witness 151 stated that, upon his arrival in Vojno, Mihalj and the accused Šunjić met them and they told them how they had to behave and then they brought two detainees and showed them their bodies which were all beaten and black and blue as a result of beating and they told them that they would all be like them. All these actions were a constituent part of the purpose of the criminal system, whose aim was to intimidate and humiliate all the detainees since the moment of their arrest and later on while they were transported to the prison, to make them feel helpless and prepare them right away for all the other criminal acts to which they would be exposed. All this was committed only against the citizens of Bosniak ethnicity, with a discriminatory intent and with the aim of persecuting those persons and their fellow-countrymen of the same ethnicity. The accused persons committed these actions and acts with the intent to discriminate against them on national, religious and ethnic grounds.

Accommodation, conditions during their stay, taking the detainees to perform forced labor

The living conditions in the Vojno prison were undoubtedly exceedingly difficult, which was to a large extent contributed by the completely inadequate accommodation of detainees. Based on the statements of all Prosecution witnesses it stems that men were held in a garage and in a basement of a house in Vojno, whereas women were held in the rooms which were located in two separate neighboring houses. Having inspected the crime scene and the sketch of the scene made by SIPA on 17 July 2006, the Panel was satisfied that the referenced garage consisted of one room which measured 6 by 4 meters and another smaller secondary room, which measured 3.5 by 4 meters. According to the statements of the captured men who stayed in the garage, they were all held in the larger room of the garage, whereas the smaller room was used for putting aside their footwear. From the statements of witnesses AI, AD, Ramiz Mačković, Ramiz Bebanić, and Samir Humačkić it follows that between 50 and 65 men were held in the garage at the same time. Witness Samir Humačkić noted that they basically slept one over the other. Witness Zulfo

Humačkić stated that between 65 and 70 detainees were held in the garage during the time he stayed there, that there was not enough space, that they almost did not sleep at all. Also, many detainees were held in the basement of a house within the Vojno prison. Having inspected the crime scene, the Panel was convinced that the basement or the boiler-room is located below the ground level and that it consists of three rooms which are connected and in which the conditions for people to stay are exceedingly difficult, they are not adapted for living, there are no windows and the light is almost insignificant. Witness 152 stated that there was no water in the basement where he was held and that there was not enough light, no toilets, there was a bucket in the corner in which they took care of their bodily functions. Other detainees who were held in the basement also consistently stated that the conditions there were awful and unbearable. The same thing applied to the garage which had an antechamber where they relieved themselves and which was used for putting aside their footwear. Witnesses J, C and D stated that they stayed in small rooms in the houses and that between 13 and 30 women, children and elderly were held in a single room, and that they slept like sardines. Witness Hamza Leto, who was held in the basement as a detainee, could not precisely tell how many persons were held in the basement, but he also said that they slept like sardines. Their being cramped there was worsened by the specific living conditions in which the detainees were held. According to the statements of the Prosecution witnesses, the detainees were held locked inside the cramped rooms during night, whereas during day they would be mostly taken to perform labor. Witness A said that she was held in a room of a house which measured 4 by 4 meters together with five women and eight children, that they slept on the floor with no blankets. Witness "J" stated that she stayed in a room which measured 2.5 by 2 meters together with 22 women and children, that there was no water and no electricity in the house, that the floor was made of concrete. Witness "C" noted that she was held in a room of a house together with around 20 women and children. There was no furniture or beds in the room, the room was very small and they were lined like fish in a can. The detainees were not allowed to move around the houses outside their rooms, they were not provided with any toiletries, they did not get any soap, toothbrushes or toothpaste, and they could not have a bath or shower, they did not have any warm water to wash themselves. The only clothes the detainees had was the one in which they were arrested. They could not wash the few pieces of clothes they had. Witness Saja Ćorić stated that hygiene conditions were non-existent, that she did not have any opportunity to have a bath or change her clothes. Witness J also said that they could not have a bath, that they were not provided with any toiletries, the women used some pieces of cloth or dresses instead of sanitary napkins, they could not change, they were not provided with any clothes. Witness "E" stated that they were not provided with any toiletries, whenever they had a chance they would have a bath with cold water with no soap, as for the clothes, they only had what they brought with themselves. Witness AD said that he was held in the garage, that it was packed with people, it smelled badly since they relieved themselves in a tin-bucket inside the garage, the door was locked with a padlock, while there were guards around the garage. Other witnesses who were held in the garage confirmed these allegations, including the witness Ramiz Mačković, who also added that the walls of the garage were covered with blood and that they were not allowed to talk inside the garage, whereas witness AF said that they slept on the floor, there were no beds and that there were some pallets. Witness Samir Humačkić, who was also held in the garage, said that he had a bath only once in two and a half months, namely on the occasion when disinfection of the room was carried out due to the spread of lice, that they were not provided with any toiletries. The living conditions in the houses in which they were

detained were difficult throughout the entire period of their captivity. The witnesses agree in terms of the description of the conditions there.

All the detainees were taken to perform forced labor. This has already been noted in this reasoning, in the part in which the statements of the witnesses who testified about this form of inhumane treatment were presented in detail. In addition, women, as well as men, were also taken to perform labor. The labor was performed on a daily basis and it mostly lasted from morning to evening. Many witnesses noted that they were taken to perform labor also when they were injured as a result of beating and torture. With regard to the women, the forced labor consisted of cooking, washing, cleaning, tiding and so on, all for the needs of the HVO members. At the same time, the men forcibly dug trenches, made pillboxes, cut woods, carried ammunition, and did everything they were ordered to do. This labor was very often performed on the very frontline. On these occasions many detainees were exposed to crossfire or sniper fire. A large number of detainees were killed or injured as a result of this fire. The names of all the persons who were killed on the frontline or near the frontline are listed in the Verdict. However, these injuries and killing of detainees did not decrease the number of times when the detainees were taken to perform forced labor on the frontline. The humiliating conditions in which they were held, insufficient nutrition and medical care, lack of hygiene and taking detainees to perform forced labor also represented the common purpose of the criminal system. At this stage that purpose was the following: the worst accommodation possible, the worst living conditions possible, as insufficient amount of food and medical care as possible, as much labor to be performed for the needs of the HVO as possible. The victims were unimportant. Much more important was to make them continue performing labor on the frontline and continue getting killed or injured. Their lives were not worth much anyway. Those actions represented part of the persecution system, the victims were of Bosniak ethnicity, and the accused persons, as perpetrators of the acts, had the intent to discriminate against these persons on national, religious and ethnic grounds and they committed the acts of inhumane treatment with this intent.

Rape, killing, torture, inhumane acts

From the consistent statements of all the witnesses who were heard it follows that, during their stay in the Vojno prison, a large number of persons of Bosniak ethnicity were beaten, tortured, killed, whereas a large number of women were raped. These acts were committed right from the beginning of the operation of the Vojno prison. Therefore, the first detainees who were brought to the Vojno prison at the beginning of July (Čilić and Lulić) were first beaten twice during the day by Damir Brekalo, and then they were called to come out of the basement in the evening, after which they never returned. Their bodies were exhumed in the area of Vojno and identified subsequently. Also, in August and in early September several detainees were killed. Detainee Arif Omanović, who was brought together with his wife Huma and who was an elderly man of over 60, was beaten on a daily basis by the HVO soldiers, including the accused Šunjić, as a result of which he died. A similar thing happened to Avdo Jelin, who was also beaten and tortured with electricity from the first day he arrived to Vojno, in which the accused Šunjić also took part, and who died as a result of this abuse shortly after. During the same period Mensud Dedajić was also killed while he was performing forced labor on the frontline. He was killed by an unidentified soldier of the HVO. Some detainees from Heliodrom did not even manage to get to the Vojno prison because they were killed in the meantime. During September this happened

to detainee Asif Čakrama who was killed on the road between Dubrani and Vojno by the accused Mirko Vračević in the presence of the accused Šunjić. At the moment of his death his hands were tied with wire. The most brutal killing of detainees in Vojno took place also in September. On the same day, after a member of the HVO was killed near the frontline, throats of four detainees were slit, namely of Aris Začinović, Enver Kajtazi, Husnija Čorajević and Željko Čakalović. During this event the accused Šunjić and Brekalo were present on the scene. Some time after that, in late December 1993 and in early January 1994, Džemal Sabitović, Hamdija Tabaković and Mensur Salman were killed while they were performing forced labor on the frontline. During this period, the accused Šunjić killed Nurko Enes, who was just arrested, in the compound of the Vojno prison, whereas a member of the HVO with the nickname Roki killed detainee Mustafa Kahvić on the frontline. While analyzing these killings which took place frequently and on which occasion 16 detainees were killed in different manners, which were perpetrated either directly by the accused persons, or in their presence or during performing of forced labor, the Panel has concluded that those killings were also the common purpose of the criminal system. The killings were committed knowingly, with discriminatory intent on national, religious and ethnic grounds. Nobody wanted to prevent those killings and nobody was held responsible for these killings. Also, the victims, the detainees of Bosniak ethnicity, did not provoke any of these killings in any way. They were killed in a cruel manner while being helpless. Other detainees who were not killed by the accused or the prison staff were killed on the frontline, where they performed forced labor upon orders, in which the accused persons also took part, each in his own manner. The Panel finds that all these killings were a part of the goal of the criminal system of persecution of Bosniaks on discriminatory grounds.

Raping of women also began as soon as the Vojno prison was established. Witness "001", who was detained already in mid July, stated that she went to complain to the 1st Battalion Commander, the accused Radić, about attempted rape of her daughter by Mario Mihalj. Already on or around 23 July 1993 underage witness L was raped by Brekalo, underage witness X was also raped by the accused Brekalo, whereas the accused Marko Radić committed sexual violence against underage witness X. In August, witness A was raped first, she was raped by the accused Marko Radić two times in the 1st Battalion Command as soon as she arrived and then he sent a soldier called Ivan to rape her too, whereas several days after that the same witness was raped for the third time by the accused Radić. The third time she was raped in the command of the prison and the accused Šunjić was present in the command building. In September the accused Radić raped witness D in the command of the 1st Battalion, whereas, during the same month, Brekalo raped witness D two times together with Dario Sušac. Also in September witness C was raped by Brekalo and a soldier called Marko. Witness AG, who was brought to the Vojno detention camp in early September, noted that, shortly after she arrived, the accused Brekalo and Mihalj raped her. The same witness stated that she was raped on a daily basis, that they spared her only for five days, as well as that she was raped, among others, by Marko Radić three times and by Šunjić once. Witness AM also stated that she was raped on several occasions by Mirko Vračević and since she could not precisely determine how many times she was raped, based on her scanty answers the Panel concluded that it happened at least on three occasions. During her stay in the room in which police stayed in Vojno, witness B was raped by Dario Mihalj, Tomo Aničić, and soldiers called Babo and Sergej and she was also taken to the police building by the accused Šunjić. Witness F was sexually abused by the

accused Brekalo and Dario Sušac, witness E was raped by Mirko Bukara after the accused Radić told her to follow Mirko Vračević, who took her to the house in which Bukara raped her. Witness J was raped by soldier Dragan Škrobić, who was with Marko Radić before that and who took them across the Neretva river in a boat.

Such large number of women who were raped by the accused persons, some of whom were underage girls, who went through different forms of sexual abuse and some of whom were raped several times in one day, whereas others were raped several times during a longer period of time, suggests that raping of women in the Vojno prison was the accused persons' common goal of the criminal system of persecution and that these acts were committed with the discriminatory intent towards women of Bosniak ethnicity.

Torture of detainees in Vojno also represented a purpose of the criminal system. In the Vojno prison a large number of detainees were tortured, including witnesses AI, 153, 152, AF and others. The torturing took place during a longer period of time, it was frequently done by several persons, the manners of torture were different, including electric shocks, tattooing crosses and lilies, beating with wooden bats, as well as with other objects, hitting their heads against the wall and door and so on. In addition to the torture, other forms of beatings took place on a daily basis such as slapping, punching and kicking, hitting with rifle butts, threats of death, and the like. All these actions were carried out by the accused persons, in particular by the accused Šunjić, Brekalo and Vračević. The accused Radić knew of these acts and was aware of the torture, beating and other inhumane acts, since he visited the rooms in the prison, where he saw what the detainees looked like and he could also see the garage walls covered with blood. However, these acts and these offenses were a purpose of the criminal system, namely the persecution of Bosniak population and these acts were committed by the accused persons with discriminatory intent against persons of different religion and ethnicity.

3. Legal elements of liability for the joint criminal enterprise

a. The systemic joint criminal enterprise

Actus reus: plurality of persons

In order for a joint criminal enterprise to exist, of course, there must be more than one person involved. However, no particular form of organization is necessary, nor is it necessary to limit the enterprise to membership in one or any organization. Several persons from several different organizations can join to create a criminal system. In the *Mauthausen Concentration Camp* case the persons who created the system were members of SS from different divisions, guards or civilians, or even the detainees who took part in the enforcement of the system. The Trial Chamber in the *Kvočka* case found that in the detention camp Omarska the persons who were involved in the systemic joint criminal enterprise included external interrogators, internal guards, employees in the mine on whose property the detention camp was located, members of the local Crisis centre, special outside security units and members of the Territorial Defense. Although it is necessary to note as precisely as possible the principal perpetrators, that is, the ones who indeed committed the underlying criminal offences, in case when all perpetrators are not tried in

the same proceedings it would be unrealistic and unfair to try to identify each and every individual who was involved in the system.

The success of the systemic joint criminal enterprise required participation of plurality of persons working together to implement the persecution system. Each group of the protagonists was given a particular role and they performed special functions. Specifically with regard to the Vojno detention camp, there was a group that was in charge of arresting women, children and elderly in the western part of Mostar and bringing them to Vojno. The detainees from Heliodrom were transferred to Vojno based on requests submitted by the 1st Battalion of the 2nd Brigade or the 2nd Brigade, while the authorized persons in the SVIZ Heliodrom acted pursuant to these request. The Commander of the Bijelo Polje Battalion, the “Ivan Stanić Ćićo” Special Unit, as well as of the HVO 2nd Brigade, had control over the prison staff, as well as over the persons from his units who used to bring the detainees, whereas the Commander, the Deputy Commander and guards of the Vojno prison had control over the detainees in Vojno on a daily basis, otherwise they would not have been unlawfully detained or available to other participants in the joint criminal enterprise. The Vojno prison staff consisted of persons who met the detainees, interrogated them, gave them instructions regarding their behavior, put them in facilities and rooms and decided who would perform labor. The guards secured the detainees and took them out of their rooms and handed them over to soldiers who would come to take them to perform labor or they would personally take them to perform labor. By doing this, these protagonists committed crimes established in the sections of the Verdict. The key issue is that, being the persons who controlled and functionally maintained the Vojno prison, the accused persons committed the crimes and enabled other participants in the joint criminal enterprise to carry out tasks and commit crimes by ensuring that the victims are held in a single place, demoralized and weakened, always available for the participants in the joint criminal enterprise and physically and mentally unable to resist the crimes against themselves.

It is indisputable that the accused persons actively participated in the systemic joint criminal enterprise and that they took part in running and furtherance of the system of the joint criminal enterprise within which these crimes were committed. According to the legal definition, the systemic joint criminal enterprise must include plurality of persons, each contributing to the system, and therefore to the commission of crimes, even if a person does not directly participate in the *actus reus* of the individual crimes. The joint criminal enterprise defined in this manner could not function without “the others” who, together with the Vojno staff, constituted the plurality of persons. No defense can be based on the fact that the accused persons did not personally participate in all the activities, or commit all the crimes necessary for the realization of the common purpose of the joint criminal enterprise. It suffices that the roles they had contributed to the *actus reus* of some of the crimes and contributed to a decisive extent to the overall criminal purpose of the joint criminal enterprise.

Actus reus: Common criminal purpose

Within the systemic joint criminal enterprise the goal of the system itself is “commission of crimes whichcan be considered common to all the perpetrators beyond any reasonable doubt”. There is no need to prove explicit agreement with the crimes the system will

commit, while the purpose can be created with or without formal planning. However, in the lack of evidence about formal agreement or plan, there must be sufficient evidence to convince a trier of fact that a common criminal purpose existed. This conclusion can be based on evidence that the participants acted in unison or in couples, on repetitive character of the criminal offences of similar nature and on observable commission of the criminal offences.

The evidence reveals an important organization and coordination in the process of commission of all the crimes with regard to which the Panel has established that they were a part of the criminal system elaborated above. The arrests of civilians, women, children and elderly, in the western part of Mostar, were carried out mostly in the same manner, as well as their transport to the Vojno prison. These arrests were carried out based on the order by the accused Radić, the Commander of the HVO soldiers who arrested civilians around Mostar and brought them there. Also, following an order by Radić, Commander of the 1st Battalion of the 2nd Brigade, and, later on, Commander of the 2nd Brigade, detainees were taken from Heliodrom to Vojno to perform labor. Persons who were brought to Vojno were all Bosniaks. The system of intimidation and humiliation of detainees would be enforced immediately upon their arrival, while they were introducing themselves and during interrogations when they were slapped or beaten due to allegedly wrong way they introduced themselves or due to wrong terms they used to say the month or year of their birth. Within this system of intimidation and humiliation, a code of conduct about which the prisoners were informed in Vojno was also important and it implied that the detainees were not allowed to look at the prison staff, that they were not allowed to talk to each other, that they had to keep their heads bent towards the ground, their hands behind their backs and so on. Also, the very rapes, as well as sexual violence, were carried out in a rather systematic manner. All young women with children were either raped in the prison or went through other forms of sexual violence. While doing so, the perpetrators of these acts knew that they had children and most often they blackmailed the women with their children, threatening that they would kill their children if they do not consent to a sexual act and if they tell anyone about the rape. The rape most often took place at night in the manner that guards would come to the rooms and take the women to persons and places previously arranged. Also, purported interrogation of women was frequently a reason to take them to the place where they would be raped. The forced labor performed by the detainees, who were taken out of their rooms on a daily basis and taken to perform labor for the benefit of the HVO units was very well organized and coordinated. Every morning the detainees were taken to perform labor, soldiers from the HVO units which needed them to perform labor used to come to take them. The Vojno prison staff decided who would go and they used to hand over the detainees to these soldiers or the guards would personally take them from the prison to certain locations. The women most often did the washing, cleaning and cooking, whereas the men dug trenches, made pillboxes, chopped woods and so on. There was a clear procedure in which different protagonists had different roles and this procedure was respected.

A coordinated commission of consecutive crimes by protagonists during a long period of time can represent sufficient evidence to establish the existence of a systemic joint criminal enterprise to commit those crimes. Regardless of this, the Panel should not just rely on these factors. Indirect and direct evidence in particular determine the common goal which

defined and created the Vojno prison as a systemic joint criminal enterprise which includes commission of crimes described in detail in the sections of this Verdict.

While considering whether the crimes determined in the referenced Verdict were committed as a part of the joint criminal enterprise in pursuance of a common purpose, one crucial fact immediately stands out when the evidence is observed in its entirety. To put it simply, the Vojno prison represented a centre of activities or a core which was the main common link between all the individual crimes established in the Verdict. Regardless of whether the crimes were committed inside or outside the Vojno prison, this prison represented the *conditio sine qua non*, the necessary element. Killings, rape, torture and inhumane acts, all these crimes occurred in the Vojno prison and they depended on acts or omissions of the staff and persons who were connected to it, wherever their final points were. The persons who committed these crimes were directly connected to the Vojno prison itself. Those were the persons who participated in the establishment of the prison itself and who had control over the prison, as well as the very prison staff, in particular its Commander and Deputy Commander, guards, and certain soldiers who were commanded by Radić and who had free access to the detainees and who were free to treat them the way they wanted to.

In addition, it is clear that the intention was that the Vojno prison should operate as such core. Namely, it was not just an ordinary or a usual detention camp. The purpose of the Vojno prison was to play a broader role, which indeed it did play. The sequence and pattern of the events clearly reveal the outline of the plans and concept of those who initiated and ran the Vojno prison. The crimes from the Vojno prison were not arbitrary or accidental and they were not a result of the acts of individual perpetrators on their own initiative. On the contrary, these crimes were a result of an organized and well-thought-out system; at the beginning, civilians of Bosniak ethnicity were arrested and transferred to Vojno and then they would be terrorized which implied first intimidation and humiliation, followed by torture, taking them to perform forced labor, rape, killings and other inhumane acts. Commission of crimes therefore represented a constituent part of the Vojno prison's role as a detention camp. The captives were not just detained they were detained awaiting the commission of other criminal acts. This pattern of treatment of detainees commenced immediately upon the establishment of the prison and it lasted until the prison ceased to exist, namely for a period of eight months. Different crimes were committed against the detainees in Vojno, and against some of them, several times a day. All this indicates that the purpose of the Vojno prison was to operate as a core of the criminal system, which includes commission of all types of crimes established in this Verdict. All the male detainees of Bosniak ethnicity, who went through several prisons under the control of the HVO during the relevant period, stated that the Vojno prison was the worst.

The very crimes were connected in a systemic and thematic manner, which once again highlights the role of the Vojno prison. The pattern of crimes that came up in Vojno reflects an organized and systematic progression, starting from arrests, through creating inhumane conditions, beatings and torture during the interrogations, rape and sexual violence, removal by killings and so on, whereby the crimes which were committed fulfilled the common purpose, it all served to round up the ethnic cleansing policy which stood behind the widespread and systematic attack on the population of Bosniak ethnicity in Mostar and in the wider area.

The fact that, from the beginning, the Vojno prison was the core of the systemic joint criminal enterprise, with the goal of persecution of the civilians of Bosniak ethnicity from Mostar through their arrests, torture, rape, killings and other forms of inhumane acts, was corroborated in statements a large number of the witnesses. Witnesses AI, Saja Ćorić, Witness J, F, D consistently stated that the detention camp Commander Mihalj and Deputy Commander Šunjić waited for them as they arrived to the prison and that they were then told “Welcome to the hell”. From the statements of witnesses AI and J it ensues that they cursed their Balija’s mother and called them stupid Balijas when they did not know how to introduce themselves “properly”. The accused Šunjić and Mihalj took two detainees from the basement and showed their injuries to a group of detainees immediately upon their arrival telling them that that was how they were going to look, too. Underage witnesses X and L, who were among the first persons who were arrested, consistently stated that they were raped already on the first day, namely witness L two times by the accused Brekalo, whereas witness X was raped by the Chief Commander Marko Radić. Also, witness A was taken away and raped immediately upon her arrival. Some of the detainees were killed even during the transport, for example Arif Čakrama, who was killed by the accused Vračević on the road section between Đubrani and Vojno. Selim Halilović was killed in Vojno by Commander Mihalj immediately upon his arrival, after he said that he had a heart condition and that he was unable to perform labor. Avdo Jelin was beaten upon his arrival in Vojno, while he died a couple of days later due to the consequences of the torture and beatings. Many witnesses noted that immediately upon their arrival in Vojno they were slapped or hit, as well as that, during their stay there, they were exposed to ill-treatment and torture on a daily basis. (Witnesses: AI, 152, 153, Ramiz Mačković, Ibrahim Šogolj, witness AF and others.)

Direct evidence about the common goal and system in Vojno were earlier corroborated by numerous other pieces of evidence. All the accused persons knew each other well, they were often in contact with each other, and they were all in the same region, in the Bijelo Polje settlement. When one of the accused persons would commit a crime, other accused persons were most frequently present as well, they either participated in the very act of the commission of the crime or they were present there. Not only did the accused persons know about the crimes committed by others, but they also encouraged the commission of these offences with the goal of reaching the common purpose. Witness AI stated that one night he was tortured with electricity by Šunjić and Mihalj, whereas Mirko Vračević took him to their room. Witness 153 noted that, while he was electrocuted, the accused Šunjić, who was playing a guitar and laughing, was also present in the same room together with Mihalj, as well as Vračević who was then pricking him with a bayonet tip. The same person stated that, on one occasion when he came back after performing labor, he saw a pile of corpses in the compound of the Vojno prison, while the accused Šunjić was standing by the corpses and Brekalo was washing his hands. Several witnesses consistently stated that when witness D would be taken by Emir Brekalo, the accused Radić and Šunjić were also present in the room and that she would be raped then (witness D, Saja Ćorić, J). Witness AF stated that upon his arrival in Vojno he saw the accused Radić, Šunjić and Brekalo and that Mario told them then to carry ammunition boxes. The same witness noted that, on one occasion, the accused Šunjić, the accused Brekalo and Mario beat the detainees together and that they beat him as well until he fainted.

All the testimonies were consistent in the description of the system which was based on the persecution of civilians of Bosniak ethnicity, through their unlawful arrests, rape, killings, torture and other inhumane acts. The common purpose, which included specific crimes, already existed at the moment of the commission of these crimes.

Inhumane conditions and forced labor represented a support and inseparable part of the system. The purpose of the inhumane conditions was to demoralize, weaken and intimidate the detainees, to help ensure order in the Vojno prison, to discourage escape and to serve as support to killings, rape, torture, creating an atmosphere of fear and obedience. Inhumane conditions also served to ensure that the detainees would never return to Mostar, that is, to their previous places of residence, by implicitly stressing that Bosniaks would suffer in case they attempt to return. Forced labor to which all the detainees were subjected, except for those who were very old, served to fulfill many of these goals, particularly for taking every possible advantage of the detainees during the period of their stay at Vojno; basically to use the labor performed by the detainees for the benefit of the military units in the region of Bijelo Polje before they get rid of the detainees and expel them from the western part of Mostar and the wider area.

Therefore, the commission of the crimes established in the sections of this Verdict was part of and also a contribution to the common purpose of the Vojno prison as the systemic joint criminal enterprise.

It is indisputable that some of the crimes were committed also outside the compound and the yard of the Vojno prison. Rape and the killing of some of the detainees while they were performing labor near the frontline are examples for this. Although the common purpose of the detention camp as a system often directly corresponds with the crimes committed inside the very prison, still the common purpose of the systemic joint criminal enterprise is not exclusively about the place. The crimes which were committed outside the Vojno prison were characteristic for the prison as a systemic joint criminal enterprise. Detainees of Bosniak ethnicity were persecuted and forcibly displaced from their homes in the western part of Mostar and the wider area by arrests, capturing, killings and other acts of force.

The Panel has concluded that all the committed crimes listed in sections 1 through 27 were committed with the discriminatory intent towards the detainees due to their ethnicity, so that the detainees were discriminated on this ground. The very criminal system was enforced only against the detainees of Bosniak ethnicity and it was conceived precisely with the purpose of carrying out persecution of Bosniak detainees through commission of those types of crimes which were eventually committed. Therefore, the Panel finds that the Vojno prison represented the systemic joint criminal enterprise and that the committed crimes, established in all sections of this Verdict, were in accordance with that and that they contributed to the systemic joint criminal enterprise with the common purpose of persecuting Bosniak civilians and detainees in the above-described manner.

b. Individual criminal liability: *Actus reus*

“Each of the accused persons, with his actions, participated in the enforcement of this system.”

For the existence of individual criminal liability for crimes committed within the systemic joint criminal enterprise, the contribution of the accused person to the implementation of the joint criminal enterprise is required, as well as his personal knowledge of the system and his intent to further the system. Where persecution is the common purpose of the system, it also has to be determined that the accused had the common, specific discriminatory intent. The Panel will consider each of these elements with regard to each of the accused persons.

In order to bear responsibility for the systemic joint criminal enterprise, an accused must give his contribution to the criminal system, although it is not necessary that he actually participated in the *actus reus* of the underlying criminal offences. As the Trial Chamber in the *Krstić* case noted: “General Krstić did not conceive the plan to kill the men, nor did he kill them personally. However he fulfilled a key-coordinating role in the implementation of the killing campaign”. With this, his level of participation made him “a principal perpetrator of these crimes”.

It is not necessary that the accused person was present at the time of the commission of the criminal offences. However, so far the responsibility has not extended to the criminal offences perpetrated within the system before the moment the accused joined the systemic joint criminal enterprise or after he detached himself from it. The evidentiary factors which are important for determining whether the accused contributed to the common criminal goal include the following: *de facto* or *de jure* position of the accused person within the system, the extent of the criminal enterprise, the length of the period of time during which he was present in the place of the system, his efforts to prevent criminal activity or to disturb efficient operating of the system, the intensity of the criminal activity, the type of activity which he did indeed carry out and the manner in which he performed his functions within the system.

1. The Accused Marko Radić

Under the excerpt from the Personal Record Card, the Accused Marko Radić was a member of the 1st Battalion HVO from 20 September 1991 until 2 November 1992, a member of the First Battalion of Second Brigade from 3 November 1992 until 1 December 1993, and also a member of the ATG */translator's note: Anti Terrorist Group/ Ivan Stanić Ćićo* from 24 December 1992 until 1 January 1994. It is stated in the same Record Card that he was Commander of the Second Brigade from 2 December 1993 until 4 May 1994, and that on 9 March 1995, he was promoted to the rank of colonel. The same data about the Accused Marko Radić which refer to his career are also stated in the Excerpt from the Unit Record which bears his name. During the trial it was not contested that the Accused Radić was Commander of the First Battalion, and also that he was Commander of the First Battalion, Second Brigade, later on. This fact was stated by all witnesses, both for the Prosecution and for the Defence, who were examined about that circumstance. Also, the Defence did not challenge the fact that late in 1993, the Accused Radić became Commander of the Second Brigade. It is written in the above referenced Personal Record Card and Unit Record that he was Commander of the Second Brigade from 2 December 2003, and that a day before, his service in the First Battalion of the Second Brigade ceased. It ensues from the Record on Duty Handover, Number 03-1472/93, that on 21 December

1993, the handover of the duty of the Commander of the 2nd Brigade was recorded to have taken place between Marko Radić who took over the duty and Milan Štampar who handed over the duty. In respect of the Accused Radić's membership in the ATG Ivan Stanić Čićo, in addition to the above referenced documentary evidence, the certified List of members of the Convicts Battalion Ivan Stanić Čićo Bijelo Polje was admitted in the case-file of the Court, listing the total of 56 persons; the List was made on 27 June 1993 by the Commander of the *Convicts Battalion Ivan Stanić Čićo*, Marko Radić, who put his signature on it and his stamp below the signature. That Marko Radić was still Commander of the *Ivan Stanić Čićo* Unit after the above date the Panel was convinced on the basis of the Payroll for November 1993, made by Commander of the *Convicts Battalion* and ATJ /*Antiterrorist Unit*/ Mladen Naletilić Tuta, the page 00795354 of which shows that ATJ *Ivan Stanić Čićo* Unit had 48 members, whereas the page 00795383 shows that Major of that Unit was the Accused Marko Radić under number one and Branko Božić under number two. The Witness Redžo Ibrahimović, who was a member of the First Battalion *Bijelo Polje* which was a constituent part of the HVO, stated that the Accused Radić was his Commander both prior to and after the conflict with the Muslims. The Witness AH, also a member of the First *Bijelo Polje* Battalion HVO, stated that the *Bijelo Polje* Battalion had a special unit called *Ivan Stanić Čićo*, that it allegedly was under the command of Tuta's soldiers, and that the Commander of that special unit was Marko Radić. The Accused Marko Radić put his signature on another document which was issued on 2 June 1993 and which refers to the List of soldiers of the *Convicts Battalion* who were to be issued a decision on apartment allocation, he himself being among those persons. The Defence challenged the fact that Radić was the Commander of the *Convicts Battalion Ivan Stanić Čićo* and in that regard it presented the Witness Zdenko Sesar and Dražen Lovrić who were members of the Anti-sabotage Platoon *Ivan Stanić Čićo*. The Witness Sesar stated that he was a member of that Anti-sabotage Platoon from its establishment in 1992 and that Marko Radić was not its Commander. As for the *Convicts Battalion Ivan Stanić Čićo*, he heard that it would be established prior to the fall of Bijelo Polje late in July, but that never happened. The Witness Dražen Lovrić noted that Marko Radić was never Commander of the Anti-sabotage Platoon *Ivan Stanić Čićo* and that the I Battalion, together with Commander Marko Radić and the Anti-sabotage Platoon did not have any connection. The Panel did not accept such statement of witnesses Zdenko Sesar and Dražen Lovrić, given that it is inconsistent both with documentary evidence reviewed by the Court and the statement of the Witness AH. According to the documentary evidence, that is, the Payroll for November of the *Convicts Battalion AJT Ivan Stanić Čićo*, there are also the names of those witnesses, under number one being the name of the Accused Radić who was marked as Major of that Unit. Bearing in mind that the Witness Sesar was also the member of the I Battalion until the end of war, and that both Sesar and Lovrić are in all lists referring to the members of the *Convicts Battalion*, signed by the Accused Radić, the Court finds that statements of those witnesses are not credible and that they were given with the aim of diminishing the potential responsibility of the Accused Radić whom they know and who was their Commander. In his capacity as the Commander of the 1 Battalion, the Accused Radić attended a meeting which was held on 20 March 1993 with representatives of Municipal Authorities and which was also attended by commanders of other leading battalions of HVO Mostar. In the same meeting Radić stated: "We were promised that the town would be cleansed and that there would be apartments for us, soldiers. Let the Government bodies in charge of this problem present their position". Afterwards, Radić took the floor again and said: "I consider that it can be done only with

strong special forces and with full support of yours". It ensues from the established fact no. 4 that HVO units attacked Mostar early in the morning on 9 May 1993, whereas the fact no. 8 reads that the expulsion of Muslims from their apartments started on the referenced date. The List of 26 soldiers of the *Convicts Battalion* who were to be issued decisions on apartment allocation, of 2 June 1993, with the name of Marko Radić included, the Certificate of Commander of the First Battalion of 24 May 1993 stating that the housing issue should be resolved in respect of the following persons, including the names of 8 soldiers, the Certificate of Commander of the First Battalion of 23 May 1993 that 33 soldiers should have their housing issue resolved, the Certificate of Commander of the First Battalion of 1 June 1993 that 9 soldiers should have their housing issue resolved, the Certificate of Commander of the First Battalion of 0? /sic/ June 1993 that 46 family members of the killed soldiers of the First Battalion *Bijelo Polje* should have their housing issue resolved, the Certificate of the Commander of the 1st Battalion of 9 June 1993 that seven soldiers of the First Battalion should have their housing issue resolved, and the Certificate of Commander of the I Battalion of 23 June 1993 that one member of the First Battalion was free to stay in the apartment because his family house was unfit to live in, the Panel established that the Accused Radić as the Commander of the First Battalion in late March and throughout June was very much engaged in providing apartments to more than one hundred persons, members of the First Battalion, members of the *Convicts Battalion*, as well as members of the killed soldiers of the First Battalion, the units which were under his command. In all of the mentioned lists and certificates there are exact addresses of apartments which were to be allocated to those persons. Also, the lists and certificates show that all of the apartments were in Mostar, more precisely, in the west Mostar, located in several streets, on different floors. According to statements of all witnesses, and also according to the documentary evidence, which was not challenged by the Defence, the Accused Radić was the Commander of the 1st Battalion of 2nd Brigade at the time when the ABiH attacked HVO positions in Bijelo Polje on 30 June 1993. On that occasion, according to the statements of the Prosecution witnesses (AH and Redžo Ibrahimović), as well as the Defence witnesses (Žarko Leko, Željko Zovko, Rudo Ravlić and others), several HVO members were killed, territorial separation of those military formations took place, and the consequence of that attack was a number of captured HVO soldiers and civilians who were taken to a primary school in Bijelo Polje, in the area controlled by the ABiH. The Panel accepted those facts as correct. On the basis of the order by Chief of HVO Main Staff of 3 July 1993 it ensues that immediately after the referenced conflict *Bijelo Polje* Battalion was formed, and that the Commander of the Battalion was Marko Radić a.k.a. Maka. Therefore, very soon, following the unexpected attack by the ABiH, that military unit was consolidated and established in that area. Reviewing the Report of the V Battalion of Military Police of 3 July 1993, it is evident that Military Police officers and Company Commander Mirko Kožul went to Bijelo Polje on 30 June 1993 where they were at the time of making the referenced Report and that they all were alive and well under the *command* of Marko Radić, and that they were keeping the line of separation with the Army of BiH near the petrol station. Likewise, it ensues from the Report of the V Battalion of Military Police of 15 July 1993 that on 8 July 1993, Company Commander Mirko Kožul set off with Military Police Platoon (twenty police officers) to Bijelo Polje. Next day upon their arrival, Mr. Marko Radić issued an order to draw back the positions because of the increased pressure of water, as the enemy released water from the HE /translator's note: hydro-electric power plant/ Salakovac. The Defence witness Slavko Kožul, as member of the Military Police, confirmed in his statement that during the

referenced periods he was in Bijelo Polje, and that he went on the front line, and that he was then under the command of the Battalion, and the Commander, in his opinion, should have been the Accused Radić.

The Examination Record made by the Military Police Administration on 8 July 1993 shows that Mario Mihalj, as a member of the II Company of V Battalion VP, gave a statement which reads that on 7 July 1993, in the morning, he came to the VP building and met there Emir Brekalo, Ivica Kolobara and a boy nicknamed Tare, members of the I Battalion HVO, who asked him if he knew the addresses of the Muslims from Bijelo Polje. They explained to him that they needed to bring such civilians to a truck so that an exchange could be carried out. He stated that he was absent from Mostar all the time, because he was in the field in Bijelo Polje, from the date of the attack on the *Tihomir Mišić* Military Barracks until 4 July 1993. On the same date, Military Police Administration made a statement given by Ivica (Ivek) Kolobara who introduced himself as member of the *Convicts Battalion Ivan Stanić Čićo*. His statement says that on 7 July 1993, together with Emir Brekalo and Anđelko Zlatić, under the order of the Command of the I Battalion HVO, he came to Mostar in order to gather the remaining persons of Muslim ethnicity who currently lived in Mostar, but had permanent residence in the area of Bijelo Polje, Vrapčići and Raštani, in order to exchange them for Croats from those areas. The same person further stated that they accomplished the task and brought the gathered persons by a truck to Dubrane, wherefrom they were returned to Mostar under the order of Miro Andrić. Given that it was found beyond doubt that in the referenced period the Accused Marko Radić was the Commander of the I Battalion, it ensues that he gave such order.

At about the same time, only one day before, the 1st Battalion of 2nd Brigade took 8 prisoners from the *SVIZ Heliodrom*, two of whom did not return. That arises from the Report Number 676/93 of 14 September 1993, signed by the SVIZ Warden Stanko Božić, where it is stated that on 6 July 1993, the 1st Battalion of 2nd Brigade took 8 prisoners to perform labor, and that detainees Rasim Lulić and Mustafa Čilić were not brought back. It has already been stated in the Reasoning that Čilić and Lulić were killed while they stayed in the Vojno Prison, and that they were buried at the same locality. Those were the first established killings of prisoners in Vojno, and the system of perpetration of these offenses began with them. The request for bringing those prisoners was sent by the First Battalion of Second Brigade which was under the command of the Accused Radić. Also, a group of eight prisoners from the *Heliodrom* who were taken to Vojno were the first prisoners found to have stayed there. As Marko Radić was Commander of the First Battalion at that time, it is beyond doubt that he requested the bringing of those prisoners.

The Defence Witness 001 stated in her statement that she had lived in Vojno with her parents, her husband and two children, and that on the day of the beginning of the conflict between the ABiH and HVO-a in Vojno she moved to the basement and remained there for the next 14 days, as the Commander of the Ilići soldiers told her to do so. After that three unknown HVO soldiers stormed into it and took them to Vinko Šunjić's basement where they detained them. They spent 15 days in that basement and then Šunjić's sons took them to Buco Cigić's cellar. In Šunjić's cellar there were detainees from different places: Stolac, Čapljina, Prozor, and they were all Bosniaks, except for one who was Croat. Buca Cigić did not want to have a camp in his house, and he requested that they be transferred, so that in mid-August they were transferred to the Jurićs' house where she stayed until the end of

her captivity. The same witness stated that Marko Radić was Commander of the 1st Battalion and that she was looking for him when she had a problem with her daughter whom they attempted to rape, assuming that the camp was under his command. Next arrest which was established in the proceedings took place on 23 July 1993 when underage sisters X and L, together with their younger brother and their mother were arrested by the accused Brekalo, Jure Kordić and Nedžad Ćorić in west Mostar. On the same day, underage Witness X was sexually abused by the Accused Radić in the Command of the 1st Battalion of 2nd Brigade in Bočine, whereas underage Witness L was raped twice by Emir Brekalo. Those were the first established rapes and abuses of the arrested women, girls in this case, by persons who had control and operated in the Vojno prison. The Witness X also stated in her statement that two days later she was taken to the cellar of a house in the place of Vojno where she found other prisoners. Those statements confirm that in July there were Bosniak detainees in Vojno, both Bosniak civilians, women, children and the elderly from the settlement itself, and Bosniak men from different parts of Herceg-Bosna who had been brought in Vojno. It has been already mentioned in the Reasoning of this Verdict that arrests and the bringing of prisoners to Vojno were conducted most often by Kolobara, Ćorić, Tinjak, Brekalo and others. According to the lists of the *Convicts Battalion, ATJ Ivan Stanić Čičo*, and also according to their personal military cards, they all were members of the *Convicts Battalion* which included Antiterrorist Units (AJT). Defence Exhibit 02-51a, that is Information of the SIS Centre of 6 June 1993 shows that members of the Anti Terrorist Units were at that time engaged in different jobs such as cleansing of the town and taking people out of their apartments, sometimes to the left bank and at other times in unknown directions. It is evident from the Official Note by the CSB /translator's note: Security Services Centre/ Mostar of 13 December 1993 (Exhibit 02-43) that, on 2 December 1993, 57 Muslim civilians were released from the Vojno Camp, mainly women and children, who predominantly originated from Bijelo Polje, but were in parts of Mostar under the HVO control, and who were arrested during August and September 1993. The arrest was made under the order of the Commander of the I Battalion Marko Radić – Maka, and was carried out by: Emir Brekalo, Ivek Kolobara, Nedžad Ćorić, Tinjak and others. Upon their arrival in the Vojno Camp, Commander of the Camp Mario Mihalj said to them: "You've come to the black hell. I'm Mr. Commander. I rule the roost here. No one will get out of here." On the arrival they were subjected to examination and torture, especially to electric shocks; on that occasion, gold items, money and valuable objects were taken from them. The majority of women were raped during the stay in the Vojno Prison in such a manner that they were taken out in the evening, one after another. According to their statements, there were camps in the area of Vrđi and Đubrane. Murder, abuse and rape was committed by Dario Sušac, Mario Mihalj, Emir Brekalo, Mirko Vračević, Đemo Tinjak aka Žuti, Dražen Lovrić and others, and they were members of a part of Tuta's Unit which was under the command of the I Battalion. According to a statement of released persons, representatives of the Red Cross tried several times to come to Vojno from direction of Raštani and Vrđi, but were turned back from those check points.

It ensues from this evidence that in late 1993 the MoI Security Service Centre Mostar had all information related to the situation in the Vojno Prison and to the persons responsible for that situation. It is also evident from this document that the arrest was conducted under the order of the Accused Radić, and that all of the listed persons were members of a part of Tuta's Unit which was under the command of the I Battalion (Commander Radić). Reviewing the copy of the handwritten statement of Marko Radić, Commander of the 1st

Battalion, of 31 July 1993, it is evident that he was tasked to attack and cleanse the place of Jasenjani and that he accomplished the task with his unit, on which occasion the extremist Muslims were arrested, examined, detained and expulsion. Also, one part of the Statement reads that he was not a person fond of writing. The Vojno prison, as it has already been said, was not formed by an official authority, either civilian or military. Several reports of the SVIZ Warden read, as it has been already mentioned, that it was a *private prison*, and as for the persons who introduced themselves as Commander or Deputy Commander of the Camp, those Reports read that they were “so-called”. It ensues from those Reports that the Vojno Prison was not a completely legal prison, and that assignments of prison staff were not performed in a strictly formal manner, through decisions, orders or procedural decisions. That some prisons at that time had a procedure for appointment of top persons is proved by evidence of the Defence for the second accused, related to the prison in Gabela – Čapljina where a decision was rendered to give consent regarding the appointment of a warden of the civilian prison in Gabela (Exhibit 02-15). Therefore, it was important for the Panel to establish who the persons with duties in the Vojno Prison were, and especially to which units they belonged. The reason for this is all the more stronger if one knows that the Defence noted during the proceedings that responsibility for each unit was well-known and that each officer had full authority regarding the members of his unit. The Court found during the proceedings that Mario Mihalj (deceased) was Prison Commander and the Accused Dragan Šujić was Deputy Commander. As no formal decision on their appointment existed, the Panel established those facts on the basis of consistent statements of almost all of the witnesses who were heard, and on the basis of documentary evidence where they put their signatures in the referenced capacity. Also, on the basis of consistent statements of witnesses, the Panel established that Mirko Vračević, Žarko Leko, Rudo Ravlić, Ivan Pole, Karlo Azirović and Zdravko Šunjić aka Kuna (deceased) were wardens in the Vojno Prison. The Witness Žarko Leko noted in his statement that he had been a member of the *Bijelo Polje* Battalion until the Dayton Agreement was signed. The Witness Rudo Ravlić noted in his statement that he was a village guard, that he did not know to that very day what exactly he was, he may have been an HVO member, but he did not have anything in writing to that effect. As for Mario Mihalj, he said that rumour had it that he was a member of the I Battalion, but that he never used to see him, he did not know whose member he was. Under the Order of 7 December 1993, which was signed by B. Božić, on behalf of Marko Radić, Commander of the 1st Battalion, the Panel established during the proceedings that Rudo Ravlić as a guard in Vojno was proposed for demobilization or pension as of 1 December 1993. It ensues from the review of the Conscript Form that Rudo Ravlić was a member of the First Battalion, Second Brigade, from 2 November 1992 until 1 December 1993. It was established beyond doubt based on those documents that guard Rudo Ravlić was also a member of the First Battalion. The Witness Ivan Prole noted in his statement that he was a guard in the Vojno Prison, that he was a member of the 1st Battalion during 1993 in which Marko Radić was Commander, and that he thought that Mario Mihalj was also a member of the 1st Battalion. He knew that Marko Radić was Commander of the First Battalion at that time. As for the Accused Mirko Vračević, it has already been mentioned that at the relevant time he was a member of the First Battalion of Second Brigade. As for the Accused Šunjić who was *de facto* Deputy Commander of the prison, it has also been mentioned that it ensues from documentary evidence that at the relevant time he was a member of the First Battalion, and also a member of the *Convicts Battalion Ivan Stanić Ćićo*. Given that, at one time, Šunjić was also in the V Battalion of the Military Police, the Panel will refer to him in particular in the part of this reasoning

where it describes the place, role and activity of Šunjić in connection with his stay in the Vojno prison. Based on the documentary evidence in the record, the Prison Commander Mario Mihalj, who died, was a member of the *Bijelo Polje* Battalion at the relevant time. It ensues both from the statements of the aforementioned Defence witnesses (Prole, Rudo Ravlić) and from the ICRC Report on the visit to prisoners' accommodation of 31 January 1994, where it is stated *inter alia* that Mario Mihalj was a member of the *Bijelo Polje* Battalion who was abusing his office. Based on the Payroll for November showing the amount of money to be paid to the members of the *Convicts Battalion* and *Anti Terrorist Unit (ATJ) Ivan Stanić Ćićo*, which was signed by Mladen Naletilić Tuta, it is evident that Mario Mihalj and the Accused Šunjić were the members of the *AJT Ivan Stanić Ćićo*, and that the Accused Radić was Major of that Unit. In his testimony at the main trial the Witness Damir Lukić stated about Mihalj that it was not known where exactly he was assigned to, but that he heard he was with Tuta. The same Witness stated about Mihalj in the investigation that he had an ID of the *Convicts Battalion* whose Commander was Tuta, and most likely that the boy who was his Deputy had it too, as according to the hearsay they had the same status. That Witness stated about the Accused Radić that he also had the same status as Mihalj and as that boy had, only that his level in the hierarchy was higher than the level of the two of them. He learnt from hearsay that Radić was Commander of a special unit. The Witness Damir Lukić stated in the investigation that *Bijelo Polje* residents were members of the First Battalion, so that those who were present in Vojno were members of the First Battalion, including Mihalj and that boy who was with him. That unit was under the command of Marko Radić and thereby he was superior to Mihalj and the boy who was with him. In respect of Mario Mihalj as Prison Commander, there is evidence in the record that at one time he was concurrently a member of the V Battalion of Military Police *Bijelo Polje*, as it is evident from the Report by the Commander of the II Company of Military Police Mate Aničić that on 14 September 1993 he imposed disciplinary measure on Mario Mihalj of five days in custody because of infringing the rules about activities of on-duty soldiers. Daily Report of the V Battalion of Military Police of 15 September 1993 and the Escort Sheet to serve that sentence are pieces of evidence confirming that military police officer M. Mihalj was sentenced to a five-day custody. Also, the Questionnaire on Candidate for Guards Brigade, filled out in handwriting by Mario Mihalj on 17 June 1994, shows that that on 16 September 1991 he joined the I Battalion *Bijelo Polje*, where he remained until 15 July 1992 when he joined the Military Police. On 19 September 1993 he joined the Anti-sabotage Platoon *Ivan Stanić Ćićo* where he remained until 1 March 1994. The review of the Proposal for new assignment of 1 September 1994 shows that at that time Mario Mihalj's work post was in the *Convicts Battalion Ivan Stanić Ćićo*, where he was a Lance Corporal. The proposal for Mihalj was given by the Command of the MO /Defence Ministry/ HB, 2nd Guards Brigade and the Assistant to Minister for personnel affairs. It is stated in the explanation that Mario Mihalj, by his previous work and engagement in the *1st Battalion of 2nd Brigade HVO Mostar and the Convicts Battalion* since the beginning of the aggression on the territory of HR HB, *deserves thoroughly to be admitted as Deputy Commander of the 2nd Platoon on a motor vehicle Reconnaissance Company of the 2nd GMTBR /Guards Motorised Brigade/ HVO*. It ensues from the statement of the Witness Niko Marušić, Commander of the Second Company, Fifth Battalion, Military Police, given during the investigation, that Mario Mihalj and Dragan Šunjić were members of his Company until the attack on *Bijelo Polje*, but as his Company disintegrated after the attack, he did not have any knowledge which unit they joined. As for the Accused Šunjić as the Commander it has already been

mentioned in this Reasoning that, on the basis of documentary evidence in the case-file, including the Military ID Card and Membership Application Form of the Veterans Association which he personally filled in, he was a member of the First Battalion of Second Brigade at the relevant time. It was also established during the proceedings that other soldiers in Vojno were also members of the First Battalion, such as, for instance, Štefica Zovko who worked in the kitchen, Dragan Golić who was responsible for food and canteen in Vojno, Vinko Jurišić who worked in the Medical Unit. Bearing in mind the established membership of the referenced persons in the First Battalion and the *Convicts Battalion Ivan Stanić Ćićo* whose units were under the command of Marko Radić, it ensues beyond doubt that all the persons who were staff members in the Vojno prison were from those units, and that they were all under the command of Marko Radić. On the basis of all the referenced pieces of evidence, the Panel found that the Accused Marko Radić had formed the Vojno Prison staffed with members of his units.

During the proceedings, the Defence maintained that the appointment of the prison staff members was carried out by a certain Mate Pavlović (witnesses Nikola Mihalj, Žarko Leko, Rudo Ravlić, Ivan Prole, Karlo Marić). The Witness Žarko Leko, a guard in Vojno, stated that he received an order by Marijan Šunjić (brother of the Accused Dragan) who was ordered by a certain Pavlović that they should keep the civilians in Vojno. The Witness Rudo Ravlić noted that one soldier brought doctor Kreso and his wife and told him that Mate Pavlović said that he should receive them. Fifteen days later Mate Pavlović came and told him to take care of the women. Ivan Prole stated that he was assigned as a guard by Mate Pavlović or someone else, which he learned from hearsay, and it was only later that he saw Pavlović. Karlo Marić stated that Mate Pavlović was the Commander of the 81st Home Guard Regiment which was formed after March 1994 when conflicts with the ABiH ceased. Before that, Pavlović was in the Command of the Second Brigade, but he did not remember if some of the units were under his command. He was aware that Mate Pavlović died in a traffic accident after the war. The Witness Mihalj Nikola, father of the late Mario, maintained in his statement that Mihalj was a member of the First Battalion in 1992, and later on, in 1993, that he did not know if anything changed and of which unit he was a member. He stated that he heard that a certain Pavlović appointed Mihalj as the Prison Commander, because of which he once came into a conflict with him when he was shown to him in the infirmary. The Panel did not accept the statements of the aforementioned witnesses, regarding the appointment of the referenced persons in the Vojno Prison by Mate Pavlović, as the above statements were given in a rather inconclusive manner. The majority of those witnesses mentioned the name of Mate Pavlović precariously, stating their reservation as to having received such order or information from him personally. The majority of the referenced witnesses did not know Mate Pavlović, nor did they know of which unit he was a member and which position he held. Only the Witness Karlo Marić said that Pavlović was in the Command of the Second Battalion and that he held the rank of captain, but that witness also could not say if he had any unit under his command. Bearing in mind that the witnesses Karlo Marić and Rudo Ravlić stated that Mate Pavlović died, it was completely clear to the witnesses that the check of their averments by hearing Mate Pavlović was impossible. Further, none of those witnesses stated that he changed the unit by that appointment, and all of them were members of the First Battalion which was under the command of Marko Radić. On the other hand, none of the Prosecution witnesses who were heard, and in the first place none of the women and men who stayed in the Vojno Prison for months ever mentioned Mate

Pavlović as a person who had any connection with the Vojno Prison. However, as all of the aforementioned Defence witnesses were members of the First Battalion which was under the command of Marko Radić, the Panel holds that such statements of theirs were given for the purpose of diminishing the responsibility of the Accused Radić who was their superior and whom everybody knew.

Contrary to the referenced Defence witnesses, all of the Prosecution witnesses stated in their testimony that Marko Radić was a superior to Commander Mihalj and Deputy Commander Šunjić, as well as to the guards in the Vojno Prison. In addition, the same witnesses also stated other activities taken by Radić in the Vojno Prison during their stay therein. The Witness AI stated that Radić was in charge for the *Bijelo Polje* Battalion, and that he once came over, and when they were brought in front of the garage he introduced himself then and he asked them if they were individually ready for the work. No one dared to say that he was not, fearing the consequences. The Witness Saja Ćorić stated that the Accused Radić was number one and everything the soldiers did, they did on his behalf; the Witness 152 stated that Radić was Mihalj's Commander, as that could not have been anyone else. He saw him once when he came to visit the prison; he was taken out of the basement then, and when Radić saw him, he asked him what had happened to him. He did not dare to reply. His nose was broken then, his teeth were knocked out, his hair was cut up to the half of his */sic/*, his shirt was torn. Afterwards, Radić asked him about his father, and when he told him the name of his father, Radić said that was the reason he looked like that. Next time he saw him during an exchange; the Witness A stated in her statement that the Accused Radić raped her twice in the Command on the first night of her arrival in Vojno, and then he did it once again, which has already been stated in the Reasoning; she also stated that Radić arranged their exchange, too; the Witness J noted that she managed to get out of the Vojno Prison with the help of a certain Glibo who went to the Command, to Marko Radić's office, and said to him that he was going to marry her, and after that she was released; the same witness stated that on one occasion Radić came into a room together with Mihalj, Šunjić and Brekalo, and that on that occasion Brekalo ordered the Witness D to come out, which she had to do and after that he raped her. That incident when Brekalo in the presence of Radić took the Witness D out of the room was also described by the Witness D; the Witness C stated that she went to the Command to Radić's office and that he questioned her there, and when she said to him her name, his comment was that she had a real Balija's name. The same witness noted that Radić also examined her two sisters. On one occasion, Radić engaged her to deliver mail to one Hećim who was an ABiH member; the Witness F also stated that she was in Radić's office and that he asked her then: "Would you give birth to an Ustasha?", and then he added: "All of you will give birth to one". She had four meetings with Radić. According to that witness, not a single a bird could have flown through in Vojno without Marko Radić's knowledge; the Witness AG stated that Radić raped her three times. The Witness E noted that the first evening on her arrival she was called to come to the Radić's Command Post where he questioned her. Second time she went to see Radić and to complain about some soldiers who abused her sexually and she told that all to Radić, and then she had to write a statement. Also, when they brought them all to the Heliodrom on one occasion, as they did not want to receive them there, she heard from Mihalj that Radić ordered that they be brought back to Vojno; Radić raped the Witness D, which has been mentioned in the Reasoning. In the Command in Bočine Radić said to her: "I am boss here to everybody. My soldiers obey me, and the others must, too". That witness also noted that they were brought back to Vojno from the

Heliodrom under the order of the Accused Radić. She noted that she had seen Radić during the exchange. He said then that when they left, they were not allowed to tell anything, otherwise he would chase them as far as Tuzla; the Witness R stated that she once worked in Radić's Command Post, that Radić questioned her, and that she saw him during the exchange, Radić was in charge of the exchange and he had a list on him; the Witness Ramiz Mačković stated that he heard from soldiers that the Accused Radić as the Commander of the *Bijelo Polje* Battalion was a superior to all in the prison. He saw the Accused Radić when on one occasion he came to inspect the Vojno prison. Guards said then that the Commander of the *Bijelo Polje* Battalion would come; Marko Radić came in the basement with a torch; it was dark there, so that he was not able to see his face, but he only remembered that he had a low-pitched voice; the Witness Dika Ćorić stated that she saw Radić during the exchange and that he was reading out a list; the Witness AL stated that once, while he was working, he heard that Marko Radić would come and visit the front line, and then he saw him only for a short time; the Witness Samir Humačkić noted that Marko Radić was in charge and that it was not concealed. Soldiers were saying that Radić was in charge. As he worked with Radić in school for some time before the war, on one occasion, while he was passing by his Command on his way to labor, the Accused Radić recognized him and they talked then. The witness noted that he said to Radić that he came to the Vojno Prison, and that he answered to him that his soldiers were all arrested, that they were in a school in Bijelo Polje, that the place was a camp for his soldiers and other Croats. The Witness Humačkić complained to him then about the conditions in the garage, saying that it was horrible, that it was cramped and that they could not sleep, but in response Radić asked him a question in what condition his soldiers were detained. The same witness also stated that he saw two detained women coming to the Command Post of Marko Radić to work, the last name of one of them was Mirica; the Witness Aziz Suljević stated that he saw Marko Radić in a canteen once and he was told then that he saved him from Mihalj, as Mihalj did not allow detainees to be in the canteen; the Witness AF stated that, on his arrival in Vojno from the Heliodrom, Radić among others received him, and that Mihalj said to them that they should carry boxes with ammunition, which Radić could hear. Next time, he saw him when he was inspecting firing positions; the Witness 153 stated that Radić was the superior, that it was a matter of general knowledge, and when he would come, there would be the commotion; the Witness Aziz Dautbegović noted that he used to see Radić when he visited soldiers on the front line, and then prisoners were in trenches and they looked horrible; next time he saw him when he was chopping wood and Radić passed by in the company of a military police officer. The Witness B stated that she saw Radić reading out names during the exchange. He addressed them saying: "Balija women, you are leaving on your own. Alija sent for you". The Witness X stated that the Accused Radić abused her sexually. Also, a number of female witnesses, including the Witness B, consistently stated that they saw Marko Radić in the Vojno Prison when one prisoner escaped, and that he came together with Mihalj, Šunjić and Brekalo, thinking that they were hiding that prisoner. It evidently ensues from the referenced statements of the witnesses which are thoroughly consistent and which were accepted by the Court as credible that the Accused Marko Radić was the superior to the staff in the Vojno Prison, that he visited the prison rooms, that he also visited front lines at the time when prisoners were laboring, that he was present during the exchange, and that he personally took numerous inculpatory actions referenced in the Indictment at issue.

During the proceedings, the issue of the zones of responsibility of individual battalions within the Second Brigade appeared to be questionable in particular, and the Prosecutor's Office and the Defence held diametrically opposed views about that issue. Specifically, it was incontestable that until 30 June 1993, when the conflict began between the ABiH and the HVO in Bijelo Polje, the First Battalion had in its area of responsibility a wide area north of Mostar, including the place of Vojno. What indeed was contestable is whether, at the relevant time, the First Battalion of the Second Brigade kept the area of Vojno in its zone of responsibility or whether the V Battalion of the Second Brigade had the responsibility over the place of Vojno. In order to prove that the place of Vojno was in the area of responsibility of the First Bijelo Polje Battalion of Second Brigade, the Prosecutor's Office proffered a number of evidence, both witnesses and documentary evidence which were admitted into the case-file. In that regard, the Prosecutor's Office based the responsibility of the Commander of the First Battalion for the events in the Vojno Prison largely on the fact that all the staff of the Vojno Prison were members of that Battalion, but some staff members were at the same time members of the *Convicts Battalion ATJ Ivan Stanić Ćićo* which was also under the command of Marko Radić. Also, in the preamble of the Indictment relating to Marko Radić, in addition to the *Convicts Battalion*, the Prosecutor's Office set out that he also was Commander of the Second Brigade at the relevant time, and that, on all of those grounds, he was responsible for the entire area of Bijelo Polje, including the village of Vojno. It has already been stated in this Reasoning which pieces of evidence were given in that regard by the Prosecutor's Office. For the sake of reminding, we shall state here that they are actually all the aforementioned Prosecution witnesses who stated their view about the zone of responsibility of the Bijelo Polje Battalion, as well as about their knowledge who was Commander-in-chief and who had control over the prison in Vojno. As regards documentary evidence, the Prosecutor's Office tendered into the case-file a number of Orders for the take-over of prisoners and Reports by a SVIZ warden which state that the 1st Battalion of 2nd Brigade requested and received more than one hundred of prisoners for labor and that those prisoners were interned in Vojno (stated Exhibits T-18A, T-18, T-18F, T-18G, T-18i). The Defence also tendered in the case-file the Exhibit T-20 E on the re-establishment of the *Bijelo Polje* Battalion, which reads that Chief of the HVO Main Staff, Major General Milivoje Petković, issued an Order that the *Bijelo Polje* Battalion be formed from soldiers, non-commissioned officers and officers in the Bijelo Polje region, and that the Commander of the battalion should be Marko Radić Maka. Under section 2, the *Bijelo Polje* Battalion was put under the command of forces as stated in the Order of Chief of HVO Main Staff No. 02-2/1-01-1259/93 of 2 July 1993. In the absence of the latter order, the Prosecutor's Office was proving, also through SIS authorities, the responsibility of the *Bijelo Polje* Battalion for the prison which was located in the place of Vojno, offering a number of evidence in that regard. The review of the Request of the SIS Centre Mostar of 11 December 1993 shows that Chief of the SIS Centre ordered an urgent and thorough report on the number and state of confined persons who were currently *in the zone of responsibility of your unit*. That Request was referred, *inter alia*, to the 2nd Brigade HVO Mostar. On the same day, Anđelko Zlatić, Assistant to Security Commander of the First Battalion *Bijelo Polje*, wrote by hand the requested Report on the number and the condition of prisoners in Vojno (Exhibit No. 20B) and on the basis of that Report, Ivica Rotim, Assistant to Security Commander of the Second Brigade, made a List of detainees in the detention centre Vojno on 13 January 1994 (Exhibit T-20). The Witness Ivica Rotim testified at the main trial and then he changed his testimony which he gave in the

Prosecutor's Office of BiH on 25 June 2006, for the reason that some said to him that he made a mistake in his first statement. Specifically, that witness stated in the investigation before the Prosecutor's Office that Vojno was in the zone of responsibility of the First *Bijelo Polje Battalion*, that he thought that guards from the First Battalion stood guard, and that the responsibility for internment in Vojno was assigned to that battalion which sought prisoners. The same witness also stated that the brigade police was disbanded, and duties of ensuring accommodation of the prisoners were performed by the First Battalion soldiers for the reason that it was the locality and zone of responsibility of the First Battalion, which in turn means that the First Battalion had responsibility for the detention centre Vojno. The Witness Ivica Rotim stated in the same statement that the Commander of the First Battalion was superior to Anđelko Zlatić, Security Assistant of the First Battalion. The fact that Anđelko Zlatić was indeed Assistant to the Commander of the I Battalion for the SIS ensues from the List of Command Staff of the Second Brigade of 1 December 1993 (Exhibit 02-34) which reads that the Accused Marko Radić was the Commander of the First Battalion, and that Anđelko Zlatić was Assistant to Commander for the SIS. The witness Ivica Rotim changed his previous statement at the main trial; he spoke then about the zones of responsibility within units of the Second Battalion, maintaining that the Vojno Prison was not in the zone of responsibility of the First Battalion, but of the Fifth Battalion. He especially noted that the First, Third and Fifth Battalions were located on the left bank of the Neretva River and that they were solely responsible for the front line towards the ABiH positions in their zone of responsibility. Battalions could not have the depth of the zone of responsibility, as the Neretva, that is, the lake, was behind their back. With the aim of challenging the assertion of the Prosecutor's Office that Vojno was in the zone of responsibility of the 1st Battalion, the Defence tendered numerous pieces of evidence, and in that regard, Vitomir Zlatić, Ivan Golemac, Mirko Kožul, Marijan Šunjić, Dražen Lovrić, Ivica Rotim (again), Goran Zovko, Zdenko Sesar, Marica Perić and Slavko Puljić testified. As for documentary evidence, the Defence also presented two topographic maps, four Orders of the Operations Zone of Southeast Herzegovina from August, September and November, Plan of logistics support of HVO units and Request of the Main Staff, North Sector, of 24 August 1993. All of the referenced witnesses maintained that the zone of responsibility of the First Battalion swept from the Zalihićs' houses, including the Zalihićs' houses, to the Tange's house, excluding the Tange's house, and that further in the northward direction from the Tange's house there was the zone of responsibility of the V Battalion of Second Brigade, and that the place of Vojno was not a part of the zone of responsibility of the First Battalion. The Defence Witness Slavko Puljić was Chief of the HVO Combat Arms Section within the Main Staff before the conflict with the ABiH, and after the conflict he was brought back to the Operations Zone of East Herzegovina. The Witness Puljić stated in his testimony that sectors were under the command of the Operations Zone, whereas the brigades were under the command of the sectors. Commander of a battalion received orders by brigade commander. He did not know that a battalion had its prison. At that time, they worked on the new organization to form three sectors. Geographically, Bijelo Polje was a part of the Sector North. Military Police had a parallel pyramidal structure, headed by the Military Police Administration, to which Military Police Forces of the Battalion were subordinate. Sometimes, Military Police was added to some Military Unit and it was then under the command of the Commander of the Unit to which it was assigned. The witness said that he personally was drawing the maps of the zones of responsibility, and in that regard Defence Counsel presented a map for his review; however, the witness stated that he could not say with certainty whether he was the

author of that map and whether he saw the it before, as it was only a part of the map cut out, which does not have the date of issuance. The witness noted that the zone of responsibility of the I Battalion covered the part of the demolished bridge where the new bridge was built. Disciplinary measures could have been imposed on a member of the Military Police only by his superior, but not by commander of a unit to which he was assigned. The Witness Slavko Puljić noted then that he knew about the *Ivan Stanić Ćićo* Unit, that at the beginning each commander sought to have companies, that he knew that the referenced Unit was part of the First Battalion and that it was a part of the *Convicts Battalion*. As for the *Convicts Battalion*, the witness noted that it was a parallel structure and a parallel system. Salaries were paid both to the army and police out of the same source, taking into account that police had higher salaries than soldiers. It is possible that the same person received salary both as a soldier and as a police officer. Zones of responsibility were defined in respect of the front line, and the front line went along the main road. The settlement of Vojno was exactly behind the part that was within the zone of responsibility of the First Battalion. He reiterated that the zones of responsibility were defined practically along the front line, so that in respect of that line, points were given such as to the left – to the right of it, including – excluding. Vojno is situated behind that part where the First Battalion was based. The front line did not go through Vojno. Bearing in mind also the statement of the Witness Ivica Rotim who stated that zones of responsibility did not refer to the area behind the lines, it ensues that on the front line the responsibility of individual battalions could not be established in respect of the area behind the front lines since zones of responsibility did not include the area in depth, as the witnesses Rotim and Puljić consistently stated. In the proceedings it was established beyond doubt that Vojno was in the area in depth of the front line. The Panel saw that for themselves during their visit of the scene. Vojno is several hundred meters away from the M-17 main road which was the front line at the time. Also, Vojno is situated on the other side of the Neretva River in respect of the main road. Bearing that in mind, the Panel did not accept testimonies of the Defence witnesses in which they maintained that Vojno was not in the zone of responsibility of the First Battalion only on the basis of the fact that the First Battalion held the line from the Zalihićs' houses to Tange's house. The witness had information about responsibilities of battalions on the front line, but not about the area in depth. The Witness Puljić himself noted that the place of Vojno was behind the front line which was held by the First Battalion and that the front line was not going through it; the Witness Ivica Rotim also emphatically maintained in the investigation that Vojno was in the zone of responsibility of the First Battalion. Therefore, bearing in mind that all staff members of the Vojno Prison were within the First Battalion or the *Convicts Battalion Ivan Stanić Ćićo*, which also was composed of members of the First Battalion, as stated by the Witness Puljić and the Witness AH, and the units of which were under the command of Marko Radić, the Panel opines that it was established during the proceedings through all the foregoing that Vojno, as well as the prison in Vojno were the responsibility of the First Battalion, Second Brigade and the *Convicts Battalion*.

Dragan Šunjić

According to the Personal Record Card, Dragan Šunjić was a member of the First Battalion from 18 September 1991 until 1 July 1992, and then a member of the Military Police from 1 July 1992 until 19 April 1993, and then a member of the *Convicts Battalion* HVO from 19 April 1993 until 1 January 1994. When he joined the Association of Veterans, Dragan

Šunjić himself wrote with his own hand that he was a member of the OODDZTO-Potoci from 20 September 1991 until 7 April 1992, and also that he was a member of the First Battalion, Second Brigade from 8 April 1992 until 10 May 1994. It ensues from the original Military ID which bears the name of Dragan Šunjić that Dragan Šunjić was a member of the Military Post 1520 (First Battalion of Second Brigade HVO) from 20 September 1991 until 10 March 1994. The excerpt from the Unit Record for Dragan Šunjić shows that he was drafted in the reserve Armed Forces of HR-HB on 30 September 1993, from 16 September 1991 until 1 July 1992, from 15 August 1993 until 30 September 1993. On the second page of the same document, in the entry Wartime Service, it is recorded that he served in the First Battalion of Second Brigade from 20 September 1991 until 10 March 1994.

It ensues from the Report by the V Battalion of Military Police from 30 June until 5 July 1993 that on 30 June ABiH attacked the entire area of Bijelo Polje and the Tihomir Mišić Military Barracks, and that on the same day eight police officers, including Dragan Šunjić, who were headed by Mirko Kožul, were sent to Bijelo Polje. Also, the Daily Report by the V Battalion of Military Police for 8 July 1993 shows that on that day a group of 21 officers of the Military Police of the II Company of V Battalion, led by Mirko Kožul, went to Bijelo Polje to take over the shift; Dragan Šunjić was among the officers. Departure of the officers of the Military Police of the V Battalion to Bijelo Polje in those periods of time was also confirmed by the statements of the witnesses Mirko Kožul and Slavko Kožul, as well as by other documentary evidence, and it arises from them that members of the Military Police were then under the command of the Commander of the First Battalion.

The Defence for Dragan Šunjić contested during the proceedings that Šunjić was in the First Battalion of Second Brigade before 30 September 1993, and also that he was a member of the *Convicts Battalion Ivan Stanić Čičo*. In that regard, the Defence submitted that Dragan Šunjić was in the V Battalion of the Military Police until 14 September 1993, and afterwards he took care of his injured brother who was exchanged and admitted in the Mostar hospital, and on 30 September 1993 he joined the First Battalion of Second Brigade. On the basis of those assertions, the Defence for Dragan Šunjić, and the Accused himself denied any participation of his in any of the referenced acts which took place in Vojno until 30 September 1993, because the Accused Šunjić was not in the Vojno prison, he was not a member of the First Battalion or the *Convicts Battalion* and he was not present when those acts occurred.

Among the evidence which the Defence for Šunjić presented in that regard, the following witnesses for the second accused were heard: Zdravko Šunjić, Jozo Prga, Marinko Šunjić, Branimir Vidović, Veselko Panda, Mladenko Šarić, Vlado Ramljak, Mato Aničić, Mladen Mandić, Valter Aničić, Nikoca Zovko, Tomislav Aničić, while a number of documentary pieces of evidence were admitted into the case-file of the Court. Among those pieces of evidence is the Request by Chief of the Section for Establishment and Staffing of the II Brigade of 16 September 1993 which was sent to the Active Police Officers of the HVO and in which it is written that, based on the current situation on the front line of Bijelo Polje and in connection with the Request by Commander of the 1st Battalion of 2nd Brigade, Mr. Marko Radić Maka, the addressee was requested to terminate the status of soldier Dragan Šunjić in the Unit as of 14 September 1993. The referenced person was indispensably needed by the said Unit. The Daily Report of the V Battalion of the Military

Police for 14 September 1993 shows that on that day, the Military Police Officer Dragan Šunjić was absolved from duty at his personal request and that he turned back the police badge and the police ID. It ensues from the Report for September of the V Battalion of the Military Police that early in September they secured the facility of the Military Police, the facility of the Command of the 1st Battalion of the HVO Dubrani and the prison in Dubrani where the persons of Muslim ethnicity were interned. In mid-September, a Platoon of military police officers was ordered to withdraw from Dubrani and from that time on the securing of the facility of the Military Police Command and Defence Section of HVO started. The witnesses heard consistently stated that they used to see the Accused Šunjić at the checkpoints held by the Military Police of the V Battalion, Second Brigade, during the period from 30 June until mid-September, whereas the witnesses Marinko Šunjić and Branimir Vidović maintained that the Accused Šunjić stayed in Mostar from 10 September 1993 and that every day he visited his brother who was exchanged then and was in the Mostar hospital for medical treatment. Also, some witnesses for the second accused claimed that in the Vojno prison the Accused Šunjić was in charge of maintenance and operation of a generator unit which was necessary for the production of electricity, that he was not in charge, and that as a guard he brought a group of prisoners to Raška Gora where they cut trees (witnesses Rudo Ravlić, Ivan Pole, Žarko Leko, Ljubo Vukoja, Božidar Novak, Mladen Mandić). A large number of witnesses for the second accused, including the witnesses who were members of the Military Police, maintained that in August and September they used to see the Accused Šunjić as a military police officer at checkpoints outside Vojno, and that they knew he was a member of police forces and that he left them in September (Zdravko Šunjić, Jozo Prga, Marinko Šunjić, Veselko Panda, Mladenko Šunjić, Vlado Ramljak, Milan Sesar Vladimir Zadro, Miroslav Šunjić, Mato Aničić, Valter Aničić, Nikica Zovko).

The Panel notes that in a joint criminal enterprise the accused persons need not be members of the same organization or military formation. It is quite possible that participants in a joint criminal enterprise are in different military and even civilian structures, but if they had a joint criminal aim and participated in achieving that aim, then their responsibility is determined under those criteria, but not by potential membership in the same unit and defining the relation of a subordinate in it. Given that command responsibility was also included in the Indictment of the Prosecutor's Office as a form of responsibility of the Accused Šunjić, and given that under that form of responsibility it was relevant to individually establish membership of the accused in a particular unit, the relevance of this fact was lost when the Panel handed down the Verdict under which the accused were sentenced on the basis of participation in the joint criminal enterprise, but not on the basis of command responsibility. For the above reasons the Panel does not consider that the Accused Šunjić's membership in a particular unit at one period of time is of crucial importance for establishing his criminal responsibility.

What was of importance for the Panel, was to specify the position and the role of the Accused Šunjić in the Vojno Prison and to find whether he, through his actions, participated in the joint criminal enterprise and if he did, how he did that and which actions he took. As for the Accused Šunjić, the Court finds that in the Indictment the Prosecutor specified a different period of the perpetration of the criminal offence than that relevant for the other accused persons; in other words, the Accused Šunjić is charged that he committed the criminal offence during the period from August 1993 until March 1994, which means

one month after the crimes were committed by the other accused persons. For those reasons, in respect of the Accused Šunjić, the Prosecutor's Office omitted all the actions which make the legal element of the criminal offence and which were committed in July 1993 in the Vojno Prison. Hence, the events related to the role, actions taken and the responsibility of the Accused Šunjić shall be given within this time frame.

According to available documentary evidence presented during the proceedings, the Accused Šunjić is mentioned for the first time in connection with the Vojno Camp in August 1993, in the Order issued by the Defence Sector Mostar on 19 August 1993 by which, on the request of the 1st Battalion of 2nd Brigade, 50 prisoners were taken from the prison at the Heliodrom to do particular work, and for those prisoners Dragan Šunjić was personally responsible. It was established beyond doubt in the proceedings that all prisoners requested by the 1st Battalion were taken to Vojno. Under the referenced Order, Dragan Šunjić secured those 50 persons. Membership of Dragan Šunjić in a unit is not evident from that Order. It was written in the attachment of the Order by the SVIZ No. 663/93 of 10 September 1993 that SVIZ Warden visited the prison and noticed injured prisoners who wrote their statements. Attached to that Report is the Statement which was given by the prisoner Halil Hamzić and in which it is stated that they performed labor in Bijelo Polje from 19 August to 3 September 1993, and that they suffered unbearable tortures there by Commander Mario Mihalj and that those tortures took place every day and were described in detail by the detainee. Beyond doubt, it was the group of prisoners from the Heliodrom who were taken to Vojno by the Accused Dragan Šunjić. The circumstance that Dragan Šunjić participated as a person who was in charge of security of prisoners who were taken from the Heliodrom to the Vojno Prison was also confirmed by the Report of the SVIZ Heliodrom Warden Stanko Božić where it was written that 50 prisoners were taken to the First Battalion perform labor and that Dragan Šunjić was in charge of their security. The Order of the Defence Sector Mostar of 2 September 1993 shows that, at the request of the 1st Battalion of 2nd Brigade, 50 prisoners were taken from the Heliodrom and that Dragan Šunjić was responsible for them. Also, it was stated in the Report No. 698/93 of 22 September 1993 that 70 prisoners who were to be used for labor were taken out of the Heliodrom on 13 September 1993 by the Second Brigade and that Šunjić was responsible for that group of prisoners, too (Exhibit No. T-18-I). At this point, the Panel notes in particular that the review of all the referenced orders shows that Dragan Šunjić was personally responsible for taking the prisoners over, their security and care about them as they performed labor, until the completion of the task. This is inconsistent with statements by the Witness Stanko Božić and the Witness Ivica Rotim that those persons, who were responsible for prisoners, were tasked to bring the prisoners from the Heliodrom to the destination and during their transportation to be responsible for their fate. However, the Panel found that in August 1993 the Accused Šunjić was not only the person who brought the prisoners from the Heliodrom to Vojno, but in that month he also performed the duty of Deputy Commander of the prison. Besides numerous witnesses who consistently noted that in their testimonies, this fact also ensues from the Record of 29 August 1993 which was signed by Prison Commander Mario Mihalj and Deputy Commander of the prison Dragan Šunjić, in which it was written that during the work the prisoner Mensud Dedajić was killed by a sniper bullet, and that guards and prisoners who worked with him were present at his funeral.

As it has already been stated, the Accused Šunjić denied throughout the proceedings that he was engaged and present in the Vojno Prison for a larger part of August and September 1993, and thereby that he committed or that he had any connection with the criminal offences which were committed during that period. With regard to that assertion, the Panel particularly analyzed the evidence referring to the activities of the Accused Šunjić from August until the end of September. As specific documentary evidence has already been presented, the subjective evidence will also be presented here:

The Witness A, who came to the Vojno Prison on 15 August 1993, noted that she used to see Dragan Šunjić in the prison all the time; the Witness F who came on 15 August 1993 stated that, on their arrival in Vojno, Dragan Šunjić and Mario Mihalj received them, saying to them: "Welcome to hell". Mihalj introduced himself as Commander, and then he introduced Dragan Šunjić as Deputy Commander; the Witness E who was also brought to Vojno on 15 August 1993 stated that, on their arrival in the prison, Mihalj and Dragan Šunjić met them and that they introduced themselves as Commander and Deputy Commander of the prison. Son of the Witness E first said his last name and then the first name while introducing himself, because of which Mihalj hit him twice. On the same evening, after they had taken their things, Mihalj began to examine them, whereas Dragan Šunjić was present there and was taking notes. Then, Mihalj placed them in a house; the Witness Azer Handžar stated that he was brought to Vojno from the Heliodrom on 18 August 1993. Two men entered the hall of the Heliodrom where they were interned and randomly selected men who were to go with them to Vojno. He learnt that the two men were Mario Mihalj and Dragan Šunjić, as when they came to Vojno, Mihalj introduced himself, whereas for Šunjić, he thought that Mihalj introduced him or that he heard his name from a prisoner. Then they lined them up and later on brought two prisoners from the basement, ordering them to remove their clothes in order that they could see their bruises and what would happen to them if they disobeyed their orders. They placed them in the cellar then. He stayed in Vojno for 11 days when he was wounded on 1 September 1993 and transported to Mostar. Two days before he was wounded prisoner Mensur Dedajić was killed. Šunjić escorted him to a hospital, but the witness did not know if someone had ordered him to do so. During his stay in Vojno, he saw the Accused, but he did not know how many times; the Witness 151 was brought to Vojno in mid-August and, on their arrival, Mario Mihalj and Dragan Šunjić received them and they told them how they should behave; they brought two prisoners then and showed their bodies that were black and blue with blows, and they said to them that all of them would look the same if they disobeyed their orders. Those two prisoners that were brought in were Arif Omanović and the Witness 153. They closed some in the garage, and others in the basement of a house. When they announced the code of conduct to them, they said to them that they had to walk with their heads bowed, that they had to address them with Sir and the like, and in doing so they made it unequivocally clear to all that they were in charge there.

The Witness Ramiz Bebanić, who came to Vojno on 2 September 1993 and remained there for 11 days, stated that he saw Šunjić every day, during that period. The other witnesses who came to the Vojno Prison in September, both women and men, stated the same. Among those witnesses was the Witness Saja Ćorić who came on 2 September 1993; on her reception she saw Šunjić together with Mihalj, when Mihalj said: "Welcome to hell! I'm the Black Satan." On that occasion, Šunjić attended the examination of that prisoner, and also the scene when her body was connected to electricity later on. The Witness stated

that she saw Šunjić every day there; perhaps for 2-3 days he was not there. The Witness AI also came to Vojno on 1 September 1993. He stated that Mihalj and Šunjić received them, uttering the following words: "Welcome to hell! Few of you will get out of here." In that connection, he was examined by Mihalj, and there was Šunjić, too; then he received a beating from Mihalj and Šunjić. The same witness stated that Šunjić was present in Vojno every day; maybe one day he was not there. The Witness J, who noted that she was brought to Vojno on 7 September 1993, also stated that Šunjić and Mihalj received them and that they said: "Welcome to hell!"; besides, Šunjić cursed Balija's mother to the Witness D when she introduced herself and asked her what school she completed as she did not know how to introduce herself. Šunjić was also in the room when she was examined by Marko Radić. Radić ordered Šunjić to search her, which he did, feeling her breasts, searching her bra and panties. The Witness C stated that she came on 9 or 10 September and that on her arrival in Vojno she saw Šunjić, Mihalj and Vračević in a corridor of a house in which they were brought. She remembered Šunjić saying then: "Take those animals away!" The Witness D, who came to Vojno early in September, stated that in Vojno she was received by Šunjić and Mihalj who said: "Welcome to hell! I'm the black devil." Šunjić was standing next to him, smiling. While they were examining her on that day, Šunjić was taking notes. She saw Šunjić almost every day. The Witness Aziz Suljević, who came to Vojno in late September via Đubrane, stated that he saw Šunjić, Mihalj and Vračević in Đubrane and that they tied them up two by two with wire and took them to Vojno on foot. On that occasion, the prisoner Asif Čakrama was killed by the Accused Vračević. The same assertions about Šunjić's presence in Đubrane and at the time of murder of Asif Čakrama were given by the Witness Ramiz Mačković. The presence of Šunjić and his activities in August and September were described by the Witness 151 who came there in mid-August and was received by Šunjić and Mihalj who advised them about the code of conduct and brought out of the basement Arif Omanović and the Witness 153 who were back and blue, and said to them that they would all look like them if they disobeyed their orders. Šunjić and Mihalj were beating some prisoners then. The the same witness stated that on a number of occasions he saw Dragan Šunjić beating Arif Omanović, asking him where his son was. Zulfo Humačkić also came to Vojno late in August and was also received by Šunjić and Mihalj who were threatening to them then, saying that they had to pass through a reception room before entering the garage, which meant introducing themselves and beating up of prisoners who did not first say their first name. He was then beaten up by Mihalj and Šunjić. He stated that during his stay in Vojno he was beaten up four times by Šunjić. The Witness 153, who noted that he was brought to Vojno on 15 August 1993, stated that they were received by Šunjić and Mihalj. Šunjić was showing all the time that he was Deputy Commander; that was evident, he did not dare to address him. At the time when his body was connected to electricity, Šunjić was also present there, mocking him and playing the guitar. Also, he saw Šunjić, together with Brekalo, by a pile of dead bodies of prisoners who, as they were told, had intended to escape. All of those witnesses, as it has already been mentioned, maintained that Dragan Šunjić was Deputy Commander of the prison at that time. The Witness B, who came in Vojno at around 20 August 1993, said that Šunjić took her out of the room when a soldier by the name of Sergej came to pick her up, that he escorted her in a car to the police building, and that he mentioned the pillowing to her, but only when she was raped did she understand the meaning of that word.

Also, on 22 September 1993, the SVIZ received from Dragan Šunjić in his capacity as the *Commander* of the Vojno prison a record in which he notified them about the murder of prisoner Salim Alilović. That Record was made on 15 September 1993 and was signed by Šunjić in his capacity as Prison Commander and Zdravko Šunjić in his capacity as Deputy Commander of the prison. That evidence indicates that the Accused Šunjić assumed the duty of Prison Commander for a short time, while Mihalj was in custody for five days. It ensues from the already mentioned pieces of evidence (Report by Commander of the II Company of Military Police of 14 September 1993, Daily Report by Military Police for 14 September 1993, as well as Escort Sheet) that Mario Mihalj was in prison from 15 September until 19 September 1993. The Panel notes that Šunjić was relieved of his duty as military police officer of the V Battalion on 14 September 1993, and that Marko Radić requested his discharge on that day because of the needs of his unit of the 1st Battalion of Second Brigade in Bijelo Polje. Analyzing those pieces of evidence with respect to chronology of the events, the Panel concluded that the reason for relieving Šunjić from Military Police was so that he could assume command in the Vojno Prison, and that it was the Accused Marko Radić who installed him to that position.

The Panel accepted testimonies of the Prosecution witnesses referring to the presence of the Accused Šunjić in the Vojno Prison, the function he had there, as well as actions he took, as those testimonies are mutually consistent, and are also consistent with the documentary evidence which the Court reviewed. The Panel did not accept testimonies of Defence witnesses that Šunjić was an ordinary guard in Vojno who was only in charge of the generator unit, who did not have any particular responsibilities and who brought once a group of prisoners in Raška Gora. Specifically, testimonies of Defence witnesses in respect of that circumstance, irrespective of their mutual consistency, are entirely in opposition to the testimonies of all Prosecution witnesses which show that Šunjić was Deputy Commander of the prison and that he took many other actions, including the actions with which he is charged by the Indictment at issue. Hence, the Panel holds that testimonies by witnesses of the second accused as well as by others who voiced their opinion in this regard were given with a view to diminishing the responsibility of the Accused Šunjić, since the majority of those witnesses knew Šunjić, were together with him in the war and, by that very fact, had a motive to testify in his favour. As for Šunjić's presence, as a military police officer, at checkpoints at specific periods of time, the Panel holds that the referenced fact is less relevant as it was established from the aforementioned evidence of the Prosecutor's Office that in the period covering August and September 1993 he was present in the Vojno Prison in his capacity as Deputy Commander and during that period he took all the actions with which he is charged, and/or that he was present when the others took the actions as charged under the Indictment.

Bearing in mind testimonies of the aforementioned Prosecution witnesses which are consistent in respect of Šunjić's presence in the Vojno Prison, as well as the role he had there, and also the activities he took, the Panel found beyond doubt that the Accused Dragan Šunjić was present in the Vojno Prison almost every day from mid-August until the end of September 1993, that he performed the function of Deputy Commander of the prison during that time, that he performed the function of Commander of the prison for a short time, until 15 September, that is, until Mario's return and that he took a number of actions against the prisoners in Vojno, such as detention, forced labour, humiliation, abuse, torture, murder, sexual abuse and other inhumane acts.

Dragan Šunjić continued with those activities even at a later time, in the coming months, until the end of the relevant period. There are numerous testimonies about that by Prosecution witnesses who were detained in Vojno. The Witness AK came to Vojno on 17 November 1993. Šunjić and Mihalj received them there. He was beaten up by Šunjić and Mihalj on a number of occasions. On one occasion, they put a bag on and off his head and thus beat him. The Witness AL, who came to Vojno by a Dodge Ram pickup truck, stated that Šunjić, together with a group of detainees, was in a wood for five or six days where they were cutting trees, and that they had to address to him then as Mr. Deputy Commander. The Witness Samir Humačkić, who came in mid-November 1993, said that they whoever wished to beat them did so. He often saw Šunjić. His behaviour was rude. He was brutal and most often he cursed them and called them names. The Witness Aziz Suljević stated that Šunjić was beating men if they would bring something into the garage. On one occasion, Šunjić and Mihalj came to the garage with a torch. They started to select prisoners of bigger stature and beat them until they would collapse. Mario told them to bang their heads against the wall and door, and they had to obey his order. Their heads were injured, and he saw scars on the prisoner Ramiz Mačković's head which resulted from the banging against the wall and door. Exactly the same event was also described by the Witness AI who said that he fractured his head then and that it was bleeding. The Witness Hasan Trtak came in Vojno in mid-December 1993. He was also received by Šunjić and Mihalj. Šunjić personally beat him when two prisoners had escaped. His teeth were knocked out. The Witness Ibrahim Šogolj, who came to Vojno on 17 November 1993, stated that Dragan Šunjić beat him up eight times for no reason. He stated that they never returned from work without someone being battered by Šunjić. The same repeated in the morning when they would go to work. The Witness AF came to Vojno in January 1994. His group was also received by Šunjić, Brekalo, Radić and Mihalj. They were immediately ordered to carry some ammunition boxes. The batterings took place in the garage every day. He was beaten up by Šunjić, Brekalo and Mihalj. Aziz Dautbegović, who came in November 1993, stated that he saw Šunjić every day and that Šunjić took pleasure in beating camp detainees on their back with a rifle butt in the morning. He saw that quite often. The Witness AE came to Vojno on 22 December 1993 and his group was received by Šunjić and Mihalj. Šunjić battered him repeatedly during his stay in Vojno. Once, they made them repeat the words: "Dragan, you donkey", and when they uttered those words, Šunjić would beat them. The referenced witnesses consistently maintained that, at the time of their stay in the Vojno Prison, Dragan Šunjić was Deputy Commander of the prison.

All of these pieces of evidence which the Panel accepted as credible and reliable, because they are mutually consistent, indicate that the Accused Dragan Šunjić as Deputy Commander continued to take all actions which he carried out from mid-August 1993, only he intensified the battering of prisoners – men, later on. During that period, a number of prisoners were killed in cross-fire or by sniper bullets that came from different directions, including Hamdija Tabaković, Mensur Salman, Mustafa Kahvić and others. The review of the Report of the POW Accommodation Center in Mostar of 31 January 1994 shows that, on 28 January, 61 prisoners of war out of those who were taken to work on 8 and 17 November 1993 were brought back from work. *"All prisoners were mistreated, abused and beaten, which is evident from the appearance of individuals. Self-styled Commander of the prison in which they stayed was Mr. Mario Mihalj who, took the most active part of all in*

the atrocities, destructive and sadistic ideas, and the soldier Dragan Šunjić was directly after him. With such behaviour, soldiers Mario Mihalj and Dragan Šunjić violated the rules of the Geneva Convention with respect to prisoners of war. Besides, we propose that a veto be put on the taking of prisoners for work by entire II Brigade". We recall that during that period the Accused Marko Radić was the Commander of the entire Second Brigade. The records, which were signed by Prison Commander Mario Mihalj, were submitted as attachments to that Report. The killings of Džemal Sabitović, Mustafa Kahvić, Menso Salman and Hamdija Tabaković while labouring on the front line were reported therein. Also, attached to the same Report was the statement of prisoners who returned from labor and their stay in the Vojno Prison on 28 January 1994. The statement reads that two groups went to Vojno in November and, out of the total of 75 prisoners, only 61 prisoners (four killed, others wounded) came back. Prisoners stated that they were interned in the garage without glass in the windows and in the cellar without a lightwell. On arrival, they were immediately subjected to abuse. The battery was performed with baton, rifle butt and boots and in the position they were ordered to take: "Kneel down, put your arms behind your back and bow your head deeply down". It lasted until a prisoner fell down or fainted. They were trained to say to the Commander the greeting: "At the ready for the Homeland!" and to say it together at the same time. Such abuse took place every day and was also carried out by Deputy Commander Dragan Šunjić. They went to perform labor on the front line. It is written in the Statement that Roki killed Mujo Kahvić in a trench, that Commander of the 1st Battalion was Marko Radić and that later on Božić aka Jež replaced him. In the place of Vojno the batterings were performed by Mihalj and Šunjić. One prisoner was ordered to put a PVC bottle on his head and they were shooting at it from a sub-machine gun, and later on the prisoner was beaten up. Dragan Šunjić was striking one prisoner in the head using two stones until he started bleeding from two spots, and then on his return to prison, both Šunjić and Mihalj beat him. As a result of the beating, one prisoner had such a swelling that he was not able to see anything. The Report says that they received one quarter of bread loaf and 200 grams of fatty tin to last 24 hours, which was insufficient, and that they did not have any conditions for personal hygiene. Mario Mihalj and Dragan Šunjić took the lead in battery. When washing was organized after 60 days of captivity in Vojno, Dragan Šunjić and Mihalj made the prisoners say "Dragan is a big donkey" or "Mario is a big donkey", and then they battered 25 prisoners with a rifle butt, boots, knife handle. Mihalj and Šunjić were beating one retarded prisoner for two hours, so that the prisoner was breathing with a rattle. Two days before the escape of two prisoners, one prisoner was beaten up by Šunjić and made to drink urine where other prisoners urinated, whereas another one was called to come to official premises of Commander, and Šunjić and Mihalj beat him up there, and connected his body to electricity. Prisoners wrote in a report that their health and mental condition was such that they were unable, either physically or mentally, to normally communicate or to do any kind of work. The joint report was signed by 59 prisoners.

Bearing in mind the aforementioned, the Panel did not accept the testimony by the second accused Šunjić that he did not stay in Vojno in August and September for a longer period, that until mid-September he, as a military police officer, had responsibilities mainly at checkpoints where he made checks, that from 14 September until 30 September he was outside all military formations and that at the relevant time he did not have the function of Deputy Commander in the Vojno Prison but that he was an ordinary guard, as the same statements are inconsistent with all referenced pieces of evidence of the Prosecutor's

Office, both subjective and documentary, which are admitted into the case record. The Panel accepted the statements of the Prosecution witnesses referring to the time, place and role of the Accused Šunjić in the Vojno Prison, because they are mutually consistent, they are given in a convincing manner and are detailed, their statements are confirmed by documentary evidence in the case-file, and among those pieces of evidence there are documents the Court mentioned, that had been signed by the Accused Šunjić alone.

Damir Brekalo

According to the Personal Record Card, at the relevant time, the Accused Damir Brekalo was a member of the *Convicts Battalion* (24 December 1992 – 1 January 1994) and also a member of the 2nd Brigade, 1st Battalion from November 1992 until 30 September 1993 and from 2 April 1994 until 19 14 /sic/ 1994. During the same periods of time, the Accused Marko Radić was Commander of those units. Membership of Damir Brekalo in a unit of the *Convicts Battalion* “was also established on the basis of the List of soldiers of the *Convicts Battalion* of 2 June 1993 which, under number 12, includes the name of Emir Brekalo which he had until mid-September 1993. That List was signed by Commander of the I Battalion Marko Radić. There is also the name of Emir Brekalo in the List of members of the *Convicts Battalion Ivan Stanić Ćićo* Bijelo Polje, under number 22, and that List was also made by Commander Marko Radić on 27 June 1993. The review of the List of soldiers of the *Convicts Battalion* who were to be issued a decision on the apartment of 2 June 1993, which was made by Commander of the I Battalion Marko Radić, shows that under number 12 Emir Brekalo was allocated an apartment in Kolodvorska Street. In the same street, an apartment was also allocated to Marko Radić who takes position under number 5 of that List, and all of that indicate their close friendship. Membership of Brekalo in the 1st Battalion was established on the basis of the statement by Mario Mihalj which he gave on 8 July 1993 to the Military Police Administration, in which he said that Emir Brekalo was a member of the I Battalion HVO. Similar statement was also given on 8 July 1993 by Ivica Kolobara who introduced himself as a member of the *Convicts Battalion Ivan Stanić Ćićo*, and who said that he, together with Emir Brekalo and Anđelko Zlatić, under the order of the Command of the I Battalion HVO, went to Mostar to collect persons of Muslim ethnicity. Given that Marko Radić was beyond doubt Commander of the 1st Battalion at that time, it is clear under the issued order that Emir Brekalo was a member of the unit which was under his command.

Damir (Emir) Brekalo was mentioned for the first time, as for the charges in the Indictment, exactly in the aforementioned statements given by Ivica Kolobara and Mario Mihalj. Both of the statements were given on 8 July 1993, and they refer to the events of 7 July 1993, when Brekalo, Anđelko Zlatić and Ivica Kolobara, under the order of the Command of the I Battalion HVO came to Mostar with the task to collect the remaining persons of Muslim ethnicity who currently lived in Mostar.

The underage Witness L stated in her statement that she was arrested with her family in the house owned by her mother's brother on 23 July 1993, and that they were arrested then by Nedžad Ćorić, Jure Kordić and Emir Brekalo. The same witness stated that on that day Brekalo examined and abused her, offered alcohol to her and her fifteen-year old sister to drink and some cigars with a strange smell to smoke, that he told them they were to do what he ordered them to do, that he threatened her that he would throw her down in the

Neretva, and the like. On that occasion, Brekalo raped her in an apartment in which her younger sister was in another room. Afterwards, they were taken to a house, where she fainted, and when she recovered Nedžad Ćorić said to her that Emir Brekalo was in charge among them, and that they took her sister, mother and brother to Vojno under the order of Marko Radić. That evening Emir Brekalo raped her again, threatening her with a knife that he would kill her. She knew Brekalo very well from before, and she described him as having an earring with a cross in his ear.

Witness X, who is Witness L's sister and who was 15 at the relevant time, also stated that she was arrested with her family on 23 July 1993 by Brekalo, Kordić and Nedžad Ćorić. She knew Brekalo as they lived in the same residential area. She confirmed that Brekalo started questioning them, that he abused them, forced them to drink alcohol and smoke some cigars, that they were brought to an apartment on which there was a writing *Convicts Battalion*, and Brekalo took her sister to a room, whereas she remained in the other room with Kordić. She heard Brekalo screaming in that room, he kept on coming out of that room, cursing their Balija's mother, and he said that all Balijs would end in that way, and when they got out of the room, her sister was crying, and her clothes were creased. Afterward, on the same evening, she was taken to Vojno. Brekalo was driving a Skoda as far as Goranci. From Vojno, she was immediately taken to Bočine where Radić forced her to sexual intercourse, and then she was brought back to a weekend-house in Bočine. Next day, in the afternoon, Kordić took her to a house where she saw Brekalo and Kolobara. Kolobara gave her a punch on the head there. Then, she was taken to another house where there were several soldiers including Emir Brekalo and Nedžad Ćorić. Brekalo took her to a room saying to her that he would rape her and that each Muslim women aged from 7 to 77 should be raped. He brutally raped her there, tearing her hair, beating her, slapping her, squeezing her hands. Later, they took her to Vojno where she soon suffered injury of her both legs. During her stay in a hospital in Mostar, she saw Brekalo who came to visit someone. He said to her then that he couldn't wait for her coming back to Vojno. That rape was the first established rape of women-prisoners at Vojno.

The Witness AA stated that he came to Vojno for the first time on 6 July 1993, and that he was present when Emir Brekalo severely beat up prisoners Čilić and Lulić twice in the course of the day. That witness stated that, in the same evening, some person called those prisoners to come out of the garage and it seemed to him, judging by his voice, that it was Brekalo. Afterwards, they were never seen alive again. Later on, they were exhumed and identified. That was the first established murder in the Vojno Prison.

The Prosecution Witnesses C and AD also stated in their statements that Emir Brekalo arrested them. The Witness C said it happened in Mostar, early in September, on 9 or 10 September 1993, and that six soldiers, among whom she recognized Emir Brekalo and Tinjak aka Žuti, stormed into her apartment. She knew them from before because she previously lived in Bijelo Polje. They were taking them to Vojno via Đubrane. Emir Brekalo transported them by a passenger's car from Đubrane to Vojno. Mihalj, Šunjić and Vračević received them there. Emir Brekalo searched them, as did Mirko Vračević, and he took away all the money from her sister. On one occasion, guard Rudo Ravlić took her to the Command of the camp where there were Šunjić, Kuna and two soldiers. They said to her that she should have done something, and when she asked for a receipt, Šunjić yelled out and said that she did not have any rights and that she was in the very hell. That evening

she was taken to a house where there were Emir Brekalo and a soldier named Marko. Brekalo, together with Marko, raped her there orally and humiliated her sexually; previously he forced her to drink alcohol. Witness AD stated that Emir Brekalo and Mario Mihalj came to the Heliodrom in late August and took a group of prisoners to Vojno.

Also, a number of witnesses stated during the proceedings that they saw Damir (Emir) Brekalo during their stay in Vojno and on that occasion they described his activities in Vojno.

The Witness Saja Ćorić stated that on one occasion Brekalo, wearing a black cap and a cross-shaped earring in his ear, came, together with Šunjić, Radić, Mihalj and one Jež, to a room where they were placed and introduced himself. Then, he took the Witness D out of the room, and as the Witness D's child began to cry, he threw it on the floor. The Witness A sometimes saw Brekalo in the camp, but she did not know what his role was. The Witness J also described the event when Brekalo came into the room and took away Witness D, and threw her child down. The Witness F noted that Brekalo attempted to rape her. She described him as a person who had a cross on his ear. She saw Brekalo three times during her stay in the prison.

Witness D also described the meeting with Brekalo which took place when he entered their room together with Radić, Šunjić, Mihalj and two more persons. He introduced himself then and said to her to come out, and to leave the child. That evening Brekalo raped her. On that occasion, he repeatedly pulled out a knife out, he started to call her names, he slapped her several times, he repeatedly pulled a pistol out and he threatened her that he would bring the child and slit its throat. Later on, he called the soldier named Dario Sušac and said to him: "You, take her now. On the job!", whereafter Dario also raped her. They repeated the same two or three days later. Also, a few days later, the Witness D said that she was taken to Brekalo in the Command of the camp where there were Šunjić, Mihalj and Dario. Brekalo took her then to Marko Radić to a house. Radić raped her on that occasion, and then, together with Brekalo and Dario, he warned her not to tell about that to anyone in the prison. The same witness also described Brekalo as wearing a cross on his ear at that time. The Witness AG referred to Brekalo as the person who raped her. The Witness AD stated that he saw Brekalo in Vojno only once in the company of Dragan Šunjić. The Witness Ramiz Bebanović said that, on one occasion, Brekalo, Šunjić and Mihalj came to the garage in Vojno and that they were beating all the prisoners. He knew Brekalo from before. In her testimony, the Witness K also described the event when Brekalo, together with other persons, came to the room and took away the Witness D.

The Witness AF, who came to Vojno in January 1994, noted that he saw Brekalo when he came to Vojno and that he was together with Radić and Šunjić. Then, Mihalj said to them in their presence to carry ammunition boxes. During his stay in Vojno, he was beaten up 3-4 times. The second time, Šunjić, Brekalo and Mihalj beat him; they lined them up in the garage and started beating them. On that occasion, he was tattooed on his shoulder. The fourth time he was also beaten up by all of the three of them. They first shaved them all using one razor, and then they arranged them in two lines and started beating them with a baseball bat and kicking them. Damir Brekalo and Dragan Šunjić were beating all the prisoners. The Witness Zulfo Humačkić, who came to Vojno late in August, stated that he heard that Brekalo was beating the prisoners. The same witness also stated that Brekalo

came to the garage together with Mihalj and Šunjić, once or twice. Witness 153, who came to Vojno on 15 August, stated that on one occasion while he was coming back from work he saw Brekalo and Šunjić next to a heap of dead bodies. Brekalo was squatting next to a tap, washing his hands. Then, Mario said to them that those prisoners intended to escape. He saw Brekalo 5-6 times during his stay in Vojno. On one occasion, Brekalo told him to bite off a prisoner's ear, but it did not happen. The Witness AH also stated that he saw Brekalo in Vojno and Bocine several times. Witness B mentioned the incident when a prisoner escaped, Brekalo, Šunjić, Radić and Mihalj came into the room. Brekalo wore a cross-shaped earring in his ear. He pulled a pistol, put it against her temple and asked her whose wife she was.

It ensues from the referenced pieces of evidence, which are mutually consistent and which were accepted by the Panel as credible, that Damir Brekalo as the soldier of the First Battalion and the *Convicts Battalion*, often stayed on the compound and on the premises of the Vojno Prison, that he took specific actions during the arrests and bringing the prisoners to Vojno, during their reception in the prison and their stay therein, that he participated in detaining, abuse, rape, murder and torture of the prisoners.

Mirko Vračević

Under the data from the military records submitted by the Ministry for War Veterans on 1 December 2008, during the homeland war Mirko Vračević was a member of the VP 1520 Mostar from 30 June 1993 until 18 April 1996, out of which, during the period from 30 June 1993 until 19 April 1994, he was a member of the First Battalion of Second Brigade Mostar. It ensues from the Military ID Card which bears the name of Mirko Vračević that he participated in the war as a member of the VP 1520 during the period from 30 June until 18 April 1996. According to those documents, it ensues beyond doubt that from 30 June 1993, immediately after the conflict had occurred between the ABiH and the HVO forces in Bijelo Polje, Vračević was militarily engaged in the First Battalion of Second Brigade which was under the command of Marko Radić at that time.

It has been established in the proceedings beyond doubt that Mirko Vračević was a guard in the Vojno Prison. The Defence did not challenge that fact.

Given that the role of Mirko Vračević as a guard of the prison is incontestable in this part of the Reasoning activities and actions which Mirko Vračević took as a guard during the relevant period will be presented.

A number of witnesses testified that Mirko Vračević was present when they arrived in the Vojno Prison, and that he took specific actions, including the murder of Asif Čakrama.

The Witness Saja Ćorić noted that, on their arrival in Vojno, they were received, among others, by Mirko Vračević who said that Commander of the prison would examine them. Then, he put a bomb in the hands of the Witness D's child. After the brought civilians had been interrogated, Vračević took one group away, whereas the witness remained there. Also, Mirko Vračević presented them with the code of conduct in the camp. The Witness 152 noted that Vračević presented to him the code of conduct: he should stand still, he should bow his head and he should address the prison staff as Sir. The Witness J noted that,

upon her arrival in the Vojno Prison, she saw Mirko Vračević in the corridor of a house in which they were brought. She described the event when Mirko gave a bomb to the little girl of the Witness D, saying that it was candy. She also noted that Vračević said to her on that occasion: *"The fox is brought to the furrier"*, and then he produced a knife and put it to her throat. The Witness C noted that, on her arrival in Vojno, she saw Mirko Vračević searching the prisoners that were brought there. The Witness D also maintained that Vračević received her in Vojno and that he ordered to them to come in the Command. After the examination, Vračević took them to a room where they were placed. The Witness Ramiz Mačković noted that he saw Mirko Vračević when he came to Đubrane, together with Šunjić and Mihalj, to pick up the prisoners who were taken under escort from the Heliodrom. He was striking the prisoners there with a rifle butt, but most severely he was beating Nuhan Makaš. On that occasion, he killed Asif Čakrama from a rifle, because he replied to his question as to how the Muslims say tomb; the bullet passed through Čakrama's body and injured the prisoner who was next to him. The Witness AL noted that they were received in Vojno by Mihalj and Vračević, and that curses, abuses and the like began immediately upon their getting out of a truck. They gave them instructions then how to behave. The Witness Aziz Suljević confirmed that Vračević was in Đubrane when prisoners were taken from the Heliodrom to Vojno. The prisoners were tied with wire there, two by two, and were taken to Vojno on foot. On their way to Vojno, Vračević killed Asif Čakrama from a rifle, and injured a prisoner who was next to Asif. The Witness K confirmed that, on their arrival in Vojno, Vračević put a knife to the throat of her daughter, the Witness J. The Witness B stated that, on their arrival in Vojno, after they had introduced themselves and after they had been slapped, they were brought by Vračević to a house where they were accommodated.

Also, a large number of witnesses testified that Vračević, as a guard in the Vojno Prison, committed the following acts: raping, taking of prisoners to perform the forced labour, beating and abusing, taking prisoners to be tortured and battered and the like.

The Witness AI stated that Mirko Vračević took him to the house of the Command where there were Mihalj and Šunjić, on which occasion Mihalj connected his body to electricity, whereas Šunjić was jumping on him. The same witness noted that Mirko aka Srbin was there every day, and that he opened and closed the garage door.

The Witness 152 noted that Mirko Vračević struck him with a rifle and that he provoked him, threatening him that he would slit his throat as he had already slit his aunt's throat. The Witness A said that, after she had come back to the camp of Mark Radić who raped her then twice in a row, Mirko Vračević searched her items and said to her to come to another house where the other detained women were interned. As for Vračević she noted that he was in the camp all the time, except when he did not stand guard. The same was noted by the Witness J who said that Vračević was in Vojno at least every second day. Witness C stated that she often saw Vračević in the camp and that he often came to their room. The same witness described the incident when Vračević was yelling at Zejna Tihak, and he was pushing her out of the room with a rifle. On one occasion, when Šunjić was beating her and put a pistol at her temple, Vračević was present there, too. Witness E said that Vračević was present in Vojno every evening, and he came to meet her when she came back from the Marko Radić's command post. Witness D also described the incident when, on her arrival in Vojno, the Accused Vračević gave a bomb to her seventeen-month old

daughter to take it. The same witness stated that she was constantly seeing Vračević. Witness R noted that, on one occasion, Vračević was together with Šunjić and Mihalj when they gave some milk to drink to a dog and a cat, whereas the children were watching the scene. That witness noted that Vračević would escort Mihalj and Šunjić, and when he came alone he behaved as if he had been a boss, the one in charge. Witness Dika Ćurić stated that Vračević took all her items, even the food and her bag. Witness Ramiz Bebanović stated that he saw Vračević every day; on one occasion, he was seeking four volunteers to bury Avdo Jelin's body which was wrapped in the garage. Witness Hamza Leto said that he saw Vračević a couple of times when he was taking prisoners out for labor. Witness Ramiz Mačković said that Vračević was taking him to the Neretva where they performed labor. This witness said that Vračević kept saying to him that he would shoot at him because he was stirring up the hatred against the Croats. The Witness Saja Ćorić said that, on one occasion, Mirko Vračević took them to work in Bočine and that they were exposed to fire coming from ABiH positions then. Also, Witness 151 said that Vračević used to take them to work, give them food, open the garage door, and that he was present as a sort of security when Šunjić and Mihalj were beating the prisoners. Witness 153 described the incident when Vračević came to the garage and called Arif Omanović to come with him, and he took him to Mihalj who beat him black and blue, so that Arif was all disfigured. Right after that, Vračević took the Witness 153 out of the garage and brought him to Mihalj who was beating up the same witness for two hours, and then Vračević brought him back to the garage. The same witness noted that, on one occasion, Vračević was bayoneting him at the time when Mihalj was connecting his body to electricity. The Witness Aziz Dautbegović stated that Vračević used to take him to perform labor. The Witness B said that Vračević took her, together with Emica Ćurić and Zejna, in front of the house entrance, brought some blankets from the garage that were covered with blood; he was standing there with a rifle in his hand and ordered them to wash the blankets, because if they did not do so, someone else would perhaps have to wash their own blood. On one occasion, Vračević also came in their room and threw into it some mouldy bread, saying: "*Eat it, you pigs, you Balija women!*". She said that Vračević carried a rifle on which there was a writing "*Only survivors will survive*" and on that occasion he told them in the room that they should have that in mind all the time, adding that he was a black adder. Witness F also saw Vračević with a rifle with the writing on it "*Only survivors will survive*".

Witness AM stated that times she was raped by Mirko Vračević at least three. The Witnesses Saja Ćorić and Dika Ćurić said that Mirko took AM out of the room at night. Witness K said the same, noting that he abused the Witness AM by keeping her out of the room all the night. Witness F said that Vračević took out of the room the Witness E who returned after midnight, crying. Witness E stated that on one night Vračević took her from the Vojno Camp to some house, that he knocked at the door and when a man appeared, he said to him: "*Here, I brought her to you*".

All the witnesses-prisoners described Mirko Vračević in their testimonies mainly as a fairly old, short and thin person, as the one having a damaged eye and as the one who was called Srbin or Ćoro.

It ensues from the referenced statements, which are mutually, consistent that Mirko Vračević, as a guard in the Vojno Prison, was very often in that prison, that he took specific actions, both at the time when prisoners were brought to Vojno, at the time of their reception in the prison and during their detention there, that he personally participated in

the incarceration and internment of prisoners, in taking them to perform forced labour, in the abuse, rape, murder, and torture of the prisoners.

c. Individual criminal liability: *Mens rea* (Knowledge)

Each of the accused persons was familiar with the system

In order to be held liable as a co-perpetrator of the crimes committed through the systemic joint criminal enterprise, an accused person must personally know about the existence of the organized system and its common criminal purpose. The knowledge of the common criminal purpose requires that the accused person knows about the type and degree of criminal activities in which the system is involved. However, the Indictment does not have to prove that the accused person personally knew of each individual crime committed within the system.

Evidence of the knowledge can stem from the explicit testimony and it can also be derived from the position the accused person held within the system. In addition, other factors may also shed light on the existence and the extent of the personal knowledge, such as: the time he spent in the detention camp, the actual tasks which he carried out, his working place inside the detention camp, his access to other parts of the detention camp, the frequency of his movements through the detention camp, the extent of his contacts with the prisoners and the nature of these contacts, the nature and the extent of his contacts with other staff members and with his superiors and subordinates, the nature and the extent of his contacts with the persons who used to come to the detention camp from outside, the evidence about what he saw, heard and felt with his sense of smell or about the information which he received in terms of the criminal activities of the system and his reactions to this information.

Personal knowledge of the system

The established facts and the evidence presented show that the ultimate goal of the attack on the Bosniak population of Mostar and the wider area was the persecution of the Bosniak ethnic community from the area which was controlled by the HVO forces and which was under the administration of the HZ HB. In their statements the witnesses stated that they directly observed this or that they were themselves victims of the persecution of Bosniak civilians from the western part of Mostar to different detention centers, as well as to the left bank of the Neretva River. The persecution implied not only arrests and expelling of civilians through exchanges, but also commission of other acts which were supposed to serve the same purpose. Therefore, many witnesses from the western part of Mostar were aware of the fact that the HVO soldiers would come to take them and that they would be taken away just like their fellow-countrymen of the same ethnicity, so some of them had already prepared bags with their belongings for this occasion. In the opinion of the Panel, the testimonies of these witnesses are credible. However, it is not credible that the prisoners could know about these facts, while the accused persons, who were members of the HVO military formations and later on staff members in the Vojno prison and persons who controlled that prison and who were partly responsible for enforcing that system, were not informed about it.

Personal knowledge of the character and the extent of criminal activity

Even if the accused persons were not specifically and directly informed about the existence of the system and its character, and the Panel holds that this was unlikely, the evidence proves beyond reasonable doubt that they must have known about the type and the extent of the criminal act which was committed in the Vojno prison based on the systemic joint criminal enterprise.

The accused Radić was the Commander of the 1st Battalion of the 2nd Brigade, of the “Ivan Stanić Ćićo” Convicts Battalion and, later on, of the 2nd Brigade, whereby he held the leading positions within the units which were among the most important units in the HVO system. As it has been already established, as early as in March 1993 the accused Radić attended the meeting with the representatives of the Municipal Government in the capacity of the 1st Battalion Commander, on which occasion he asked the Government’s bodies to present their opinion about the promise that the city would be cleansed and that there would be apartments for soldiers. In that regard Radić presented his opinion that this could be done only with the assistance of strong special forces and with full support of the Municipal Government. Several lists which he made as the Commander of the Convicts Battalion and the 1st Battalion show that during the entire month of June the accused Radić was actively engaged on resolving the housing issues of the members of his units, as well as of family members of the soldiers from his units who had been killed. All the apartments which he noted in the lists are located in the western part of Mostar.

As far as the Vojno prison itself is concerned, the accused Radić ordered a group of his soldiers from the Convicts Battalion and the 1st Battalion to arrest and bring in civilians of Bosniak ethnicity from Mostar to Vojno. Also, as the Commander of the 1st Battalion of the 2nd Brigade, on several occasions he requested that detainees be brought from Heliodrom to perform forced labor in Vojno and in the surrounding area. During the stay of these detainees, the accused Radić came to Vojno on several occasions. There he was able to see the state in which the Vojno prison was, he saw the houses in which the detainees were held, he saw how many of them were kept in these rooms, how they looked like after the beating and so on. Also, on several occasions he inspected the frontlines and he saw the detainees performing hard physical labor in the trenches. Whenever they had a chance to speak to Radić, many detainees told him about certain events, complained to him about the conditions in which they were, as well as about other problems related to the behavior of the prison staff towards them and towards members of their families. Besides, Radić himself participated in the forming of the Vojno prison, as well as in arresting the civilians, women, children and elderly from Mostar, bringing in the detainees from Heliodrom, interrogating certain civilians, and he personally participated in rape and sexual violence against the women who were brought there, one of whom was just over 15. The evidence has established that Radić was present in the Vojno prison and in the surrounding area in different manners during the entire relevant period, and all the prisoners who testified noted that the accused Radić was the Chief Commander of all the persons who were engaged in the Vojno prison. He was well-familiar with the nature and the extent of the committed atrocities, in particular with the fact that they were part of the system of abuse and persecution of the Bosniak population on ethnic grounds.

The accused Dragan Šunjić, in the capacity of the Deputy Commander and the Commander of the Vojno prison for a couple of days, was also familiar with the events in the prison and he took part in many of them. After his arrival in Vojno he was present there almost on a daily basis. He participated in bringing in the detainees from Heliodrom, on the occasion of the admission of these persons to the Vojno prison they were maltreated as soon as they would arrive, they were informed about a code of conduct which was strict and in which disobedience was not tolerated. The accused Šunjić took part in interrogating the prisoners, taking them to perform forced labor, beating them, torturing, killing them, taking women to be raped, on one occasion he personally committed the act of rape. The accused Šunjić entered the rooms and premises in which the prisoners were held, he saw the conditions in which they were, he knew how they looked like, with what kind of nutrition and medical care they were provided, what were their possibilities to take care of their personal hygiene. He was present on the occasion when other accused persons or the HVO soldiers committed crimes against the prisoners. Nothing could happen in the Vojno prison that he, the Deputy Commander, did not know about. Therefore, the Panel finds that the accused Šunjić knew about the persecution of the Bosniak population, that the persecution was within the systematic attack on the Bosniak population and that his actions represented part of that attack and part of the system targeted at the abuse of the Bosniak civilians and the furtherance of the persecution.

Being a person who was a member of the 1st Battalion and the “Ivan Stanić Ćićo” Convicts Battalion, the accused Brekalo was on close terms with the Commander Marko Radić, who provided him with an apartment in Mostar in the same street in which he provided himself with an apartment, and right from the beginning of the relevant period he participated in the arrests and in bringing the persons from Mostar to Vojno. In addition, at the very beginning, the accused Brekalo raped two underage girls whom he brought to Vojno and he also took one of them to the accused Radić. Brekalo raped other female prisoners too, and he often used to come to Vojno, where he had an opportunity to see the conditions of the prisoners’ stay there and the state of this prison. However, on the occasion of the frequent visits to the Vojno prison, the accused Brekalo personally maltreated the prisoners, he beat them either in the prison or on the frontline where they were performing forced labor, he was present when certain killings took place or on the same day he beat the prisoners who were then taken away and killed. During this entire period he was seen with the accused Radić, Šunjić and Vračević both in the Vojno prison facility and outside the prison, and he was also in contact with Commander Mihalj, all of which suggests that he was well-familiar with the system of abuse and persecution of the Bosniak civilians in which he willingly took part.

As a guard in the Vojno prison, the accused Mirko Vračević also personally participated in many unlawful activities. So, on one occasion Vračević took prisoners from Đubrani to Vojno and he maltreated them, in particular Nuhan Makaš, and then he killed prisoner Asif Čakrama just because he answered his questions about what is the Muslim word for tomb. On several occasions Vračević raped witness AM. Also, he used to take some women from the rooms to the places where other soldiers raped them. As a guard, Vračević was present in Vojno almost every day, he entered the rooms in which the prisoners were held, he could see where they were held, how they looked like, what they were doing, and he could learn about the events that were taking place in this prison. Sometimes he used to take the prisoners to perform forced labor. He personally took some prisoners to Mihalj and Šunjić,

where they were beaten, tortured, electrocuted, and on one occasion, during such torturing, he pricked one of the prisoners with a bayonet tip. On several occasions Vračević also threatened the prisoners that he would kill them, slit their throats, he used to hit some of them with a rifle-butt, he frisked some of them, he insulted some of them and did not allow them to take their children with them. Being a guard during his engagement in the Vojno prison, he was familiar with what was going on with the prisoners, he personally participated in many activities, so that he was familiar with the system of abuse and persecution of the Bosniak civilians.

Therefore, the evidence proves beyond reasonable doubt that the accused persons knew that Vojno represented a systemic joint criminal enterprise and that the common purpose of that enterprise was persecution of the persons of Bosniak ethnicity by unlawful imprisonment in inhuman conditions, forced labor, beating, torturing, killings, rapes, as well as by other inhumane acts.

Knowledge of imprisonment and inhumane conditions

The Panel opines that all the accused persons knew about the unlawful imprisonment and inhumane conditions in which the prisoners were held.

The accused Radić personally issued orders to his subordinated soldiers from the 1st Battalion, as well as from the Convicts Battalion, including the accused Brekalo, to arrest civilians, women, children and elderly in the western part of Mostar and to take them to the Vojno prison. On this occasion he did not issue any written orders and his soldiers did not deliver written arrest warrants to those persons. The accused Damir Brekalo personally took some of these civilians to the Vojno prison. Also, the accused Radić on several occasions, first as the Commander of the 1st Battalion of the 2nd Brigade and later on as the 2nd Brigade Commander, asked that detained men from Heliodrom be brought to him, whereby he held them in continuous detention in the Vojno prison thereafter. According to their consistent statements, as well as based on the List made by the Assistant SIS Commander of the 1st Battalion, and of the 2nd Brigade, those men were not prisoners of war, they were civilians who were mostly arrested at their homes, who did not have any weapon at the moment of their arrests, whereas the few of them who had weapons were members of the HVO at the moment of their arrests and they did not offer any resistance. Dragan Šunjić took over these prisoners from Heliodrom on several occasions and he was in charge of them. The Vojno prison was formed in July and from the very beginning women, children and elderly started arriving there, as well as men from Heliodrom. All the detainees were of Bosniak ethnicity. On the occasion of their arrival in the Vojno prison, Dragan Šunjić, as the Deputy Commander, and Mirko Vračević, as a guard, were, from among the accused persons, most often present there, however the accused Marko Radić was sometimes present there as well, and it has been already noted that Brekalo used to bring some of the arrested civilians himself. All the accused persons knew that not all the persons who were brought there were prisoners of war, that they were in fact civilians, that they were also not regular lawful prisoners who were accused of having committed war crimes and who were waiting for a trial, or convicted persons who were legally sentenced to imprisonment. The unlawfulness of their imprisonment within the system was well-known to each of the accused persons. All four of the accused persons understood well the difference between lawfully kept persons and those whose imprisonment was not legally

sanctioned. Being the members of different military and police units, the accused Radić, Šunjić and Brekalo had knowledge and experience during the war with the arrest and imprisonment of persons, while the accused Vračević, as an elderly and more experienced man, must have known that arrests of the detainees were unlawful. Finally, it must have been obvious to all of them that the detainees were not interrogated about their responsibilities on the occasion of their arrival, that no criminal proceedings were pending against them, that they did not have any written decisions with regard to any of the detainees indicating that he had committed some criminal offences and that he was imprisoned because of that. All the pieces of evidence presented clearly show that all the detainees were of Bosniak ethnicity and that this was persecution.

Each of the accused persons knew that the conditions of the stay in the prison were horrible. It was obvious that the prisoners were held in inhumane conditions, namely men were held in a garage and a basement of a house, while women and children were held in smaller rooms of a house. All the accused persons knew that a large number of detainees was coming to the Vojno prison, that there was not enough space for all of them to be accommodated, it was obvious that such a large number of persons cannot be normally accommodated in such rooms, all the accused persons entered the rooms in which the detainees were held, they personally saw in which conditions they were held. Also, the accused persons knew that nutrition of the detainees in the prison was inadequate. Many witnesses testified about how many kilos they had lost, the accused persons were in contact with the detainees, they could see that they had lost weight considerably. Besides, the accused Vračević brought food to the prisoners and he could see that the quality and the quantity of the food were not consistent with a normal nutrition of the detainees. Šunjić, who was the Deputy Commander in the prison, could also see all that. Also, it was obvious to all the accused persons that the prisoners were deprived of the basic hygiene conditions, not just because they had no warm water, but because there were no soaps, no adequate clothes, no sanitary napkins, they could not have a bath, or normally use a toilet. All the accused persons entered the rooms where the prisoners were held and they could all see how impossible it was for them to take care of their personal hygiene. This was particularly the case in the garage and the basement, where the detainees took care of their bodily functions in buckets and where bad smell was unbearable.

Medical care was inadequate and each of the accused persons knew that. A large number of the prisoners were physically maltreated, seriously beaten up or battered. These incidents happened very frequently. The accused Šunjić, Brekalo and Vračević also personally participated in the maltreating, torturing and beating of the prisoners, while Radić witnessed all that when he saw the prisoners on the frontline and on the occasion of inspecting the prison. The consequences of these torturing and beating were numerous injuries the prisoners sustained, many of which were visible. Each of the accused persons was aware of the fact that medical assistance was insufficient and inadequate. It mostly pertained to injuries the prisoners sustained from fire weapons. None of the prisoners who were tortured or beaten up received medical assistance, some of the prisoners died as a result of the lack of medical assistance, all of which was known to the accused person who were present there and who witnessed all that.

Knowledge of the forced labor

Each of the accused persons knew about the fact that the prisoners performed forced labor in Vojno and in the surrounding area. The work was performed on a daily basis, while the prisoners were very often taken to perform labor near the frontline, where they dug trenches, made pillboxes and did the cooking, washing, cleaning, as well as all other jobs they were ordered to do. During the relevant period, each of the accused persons was present in the places where the prisoners performed forced labor. The accused Radić requested that the prisoners from Heliodrom be sent to him to perform forced labor, he personally ordered some of the prisoners to do the cleaning and washing in the command where he was. The prisoners were sometimes brought by the accused Šunjić who was in charge of the prisoners at that time, as well as by the accused Brekalo. The accused Vračević and Šunjić used to take the prisoners to perform labor, sometimes they used to go with them to the locations where the prisoners performed labor, the accused Brekalo and Radić were on the frontline where they saw the prisoners performing forced labor. All this clearly shows that the accused persons knew about the fact that the prisoners performed forced labor, they knew which type of labor the prisoners performed, in which locations and for whose benefit. Also, all the accused persons knew that the prisoners were exposed to crossfire and sniper shots while they were performing labor near the frontline, whereby a number of prisoners were killed as a result of that and others were injured.

In addition to this, due to the set code of conduct, as well as due to the general atmosphere the accused persons had created in the Vojno prison, none of the prisoners dared to refuse to perform labor, which the accused persons were well aware of.

Knowledge of beating and torturing

Beating and torturing of the prisoners during their stay in the Vojno prison were obvious. The beating took place almost on a daily basis, during day and night, either in the places where the prisoners performed labor or in the very rooms inside the Vojno prison. The beating and torturing were done directly by the accused Šunjić, Brekalo and Vračević, as it was noted in several sections of the Verdict, whereas the accused Radić witnessed the beating and torturing during his inspections of the prison and the frontline. While this was going on, no attempts were made to conceal or camouflage what was happening. Both military and police structures knew about this, even the representatives of the camp prisoners associations knew about it, and reported it in their reports. Not only did the accused Šunjić, Brekalo and Vračević personally beat and torture the prisoners, but they were also present when others did that, most often when Mario Mihalj did it. It is clear that, based on the physical state of the prisoners, all of them could see that they were beaten up and tortured. The witnesses described how the sounds of beating and torturing could be clearly heard, while physical injuries, including heavy bruises, faces covered with blood and other signs of physical abuse, which were results of the beating and torturing, were also clearly visible. The beating and torturing were committed in the building of the prison command, as well as in the garage and the basement. The Panel has inspected Vojno and has seen that the command building is very close to the houses and the garage in which the prisoners were held. It is quite probable that the prisoners-witnesses could hear the sounds

of the beating and cries of the victims and that they could see the blood in the rooms where some of the prisoners were beaten and tortured.

The evidence has also established that the accused persons must have known about the system in which the prisoners were tortured and beaten. Namely, the prisoners were beaten and tortured on a daily basis. Some of the detainees were beaten eight times during their stay in the prison, for example Ibrahim Šogolj, whereas others testified about being beaten several times a day. The beatings started from the moment the prisoners would arrive in the prison. Several witnesses stated that they were welcomed with the sentence: “Welcome to Hell”. Beating and slapping the prisoners who would fail to introduce themselves in the manner the prison staff considered to be proper was called passing the entrance exam. None of the beaten and tortured detainees was provided with any medical assistance. All the available items were used for beating and torturing: fists, feet, tool handles, electricity and they also made up all the possible manners and methods of beating and torturing. Some of the detainees died as a result of the beating and torturing. All this is documented with evidence and, in addition to a large number of witnesses who testified about it, the joint Statement of the Vojno prison prisoners, which was written and submitted to the relevant authorities and associations, is very illustrative of this. Therefore, the Panel opines that all the accused persons knew about the system of abuse of prisoners through beating and torturing, that they participated in it and that it was done with the purpose of persecuting the Bosniak population and within the attack on them.

Knowledge of rapes and sexual violence

All the accused persons knew about the system of rape and sexual violence against the female prisoners of Bosniak ethnicity. As it has been already noted in this Verdict, the total number of 11 cases of rape and sexual violence against the female prisoners took place in the Vojno prison. During the proceedings it was established that all the accused persons participated in the *actus reus* of rapes and sexual violence. Certain cases of rapes and sexual violence took place in the very prison command, as well as in the 1st Battalion command centre. In some cases the same female prisoners were raped or sexually maltreated by several accused persons. Also, rapes and sexual violence against some imprisoned women were committed in front of some of the accused persons, or some of the accused persons themselves took imprisoned women to other accused persons or to other persons to rape them. Sometimes, after the commission of the act of rape, the accused person would ask other soldiers to rape the same female prisoner again. All the pieces of evidence presented confirm that the accused persons knew about rapes and sexual violence and that those acts were part of the system of persecution of the Bosniak population in which the accused persons took part directly and to which they contributed.

Being the 1st Battalion Commander and the Commander of the ATJ /*Antiterrorist Unit*/ “Ivan Stanić Čičo” Convicts Battalion, and being the person who formed the Vojno prison, the accused Radić personally participated in raping the female prisoners and committing acts of sexual violence against them. The accused Radić raped the witness A three times, he raped the female prisoner with the pseudonym AG three times, he raped the witness D one time and then he ordered another soldier to rape her again, he committed the act of sexual violence against underage girl X in the presence of another soldier, he told the accused Vračević to take the witness E to the house where Mirko Bukara raped her, he

asked the witness F if she would like to give birth to one Ustasha and said that each of them would give birth to one. The witness E went to the accused Marko Radić to complain about the sexual abuse by the HVO soldiers. Also, Witness 001 went to Radić to complain about Mihalj's attempt to rape her underage daughter. The accused Radić was present in the prison room when the accused Brekalo took the witness D out and raped her. All this indicates that the accused Radić personally raped female prisoners and committed acts of sexual violence against female prisoners, as well as that he knew and could know about the rapes which were committed by the prison staff and by other soldiers of the HVO.

According to the evidence presented, as the Deputy Commander of the Vojno prison, the accused Šunjić personally raped the witness AM. Šunjić took the witness B out and took her to the building where four persons raped her and on their way there he told her that there would be humping. The witness D stated that, before she was taken to Marko Radić to the command where she was raped, she had been taken to the prison command where, among other, the accused Šunjić, as well as Brekalo, were present. On that occasion she was humiliated and threatened and from that place Brekalo took her to Radić to rape her. The witness C stated that she was taken to the prison command by guard Rudo Ravlić and in the command she found the accused Šunjić and Mihalj. They told her that she had to do something and, when she asked them to confirm that, the accused Šunjić screamed at her and told her that she had no rights and that she was in the hell itself. Immediately after that the witness C was taken to a house where the accused Brekalo and a soldier called Marko raped her. The witness F stated that the accused Šunjić was present in the command when she regained consciousness after she was sexually abused for the first time. From the statement of the witness E it stems that the accused Šunjić was present on the occasion when a statement was taken from this witness with regard to the attempted rape by the HVO soldiers. Statements of several witnesses (D, J, Saja Ćorić, B) show that the accused Šunjić was present in the room where women were held on the occasion when Damir Brekalo took out the witness D, whom he then took away and raped.

Based on the evidence presented, it stems that the accused Brekalo also participated in raping female prisoners. Brekalo first raped underage witness L, then he raped her sister, the underage witness X, he raped the witness AG, he also raped on two occasions the witness D and on both occasions he sent her then to Dario Sušac to rape her again. Together with a soldier called Marko, Brekalo sexually maltreated the witness C. Also, he committed the act of sexual violence against the witness F. According to the statement of the witness D, the accused Brekalo first took her to the command to the accused Marko Radić, who raped her and, after she was raped by Marko Radić, he threatened that she must not tell anyone anything about it, and then he returned her to the prison.

According to the evidence presented, the accused Mirko Vračević, who was a guard in the Vojno prison, raped the witness AM at least on three occasions. Also, according to the statements of the witnesses E and F, Mirko Vračević took the witness E to a house and handed her over to soldier Mirko Bukara, who raped her. Being a prison guard, Mirko Vračević knew that many women were taken away during night, raped and sexually abused. He used to see those female prisoners on a daily basis and, based on their appearance, he could conclude that they had been raped. The witness E noted that Mirko Vračević waited for her when she came back from the accused Radić the first evening after their arrival, and the witness A did not return then. The witness A stated that on the

following day she was taken back to Radić, who raped her two times and then Vračević frisked her and told her to come with him to another house where women were held.

The evidence presented in the Reasoning part of the Verdict pertaining to rapes, sexual violence and torturing of female prisoners clearly indicates that all the accused persons undertook active actions in the commission of these crimes and that those actions were subsumed under the intent of the accused persons.

Therefore, the Panel finds that the accused Radić, Brekalo and Vračević knew about 11 cases of rapes and sexual violence against the female prisoners, which took place during their stay in Vojno. The Panel has at this point noticed that the accused Dragan Šunjić was not in the prison at the time the witnesses X and L were raped and abused, therefore he is not charged with the actions related to these two witnesses. The Panel holds that, being members of the joint criminal enterprise, the accused persons are liable for these actions. The fact that not a single accused person reacted to the rapes committed by others also represents important evidence that proves that they knew about the rapes being committed and that they were part of the common purpose of the joint criminal enterprise in which they either actively participated or with which they agreed.

Finally, with the knowledge of the accused persons, the system achieved its purpose of the persecution of all persons of Bosniak ethnicity by the act of rape, which was in accordance with the purpose of the widespread and systematic attack on Mostar and the wider area.

Knowledge of the killings

In addition to knowing about the above-noted events, the accused persons knew about the system of permanent elimination of the prisoners of Bosniak ethnicity through killings. As it has been already noted in this Verdict, in the Vojno prison there was the total of 16 cases of killings of the prisoners of Bosniak ethnicity who were unlawfully kept and subjected to different tortures. Evidence exists suggesting that some of the accused persons participated in the *actus reus* of these killings. These are the accused Šunjić and Vračević. The accused Brekalo was present when some of the killings took place or he was a direct perpetrator of the beating of the persons who were then taken away on the same day and who were never seen alive again. Many witnesses were killed while they were performing labor near the frontline. This happened in front of other prisoners who were performing labor together with them and in front of the HVO soldiers who guarded them and in whose zone they performed the labor. Those killings were reported in many records of the Vojno prison staff, particularly in the records by the Commander and sometimes by the Deputy Commander Šunjić. It is true that, with regard to some of the prisoners who were killed by the accused persons or by the prison staff, it was claimed that they were killed on the frontline while they were performing labor, however that had the purpose of covering the actual causes of the prisoners' death. Nevertheless, this evidence still confirms that the accused persons knew about the killings and that the killings were part of the system of the persecution of the Bosniak population to which they contributed.

The accused Radić was the Commander of the persons who had duties in the Vojno prison, as well as of the persons who committed the killings in the Vojno prison itself, during the period when the killings took place within the compound of the Vojno prison, namely

either as the 1st Battalion Commander, the Commander of the “Ivan Stanić Ćićo” Convicts Battalion or as the 2nd Brigade Commander. Also, during the period when many killings of prisoners took place on the frontline while they were performing labor, namely due to crossfire or sniper shots, the accused Radić was the 1st Battalion Commander and the 2nd Brigade Commander, whose zone of responsibility covered the area in which the prisoners performed labor. Also, all the prisoners who were killed on the frontline were taken to perform forced labor from the Vojno prison, while Radić participated in its forming and he had control over this prison’s staff and over the events which happened there. The above-mentioned prisoners who performed labor were not only killed, but some of them were also injured. In the Report by the Military Police Administration dated 31 January 1994 it is noted that 13 detainees were not brought back from performing labor, as well as that they had been sent to the 2nd Brigade during the period from 8 to 17 November 1993. Among those prisoners, a number of them were killed, some of them were injured from fire weapons, while some of them self-inflicted wounds. The persons who were killed: Hamdija Tabaković, Mensur Salman, Mustafa Kahvić, Džemal Sabitović, were all killed on the frontline at the time when the accused Radić was the 2nd Brigade Commander. In this Report it is noted that a veto on taking prisoners to perform labor should be imposed on the entire Brigade. The list does not contain the evidence whether the veto was actually imposed, however there is evidence that clearly suggests that prisoners were still kept in the Vojno prison and engaged in performing labor until the end of the relevant period. In addition to this, there is also the SVIZ Report dated 18 September 1993 which shows that among the detainees who were handed over to the 2nd Brigade and who were secured by Dragan Šunjić, there was the largest number of the beaten and killed ones. From the SVIZ Report dated 14 September 1993 it follows that on 6 July 1993 the 1st Battalion of the 2nd Brigade took 8 detainees, six of them were brought back, whereas Rasim Lulić and Mustafa Čilić remained unaccounted for. During the proceedings it was proved that these two detainees were also killed on the firing line. In the same Report it is noted that on 2 September a total of 50 men were handed over to the 1st Battalion of the 2nd Brigade and that they were secured by the accused Dragan Šunjić, and, out of these men, 7 detainees were killed, including Husnija Čorajević, Enver Kajtazi, Avdo Jelin, Aris Začinagić, Mensud Dedajić and Željko Čakalović. All these detained persons were held in Vojno.

In the Vojno prison there was no record of the persons who were brought and imprisoned there. The only record was the log-book which was kept with regard to this prison in Heliodrom and which is full of crossings off and corrections. Because of this, the Vojno prison staff did not even know the names of many of the persons who were killed, so they learned the names from the prisoners themselves, who used to tell them the names because they personally knew them or based on their memory. For this reason many names of the persons who were killed were not written correctly in the SVIZ reports, including those written by the prison Commander and the Deputy Commander.

Under some sections, the accused Šunjić and Vračević are personally responsible for participating in the killings of some prisoners. The accused Šunjić is charged with having participated in the killing of Avdo Jelin, Enes Nurko and Arif Omanović, whereas the accused Vračević is charged with having personally killed Asif Čakrama. The evidence noted in the reasoning of the sections of the Verdict, in which the accused Šunjić and Vračević are charged with these killings, clearly indicates that they undertook the active action which had a decisive impact on the death of prisoners or the action which

contributed to such result, all of which was subsumed under the intent of the accused persons. The accused Brekalo, and Šunjić, were present when four detainees were brutally killed, when Mario Mihalj, Juro Kordić and another unknown person slit their throats. On this occasion the accused Brekalo was seen washing his hands with tap water, while Šunjić was standing there watching all that and he said he had shot at and wounded one of the prisoners from that group who had run away. As it has been already noted, the accused Radić was not present when these killings occurred. However, during the proceedings it was proved that Radić participated in the forming of the Vojno prison, that he was commander of all the persons who committed the killings, that he controlled the Vojno prison in the manner that he was in contact with its staff, he came to the prison command, entered the prison command, entered the rooms where the prisoners were held, received complains about the behavior of some of the soldiers towards the prisoners, he saved some prisoners from being maltreated by the prison staff, on one occasion he even physically attacked Mihalj, who pulled back, he decided to release the witness J from the prison because she was allegedly supposed to marry one of the soldiers, he entered the rooms in which the prisoners were held together with the prison staff and the accused Brekalo on the occasion when one of the prisoners escaped, he was present when prisoners, women, children and elderly, from Vojno were exchanged on 2 December 1993. All this clearly shows that the accused Radić was in charge of the Vojno prison during the entire period, as the witnesses-prisoners consistently claimed, he had control over the staff members who were engaged in the prison and who stayed there, and therefore he must have known and must have been informed about the killings which took place in Vojno and on the frontline. Several cases of killings of prisoners took place in the vicinity of his command in Bočine, some of the killings on the frontline took place near the Zahilići's houses and the nunnery, which were located in his zone of responsibility, while other cases of killings also took place in Bijelo Polje, the settlement after which his unit was called. The Vojno prison itself was also located not far away from Bijelo Polje, behind the frontline, in depth, and, according to the statement of witness Rotim given during the investigation, as well as the statement of witness AH, this settlement was under control of the 1st Battalion.

Therefore, the Panel finds that all the accused persons knew about the 16 cases of killings of prisoners, which took place during their stay in Vojno and that they were responsible for those killings as members of the joint criminal enterprise. The fact that none of the accused persons officially reacted to those killings also represents important evidence that they knew about the killings taking place and that they were part of the common purpose of the joint criminal enterprise in which they participated either actively or with which they tacitly agreed.

Finally, with the knowledge of the accused person, the system achieved its purpose of persecution, which was in accordance with the purpose of the widespread and systematic attack on Mostar and the wider area on all the persons of Bosniak ethnicity by the act of killing.

b. Individual criminal liability: *Mens rea* (intent)

The intent which is necessary for the establishment of liability for the crimes committed through the systemic joint criminal enterprise is the intent to contribute to the system. If the common purpose of the system includes commission of a criminal offence which requires a

special intent, then the accused must share that special intent. The common intent, either as a special intent that is necessary for the underlying criminal offence or the general intent to contribute to the system, can be established through other evidence, and not just through explicit statements about the intent. The criminal offence the accused persons are charged with in this case is persecution, namely the criminal offence which requires special intent. The Appellate Chamber in the *Kvočka* case quoted with permission the following example of the evidence of the common intent which the Trial Chamber presented in its Judgment: “If the criminal enterprise entails killing members of a particular ethnic group, and members of that ethnic group were of a different religion, race or political group than the co-perpetrators, that would demonstrate an intent to discriminate on political, racial or religious grounds. ...a knowing and continued participation in this enterprise could evince an intent to persecute members of the targeted ethnic group.”

The factors that prove the intent include the significance of the accused person’s contribution and the extent of his knowledge. The Appellate Chamber in the *Krnjelac* case found that, if, as a result of his position within the system and his opportunity to observe, the accused person had knowledge of the system, the crimes committed within that system and the discriminatory nature of those crimes, “...a trier of fact should reasonably have inferred ... that [the accused] was part of the system and thereby intended to further it. The same conclusion must be reached when determining whether the findings should have led a trier of fact reasonably to conclude that [the accused] shared the discriminatory intent...”.

The importance of the accused person’s contribution to the system can also be the evidence of his common intent. The high-ranking position within the system, taking over more responsibilities within the system after its criminal purpose became obvious, the length of the time period during which the accused person was part of the system, the importance of his tasks for the furtherance of the system, the efficiency with which he completed his tasks, verbal statements about the system, as well as any other direct participation in the *actus reus* of the underlying criminal offences are all factors which are important for the establishment of common intent. However, neither the intent to contribute to the system, nor the special discriminatory intent that is necessary for the criminal offence of persecution obliges the Panel to find that the accused was in favor of the system or not in favor of the victims of persecution. The motive for creation of the common intent is irrelevant. “...The shared criminal intent does not require the co-perpetrator’s personal satisfaction or enthusiasm or his personal initiative in contributing to the joint enterprise.”

In the light of the above-mentioned, the Panel finds that the accused persons acted upon a direct intent, wanting to contribute to the systemic joint criminal enterprise in the Vojno prison. They were aware of their acts and they wanted to commit them. In addition to this, they shared the discriminatory intent to persecute the prisoners of Bosniak ethnicity in the Vojno prison. As it has been already considered, the accused Radić was the Commander of the 1st Battalion, of the ATJ “Ivan Stanić Čičo” Convicts Battalion, as well as the Commander of the HVO 2nd Brigade, the accused Šunjić was the Deputy Commander of the prison, Vračević was a guard in the prison, while Brekalo, being a member of the units commanded by Radić, had a completely free access to the prison and the prisoners, all of them personally knew about the established system and the type of crimes committed within that system. They remained within the system and with their actions they

contributed to the system. In addition, the accused persons participated in it during the entire period as members of the joint criminal enterprise, knowing that the crimes were committed with the intent to discriminate against the detainees of Bosniak ethnicity on national, ethnic and religious grounds and this fact was manifested on a daily basis through the treatment of Bosniak civilians in the same institution in which the crimes were committed. The participation of the accused persons, with their complete knowledge of the committed crimes and the character of the system, was not momentary, but it lasted for around eight months. Therefore, the accused persons personally committed the criminal offence of Crimes against Humanity, either as individuals or together with other accused persons and other persons, they knowingly contributed to that system and they shared the common discriminatory intent.

THE APPLICATION OF ARTICLE 29 OF THE CC BiH TO CO-PERPETRATION IN THE JOINT CRIMINAL ENTERPRISE IN VIOLATION OF ARTICLE 180(1) OF CC BiH

As it has been elaborated in Section 1 above, the accused persons are criminally liable pursuant to the Criminal Code of BiH as co-perpetrators in the systemic joint criminal enterprise: 1) because customary international law, which recognizes the joint criminal enterprise, is applied to them, and 2) because the legal regulations of the BiH are applied to them, including Article 180(1) of the CC BiH, which incorporates the legal definition and the court interpretation defining perpetration and establishing that the systemic joint criminal enterprise is a form of co-perpetration pursuant to that Code.

Article 180 is applied to certain criminal offences only, including Crimes against Humanity, noted in Chapter XVII of the Criminal Code. Article 29, in Chapter V of the Criminal Code, prescribes the requirements of co-perpetration for all criminal offences covered by the Criminal Code of BiH. Article 29 reads:

“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.”

As it has been reasoned in this Verdict, the evidence indicates beyond reasonable doubt that the accused persons are co-perpetrators of the criminal offences of which they were found guilty because the criminal liability requirements for the systemic joint criminal enterprise have been met as established in customary international law. However, the degree of participation that is necessary for co-perpetration as established in customary international law and incorporated through international jurisprudence, on which Article 180(1) of the CC BiH is founded, is different from the degree of participation required pursuant to Article 29 for co-perpetration in general pursuant to the law of BiH.

In order to find an accused person guilty of co-perpetration pursuant to Article 29 he must either participate in the *actus reus* of the criminal offence or undertake some other act “by which a decisive contribution has been made” to the perpetration of the criminal offence. If the accused person participated in the criminal offence itself together with other persons,

providing that the necessary *mens rea* exists, pursuant to Article 29 that is sufficient to consider him a co-perpetrator and to punish him as a principal perpetrator. However, if he committed “some other act” that led to the perpetration of the criminal offence, then his action must represent “a decisive contribution” to the perpetration of the criminal offence. The term “decisive” imposes a larger burden of proof on the Prosecutor. As it is explained in the Commentary on the Criminal Code of BiH, the evidence must establish that the contribution of the accused person to the perpetration of the criminal offence was of such nature that “without it the criminal offence would not have been perpetrated (at all or in the manner in which its perpetration was planned – Commentary on the CC BiH, page 174).

Having considered the facts in the cases which referred to detention camps and in which the ICTY pronounced verdicts, and having considered the jurisprudence from the World War II trials, the Trial Chamber in the *Kvočka* case reached the conclusion that regardless of whether participation in a systemic joint criminal enterprise was in the capacity of a co-perpetrator or in the capacity of an aider or instigator, the degree of participation must be “significant”. Later on, in 2005, the Appellate Chamber in the *Kvočka* case established that, in principal, it is not necessary to prove “the substantial or significant nature of the contribution of an accused to the joint criminal enterprise to establish his responsibility as a co-perpetrator”, although the significance of the contribution would be relevant for establishing other elements of the joint criminal enterprise, such as the intent. However, unlike Article 29, no difference was made between different degrees of participation which are necessary for criminal liability, the one which represents the actual participation in the *actus reus* and the one which represents “some other act” by which a contribution is made.

The Panel finds that there is no difference between the joint criminal enterprise in customary international law and Article 29 in terms of the degree of participation which is necessary to establish co-perpetration when an accused person participated in the *actus reus* of the criminal offence in any manner whatsoever. However, there is a difference in case the accused person undertook “some other act” which led to the perpetration of the criminal offence. Under customary international law, if all other elements of the joint criminal enterprise are proved, the degree of participation represented in “some other act” does not have to be “substantial or significant”. However, pursuant to Article 29 it has to be “decisive”. Since the Prosecutor charged the accused persons pursuant to Article 180(1) in conjunction with Article 29 and submits that the Panel should apply both Articles, stronger proof than implied by the standard of customary international law is necessary.

In the case of these accused persons, the evidence has satisfied the standards of customary international law and Article 29. The accused persons were found guilty of having contributed to the system of persecution in which they shared the common discriminatory *mens rea* and they directly and significantly participated in the *actus reus* by running, securing and maintaining unlawful imprisonment without which not a single other criminal action by which the crime of persecution was committed could have taken place. By their direct participation in the *actus reus* of the criminal offence of persecution through unlawful imprisonment, forced labor, killings, rape, torturing and other inhumane acts, the accused persons committed actions which made significant contribution to the perpetration of the criminal offences for which they knew were part of the criminal system which they furthered. During the proceedings, it was proved that the accused persons directly contributed to the *actus reus* of other criminal activities by which the criminal offence of

persecution was committed: the accused Radić ordered arrests and imprisonment of the prisoners, he was responsible for their accommodation and conditions of their stay there, he participated in the forming of the prison, he knew that the prisoners were taken to perform forced labor near the frontline, where they performed hard physical labor in the places where they were exposed to crossfire, and finally, he committed several crimes of rape and sexual violence. As the Deputy Commander of the prison, the accused Šunjić had control over everything that was going on in the prison, he participated in the arrests of the prisoners, in taking them to perform forced labor, he knew what the conditions in which they stayed were like, he directly participated in the killing, torturing, beating, rape, as well as in other inhumane acts. Being a member of the 1st Battalion and the “Ivan Stanić Čičo” Convicts Battalion, following the orders issued by Radić, the accused Brekalo directly arrested and brought civilians of Bosniak ethnicity to the prison, he had free access to the prisoners and the houses in which they were held, he directly participated in rapes, acts of sexual violence, torturing, beating and other inhumane acts. As a guard, the accused Vračević knew about the events in the prison and he was in charge of the prisoners. He directly perpetrated the crimes of killing, rape, torture, maltreatment and other inhumane acts. Therefore, as read in Article 29, all the accused persons were “participating in the perpetration of a criminal offence” of persecution by having committed the criminal acts of unlawful imprisonment, killing, rape, torturing and other inhumane acts and by their “acts” they decisively contributed to the commission of other criminal actions which are the basis of the Indictment for persecution. The requirements related to the evidence which is necessary to establish co-perpetration pursuant to Article 29 have been met, as well as those which are necessary for the establishment of the existence of a systemic joint criminal enterprise pursuant to Article 180(1) of the CC BiH and customary international law.

The application of substantive law:

In view of the question which substantive law should be applied, considering the time of perpetration of the criminal offence, the Court has accepted the legal qualification by the Prosecution and sentenced the accused Radić, Šunjić Brekalo and Vračević for the criminal offence – Crimes against Humanity in violation of Article 172(1)h), in conjunction with subparagraphs a), e), f), g) and k) of the CC BiH.

Considering the time when the criminal offence was perpetrated and the substantive law which was effective at that time, the Court holds that two legal principles are relevant: the principle of legality and the principle of time constrains regarding applicability.

Article 3 of the CC BiH prescribes the 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 4 of the CC BiH (time constrains regarding applicability) prescribes that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence, whereas 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.

The principle of legality is prescribed in Article 7(1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR), which has priority over all other codes in BiH (Article 2.2 of the Constitution of BiH). Pursuant to the above-mentioned Article of the ECHR: “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.” Therefore, it is forbidden to impose a more stringent punishment than the one that was applicable at the time the criminal offence was committed. Therefore, this provision prescribes a ban on imposing a more stringent punishment without determining the obligation to apply the more lenient law to the perpetrator, in relation to the punishment that was applied at the time the criminal offence was committed. Paragraph 2 of Article 7 of the ECHR stipulates that: “This article 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 the general principles of law recognized by civilized nations.”

Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter: the ICCPR) prescribes the following: “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 when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”

Paragraph 2 of Article 15 of the ICCPR stipulates that “nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.”

Finally, Article 4a) of the CC BiH, which is harmonized with Article 7(2) of the European Convention, prescribes that Articles 3 and 4 of the CC BiH shall not prejudice 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. This Article enables an exceptional departure from the principles set forth in Articles 3 and 4 of the CC BiH, as well as a departure from the obligation to apply the more lenient law pursuant to Article 4(2) of the CC BiH in relation to the actions which constitute criminal offences under international law. The referenced proceedings against the accused persons fall under Article 4a) because this is precisely an incrimination which includes grave breaches of international law. This position was taken in the Verdict of Section I of the Appellate Division of the Court of BiH pronounced against Abduladhim Maktouf, number KPŽ 32/05 dated 4 April 2006.

Article 172 of the CC BiH prescribes the criminal offence of Crimes against Humanity, as prescribed in Article 5 of the ICTY Statute (Article 5 of the ICTY Statute defines the criminal offence of Crimes against Humanity as certain special offences, “when committed in armed conflict, whether international or internal in character, and directed against any civilian population”). During the relevant period, Crimes against Humanity was not explicitly foreseen in the criminal codes of Bosnia and Herzegovina.

Customary status of punishability of Crimes against Humanity and individual responsibility for its commission in 1992 has been confirmed by the UN Secretary General, the International Law Commission, as well as the jurisprudence of ICTY and the International Criminal Tribunal for Rwanda (ICTR). These institutions found that the punishability of crimes against humanity represents an imperative standard of international law or *jus cogens*, therefore, it appears to be beyond dispute that in 1992 Crimes against Humanity were part of customary international law.

Article 4a) of the CPC BiH deals with “the general principles of international law”. Since neither international law nor the ECHR contains an identical term, this term basically represents a combination of “principles of international law” as recognized by the UN General Assembly and the International Law Commission on the one side and “the general principles of law recognized by the community of nations” as recognized by the Statute of the International Court of Justice and Article 7(2) of the ECHR.

International law principles, as recognized by the General Assembly Resolution 95(I) (1946) and International Law Commission (1950), refer to the “Nurnberg Charter and the Judgment of the Tribunal” and, therefore, to Crimes against Humanity. “Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal”, which were adopted by the International Law Commission in 1950 and delivered to the General Assembly, Principle VI.c., foresee Crimes against Humanity which is punishable as a crime under international law. Principle I stipulates the following: “Any person who commits an act which constitutes a crime under international law is responsible thereof and liable to punishment.” Principle II stipulates the following: “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.”

The case-law of the European Court of Human Rights underlines the application of paragraph 2 instead of paragraph 1 of Article 7 of the ECHR in several similar cases in which the subject of discussion was precisely the existence and punishability of Crimes against Humanity as a criminal offence. Moreover, in the *Kolk and Kislyiy versus Estonia* case, the European Court “recalls that the interpretation and application of national law in principle fall within the competence of national courts” This is also applicable in cases when national law is related to the rules of general international law or international agreements.

Therefore, the criminal offense of Crimes against Humanity can in any case be classified under “general principles of international law” set forth in Article 4a) of the CC BiH. Thus, regardless of whether it is seen from the aspect of customary international law or the “principles of international law”, there is no doubt that Crimes against Humanity represented a criminal offense during the relevant period, that is, that the principle of legality has been satisfied.

The fact that the criminal acts listed in Article 172 of the CC BiH can also be found in the law which was effective during the relevant time period – at the time of the perpetration of the offense, specifically under Articles 134, 141, 142, 143, 144, 145, 146, 147, 154, 155

and 186 of the CC of SFRY, namely, that the acts listed in the Indictment were punishable under the criminal code which was then effective, additionally supports the conclusion of the Court related to the principle of legality. Finally, in terms of Article 7(1) of the ECHR, the Court notes that the application of Article 4a) is further justified by the fact that the imposed punishment is in any case more lenient than the death penalty applicable at the time of the perpetration of the offense, which satisfies the principle of time constraints regarding applicability, that is, the application of the “law more lenient to the perpetrator”.”

The accused persons committed the above-mentioned criminal offence with intent, within the joint criminal enterprise in which they all willingly participated and contributed to, and they furthered the system of abuse and persecution of the Bosniak population. From the evidence presented during the proceedings it stems that, at the moment of perpetration of the criminal offence, the accused persons were aware of the fact that with their actions they violated the rules of international law and it was clear that, with their actions, they wanted to cause the forbidden consequence. The accused persons committed the crime of Persecution in conjunction with other acts of Crimes against Humanity, in violation of Article 172(1), because this is a single criminal offence regardless of the number of perpetrated actions. In this specific case, the criminal act of Persecution contains the elements of the criminal act of other actions the accused persons are charged with. This was also the position of the ICTY, and, according to its jurisprudence, in case when the crime of Persecution is committed in connection with the *actus reus* of other acts, the elements of the crime of other acts are included in the crime of Persecution (Judgment of the ICTY Appellate Chamber in the *Krstić* case, paragraph 231-232).

Considering the established state of facts in relation to all counts of the amended Indictment and the consequences which followed, as well as the casual relation between them, the Court has found the accused persons guilty of the criminal offence of Crimes against Humanity in violation of Article 172(1)h) in conjunction with subparagraphs a), e), f), g) and k) of the Criminal Code of Bosnia and Herzegovina, and has sentenced them to imprisonment for the above-mentioned criminal offence.

VI. SANCTION

A. Necessary Sanction Proportional to Gravity of Criminal Offence

As for the criminal offence itself and participation in the systemic joint criminal enterprise whose common purpose was to persecute the Bosniak population from July 1993 to March 1994 committing the Crimes against Humanity described in the Verdict, the Panel considered the sanction which is necessary and in concordance with the set lawful goals, including the relevant legal elements.

(A) *The sanction shall be based upon the necessity for criminal justice compulsion and its proportionality with the degree and nature of the danger against personal liberties, and other basic values, (Article 2 of the BiH CC).* In this regard the Panel will also take into account the legal elements which refer to this purpose, that is, the suffering of direct and indirect victims (*Article 48 of BiH CC*). Direct victims of this offence were the detained Bosniaks who were unlawfully imprisoned in Vojno at the material time. All these

detainees were direct victims of the criminal system based on which they were unlawfully detained and held in inhumane conditions, tortured, killed and sexually abused. Some detainees were also direct victims of other criminal offenses which were an integral part of the criminal camp system, including: a minimum of 16 murders, 11 rapes and acts of sexual violence, torture of the witness 152, Ramiz Mačković, witness 153, Enver Tihak, witness AI, witness AA, witness AB, witness AF and others, inhumane treatment of detainees by sending them to forced labor near the front line where they were exposed to cross-fire, to dig trenches, to chop wood and do other chores for the HVO, and other inhumane acts toward many detainees.

The suffering directly inflicted on these victims caused additional suffering to their families and their communities. That suffering continues: a number of detainees have not been identified yet, and many prisoners still feel the consequences of the tortures they were subjected to while being detained in the Vojno prison.

The sanction has to be proportional to this degree of suffering, and it also has to be sufficient so as to (B) prevent others from committing similar criminal offences (Article 6 and 39 of the BiH CC). The main reason to incriminate the activities related to “the camps” as a crime against humanity pursuant to the international law and the criminal prosecution of the persons participating in the establishment and maintenance of the camps was to prevent the repetition of this systematic crime against the vulnerable civilians in the future conflicts. The fact that all sides used camps during the conflict in Bosnia and Herzegovina constitutes a disturbing indication that the lesson from the past has not been learnt. Accordingly, it is necessary now more than ever to impose an adequate sanction on the persons who knowingly participated in the establishment and maintenance of camps so as to let all those who will be participating in the future conflicts know that a high price will be paid for the participation in this type of crime, even if they did not personally participate in every crime committed in these camps. In order to deter the others, the sanction has to be adequate in sending the message that managing “a camp” is not a harmless job when it promotes an efficient management of a system whose objective is to persecute civilians by using methods which constitute a criminal offence pursuant to international humanitarian law.

Furthermore, this sanction must reflect (C) public condemnation of the conduct of the Accused (*Article 39 of the BiH CC*). In this case the public is the people in Bosnia and Herzegovina, and the international community which by the national and international regulations characterized such behavior as a crime against humanity. These communities clearly stated that these crimes should be condemned regardless of the side that committed them and regardless of the place where they were committed, and that they cannot go unpunished.

Also, the sanction must be necessary and proportional (D) to the educational purpose of the law, which is that the persons should be aware of the fatality of the crime (*Article 39 of the BiH CC*). The trial and sanctioning of these offences have to demonstrate that it would not tolerate the crimes which were committed during the time of war and that criminal proceedings is the appropriate way to reveal the crimes and to break the cycle of personal retaliation. The Court cannot order reconciliation nor can the Verdict impose it. However, the sanction that totally reflects the severity of the offence may contribute to reconciliation

by providing a lawful instead of a violent response, and promote the striving that justice be served instead of the wish for personal revenge or the revenge of the community. The criminal offence of Persecution creates a danger not only to the direct victims but to the community in its entirety by creating the ambience of lawlessness where the rule of law is put in question, while persons who identify themselves with the aggressor are being instigated to commit criminal offences for which they will not be punished.

Taking into account all these elements which are relevant to the criminal offences committed by the Accused, the Panel submits that the imprisonment sentence which has been imposed on them is a necessary and proportional punishment that reflects the severity of the criminal offence.

B. Sanction which is Necessary and Proportional in relation to the Perpetrator

Fairness as a legal requirement has to be also taken into account in meting out the sanction (*Article 39*), including the specific circumstances related not only to the criminal offence but also to its perpetrator. The Code stipulates two goals which are relevant to the person convicted for a criminal offence: (1) to deter the perpetrator from perpetrating criminal offences in the future (*Article 6 and 39 of the BiH CC*); and (2) rehabilitation (*Article 6 of the BiH CC*). Rehabilitation is not the only purpose stipulated by the Criminal Code as an obligation on the part of the Court, it is the only purpose of sanctioning which is recognized and expressly required by the international human rights law which the Court must adhere to pursuant to the Constitution. Article 10 (3) of the International Covenant on Civil and Political Rights reads as follows: “*The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.*”

There are rules which are relevant to these purposes because they influence the meting out of the sanction to the convicted person (*Article 48 of the BiH CC*). Those rules, *inter alia*, are the following: the degree of criminal liability; the conduct of the perpetrator before, during and after the fact, motives and personality of the perpetrator. Depending on the facts these elements may constitute aggravating or mitigating circumstances in meting out of the punishment. The reason why these elements are considered is to facilitate the Court to fashion the sanction which is necessary and proportional to the meaning of the purpose of punishment and the elements which have already been taken into account regarding the offence itself and its consequences for the community, however, that sanction has to be proportional to the preventive and rehabilitation requirements regarding the specific perpetrator.

1. Accused Marko Radić

a) Degree of Liability

Based on the presented evidence the Panel found that Marko Radić participated in the establishment of the Vojno Camp, and that de facto he was superior to his staff in the Vojno Prison throughout the relevant time period, and that he was primarily responsible for the detainees and above him in the hierarchy, and as far as the Vojno Camp is concerned, there was no more responsible person than him there.

Having in mind the position he had as the Commander of the First Bijelo Polje Battalion, then as the Commander of the *Ivan Stanić Čičo* Convicts Battalion, and eventually as the Commander of the Second Battalion, the Accused Radić had effective control over the staff and guards in the Vojno Prison, including Brekalo as a soldier in his unit, and he had a real opportunity to prevent the commission of the crimes against humanity against the detainees in the Vojno prison. However, contrary to that it was found in the proceedings that the Accused Radić personally participated in the rapes, imprisonment and other inhumane acts as a direct perpetrator, and that he participated in other offences as a co-perpetrator, and he did all that within the systemic joint enterprise, which he encouraged. While meting out the sanction the Panel took into account his position and role in the Vojno Prison as a relevant factor.

His position in Vojno and the manner in which he utilized it constitute aggravating factors.

b) Conduct and Personal Situation

The conduct and personal situation of Radić before, during and after the commission of the criminal offence include also aggravating and mitigating facts and are relevant to prevention and rehabilitation.

c) Circumstances before the Fact

Based on the information in the case file Radić was a secondary school teacher before the war. He did not have a criminal record, therefore his conduct and behavior in that time period is taken as a mitigating factor.

d) Circumstances Surrounding the Criminal Offence

As suggested by the evidence corroborating many Counts in the Indictment, Radić not only controlled the system which included the inhumane living conditions and unlawful detention, forced labor, rapes, murders and other inhumane acts, but he also implemented that system by direct participation in the commission of those offences. Some of them were committed in the very beginning of the prison operation, which instigated and encouraged other soldiers from his units, including the prison staff, to commit various acts against humanity against the detainees. The manner in which he committed these offences is an aggravating factor.

e) Circumstances after the Fact

After the war Radić got married, became a family man supporting three minor children. This is a mitigating factor. Criminal proceedings are ongoing against him for the criminal offence against public security of persons and property before the Cantonal Court in Mostar. This fact does not constitute either mitigating or aggravating factor as the criminal proceedings against him have not been completed yet.

f) Conduct in these Proceedings

Radić acted with decorum throughout the proceedings and in accordance with the expectations of the Panel, therefore his conduct is neither an aggravating nor a mitigating factor.

g) Motive

The motive in this case is not connected to intent. As explained above, the Accused intentionally persecuted the Bosniak detainees as this crime is defined by law and established in the Reasoning of this Verdict. The testimony of Witness Semir Humačkić who had spoken to Radić indicates that he was totally indifferent to his complaints about the situation and conditions in the Vojno Prison, and that he responded to them saying that his soldiers, too, were detained in the primary school in Bijelo Polje, and that they were held in no better conditions either. During the proceedings the Court established that on 30 June 1993 a surprise attack was launched by the ABiH forces on the HVO positions in Bijelo Polje which was in the area of responsibility of the First Battalion under the command of Radić, and that on that occasion several members of his unit were killed, and some local Croats from Bijelo Polje were taken prisoners, who were then held in the primary school in the part of the territory of Bijelo Polje under the BiH Army control. The activities of Radić at a later stage suggest that the Vojno prison was established, and that he ordered the members of his unit to round up Bosniak civilians in Mostar who were originally from Bijelo Polje. Immediately after the Camp establishment he was entirely relentless when the 15-year-old Bosniak girl, Witness X, was sexually abused. Also, during the first months of the prison operation he personally committed several rapes of Bosniak women. His speech delivered during the exchange of these civilians, when according to the testimony of witness D he said that when they left they should not talk too much, and that very soon they would come over there and chase them all the way to Tuzla, including the threat to witness F that she would give birth to an Ustasha, suggest that he committed the offences being motivated with hatred against the Bosniak ethnic group, and that he had reason for revenge, which would constitute the basis of his conduct against the captured Bosniaks. Accordingly, the motive Radić had is an aggravating factor.

e) Personality of the Accused

The Panel has no evidence about the personality of the accused except what he showed through his acts of perpetration of the criminal offence and what could be seen in his behavior in the courtroom. Both have been discussed above.

f) Reduction of the Sanction by Law

The Panel does not find any reasons under Article 49 to fashion the punishment below the limit prescribed by law.

g) Prevention and Rehabilitation

The length of imprisonment sentence, as well as the time spent in custody as a punishment for the crime, are in most instances justifiable prevention instruments. They provide the perpetrator with the possibility to consider the consequences of his acts for the victims, to think about his mistakes from the past and to redeem his criminal acts.

Sanction

While evaluating the relevant “circumstances bearing on the magnitude of punishment” under Article 48(1), based on the above mentioned reasons the Panel infers that there are both mitigating and aggravating factors. The degree of violation of the protected value has already been included in the First Section of this analysis about the sanction while considering the gravity of the offence and shall not be “taken into account twice.” The mitigating factors considered by the Panel include the contribution of the Accused in the pre-war criminal and legal system, his family situation and the fact that he supports three minor children. The aggravating circumstances the Panel considered include the position of the Accused as a superior officer in the Camp and how he used his position in his treatment of the detainees, having in mind that he committed multiple rapes and acts of sexual violence against a minor girl, and the manner in which he treated the persons under his control bearing in mind also his omission to punish the persons for the crimes they committed. All in all, the Panel concludes that the sanction has to reflect the aggravating factors and that they have to be taken into account by modifying the sanction in respect to the one fashioned exclusively based on the gravity of the offence. The Panel finds that the long-term imprisonment of 25 years is an adequate sanction.

2. Accused Dragan Šunjić

a) Degree of Liability

Based on the presented evidence the Panel found that throughout the material time Dragan Šunjić *de facto* was the Deputy Commander of the Vojno Camp, and that based on his position he was responsible for the detainees. His superiors in the hierarchy was Mario Mihalj, as the Camp Commander, and the Accused Marko Radić.

Having in mind the position he had as the Deputy Commander of the prison, the Accused Šunjić had an effective control over the guards in the Vojno prison, and he was also in the actual position to influence the Accused Brekalo as a soldier who visited the prison compound and premises, as well as other soldiers who were in contact with prisoners, not to commit the crimes against humanity against prisoners in the Vojno camp. However, it was established in the proceedings that the Accused Šunjić personally participated in the commission of several offences which fall under Crimes against Humanity, such as murders, torture, imprisonment, rapes and other inhumane acts, and that he participated in other acts as a co-perpetrator, all within the systemic joint enterprise, and he was among those who furthered that system. While fashioning the sanction, the Panel took as a relevant factor his position and role in the Prison Camp.

His position in Vojno and the manner in which he utilized it constitute the aggravating circumstances.

b) Conduct and Personal Situation of the Accused

Šunjić's conduct and personal situation prior, during and after the commission of the criminal offence include both aggravating and mitigating facts, and are relevant to prevention and rehabilitation.

c) Before the Fact

According to the information in the case file, before the war Šunjić was a student in a secondary school in Sarajevo, where he was accommodated in a campus. He did not have a criminal record, thus his conduct and behavior in this time period is a mitigating circumstance.

d) Circumstances Surrounding the Offence

As suggested by the evidence corroborating many Counts in the Indictment, Šunjić as the Deputy Commander of the Vojno Prison enforced and furthered the system of prisoner maltreatment by direct participation in the commission of several offences including murders, tortures, rape, imprisonment, forced labor and other inhumane acts, which instigated and encouraged other soldiers and prison staff to commit various crimes against humanity against the prisoners.

The manner in which he committed these crimes is an aggravating factor.

As a mitigating circumstance, the Panel took into account that Šunjić at the time when the criminal offence was committed was 22, which means that he was still young.

a) Circumstances after the Fact

During the war Šunjić committed a criminal offence of the attempted murder, for which he was convicted by the Verdict of the Cantonal Court in Mostar. He has served the sentence. This fact is an aggravating factor.

After the war Šunjić got married, became a family man supporting three minor children, which is a mitigating factor.

b) Conduct in these Proceedings

Šunjić acted with decorum during the proceedings and in accordance to the Panel's expectations. According to the above mentioned, his conduct is neither an aggravating nor a mitigating factor.

c) Motive

The motive in this case is not connected to intent. As explained above, the Accused knowingly persecuted the Bosniak detainees as the crime is defined by law and established in the Reasoning of the Verdict. It was established during the proceedings that a brother of the Accused, Marinko Šunjić, as a Commander in the Military Police, was taken prisoner on 30 June 1993 by the ABiH members and was imprisoned until 10 September 1993 when he was exchanged. He also stated that while he was imprisoned he was severely wounded in the Šantićeva Street while he was on forced labor, which is why upon the exchange he was transferred to hospital. Witness Marinko Šunjić stated that the conditions in the captivity were terrible, and that everybody was beaten up. The Accused Šunjić knew of his brother's captivity and his suffering in the captivity, so the manner in which he treated the captives in the Vojno suggests that he committed the offences being motivated by personal hatred against the ethnic Bosniaks, and that he had reason for revenge, which is the basis for his behavior toward the captured Bosniaks. Accordingly, the motive Šunjić had is an aggravating factor.

d) Personality of the Accused

The Panel has no evidence about the personality of the Accused except for what he demonstrated through the acts of perpetration of the criminal offence, and what could be seen in his behavior in the courtroom, and both have been already discussed.

e) Reduction of Sanction by Law

The Panel does not find any grounds under Article 49 to fashion the sanction below the limit prescribed by law.

f) Prevention and Rehabilitation

The length of the prison sentence and the time spent in prison as a sanction for the crime are in most cases justifiable prevention instruments. They provide the perpetrator the with the opportunity to consider the consequences of his acts for the victims, to think about his mistakes from the past and to redeem his criminal acts.

Sanction

While evaluating the relevant "circumstances bearing on the magnitude of punishment" under Article 48(1), based on the aforementioned reasons the Panel infers that there are both aggravating and mitigating circumstances. The degree of violation of the protected value has already been referred to in the part of this analysis about the sanction, while the gravity of the offence was analyzed, and will not be "taken into account twice". The mitigating circumstances considered by the Panel include the contribution of the Accused to the criminal law system before the war, his age at the time when the criminal offence was committed, family situation, and the fact that he supports three minor children. The aggravating factors the Panel considered include the position of the Accused as the Deputy Commander in the Camp and the manner in which he used his position, particularly the

manner in which he treated the detainees, having in mind that he personally participated and committed the murders, tortures, rape and other inhumane acts in a very cruel manner. The Panel concludes that the sanction should reflect the aggravating circumstances and that they must be taken into account by modifying the sanction in respect to the one which is fashioned exclusively on the basis of the gravity of the offence. The Panel finds that the long term imprisonment of 21 years is an adequate sanction.

3. Accused Damir Brekalo

a) Degree of Liability

Based on the presented evidence the Panel found that Damir Brekalo as a member of the 1st Battalion and the *Ivan Stanić Čičo* Convicts Battalion under command of Marko Radić, was on good terms with the Accused Radić, who provided him with an apartment in the same street in Mostar where he himself lived, to whom Radić gave assignments since the beginning of July regarding the arrest and apprehension of Bosniak civilians and their being taken to the Vojno Prison. While doing so, the Accused Brekalo had free access to the Vojno prison at any time and the free treatment of detainees, which he utilized and came into contact with detainees committing various incriminating acts.

It was established during the proceedings that the Accused Brekalo personally participated in the commission of several offences which fall within the scope of Crimes against Humanity, such as rapes, tortures, imprisonment and other inhumane acts, and that he participated in other acts as a co-perpetrator, and all within a systemic joint enterprise, which he furthered. In meting out the punishment, the Panel took as a relevant factor the role he had in the Vojno Prison.

The manner in which he used his powers and the right to visit the Vojno prison and contact the detainees constitute aggravating factors.

b) Conduct and Personal Situation of the Accused

The conduct and the personal situation of the Accused Brekalo before, during and after the commission of the offence constitute both aggravating and mitigating facts, and are relevant to prevention and rehabilitation.

c) Before the Fact

Before the war Brekalo did not have a criminal record, he was a family man and had minor children, therefore his conduct and behavior during this time period is taken as a mitigating factor.

d) Circumstances Surrounding the Offence

As suggested by the evidence corroborating many Counts in the Indictment, while the Vojno Prison was operational he enforced and furthered the system of maltreatment of prisoners: by direct participation in the commission of several offences including torture, rapes, imprisonment and other inhumane acts, which incited and encouraged other soldiers

and prison staff to commit various acts of the Crimes against Humanity against the prisoners.

The manner in which he committed these offences is an aggravating factor.

a) Circumstances after the Fact

After the commission of the given offences, the Accused Brekalo committed other criminal offences, such as rape, due to which he was sentenced by a final verdict of the Basic Court in Mostar to five-year imprisonment, and the criminal offence against Public Safety of Persons and Property under Article 308(3) of the FBiH CC, for which he was sentenced by the Basic Court in Mostar to four-month imprisonment. This fact is an aggravating factor.

During the war Brekalo sustained a head injury, due to which he has had health problems, which may be eased by surgery. Brekalo's evident poor health condition is a mitigating factor.

b) Conduct in these Proceedings

Brekalo acted with decorum during the proceedings and in accordance with the Panel's expectations, therefore his conduct is neither an aggravating nor a mitigating factor.

c) Motive

The motive in this case is not connected with intent. As explained above, the Accused persecuted the Bosniak detainees with intent as the crime is defined by law and established in the Reasoning of the Verdict. It was stated during the proceedings that Brekalo's father was maltreated because of his commitment to the HVO. Namely, Bosniaks in Bijelo Polje forced him to carry a bell and say that he was a traitor of the Muslim people. Also, in mid September the Accused Brekalo changed his name to Damir, and it can be seen from the testimony of several witnesses that he humiliated the prisoners and arrested persons on ethnic basis, saying that each Muslim should be killed and all Muslim women from 7 to 77 should be raped. Such conduct of the Accused Brekalo indicates that he was driven by a motive for revenge which would be a basis of his behavior toward the detained Bosniaks. Accordingly, the motive Brekalo had is an aggravating factor.

d) Personality of the Accused

The Panel has no evidence about the personality of the Accused except what he demonstrated by his acts of the commission of the criminal offence, and what could be seen from his conduct in the courtroom, and both have been previously discussed.

e) Reduction of the Sanction by Law

The Panel does not find any reason under Article 49 to mete out the sanction below the limit prescribed by law.

f) Prevention and Rehabilitation

The length of the imprisonment sentence and the time spent in prison as punishment for the crime are in most cases justifiable prevention instruments. They provide the perpetrator with the opportunity to consider the consequences of his acts for the victims, think about the mistakes he made in the past and redeem his criminal acts.

Sanction

While evaluating the relevant “circumstances bearing on the magnitude of punishment” under Article 48(1), based on the aforementioned reasons the Panel infers that there are both aggravating and mitigating circumstances. The degree of violation of the protected value has already been referred to in the part of this analysis about the sanction, while the gravity of the offence was analyzed, and will not be “taken into account twice”. The mitigating circumstances considered by the Panel include the contribution of the Accused to the criminal law system before the war, family situation, and the fact that he supports five minor children and that currently his health condition is poor. The aggravating circumstances considered by the Panel include the manner in which the Accused utilized his position which allowed him to arrest and bring the Bosniak civilians to prison, and that he was allowed to visit and contact the detainees, the manner in which he treated the detainees, particularly the manner in which he committed the offences, such as the repeated rapes of underage girls, sexual violence, torture, imprisonment, maltreatments and threats. All in all, based on all aggravating and mitigating circumstances the Panel finds that a long-term imprisonment of 20 years is an adequate punishment.

4 Accused Mirko Vračević

a) Degree of Liability

Based on the evidence presented the Panel found that Mirko Vračević as a member of the 1st Battalion was a guard in the Vojno Prison, and that, being in that position, he had control over the prisoners in the Vojno Prison, whom he was supposed to guard.

However, it was established in the proceedings that the Accused Vračević personally participated in the commission of several offences which fall under the Crimes against Humanity, such as murders, rapes, imprisonment and other inhumane acts, and that he participated in other acts as a co-perpetrator and did all this within a systemic joint enterprise, which he furthered. While meting out the sanction the Panel took into account the position and role he had in the Vojno Prison as a relevant factor.

His position in Vojno and the manner in which he utilized it are aggravating factors.

b. Conduct and Personal Situation of the Accused

The conduct and personal situation of Vračević before, during and after the commission of the criminal offence have both aggravating and mitigating facts, and are relevant to prevention and rehabilitation.

c) Before the Fact

Before the war Vračević did not have any criminal record. He was a family man, had children, therefore his conduct and behavior in this time period are mitigating factors.

d) Circumstances Surrounding the Offence

As suggested by the evidence corroborating many Counts in the Indictment, as a guard in the Vojno Prison, Vračević, while the prison was operational, enforced and furthered the system of maltreatment of prisoners: by direct participation in the commission of several offences such as murder, torture, rapes, imprisonment and other inhumane acts, which instigated and encouraged other soldiers and the prison staff to commit various crimes against humanity against the prisoners.

The manner in which he committed these crimes constitutes an aggravating factor.

a) Circumstances after the Fact

After the fact the Accused Vračević did not commit criminal offences. Medical documents bearing his name indicate that he has many health problems. The Panel also took into account that the Accused Vračević is now an elderly man of 64 years of age. These factors are mitigating circumstances.

b) Conduct in these proceedings

Vračević acted with decorum throughout the proceedings and in line with the expectations of the Panel, therefore his conduct is neither an aggravating nor a mitigating circumstance.

c) Motive

The motive in this case is not related to intent. As described above, the Accused persecuted the Bosniak detainees with intent, as the crime is defined by law and established in the Reasoning of the Verdict.

During the proceedings the Panel was not in the position to establish a possible motive on the part of Vračević to commit the incriminating acts and offences. For this reason the motive of the Accused is neither an aggravating nor a mitigating circumstance.

d) Personality of the Accused

The Panel does not have any evidence about the personality of the Accused except what he demonstrated through his acts in the commission of the criminal offence and his conduct in the courtroom, and both of these have been discussed above.

e) Reduction of Sanction by Law

The Panel does not find any grounds under Article 49 to fashion the sanction below the limit prescribed by law.

f) Prevention and Rehabilitation

The length of the imprisonment sentence and the time spent in prison as punishment for the crime are in most cases justifiable prevention instruments. They provide the perpetrator with an opportunity to consider the consequences of his acts for the victims, think about the mistakes he made in the past and redeem his criminal acts.

Sanction

While evaluating the relevant “circumstances bearing on the magnitude of punishment” under Article 48(1), based on the aforementioned reasons the Panel infers that there are both aggravating and mitigating circumstances. The degree of violation of the protected value has already been referred to in the part of this analysis about the sanction where the gravity of the offence was analyzed, so it will not be “taken into account twice”. The mitigating circumstances considered by the Panel include the contribution of the Accused to the criminal law system before and after the war, his current health condition and his age. The aggravating circumstances considered by the Panel include the position of the Accused as a guard in the prison and the manner in which the Accused utilized his position in treating the detainees, such as rape, murder, maltreatment, torture and threats. All in all, taking into account all aggravating and mitigating circumstances, the Panel finds that imprisonment for the term of 14 years is an adequate punishment.

Pursuant to Article 56 of the BiH CC the time the Accused Marko Radić, Dragan Šunjić and Damir Brekalo spent in custody shall be credited towards the sentence imposed based on the decisions rendered by this Court starting from 2 June 2006 onwards.

Pursuant to Article 188(4) of the BiH CPC, the Accused Marko Radić, Dragan Šunjić, Damir Brekalo and Mirko Vračević shall be relieved of the duty to pay the costs of the criminal proceedings given that the Accused Radić, Šunjić and Brekalo have been in custody for a long time now and that they are unemployed. The Accused Vračević is retired, and based on the Court's assessment the payment of the costs of proceedings would put in question the subsistence of the Accused and the persons they are obliged to support.

Pursuant to Article 198 (1) and (2) of the Criminal Procedure Code of Bosnia and Herzegovina, the parties are instructed to take civil action to pursue their claims under property law, having in mind that finding the facts pertaining to the amount of the claims

would take a long time, which would delay these proceedings, and as the proceedings even without these findings lasted very long, the Panel decided to refer the victims to take civil action. During the trial some victims did not file their claims under the property law. In any case the authorized persons may pursue their claims under property law in civil proceedings.

MINUTES TAKER
Šaćir Hadžić

PRESIDENT OF PANEL
JUDGE
Staniša Gluhajić

LEGAL REMEDY: An appeal may be filed from this Verdict with the Appellate Panel of the Court of BiH within 15 /fifteen days/ from the day when a written copy of the Verdict is received.