

Bosna i Hercegovina

Босна и Херцеговина



Sud Bosne i Hercegovine
Суд Босне и Херцеговине

Case No.: S1 1 K 003429 12 Kžk

Date: Pronounced: 27 June 2012
Written Verdict Issued: 14 September 2012

Before the Panel composed of: Judge Azra Miletić, President
Judge Tihomir Lukes, member
Judge Mirko Božović, member

CASE OF PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA
v.
Alija Osmić

SECOND INSTANCE VERDICT

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IN THE NAME OF BOSNIA AND HERZEGOVINA!

The Court of Bosnia and Herzegovina, sitting on the Panel of the Appellate Division¹, comprised of Judge Azra Miletić, as the President, Judges Tihomir Lukes and Mirko Božović, as the Panel members, with the participation of Legal Advisor Melika Murtezić, as the record-taker, in the criminal case conducted against the Accused Alija Osmić, for the criminal offense of War Crimes against Prisoners of War in violation of Article 175(1)(b) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as read with Article 29 of the CC of BiH, deciding upon the second Amended Indictment of the BiH Prosecutor's Office No. T 20 0 KT-RZ – 000 2925 09 dated 14 June 2012, following the partially public main trial, on 20 June 2012 rendered, and on 27 June 2012 publicly announced the following:

VERDICT

Pursuant to Article 285 of the Criminal Procedure Code of Bosnia and Herzegovina,

The Accused,

1. **ALIJA OSMIĆ**, son of Feriz and Zejna née Mujanović, born on 24 September 1967 in Bugojno, residing at ..., of ... ethnicity, citizen of ..., engineering technician by occupation, literate, completed Secondary School of Engineering, married, father of two underage children, completed his military service in 1986/1987 in Štip, Macedonia, no reserve officer rank, registered in the records, no decoration, indigent, no prior convictions, no criminal proceedings pending against him, ordered into custody under the Decision of the Court of BiH No. X-KRN-09/781 from 9 September 2009 through 8 October 2009 and from 13 October 2009 through 22 April 2010, and under the Decision of the Court of BiH No. S1 1 K 003429 09 Krl from 4 March 2011 until 29 March 2011, and served the sentence of imprisonment from 29 March 2011 through 24 November 2011 under a non-final Verdict of the Court of BiH No. S1 1 K 003429 09 Krl dated 4 March 2011,

IS GUILTY

Because:

During the war in Bosnia and Herzegovina and the armed conflict between the Croat Defense Council and the Army of the Republic of Bosnia and Herzegovina in Bugojno, during the period from 18 July 1993 until 19 March 1994, in a garage of a privately-owned house in the Donjići settlement, as well as in the Marxist Center – the Nunnery, and on the premises of the BH Bank Bugojno, in the capacity of a military police officer of the 307th Motorized Brigade of the Army of RBiH until 20 October 1993, and after the Military Police of the 307th Motorized Brigade of the Army of RBiH were reorganized and the Military Police - OG *Zapad /Operations Group West/* were formed, from 21

¹ Hereinafter: Appellate Panel, Panel.

October 1993 until 19 March 1994, in the capacity of a military police officer of the Military Police Company OG *West* of the Army of RBiH, he acted in violation of the rules of international humanitarian law, specifically Common Article 3(1)a) of the Geneva Convention Relative to the Treatment of Prisoners of War, inasmuch as he participated in the infliction of severe suffering and violation of bodily integrity of the captured members of the HVO, in as much as he:

1. During the period from 23 July 1993 until 26 July 1993, in the mentioned capacity as a military police officer in the Donjići settlement in Bugojno, together with other members of the Army of the RBiH Bugojno, the Bugojno Public Security Station, the Bugojno Defense Staff and Military Police of the 307th Motorized Brigade of the Army of RBiH Bugojno, held members of the HVO incarcerated in the garage of the privately-owned house, physically and mentally abused them by punching and kicking them, hitting them with police batons – truncheons, blunt implements, rifle butts, in the garage and in front of the garage, and by allowing civilians of Bosniak ethnicity and other members of the Army of the Republic of BiH Bugojno to abuse them in the same manner, wherein the Accused Alija Osmić, together with other persons mentioned above, abused Mario Glišić, Vlatko Kapetanović, witness A, Ivica Keškić and Ivan Kapetanović by punching, kicking and hitting them with batons on various parts of their bodies, and thus inflicted upon them severe suffering and visible injuries all over their bodies,

2. On 26 July 1993, in the Marxist Centre – the Nunnery in Bugojno where the captured HVO members were imprisoned, in the same capacity as noted in the previous Count, the Accused Alija Osmić came to the premises of the Marxist Centre together with other military police officers of the 307th Motorized Brigade of the Army of the Republic of BiH also including deputy commander of the Military Police of the 307th Motorized Brigade Enis Sijamija a.k.a. Pajo and Osman Šego, and after Vlatko Kapetanović, Ivica Keškić and Mario Glišić were taken out of the premises of the Marxist Center, together with Enis Sijamija and Osman Šego, Alija Osmić started punching, kicking and hitting them with blunt objects all over their bodies, inflicting on them great suffering and body injuries, due to which Ivica Keškić and Mario Glišić fell on the ground and remained lying on the ground in the corridor and the yard of the Marxist Center with visible injuries on their bodies, and all of them together kept beating Vlatko Kapetanović and pushed him out through the back door of the Centre with punches, and then threw Vlatko Kapetanović inside the trunk of a parked black *Mercedes* passenger vehicle,

3. During the period from September 1993 until approximately late January 1994, on the premises of the BH Bank in Bugojno, where certain detained members of the HVO were brought for interrogation, as a military police officer, the Accused Alija Osmić together with other military police officers abused the detainees who had been brought there, including Željko Miloš, by punching, kicking and hitting them with blunt implements on various parts of his body and thus inflicting upon him severe suffering and visible injuries all over his body,

Therefore, during the war in Bosnia and Herzegovina and the armed conflict between the HVO and the Army of the Republic of BiH, in violation of the rules of international humanitarian law, specifically Common Article 3(1)(a) of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, he inflicted upon the prisoners of war severe suffering and violation of bodily integrity,

whereby the Accused **Alija Osmić** committed the criminal offense of War

Crimes against Prisoners of War in violation of Article 144 of the Criminal Code of the Socialistic Federative Republic of Yugoslavia that was taken over pursuant to the Law on the Application of the Criminal Code of the Republic of Bosnia and Herzegovina and the Criminal Code of the SFRY², as read with Article 22 of the same Law, and thus, having applied Articles 38, 41, 42(2) and 43(1)(1) of the CC of the SFRY, the Court of BiH

SENTENCES HIM

TO 3 /THREE/ YEARS OF IMPRISONMENT

Pursuant to Article 50(1) and (2) of the CC of SFRY, the time that the Accused spent in custody under the Decision of the Court of BiH dated 10 September 2009 No.: X-KRN 09/781 from 9 September 2009 until 8 October 2009, from 13 October 2009 until 22 April 2010, from 4 March 2011 until 29 March 2011 under the Decision of the Court of BiH No. S1 1 K 003429 09 Krl, and the time the Accused spent serving the sentence of imprisonment from 29 March 2011 through 24 November 2011 under a non-final verdict of the Court of BiH No. S1 1 K 003429 09 Krl dated 4 March 2011, shall be credited toward the sentence of imprisonment.

Pursuant to Article 188(4) of the CPC of BiH, the Accused shall be fully relieved of the duty to reimburse the costs of the criminal proceedings which shall be paid from the budget appropriations of the Court.

Pursuant to Article 198 of the CPC of BiH, the injured parties were instructed to pursue their claims under property law in a civil action.

REASONING

I. PROCEDURAL HISTORY

1. The First Instance Verdict of the Court of BiH No.: S1 1 K003429 09 Krl (X-KR-09/781-1) dated 4 March 2011 found the Accused Alija Osmić guilty because by the acts described under Sections 1, 2 and 3 of Part I of the operative part of the Verdict he committed the criminal offense of War Crimes against the Prisoners of War in violation of Article 175(1)(a) and (b) of the CC of BiH, as read with Articles 29 and 180(1) of the CC of BiH and sentenced to imprisonment for a term of 11 (eleven) years. Part II of the operative part of the Verdict acquitted the Accused of the charges that he committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, as read with Article 29 and Article 180(1) of the CC of BiH.

2. On 22 November 2011, having decided upon the appeals of the BiH Prosecutor's Office and the Defense Counsel for the Accused, the Appellate Panel rendered a decision granting the appeals, revoking the First Instance Verdict and scheduling a retrial before the Panel of the Appellate Division.

² Hereinafter: the CC of the SFRY.

A. RETRIAL BEFORE THE APPELLATE PANEL

3. In the renewed proceedings before the Panel of the Appellate Division, presented again was the evidence adduced in the first instance proceedings by reviewing the audio/video recordings from the main trial where the following witnesses had given their evidence: Ivan Kapetanović, Mario Glišić, Ivica Keškić, Asim Balihodžić, protected witnesses B1 and B2, and the Accused Alija Osmić.

4. The Appellate Panel has reviewed all the documentary evidence adduced during the first instance proceedings, and upon the consent of the parties to the proceedings, accepted the previously adduced subjective evidence.

B. PROCEDURAL DECISIONS

1. EXCLUSION OF THE PUBLIC

5. Pursuant to Article 235 of the CPC of BiH, the public was partially excluded from the hearing held before the Panel of the Appellate Division while the testimony of the protected witness B2 was reviewed because the public was excluded from this part of the main trial during the first instance proceedings too, in order to protect this witness's interests bearing in mind his personal and family circumstances, and the duty he had performed during the relevant period. As to its remaining part, the main trial was public.

2. AMENDED INDICTMENT

6. On 14 June 2012, the BiH Prosecutor's Office submitted the second amended Indictment No.: T 20 0 KT RZ-0002925 09 after the evidentiary proceedings were completed before the Appellate Panel.

7. In their response dated 15 June 2012, and at the hearing held on 20 June 2012, the Defense neither objected to the amended Indictment nor proposed any new evidence.

8. The Appellate Panel rendered a decision finding that the changes in the second amended Indictment were allowed pursuant to Article 275 of the CPC of BiH³, namely that

³ Article 275 of the CPC of BiH stipulates as follows: „If the Prosecutor evaluates that the presented evidence indicates a change of the facts presented in the indictment, the Prosecutor may amend the indictment at the main trial. The main trial may be postponed in order to give adequate time for preparation of the defence. In this case, the indictment shall not be confirmed.“

they were within the limits of the subjective and objective identity in analogy with Article 280(1) of the CPC of BiH⁴.

9. A comparison of the factual description of the first amended Indictment No. KT – RZ: 49/09 dated 24 September 2010 with the factual description contained in the second amended Indictment dated 14 June 2012 reveals that the Prosecutor did not change the factual description of the acts of the criminal offense charged against the Accused by charging the Accused with a criminal offense more severe than the one charged against him under the confirmed Indictment. The Appellate Panel has held that, even though the legal qualification of the criminal offense charged against the Accused was changed under the second amended Indictment, this amendment has not brought the Accused to a more difficult procedural position.

10. More specifically, the first amended Indictment dated 24 September 2010 charged the Accused with the criminal offense of War Crimes against Civilians under Article 173(1)(c), (e) and (f) of the CC of BiH for the acts described under Counts 1-3 thereof. For the acts described in Counts 1-3 of the second amended Indictment dated 14 June 2012, the Accused was charged with the criminal offense of War Crimes against Prisoners of War under Article 175(1)(b) of the CC BiH, as read with Article 29 of the CC of BiH.

11. The Appellate Panel further concludes that other changes in the second amended Indictment were but a specification of the state of facts. This Panel has held that in order to amend an indictment it is not necessary to present any new evidence, and that merely a new subjective evaluation of the same evidence that the Prosecutor is already aware of is sufficient. Apparently, this was so in the case at hand. Along this line, this Panel concludes that if legally relevant facts are being changed, the Prosecutor must act pursuant to these changes and amend the indictment accordingly, in addition to all other consequences thereof.

12. The changed state of facts in the concrete case pertains to the existence of an essential element of the criminal offense charged against the Accused. However, in altering the category of protected persons, it should be taken into account that, during the first instance proceedings and the second instance proceedings, the Prosecution has proved that the injured parties were members of the HVO. The Prosecutor, however, gave an erroneous legal qualification of these persons as civilians, having held that all members of the military formations taking part in an armed conflict become civilians as of the moment of laying down their arms. In view of the foregoing, the Appellate Panel concludes that, by the proper application of law, the Accused was not charged with more severe criminal offenses by the proper legal qualification made in the second amended Indictment. Therefore, this Panel concludes that the second amended Indictment was entirely brought pursuant to Article 275 of the CPC of BiH, as read with Article 280(1) of the CPC of BiH.

13. The Appellate Panel also notes that in rendering the Verdict in the concrete case, the state of facts in Counts 1-3 of the second amended Indictment was also concretized by omitting the unnecessary parts and facts the Panel considered unproved, and which did not constitute the essential elements of the criminal offense charged against the Accused,

⁴ Article 280(1) of the CPC of BiH stipulates as follows: „The verdict shall refer only to the accused person and only to the criminal offense specified in the indictment that has been confirmed, or amended at the main trial or supplemented.“

of which he was found guilty. More specifically, facts bearing no significance for an act or an event do not change the identity of the offense. Therefore, the identity of a verdict or an indictment is not changed if the circumstances which pertain to more specific characteristics of the criminal offense but are not decisive for the change of the subject of charges were changed in the verdict. Changing the circumstances which do not amount to the underlying elements of the criminal offense and which accordingly can have no impact on the legal qualification of the acts of which the Accused is being found guilty, does not amount to an exceeding of charges, but rather to a more specific determination of the criminal offense for which the Accused is on trial.

3. ADDITIONAL EVIDENCE OF THE BIH PROSECUTOR'S OFFICE

14. On 14 May 2012, the BiH Prosecutor's Office filed a Motion No.: T20 0 KT-RZ 0002925 09 to adduce additional evidence in the renewed proceedings. The Prosecutor moved the Appellate Panel to summon and hear witness Osman Šego and forensic expert, Dr. Nermin Sarajlić, at the hearing before the Appellate Panel.

15. The Prosecution Motion stated that witness Šego was a suspect in the proceedings conducted before this Court, and that he was charged with the commission of the acts described in the operative part of the Indictment against the Accused Osmić, namely in relation to the events that had taken place in the Marxist Center and in the Vrbanja cemetery. This witness's testimony could not be adduced as evidence during the first instance proceedings because a verdict in the case against him was rendered on 8 June 2011, that is, the Verdict became final only after the first instance proceedings against the Accused Osmić were completed, and after the deadline for appealing the First Instance Verdict in this case expired. The Prosecution further argues that witness Šego had the capacity of both a suspect and an accused wherefore he was not obliged to testify in the proceedings against the Accused Osmić. However, once witness Šego admitted that he had committed the criminal offense charged against him, he can now give evidence as a witness. Witness Šego consented to the foregoing and entered a plea agreement with the Prosecution.

16. The Prosecution pointed out that forensic expert Sarajlić had exhumed the mortal remains of the injured Vlatko Kapetanović, and established that at least 5 through-and-through wounds were inflicted upon him by hand-held fire weapons. The view of the Prosecution is that there exists a legal possibility to adduce this evidence at the trial before the Appellate Panel pursuant to Article 317(1), as read with Article 276 of the CPC of BiH. In support of these arguments, the Prosecutor referred in her Motion to the jurisprudence of the International Criminal Tribunal for the Former Yugoslavia (ICTY). In addition, the Prosecution considers that the proposed evidence is relevant and credible, and that a refusal to adduce it can lead to a miscarriage of justice in this case. In view of the foregoing, the Prosecution moves the Panel of the Appellate Division to uphold this motion and order that the proposed evidence be adduced.

17. The Defense objected to the filed motion, having presented the arguments supporting their view that the Prosecution failed to prove the reasons that would justify adducing new evidence in the proceedings before the Panel of the Appellate Division.

18. The Appellate Panel has evaluated and thereupon refused the filed Motion. More specifically, Article 295(4) of the CPC of BiH prescribes that new facts and new evidence,

which despite due attention and cautiousness were not presented at the main trial, may be presented in the appeal, and that the appellant must cite the reasons why he did not present them previously, that is, in referring to new evidence, he must cite the facts that he wants to prove with that evidence. In this respect, the Appellate Panel concludes that witness Šego was available to the Prosecution all the time and that he could have been summoned during the first instance proceedings too. On the other hand, in relation to re-exhumation, the Appellate Panel notes that except for the fact that it is a new piece of evidence, that is, the findings whose contents are significantly distinct from certain facts presented in the findings of forensic expert Šimun Anđelinović, the Prosecution provided no reason whatsoever to satisfy this Panel that it was justifiable to present this evidence. It is also unclear why the Prosecution did not propose in rebuttal during the first instance proceedings that this evidence be presented. In view of the foregoing, the Panel concludes that the requirements set forth in Article 295(4) of the CPC of BiH have not been satisfied in order to accept this evidence as new evidence.

II. ESTABLISHED STATE OF FACTS

A. GENERAL ELEMENTS OF THE CRIMINAL OFFENSE

1. The state of war in BiH

19. The Appellate Panel has established that the documentary evidence undoubtedly entails that there was a state of war in the territory of Bosnia and Herzegovina (BiH) during the critical period, and that the Defense did not contest this during the evidentiary proceedings either.

20. On 8 April 1992, the BiH Presidency issued a Decision Declaring Imminent Threat of War.⁵ A review of the Decision on the Proclamation of the State of War in the Territory of BiH⁶ and of the Order Declaring General Public Mobilization in the Territory of BiH⁷ issued by the BiH Presidency at the session held on 20 June 1992 shows that a state of war was declared throughout the whole BiH territory. The state of war in the BiH territory lasted until the BiH Presidency issued the Decision on the Termination of the State of War on 22 December 1995⁸.

21. The Appellate Panel has undoubtedly determined on the grounds of the foregoing documentary evidence that, at the relevant time, a state of war was declared in the entire BiH territory, including the Municipality of Bugojno.

⁵ Issued on 8 April 1992, published in the „Official Gazette of the RBiH“, No. 1/92.

⁶ Issued on 20 June 1992, published in the „Official Gazette of the RBiH“, No. 7/92, tendered as documentary Exhibit **T9**.

⁷ Issued on 20.06.1992, published in the „Official Gazette of the RBiH“ No. 7/92, tendered as documentary Exhibit **T9**.

⁸ Tendered as documentary Exhibit **T10**.

2. The existence of armed conflict between the HVO and ARBiH in Bugojno during the period from 18 July 1993 through 19 March 1994

22. The Appellate Panel concludes that the documentary evidence⁹ undoubtedly shows that during the period from 18 July 1993 through 19 March 1994, there was an armed conflict¹⁰ between the HVO and the ARBiH in Bugojno. The Defense did not contest this fact during the proceedings either. Both the Prosecution and the Defense witnesses consistently confirmed the existence of the armed conflict. The documentary evidence¹¹ and the consistent testimony of Prosecution and Defense witnesses reveal that members of the HVO surrendered to members of the ARBiH. This fact was not disputed by the Defense for the Accused either.

23. A review of the combat report by the Military Police of the 307th Motorized Brigade for the period from 18 July 1993 to 31 July 1993¹² reveals that tensions between the ARBiH and the HVO culminated on 18 July 1993 in such a way that the units of the ARBiH were put on full combat readiness, meaning that they could engage in combat operations at any time, while on the next day, Sector IV/2 was "done", followed by "Lovački dom" (*Hunters' Lodge*), and private residences in Maršala Tita street in Bugojno. It follows from the same document that the conflict continued over the following days when the enemy's strong points were overcome one after another, and the units of the Army of BiH were assigned to take over and secure the captured soldiers and civilians and "place them in adequate facilities, which was done." The Report further indicated that following the HVO defeat, the Military Police were engaged in their war state activities.¹³

24. That members of the HVO surrendered to members of the ARBiH also ensues from the following documentary evidence: Daily combat report by the Command of the OG "West" dated 23 July 1993¹⁴ stating that the units of the 307th Motorized Brigade of the ARBiH and OP captured a part of the 1st Battalion of the HVO and took over the area, so that 95% of the territory was under the ARBiH control at the moment when the report was made, and that only one strong point remained in the town, that is, the *Kalin* Hotel; Daily operational report for 24 July 1993¹⁵ stating under item 3 that the strong point (Hotel *Kalin*) was taken over in the zone of the 307th Motorized Brigade, and that 100 soldiers and 150 civilians were captured. A review of the Daily newsletter by the 3rd Corps Press Centre

⁹ This primarily concerns the Prosecution documentary evidence marked as: T15, T16, T31, and the Defense documentary evidence marked as O-10, O-5, O-6.

¹⁰ Pursuant to the ICTY jurisprudence, an armed conflict is said to exist "whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State" (*Prosecutor v. Dragoljub Kunarac, Radomir Kovač and Zoran Vuković*, case No. IT-96-23 and IT-96-23/1-A, Judgment, 12 June 2002 (*Kunarac et al.*, Appellate Judgment, para 56)).

¹¹ This primarily concerns documentary evidence marked as: **T17, T18, T19, T22-T29, T32.**

¹² Tendered as documentary Exhibit **T-31** – Report by the Military Police of the 307th Motorized Brigade of the ARBiH for the 18-31 July 1993 period, dated 10 August 1993, signed by Edin Novalić, Military Police Commander.

¹³ *Ibid*, p. 4.

¹⁴ **T-17** – ICTY Exhibit, Operative Group West Command, strictly conf. No.: 04/516-93 dated 23 July 1993, Daily operational report.

¹⁵ **T-18** - ICTY Exhibit, Operative Group West Command, strictly conf. No.: 04/521-93 dated 24 July 1993, Daily operational report for 24 July 1993.

dated 25 July 1993¹⁶ consistently confirms the foregoing and reveals that Hotel *Kalin* was “taken over” on 24 July 1993 in which 100 soldiers were captured. That members of the 2nd Battalion of the HVO surrendered to members of the ARBiH is also confirmed by the Regular combat report dated 26 July 1993,¹⁷ which reveals that the 2nd Battalion of the HVO, with Commander Dragan Erkapić and the total of 108 soldiers, surrendered to the ARBiH forces on 25 July 1993.

25. With regard to the foregoing, an examination of the contents of the documentary Exhibits T22-T29 and T32 revealed that lists of names of the captured members of the HVO units in Bugojno were made.

26. Analyzed consistent statements of both the Prosecution and the Defense witnesses reveal that, at the relevant time, there was an armed conflict between the belligerent parties. Even though the witnesses heard were inconsistent regarding the date of the outbreak of the armed conflict between the ARBiH and the HVO, and the day when members of the HVO had surrendered to members of the ARBiH, the Appellate Panel concludes that the evidence given by most witnesses (Mario Glišić, Ivica Keškić, Dragan Kasalo, Milenko Kasalo, Stipica Đapić, Mario Franjić, Anto Kapetanović, Josip Kalajica, Suvad Delić) showed that the armed conflict between the said parties started on 18 July 1993, and that members of the HVO surrendered to members of the ARBiH on 23 July 1993.

3. The Accused in the capacity of a military police officer

27. On the grounds of the documentary evidence, the witnesses’ evidence and the testimony of the Accused given in the capacity of a witness, the Appellate Panel concludes that until 20 October 1993 the Accused Osmić acted in the capacity of a military police officer of the 307th Motorized Brigade of the ARBiH, and that once the Military Police of the 307th Motorized Brigade were reorganized and the Military Police of the “OG West” established, the Accused had the capacity of a military police officer in the Military Police company of the “OG West” of the ARBiH from 21 October 1993 through 19 March 1994.

28. This fact was primarily established upon a review of the original military ID booklet issued in the name of the Accused Alija Osmić,¹⁸ which reveals his deployment during the period from 3 July 1992 through 19 April 1993, and that from 19 April 1993 through 21 October 1993 the Accused was assigned to the VJ5442; from 21 October 1993 through 27 July 1994 to the VJ 6172, and from 27 July 1994 through 15 April 1996 to the VJ 5442. The referenced ID booklet indisputably indicates that during the relevant period the Accused was a military conscript who took an active part in the ARBiH activities.

29. This conclusion of the Appellate Panel is additionally corroborated by a review of the Prosecution documentary evidence, namely: Unit and identification file for Alija Osmić,¹⁹ List of members of Military Police Company OG *Zapad* with full details,²⁰ List of

¹⁶ Tendered as documentary Exhibit **T-19** - Daily newsletter by the 3rd Corps Press Centre dated 25 July 1993.

¹⁷ **T-20** - Regular combat report by the Bugojno Municipality Defense Staff dated 26 July 1993, signed by commander Abdulah Jeleč.

¹⁸ **T-63** - Military ID booklet in the name of Alija Osmić, serial number 2569283, with designated participation (46 page) in the liberation war, military service.

¹⁹ Marked as documentary Exhibit **T57**.

members of the Military Police of OG *Zapad*²¹, list of members of Military Police Company of the 307th Motorized Brigade dated 11 September 1993, list of combatants of the Military Police who are in need of a parcel,²² List of members of all units of the OG *Zapad* of the Army of RBiH dated 5 February 1994²³ and 4 March 1994.²⁴

30. In addition, that the Accused Osmić acted in the capacity of a military police officer of the 307th Motorized Brigade of the ARBiH until 20 October 1993, and as a military police officer of the Military Police Company of the OG *Zapad* of the ARBiH from 21 October 1993 through 19 March 1994, was confirmed by the consistent testimony of witnesses for both the Prosecution (Mario Glišić, Mario Franjić, protected witnesses B-1 and B-2, Ivica Keškić, Josip Kalajica), and the Defense (Muhamed Ajkunić, Jasmin Huskić, Almir Osmić). Protected witness B-1 testified that at the beginning of the conflict between the ARBiH and the HVO, the Military Police were within the 307th Motorized Brigade, and that they were subsequently established within the OG “Zapad”.

31. The accused Osmić himself did not dispute the fact of his capacity at the relevant time. Along this line, the Accused testified that since 3 July 1992 he was a member of the anti-armor company of the ARBiH, that in around November 1992 he was transferred to the Military Police of the 307th Motorized Brigade of the ARBiH, and that the Military Police of the 307th Motorized Brigade of the ARBiH were disbanded some time in 1994.

4. The injured parties

32. It follows from the documentary evidence and the statements of both the Prosecution and Defense witnesses that members of the HVO surrendered to members of the ARBiH.²⁵ The Appellate Panel finds it proved that the injured parties mentioned under Counts 1, 2 and 3 of the second amended Indictment were members of the HVO, that is, of volunteers’ units within the HVO (witness Ivan Kapetanović and protected witness A) at the time of commencement of the armed conflict between the ARBiH and the HVO, and at the very moment of their surrender.

33. Witness-injured party Mario Glišić testified that he volunteered in the HVO at the beginning of war operations in BiH, and that he was assigned to the 2nd Battalion of the HVO under the command of Slaven Petričević. At the outbreak of the conflict, witness Glišić joined the 1st Battalion, the seat of which was in the *Vojin Paleksić* Primary School. The witness had no knowledge about the surrender conditions except that they were

²⁰ Marked as documentary Exhibit **T65**. List of members of Military Police Company OG *Zapad* with full details, document of Military Police of the OG “Zapad” No: 307-791 dated 10 October 1994. The accused Alija Osmić is indicated under No. 61.

²¹ Marked as documentary Exhibit **T66** - List of members of the Military Police of OG *Zapad*. The accused Alija Osmić is indicated under No. 63.

²² **T-68** - List of combatants of the Military Police who are in need of a package, document of Military Police of the 307th Motorized Brigade No.: 307-214 dated 14 September 1993. The accused Alija Osmić is indicated under No. 75.

²³ **T – 47** - List of several units of the OG *Zapad* of the Army of RBiH dated 5 February 1994. The accused Alija Osmić is indicated under No. 63, on p. 7, in a column with members of the Military Police Company of the OG “Zapad”.

²⁴ Tendered as documentary Exhibit **T-48**. On p. 6 of the Military Police of the OG „Zapad“, the accused Alija Osmić is indicated under No. 53.

²⁵ See paras. 22-26 of this Verdict.

negotiated by Major Niko Džaja, and Senad Dautović on behalf of the Military Police Brigade of the Army BiH. Members of the HVO surrendered while they were in the Primary School. That witness Glišić was a member of the HVO is confirmed by the Prosecution witness Zdravko Križanac, the then member of the 1st Battalion. In addition, the Prosecution witness Josip Kalajica also confirms the fact that at the relevant time the injured party Glišić was a member of the HVO. Witness Kalajica testified that at the time, he was a Deputy Head of Logistics in the 1st Battalion, that the injured Mario Glišić was a member of the 2nd Battalion, and that this house was within the zone controlled by the 1st Battalion.

34. Witness Ivica Keškić testified that during the war he was assigned to the 1st Battalion within the HVO. His first direct superior was Jurgen Schmidt, and after his departure, Niko Džaja. The seat of the 1st Battalion was at the *Vojin Paleksić* Primary School. Combats ceased at the moment when Commander Niko Džaja went to negotiate with Senad Dautović. As far as the witness Keškić knows, Džaja agreed that wounded members of the HVO would be transported by the Red Cross, and that the detainees would be treated in compliance with the Geneva Convention. They had surrendered to members of the ARBiH who confiscated all their weapons. Members of other units of the ARBiH were also present there: the *Šejtani* unit and the *Zeleni zmajevi* unit. Witness Dragan Kasalo, the then member of the 1st Battalion, also confirms that the injured party Keškić was a member of the 1st Battalion within the HVO.

35. The Appellate Panel concluded that witness Ivan Kapetanović and protected witness "A" voluntarily rose in arms and participated in wartime operations. Witness Ivan Kapetanović testified that following the conflict outbreak, he left his house and went to the "Špedicija" building located across from the seat of the 1st Battalion. This witness stated that members of the ARBiH stopped them on their way out of the "Špedicija" building ordering them to surrender. Witness Kapetanović stated that he had surrendered in camouflage trousers, that he took weapons in fear for his own life at the outbreak of the conflict, that he did not consider himself a volunteer even though he subsequently became one once he had left Bugojno. The Appellate Panel, however, concludes that the injured Ivan Kapetanović was a member of home guard unit. This ensues from the Defense documentary Exhibit **O-1**,²⁶ and a letter of the Federation Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War. This evidence indicated under the "Service during war" column in the personal file that from 18 July 1993 through 30 June 1994, Ivan Kapetanović was within 6221/1-B, and from 1 October 1993 through 30 June 1995 within 1790. Therefore, contrary to his testimony, the injured party Ivan Kapetanović was definitely a member of the armed forces during the relevant period.

36. In addition, protected witness "A" testified that he was a volunteer. The witness thought that their houses were defended against some home guard unit. Protected witness "A" testified that since he was a minor, he was neither admitted in any unit nor was he issued with a rifle. He just borrowed a camouflage uniform from his father and a brother who were soldiers. Protected witness "A" joined a home guard unit in 1993. The referenced witness was at his neighbor Ivan Kapetanović's house when the conflict broke out. They subsequently withdrew to the *Vojin Paleksić* Primary School where he took a rifle out of fear and because certain civilians threw away their weapons so he could choose which one he would take. Following the negotiations, Niko Džaja told them they all

²⁶ **O-1**- Letter of the Federation Ministry for Issues of Veterans and Disabled Veterans of the Defensive-Liberation War, No. 05-41-996/10, dated 30 March 2010.

had to surrender their weapons. The injured-protected witness "A" threw the rifle he had earlier taken on a meadow. When civilians were separated from soldiers, the witness himself crossed to the soldiers' side. He thinks that he did so instinctively. Even though witness A initially testified that he had no commander, the Appellate Panel drew a conclusion to the contrary. More specifically, during the cross-examination,²⁷ the witness himself testified that during the armed conflict, Niko Džaja, the Commander of the 1st Battalion, was a commander of the referenced unit too. In view of the foregoing, it can be concluded that at the relevant time witness A was a member of the home guard unit within the armed forces of a party to the conflict (HVO). In addition, Exhibit **O-1**²⁸ further corroborates this conclusion.

37. Injured party Vlatko Kapetanović passed away²⁹ wherefore he could not be examined. Accordingly, the Appellate Panel concluded that at the relevant time, Vlatko Kapetanović enjoyed the status of a prisoner of war. Witnesses Anto and Ivan Kapetanović, Ivica Keškić, Dragan Kasalo, Josip Kalajica testified that the injured party Kapetanović was a member of the 1st Battalion of the HVO. Injured party Marko Krajinović (mentioned under Count 3 of the second amended Indictment) also passed away³⁰ and could not be examined before this court either. Based on the testimony of witness Josip Kalajica, the Appellate Panel concluded that Krajinović was a member of the 1st Battalion.

38. The Appellate Panel has determined that the injured party Željko Miloš (mentioned under Count 3 of the second amended Indictment) was a member of the HVO Military Police, that his Commander was Stipica Zelić, and that the seat of the Military Police was in the *Kalin* Hotel. After being called via megaphone to surrender, the HVO Commander Zelić entered negotiations whereupon they surrendered to the Military Police of the ARBiH. The Prosecution witness Josip Kalajica testified too that Željko Miloš had the capacity of a military police officer.

39. Defense witness Suvad Delić consistently testified that members of the HVO surrendered in the way as described by the Prosecution witnesses. At the relevant time, the 1st Battalion was deployed near witness Delić's family house. Witness Delić describes that 5-6 days after the outbreak of the armed conflict, members of the HVO were called to surrender via megaphone. This witness also testified that having set up a white sheet as a sign of surrender, and that having agreed on the surrender, Niko Džaja returned to members of his units.

40. It follows from the referenced evidence of the witnesses-injured parties that they were members of the HVO, that is, of volunteers' units within the HVO (witnesses Ivan Kapetanović and protected witness "A"), that they took part in war operations, and that they handed over their weapons following the agreed surrender of HVO members to the ARBiH.

²⁷ Transcript No. X-KR-09/781-1 dated 4 March 2010. Defense Counsel: Was Niko Džaja your commander? Witness: At the time of the conflict, yes. (p. 11)

²⁸ **O-1**- Letter of the Federation Ministry for War Veterans and Disabled Veterans of the Homeland War, No. 05-41-996/10, dated 30 March 2010.

²⁹ As confirmed by documentary evidence **T-60**- Death Register Excerpt for Vlatko Kapetanović, 26 July 1993, original.

³⁰ As confirmed by documentary evidence **T-8** - Death Register Excerpt for Marko Krajinović, issued on 14 April 2010 in Bugojno.

41. In addition, the documentary evidence supports the conclusion that the injured parties were members of the HVO who had taken part in the armed conflict and subsequently surrendered their weapons. It follows from the documentary Exhibit **T-32**³¹ that the following persons were included in this list: injured parties Ivan Kapetanović under number 20 as a soldier in the 1st Battalion, Ivica Keškić under number 22 as a Commander of the 1st Battalion Company, Marko Krajinović under number 28 as a soldier in the 1st Battalion, Mario Glišić under number 128, and witness "A" as a soldier in the 1st Battalion.³²

42. Furthermore, documentary Exhibit **T-28**³³ shows that indicated under No. 11 was injured party Željko Miloš as a member of the Crime Investigation Service. In addition, it follows from the documentary Exhibit T-26³⁴ that the referenced list indicated the injured parties as members of the 1st Battalion, namely: Ivan Keškić under No. 5, Mario Glišić under No. 9, Vlatko Kapetanović under No. 10, Marko Krajinović under No. 28, and Ivan Kapetanović under No. 42.

43. A review of documentary Exhibit **T22**³⁵, stating the names of captured civilians individually, reveals that the concrete case did not pertain to the civilians, namely that it was exactly members of the HVO who were captured. The foregoing implies that the record of captured HVO members was kept separately from the record of captured Croat civilians.

44. Therefore, the Appellate Panel finds proved that that the persons mentioned in the operative part of this Verdict were members of the HVO, namely that they were prisoners of war.

B. SECTION 1 OF THE OPERATIVE PART OF THE VERDICT:

1. Captured members of the HVO were held in a private house garage in the settlement of Donjići in Bugojno during the period from 23 July 1993 to 26 July 1993

45. This Panel first establishes as proved that during the period from 23 July 1993 through 26 July 1993, captured members of the HVO were held in a private house garage in the settlement of Donjići in Bugojno.

46. Witness Ivan Kapetanović testified that, following their surrender, members of the HVO were taken to a garage in the settlement of Donjići. According to this witness, they spent there two nights and two days, and they could not get out since armed soldiers and military police officers stood in front of the garage. Witness Glišić consistently confirmed these facts. This witness testified that, together with him, detained in the garage in Donjići

³¹ Review of all captured members of the HVO units in Bugojno made by the Command of the 307th Motorized Brigade ARBiH, Security organ, No.: 307-13-825/93 dated 6 September 1993.

³² Note: In order to protect the identity of protected witness A, the Appellate Panel does not indicate the number under which this witness was recorded.

³³ Review of captured military police officers made by the 307th Motorized Brigade of the ARBiH, Municipal Staff Bugojno, MUP Bugojno, No.: 307-13-484/93 dated 1 August 1993.

³⁴ Review of captured soldiers of the 1st Battalion made by the Command of the 307th Motorized Brigade of the ARBiH, Municipal Staff Bugojno, MUP Bugojno, No.: 307-13-186/93 dated 1 August 1993.

³⁵ Review of captured civilians made by the Command of the 307th Motorized Brigade of the ARBiH, Municipal Staff Bugojno, MUP Bugojno, No.: 307-13-491/13 dated 1 August 1993.

were (among others): Ivan Keškić, Vlatko and Ivan Kapetanović. Witness Ivica Keškić testified consistently too that upon their surrender HVO members were transferred to a garage in Donjići where his relative Keškić, Kasalo, and Kapetanović (among others) were also held, and that members of the Brigade Police stood guard in front of the garage. The fact that captured members of the HVO in Bugojno were detained in a private house garage in the settlement of Donjići, in Bugojno, was consistently confirmed by the Prosecution witnesses, namely: Dragan and Milenko Kasalo, Ivica Đikić, Stipica Đapić, Maro Franjić, protected witness "A", Anto Kapetanović, Josip Kalajica, Zdravko Križanac, and the Defense witnesses too: Hajrudin Čolak, Mersad Merdžanić, Suvad Delić and Ferid Čolić. In addition, the Accused himself did not contest this fact either. The Accused testified that after the surrender of the HVO members to the ARBiH had been agreed, he was ordered to go to the *Vojin Paleksić* School. The Accused saw in the School that 2 columns of men were formed; that a column of soldiers was on the one side, and a column of civilians on the other side; and that Ahmed Hadžić, who was at the head of the column, pointed his hand in the direction of the garage in the settlement of Donjići in Bugojno.

47. All the Prosecution witnesses consistently testified that they could not go out of the garage where they were guarded by armed soldiers of the ARBiH and military police officers of the ARBiH.

48. In order to determine whether during the period of time covered by the Indictment (23-26 July 1993), captured members of the HVO were held in a private house garage in the settlement of Donjići in Bugojno, this Panel has analyzed the relevant parts of the evidence of both the Prosecution and the Defense. The Panel has established that the witnesses' statements differed in this respect. This, however, does not diminish their credibility given that the events about which the witnesses testified had occurred many years ago, and that there is a degree of uncertainty due to the ephemeral quality of human perception in relation to traumatic events and memories. The Panel has also taken into account the period of time elapsed since the critical events had occurred, and accordingly, that the witnesses' memory was certainly changed to some degree, and that they possibly could not remember all details and circumstances that existed at the time of the commission of criminal acts.

49. It undoubtedly ensues from the statements of the Prosecution witnesses in this case who were detained in the garage in Donjići (Ivan Kapetanović, Ivica Keškić, Dragan Kasalo, Mario Franjić, Josip Kalajica, Zdravko Križanac), that they were brought there after members of the HVO had surrendered to the ARBiH on 23 July 1993. However, the period of time during which they were held in the garage is still disputable. Along this line, certain witnesses testified that they had spent there 2 days³⁶, or 2-3 days³⁷, while other witnesses testified that they were held there for 3-4³⁸ days or up to 5 days³⁹. Therefore, the testimony of witness Ante Kapetanović, father of late Vlatko Kapetanović and the then minor Ivan Kapetanović, was of decisive importance for the Panel's ruling on this issue. This witness testified that after the captured HVO members had been transferred from the garage in Donjići to the Marxist Center, he went to the Marxist Center premises only to learn there that his son Vlatko was taken away 7 days before. Witness Ante Kapetanović concluded that this was on 26 July 1993. The Appellate Panel gave full credence to the testimony of

³⁶ Pertains to witness Ivan Kapetanović.

³⁷ Pertains to witness Mario Franjić.

³⁸ Pertains to witness Ivica Keškić.

³⁹ Pertains to witness Dragan Kasalo.

this witness given that this witness had great interest in identifying the date when his son was taken away from the Marxist Center. In ruling on this matter, this Panel took into account that this period of time also falls within the period of time of which the Prosecution witnesses had memories.

50. Therefore, it ensues from the foregoing that during the period from 23 July to 26 July 1993, members of the HVO were detained in the private house garage in the settlement in Donjići, in Bugojno, that is, for 3 (three) days in total.

2. The presence of the Accused Osmić in the garage in Donjići at the critical time

51. The issue to which the Appellate Panel has paid due attention is whether, at the relevant time (23 July-26 July 1993), the Accused Osmić was present in the private house garage in the settlement of Donjići. Even though almost all witnesses consistently testified that they had seen the Accused Osmić in the garage in Donjići, the witnesses' evidence partially differ with regard to the time period during which the Accused Osmić secured the garage in the said capacity. However, having evaluated all pieces of evidence both individually and in combination, the Appellate Panel concluded that, at the relevant time, the Accused Osmić was present in the garage in Donjići.

52. Almost all witnesses testified that they had known the Accused Osmić from before, that they were his neighbors, and that they knew his family members. It ensues from the foregoing that the witnesses knew the Accused's appearance and name, that they could recognize him, that is, they have not mistaken him for somebody else. The foregoing facts were of decisive importance for the evaluation of the witnesses' statements that the Accused Osmić was present in, and secured the referenced garage.

53. In this respect, witness Ivan Kapetanović testified that he had seen Osmić in the garage on both these days. This Panel gave credence to the foregoing witness because of his explanation that before the conflict he and the Accused were neighbors and that he knew the Accused's younger brother. Witness Mario Glišić consistently testified that among the persons he knew also present there was the Accused Osmić in the capacity of a Brigade military police officer. Witness Glišić knew the Accused Osmić from before as he was frequently passing by the witness's house. Witness Ivica Keškić testified that he knew the Accused Osmić, that at the critical time the Accused Osmić was a member of the Brigade Police which guarded the detainees in the garage, and that he knew the Accused Osmić from before as they had been in the same school. Witness Keškić testified that he did not know how long the Accused Osmić was present in the garage securing the HVO members held therein; he thought it was for several days. Along this line, witness Dragan Kasalo testified that, among the guards, he knew the Accused and that during those 3-4 days the Accused was present there most of the time. This witness, however, did not know if he was there all the time but the Accused Osmić was definitely present there during the day. The witness also saw other police officers coming there, and he understood that they worked in shifts. Witness Mario Franjić also testified that he had seen the Accused Osmić within the family house yard, that he knew the Accused by sight from before, and that perhaps he did not notice the Accused immediately, but after a day or two. The foregoing can be explained by witness Franjić's testimony that, a day or two after their surrender, he was detained in a private house garage in the settlement of Donjići in Bugojno, and subsequently transferred to the garage where the incriminating events took place. Protected witness "A" testified that he saw the Accused Osmić, that he remembered

him as his neighbor, and that the Accused wore a camouflage waistcoat and black military trousers. Witness Kalajica also recognized the Accused Osmić whom he had known by sight. Witness Kalajica remembers the Accused Osmić as a person who treated the detainees in the most brutal way he had ever seen in his life. Prosecution witness Zdravko Križanac also confirmed that the Accused Osmić was present in the garage.

54. Defense witnesses Mirsad Merdžanić and Ferid Čolić also testified about the foregoing; however, they had incomplete information about the events and the Accused's movement. Therefore, the evidence of Defense witnesses did not bring into doubt the correctness and credibility of the statements of injured parties.⁴⁰

55. This Panel has evaluated the witnesses' statements both individually and in combination. The Panel could not accept the Defense submissions disputing that the Accused was present in the garage in Donjići. The Panel took into account that the Accused Osmić's alibi was contrary to the consistent statements of the witnesses-injured parties which the Appellate Panel found credible and convincing in this respect. In addition, the Defense witnesses' statements have not brought into question these statements either. More specifically, the Accused Osmić testified that the arrival of captured HVO members in the garage resulted in a chaos, that Enes Handžić, who had managed to dispel the crowd, ordered the Accused to secure one house, and that the Accused did not know where this house was located. Given that the house concerned had been set on fire, the Accused Osmić allegedly waited for a fire brigade. In the meantime, he went down to the basement flooded with water, where he saw a dead elderly man, and subsequently also the dead body of Čatić, whose throat was slit. They waited for firemen for at least an hour and a half. The Accused lost there a half of hour, or an hour, looking around and helping them out. Once he came back in front of the garage in Donjići at around 14:30 or 15:00 hrs, the Accused found no one there, except members of the Military Police. A new shift came in the meantime. They were split in two groups. It was agreed that his group would come on the following day, some time at around 10:00 or 11:00 hrs. However, when he came there on the second day, Elvedin Šabić, who was at the door, told the Accused he was not needed there. This took place on the second day and he did not return to the garage any more. The only time he went to the garage was when the detainees were removed to the Marxist Center. Such a state of facts was not confirmed by any of the witnesses' statements. Thus, even though the Accused Osmić had explained his alibi in detail, the Appellate Panel could not give credence to his testimony taking into account all the foregoing reasons.

⁴⁰ It is apparent from the evidence of witness Merdžanić, who was a Brigade military police officer in 1993, that he was brought in front of the garage at around 21:00 hrs in the evening, that he could not remember if any member of the military police was present there at the time, that Elvedin Šabić went out with him, that their shifts lasted for 2 hours each, that he did not take care who would replace him in the shift, and that he could confirm with certainty that the Accused Osmić was not in the shift when he arrived. Since this witness testified that he had secured the garage only once, this Panel concludes that the witness's knowledge about the events in Donjići and the Accused's presence there is insufficient. In addition, Osmić's presence could not even be determined on the grounds of the testimony of the Defense witness Ferid Čolić. At the time, his house was located across from the garage, and this witness testified that he had recognized the Accused while he secured the garage. Even though witness Čolić testified that he thought that the captured HVO members were held in this garage for 2-3 days, and that he subsequently did not see Osmić, this Panel cannot accept this conclusion because the witness himself was not present there all the time during this entire 2-3 day period. This witness went to visit his parents and did not pay too much attention to this fact.

3. Physical abuse of detained HVO members by the Accused Osmić

56. On the grounds of evidence of heard witnesses the Appellate Panel established that, in the way as described in section 1 of the operative part of this Verdict, together with other members of the Army of the RBiH Bugojno, the Bugojno Public Security Station, the Bugojno Defense Staff and Military Police of the 307th Motorized Brigade of the Army of RBiH Bugojno, allowing in civilians of Bosniak ethnicity and other members of the Army of the Republic of BiH Bugojno, the Accused Osmić took part in the abuse of detainees, and in the abuse of injured Vlatko Kapetanović, and thus inflicted upon them severe suffering and visible injuries all over their bodies.

57. In this respect, the Appellate Panel concludes that with regard to the physical and mental abuse of the detainees in the garage in Donjići, the Prosecution witnesses' statements were consistent in the essential segments thereof. The witnesses testified about a number of situations in which they personally or other detained members of the HVO were abused. The statements of Defense witnesses (Hajrudin Čolak and Mirsad Merdžanić) did not bring into question the foregoing evidence either. As members of the Military Police of the 307th Motorized Brigade of the ARBiH, these Defense witnesses disputed that the detainees were abused in the garage in Donjići. This is contrary to both the Prosecution witnesses' evidence to which this Panel gave credence and also the Accused Osmić's testimony. The Accused Osmić himself partially admitted that the detainees were indeed abused. The Accused, however, contested that he and other guards (members of the Military Police) had taken any part in the commission of the offenses concerned, having obviously tried to exculpate both him and other members of the Military Police.

58. Since this chapter will explain in detail the individual charges of which the Accused Osmić was found guilty under section 1 of the operative part of the Verdict, this part will only address the general existence of abuse, and the fact that the Bosniak civilians and other members of the ARBiH were allowed to abuse the detainees.

59. Along this line, witness-injured party Ivan Kapetanović testified that the detainees were called by their names to come out of the garage, and that the persons who were taken out were tortured and beaten. There were always many soldiers when the detainees were beaten wherefore they could not see who beat them. Many men were called out. Consistently with this witness's testimony, witness-injured party Mario Glišić testified that soldiers' practice was to call out one man from the garage, take him out, beat him and return him back, whereupon the next detainee would be called out. This procedure repeated on a daily basis. As soon as a detainee was outside, soldiers started hitting him with whatever was handy, punching and kicking him, beating him with sticks. That the detainees were beaten up was apparent after their return to the garage. They themselves spoke about this too.

60. The testimony of witness-injured party Ivica Keškić was particularly indicative for the Panel to conclude that the detainees were abused. Witness Keškić testified that the detainees were beaten even inside the garage, and that "*it was important to beat up Ustashas in any way whatsoever*". According to this witness, the abuse lasted until the abused persons fell on the ground, and as long as they could stand. This procedure was repeated on a daily basis. Prosecution witness Milenko Kasalo testified that in the referenced garage there was no food, and²⁰ that it was perhaps only on the third-fourth

day after their surrender that they were provided with some food. Prosecution witness Ivica Đikić also testified that at the critical time the detainees were abused in the garage and that they feared of being beaten. On a daily basis, the detainees “*crammed*” into one corner of the garage opposite to the door because persons in uniforms, mostly unknown to this witness, frequently came to the garage and dragged individuals out. Before his arrival in the family house garage in Donjići, Prosecution witness Mario Franjić was held in a family house with Croat civilians. This witness testified in detail about the condition in which he found individual detainees following his arrival in the garage. This will be analyzed in detail in relation to individual charges of which the Accused was found guilty under section 1 of the operative part of the Verdict.

61. Witness “A”, also abused in the garage, testified about the situations when he and other detainees were mistreated. This witness stated that they were beaten and insulted immediately upon their arrival in the garage, and that they were taken out of the garage for the beating. This witness-injured party testified that the detainees were abused inside the garage too. The detainees’ mental abuse was apparent from the fact that they were given just one can of food in two days.

62. Prosecution witness Josip Kalajica also testified that the detainees were abused. This witness stated that guards and armed soldiers stood in front of the garage wherefore the detainees could not leave the garage, that he could not stretch his legs in the garage as there was no space. Even though this witness testified that he personally was not abused, he confirmed that the other detainees were beaten⁴¹, that the detainees were abused both inside and outside the garage, and that the real “smash” was inside. The testimony of Prosecution witness Zdravko Križanac was consistent with the foregoing witness’s testimony. Witness Križanac stated that the detainees were beaten both in front of the garage and inside the garage, that he saw the beatings, that he himself was beaten, and that the detainees were taken out non-stop. This witness described a large number of situations in which the detainees were abused.

63. It is apparent from the testimony of Prosecution witness Dragan Kasalo that the detainees were beaten by the Brigade police officers, that the garage door was closed most of the time so that it could not be seen with which the detainees were beaten, and that they were non-stop abused while they were detained in Donjići. No one provided any help to the detainees. They were deprived of food and water too.

64. In addition, it ensues from the Prosecution witnesses’ evidence that at the relevant period of time, while they were detained in the garage in Donjići, members of the HVO were abused by Bosniak civilians and other members of the ARBiH. The foregoing evidence was partially confirmed by the Defense witnesses’ statements to which this Panel gave credence in this part. The Panel concluded that, as to the referenced parts, these

⁴¹ Transcript No. X-KR-09/781-1 dated 4 February 2010. Prosecutor Terzić: You are saying that the younger (guards) were coming in. Why did the younger guards enter the garage? (p.8)

Witness Kalajica: This garage was, as if we were, to put it figuratively, for example, presented in the same way as when a Gipsy brings a bear to show his dance. They would open the garage door, enter the garage, and screen us, whereupon someone would be released and someone beaten.

Prosecutor Terzić: Do you remember who beat (the detainees)? What did you see in this garage?

Witness Kalajica: The garage episode is one of the most hideous and unfortunate episodes in all these eight months that I spent in “Compliance” with the (surrender) agreement and the Convention lasted until we were detained in the garage. A second thereafter, a hell broke loose. (p. 9)

statements were sincere and credible as long as their participation in the offenses at issue was not in question.

65. Witness Keškić testified that certain civilians had also abused him. The Accused Osmić himself described in detail the situation with the civilians. The Accused testified that a number of civilians and soldiers, some of whom were armed with rifles and some unarmed, suddenly came from the front side of the house, but none of them entered the garage to beat the detainees. They rather verbally abused the detainees by using bad language. In this respect, the Accused Osmić stated that the guards could not protect them against these civilians, and that the guards tried their best. The guards pushed the crowd away from the garage, they did not allow them to get inside the garage, but they could take no other action. They beat them in front of the garage. Perhaps there were three-four men. The Accused emphasized that once they were engaged in securing the garage, there was no abuse any more, and that, in fact, the chaos occurred when men from the Šejtani unit came; that the guards maximally tried to defend the detainees, but that they only picked Mario Glišić and Ivan Keškić. This Panel gave credence to the part of the Accused's testimony where he stated that the detainees were abused by civilians, but not in the part contesting the guards' participation in the abuse. This is so because it was obvious that if the Accused admitted this fact, he would directly incriminate himself too. Defense witness Hajrudin Čolak testified that while the detainees were locked in the garage, a civilian came there and brought an anti-tank hand grenade to throw it at the detainees. He was, however, prevented from doing so as he was told that all his men would be killed too. According to this witness, many people were resentful, they came in front of the garage and they tried to push their way through them. They were probably inhabitants of this settlement because combat operations took place there. This witness further testified that, in addition to civilians, members of the ARBiH also came to see the detained HVO members and possibly to rage against them⁴². Defense witness Ferid Čolić, whose house was at the critical time located across from the referenced garage in the settlement of Donjići, testified that there were persons there who wanted to get inside the garage, and that the crowd cried and moaned for retaliation. Therefore, the arguments of Defense witness Mirsad Merdžanić that there was no abuse at all, and that he heard nothing, do not hold. This is because his testimony is directly contrary to the Prosecution witnesses' evidence, the Accused's testimony and the testimony of Defense witness Hajrudin Čolak.

66. Members of other ARBiH units also abused the detainees, and the persons who secured the garage allowed them to do so. The foregoing ensues from the testimony of Prosecution protected witness A. This witness testified that after they had arrived, certain

⁴² Transcript No. X-KR-09/781-1 dated 7 June 2010. Witness Čolak: No, 50 men on this street. When people heard that the 1st Battalion surrendered, when these members of the Army BiH heard that the 1st Battalion surrendered, every curious person came to see them and take out their aggression...

Judge Gluhajić: All those who came to this street, were they all members of the Army BiH, or was there any others who were not members of the Army BiH?

Witness Čolak: They were all members of the Army of Bosnia and Herzegovina.

Judge Gluhajić: Those who came there?

Witness Čolak: Yes.

Judge Gluhajić: To see them?

Witness Čolak: Yes.

Judge Gluhajić: And possibly to...

Witness Čolak: Beat, to...

Judge Gluhajić: Beat somebody ...

Witness Čolak: To take out their aggression on these captured men, that is, the men who surrendered.

civilians came to see and insult them and that among them were members of different ARBiH units. That Bosniak civilians insulted the detained members of the HVO was confirmed by Prosecution witness Zdravko Križanac too. This witness testified that many civilians gathered and shouted: "Kill *Ustashas*!" This witness testified that members of ARBiH units subsequently beat him and the other detainees.⁴³

(a) The abuse of Mario Glišić

67. The Appellate Panel has concluded that witness-injured party Mario Glišić was abused in the way as described in section 1 of the operative part of this Verdict and that great suffering and visible injuries were inflicted on him.

68. Witness-injured party Ivan Kapetanović testified in this respect that injured party Glišić was all covered in blood. The witness was told that Glišić had been beaten with a steel hub of a car tire. This witness-injured party did not eye-witness the abuse of injured party Glišić since Glišić had been already beaten when he came into the garage. This Panel gave credence to the testimony of witness Kapetanović with regard to the fact that witness Glišić was indeed abused. This is so particularly in relation to the Accused Osmić's evidence. Even though the Accused contested that he had abused injured Glišić, he admitted that they picked the injured parties Glišić and Keškić for the beating, that he heard that Glišić had taken part in a rape, that Glišić was beaten up when soldiers from Donji Vakuf or the *Šejtani* reconnaissance detachment came there; that Glišić and Keškić were beaten up in front of the garage but that that nobody beat them while he himself stood guard; that during the first 15 minutes of their detention, a civilian called Naser grabbed the injured party Glišić and started beating him, but that the guards moved him away. Witness Ivica Đikić also remembered that the aggrieved party Glišić had injuries; the witness had known him well from before. The foregoing was confirmed by witness Stipica Đapić too. According to this witness, Glišić was one of the detainees who had experienced the worst abuse. In addition, witness Mario Franjić remembered that the injured party Glišić's head was in bandages and that he was swollen. Since this witness was not in the garage during the first days of detention, he learned from Ivan Kapetanović that the Accused had taken the most active part in the detainees' abuse but that he was not present when this occurred.

69. In relation to this, the testimony of protected witness "A" was of particular importance for the Panel's finding that the injured party Glišić was abused inside, and in front of the garage. Protected witness "A" first saw the Accused Osmić entering the garage. This witness stated he would never forget the Accused's eyes full of hatred. This

⁴³ Transcript No. X-KR-09/781-1 dated 21 January 2010. Prosecutor: In front of the school, immediately, OK. What happened thereafter? You were detained in the garage, aren't you? Witness: In the garage, and a roll call started thereupon. There were many Muslim civilians. Many of them gathered. They shouted: "Kill the *Ustashas*!" Do this, do that, all sort of things, mistreatment. Those who had had some earlier disputes with any of the detained men immediately took them out to beat them.

Prosecutor: Where did the beatings occur? Witness: In front of the house, in front of the garage.

Prosecutor: In front of the garage. OK. Did you see this? Witness: I saw this and I was beaten.

Prosecutor: Would you now tell us how were you taken out and beaten? Witness: A neighbour of mine took me out and then a couple of them started beating me. I think they were members of a unit from Donji Vakuf.

Prosecutor: OK. How many of them were there? Witness: Two - three.

Prosecutor: Two - three. They were members of what from Donji Vakuf? Witness: I do not know.

Prosecutor: Is that? Witness: Army, Army.

Prosecutor: Members of the army. Witness: Members of, yes. (p. 20)

witness described in detail⁴⁴ the way in which Glišić was abused. He stated that the same thing took place both outside and inside the garage, that a steel hub of a car tire was thrown at Glišić, and that they constantly took turns. The Defense Counsel for the Accused tried to contest the credibility of this witness and asked him why he hadn't earlier mention that the Accused participated in these events. The Panel concluded that witness "A" gave a convincing explanation. Protected witness "A" stated that, at the time, the trial in *Gasa* was in question, and that he was asked nothing as to whether the Accused Osmić participated in these acts. This witness also stated that if he started mentioning all details, he would have needed a month to do this. Protected witness "A" also stated that he had seen all the events because the garage door consisted of 2 wings. One wing was sometimes opened, and the other totally closed; that is, looking from inside the garage, the right part of the door was opened, and the left one was not. Witness "A" further testified that it was exactly the Accused Osmić⁴⁵ whom he recognized as a person who had abused Glišić and inflicted injuries on him. This Panel has given full credence to the foregoing evidence as it was convincing and comprehensive, particularly in combination with the other witnesses' statements. That the Accused Osmić indeed entered the garage also ensues from the evidence of Prosecution witness Kalajica. This witness testified that the Accused accorded to the detainees the most brutal treatment, and that he would burst in the garage as a typhoon only to beat them. Witness Kalajica remembered one particular situation⁴⁶ with the injured party Marko Krajinović, which merely indicated to this Panel that the evidence of this witness should be given full credence. In addition, witness Kalajica testified that Glišić was beaten on his head with a car tire hub, thrown in a trench; that Glišić was neither alive nor dead; that he could not see who did this since everyone tried to move away, but that injured Glišić was repeatedly beaten by different persons. According to this Panel, this witness's evidence is reliable since it is obvious that the witness did not

⁴⁴ Transcript No. X-KR-09/781-1 dated 4 March 2010. Prosecutor: *Where did this happen, Witness "A"?* Witness: *This happened in the garage. Thus, they first took Mario Glišić out, beat him and threw him back in the garage. There was a car fixing trench, so they threw him in this trench and then threw a car nave at him. I remember this.*" (p.7)

⁴⁵ Transcript No. X-KR-09/781-1 dated 4 March 2010. Judge: OK, you said that you had seen that Mario Glišić was beaten up, hadn't you? Witness: Yes.

Judge: Was he beaten up? Did you see him being beaten up in the garage or in front of the garage?

Witness: **They first took him out, outside the garage, and while they were beating him, they were at the same time dragging back on the garage ground, and thereupon, I don't know, they threw him in this trench.**

Judge: OK, you have already told us this. Did you see his injuries? Witness: I saw them.

Judge: Can you briefly describe the injuries? Witness: **He had injuries on his head. Someone had some bandages, to they subsequently put bandages on his head. In this overall dark and unfortunate situation, we made a joke and told him he looked like a hodja (Islamic cleric) since he had this, yes. (**

Judge a: OK. Do you remember if this was on the first or the second day? Witness: On the first day, yes.

Judge: OK. Do you know who beat him? Witness: **He was beaten by this Alija, and other two or three men. At the moment when they burst in and when they started beating him inside, we bowed our heads in panic. (p. 18/19)**

⁴⁶ Transcript No. X-KR-09/781-1 dated 4 February 2010. Prosecutor Terzić: Mr. Kalajica, where did the most brutal one burst in, where? Witness Kalajica: In the garage. He burst in with another of them whom I know, Arif Ivković. I remember them two as members of the military police. The beating of Glišić, Mario Glišić, Marko Kapetanović, Ivica Lozančić, Fabulić. The most characteristic detail of all that I will remember concerns the Accused. I was sitting at the door together with Marko Krajinović. Osmić walks around, spotted him, approached and said: "Ah, look at the launcher!" He grabbed his head and gave him several hits with a baton. I moved away in order to avoid being hit too. This is a detail that Osmić was aware of. He told this to Marko Krajinović, because prior to this, 120-mm light mortar was stolen. It was a situation with very strong tensions. This peace of weapon was returned and he probably recognized it. This is a detail that I still remember. (p.10)

intend to incriminate the Accused Osmić on any grounds. The witness himself stated that he did not know if the Accused Osmić had hit Glišić with a car tire hub. This fact, however, can even be excluded given that the witness stated he had moved away in order to avoid being abused himself. In addition to these witnesses, witness Zdravko Križanac also testified that Glišić was called out, tormented and eventually thrown in a trench, and that trench-covering boards, car tire hubs and all sorts of items were thrown at him. This witness stated that the Accused Osmić took the most active part in the beating, and that he was certain about that it was the Accused Osmić because he had lived in his vicinity. This witness also stated that he went to the primary school with the Accused's sister. Witness Križanac also explained that he could see these events because the detainees were crammed around the trench and the door was open.⁴⁷

70. Witness-injured party Križanac himself described in detail the abuse he had personally experienced. This witness stated that he, Ivan Keškić and Vlatko Kapetanović, among others, were beaten up only an hour after they were brought to the garage in Donjići. The witness testifies that those who abused them (identifying military police officers as perpetrators) were never alone, but that there were always several of them. Furthermore, the witness identified the Accused Osmić as one of the persons who abused him. Witness Križanac stated that he was abused five-six times and that the Accused Osmić once beat him in the garage. Witness-injured party Glišić testified that he was hit with a car tire hub on his head, and cut with a knife in the garage, but that on these occasions the Accused Osmić did not abuse him. The witness noted that he first thought it was the Accused who hit him with a tire hub on his head, but he subsequently learned that it was Amer Karagić who did it. The Panel finds that the testimony of the injured party himself is convincing and credible. It is apparent that the witness incriminates the Accused Osmić only for the abuse of those he himself remembers, particularly bearing in mind that in fact, the witness indicated who hit him his head with the tire hub. In correlation with the testimony of the injured witness "A", the foregoing testimony becomes even more reliable. The statements of these two witnesses are consistent in the essential parts thereof, particularly bearing in mind that, as a result of the visible injuries and pain he had suffered, Glišić understandably could not remember all the details related to the physical abuse he was subjected to at the time.

71. Therefore, the arguments of Defense witness Hajrudin Čolak that no one abused members of the HVO during their detention in the garage, and that no one from the Army BiH entered the garage, are ill-founded given that their obvious intention is to exculpate both the Accused and Defense witness Merdžanić, who himself testified that no detainee was heard moaning or asking for help. The foregoing is ill-founded also because the Accused Osmić himself admitted that the detainees were abused in the above described manner.

⁴⁷ Transcript No. X-KR-09/781-1 dated 21 January 2010. Witness Križanac: We were crammed around the sides of this trench. They called out one by one. If you looked at this direction, you could see them being tortured over there, one could hear shouting, beating, screaming, you look...

Panel President-Judge: Was the door opened or closed? Witness: The door was closed.

Panel President-Judge: Sorry. Witness: The door was closed.

Panel President-Judge: OK. So, when the door was opened you could see that, couldn't you? Witness: Yes.

Panel President-Judge: Did you see these persons subsequently? Were there any injuries on their bodies, those persons who were beaten? Witness: Mario was all covered in blood. (p. 30).

(b) The abuse of Vlatko Kapetanović

72. The Appellate Panel has concluded that injured party Vlatko Kapetanović was indeed abused in the way as described in section 1 of the operative part of this Verdict, and that great suffering and visible injuries were inflicted on him. Given that Vlatko Kapetanović passed away, relevant for this Panel in this respect was the circumstantial evidence about his abuse.

73. Vlatko Kapetanović's brother Ivan Kapetanović testified that cold water was poured over Vlatko, that his brother was unrecognizable, that he was handcuffed, and that he was lying on the concrete floor while they poured water over him. Witness Glišić provided a further "explanation" of the abuse of late Vlatko Kapetanović. Witness Glišić stated that Vlatko was charged with a rape of the wife of one Čatić who had been killed in an attack launched by the 1st Battalion. This witness also stated (among other things⁴⁸) that late Kapetanović was taken out of the garage, beaten and thrown back into the garage, whereupon someone else was called out. This was the usual abuse procedure. That the detainees were beaten could be seen once they were returned into the garage. The detainees were beaten, punched, kicked and hit with batons by those who took them out. Prosecution witness Dragan Kasalo testified that late Kapetanović was beaten on the first or second day upon his arrival in the garage. This occurred immediately following a situation when a Muslim woman got inside and pointed at him, but he did not know what was that all about. In correlation with witness Glišić's testimony, the testimony of witness Kasalo becomes even more reliable bearing in mind the Accused's testimony. The Accused himself stated that on the second day after the arrival in the garage, Elvedin Šabić told him about the referenced incident with a girl and explained that Vlatko Kapetanović was suspected of having participated in the killing of her father Haračić. In addition, Prosecution witness Milenko Kasalo testified that Vlatko was once taken out, that he did not know who took him out, but that after his return he heard Vlatko complaining of the pain he felt here and there. The witness, however, did not see this. Witness Mario Franjić also testified that Vlatko Kapetanović was abused. This witness stated that immediately after their arrival (that is, on the second or third day following their surrender) in the garage, he immediately noticed Vlatko whose hands were tied in a semi-lying position, and his head leaned against the wall; the witness immediately saw that Vlatko was beaten, that his face was blue and his eyes swollen, that he was half-naked, perhaps he had trousers, his upper clothing taken off, he looked rather miserable. This witness also added that they (guards) subsequently entered the garage and lighted up Vlatko's position. Thereupon he heard the sounds of beating, hitting with rifle butts and iron bars all over Vlatko's body. The witness only heard all this but did not see who did it due to the flashlight. The witness noted that during the entire period of detention in the garage, Vlatko stayed in the same position in which he had first found him. Witness Franjić remembered that Vlatko was poured with water to regain consciousness. Even though this witness stated that Ivan Kapetanović told him that, allegedly, it was Osmić who abused the detainees most, including Vlatko, the witness noted that he was not present there when this occurred.

74. Therefore, it is indisputable for this Panel that late Vlatko Kapetanović was abused. What is still disputable is whether the Accused Osmić took part in the abuse of the

⁴⁸ Along this line, witness Glišić testified that Ivan Keškić was also taken out of the garage.

referenced person. In this respect, the statements of witnesses "A", Josip Kalajica and Zdravko Križanac were of decisive importance for this Panel.

75. Witness "A" testified that, having entered the garage, the Accused Osmić sadistically abused late Vlatko Kapetanović by punching and kicking him. This was deeply etched in this witness's memory. Witness "A" testified about the situation with handcuffs, as also described by witness Franjić. He stated that Vlatko sat on the concrete floor handcuffed, that he was separated from all the above referenced persons, and that he had injuries all over his face and body. In addition to the Accused Osmić, late Vlatko was also beaten by one Kajka. The witness, in fact, emphasized that *„most of the men who were there, firstly beat him (Vlatko)..."*⁴⁹.

76. Witness Kalajica testified that late Kapetanović was extremely brutally beaten in the garage, that he was forced to take off his shoes and his upper clothing; that thereupon a bucket of water was brought and Kapetanović was forced to put his legs in the bucket while they poured water over his head from a cup. In this respect, witness Kalajica thought that it was the Accused Osmić who first beat Vlatko, and that thereupon Arif Ivković came and finished the beating. This witness testified that he saw the Accused hitting Vlatko while he was in the garage; he (Osmić) suddenly just rushed in and started beating them one by one. Even though this witness was not certain in identifying the other detainees abused by the Accused, he nevertheless recognized the Accused Osmić as a person who had abused late Vlatko. This witness's testimony was highly reliable given that witness Kalajica refused to name other abused detainees of whom he was uncertain⁵⁰. The fact that witness Kalajica also mentioned the event when a woman entered the garage and claimed that Vlatko had raped her, led this Panel to conclude that this witness's testimony is credible and that it is justified to give credence to his testimony.

77. Finally, witness Zdravko Križanac also testified that late Vlatko was abused. Witness Križanac specified that the Accused Osmić beat Vlatko in front of the garage and that he eye-witnessed this.

78. In view of the foregoing, the Appellate Panel finds it proven that the Accused participated in the abuse of Vlatko Kapetanović in the way as described in the operative part of this Verdict.

(c) The abuse of Witness "A"

79. It follows from the Prosecution evidence given by witnesses Milenko Kasalo, Josip Kalajica and Ivan Keškić that witness "A" was detained in the garage together with them. In addition, witness-injured party Ivan Kapetanović stated that he immediately recognized injured the party "A" as his neighbor with whom he had grown up, that witness "A" was taken out of the garage and that at the time witness "A" was a minor. Prosecution witness

⁴⁹ Transcript No. X-KR-09/781-1 dated 4 March 2010. (p.19)

⁵⁰ Transcript No. X-KR-09/781-1 dated 4 February 2010. Judge Gluhajić: OK. **I have one more question. Since you stated that you had seen that Alija Osmić entered the garage and started beating the detainees, can you remember who was among the beaten persons, as you already mentioned this Kapetanović?** Since you said that he (Osmić) beat other persons too, can you remember precisely the names of persons beaten by Alija Osmić in the garage? **Witness Kalajica: Uuh, I could not, I really would not speculate on this, all this is too serious that...** His sturdiness and arrogance were peculiar to him. His most serious handicap was the fact that he was a corpulent man; he was like a typhoon. (p. 29)

Mario Franjić testified that he learned from witness “A” and other beaten detainees that it was the Accused Osmić who had beaten them most. This witness added that he heard that the Accused had beaten the detainees⁵¹. Witness-injured party Glišić remembers that witness “A” was abused in the garage.

80. Protected witness “A” also testified about his abuse. He stated that the detainees were taken out only to be beaten. This witness was taken out by Eso Halilović, who had called him out by his nickname. The witness’s friend Ivan Kapetanović was also called out by his nickname. Ivan went out first and the witness followed him. The guard at the door was a member of the Brigade Police. On his way out, the guard gave him a punch and Esad told him “*Do not touch them*”. When they went out, they were given a note, a small piece of paper on which it was written: “*This is Herzeg-Bosnia*”. A letter “U” and a cross were also written on this small piece of paper. The witness thought that neighbor Esad would spare them. When the witness, or Ivan (the witness thinks it was him) started reading the small paper, they started beating his friend Ivan Kapetanović. They punched and kicked him, swore his Ustasha’s mother. They told him: “*this is not your Herzeg-Bosnia*”. Thereupon, they started beating the protected witness “A”. After the beating, witness “A” and Ivan Kapetanović were returned to the garage. Even though the witness himself does not mention the Accused Osmić in relation to this situation, he further testifies that the Accused beat him too. The witness described that he was beaten in the garage, punched and kicked, insulted, and that he had bruises on his face. This witness also gave a convincing explanation as to why he did not earlier mention the Accused Osmić as a person who had abused him. The witness explained that it was Gasal on trial at the time, not the Accused Osmić, and that he would have needed a month to remember all details about this.

81. Witness Zdravko Križanac testified that he saw the Accused beating witness “A”. This witness mentioned the witness A’s nickname, and that the beating took place in front of the garage. Witness Keškić also identified the witness “A” as one of the persons who were beaten in the garage.

82. Having evaluated these witnesses’ statements both individually and in combination, the Appellate Panel concluded that witness “A” was abused while he was held in the garage in Donjići, and that among others the Accused Osmić abused him too. More specifically, it is apparent from witness A’s testimony that this witness had no intention of incriminating the Accused on any grounds. The witness mentioned the situation in which the Accused Osmić was not mentioned, and specified that, in addition to Esad Halilović, another Brigade Military Police officer was present. The foregoing, in correlation with the statements of witnesses Križanac and Franjić, clearly shows that witness “A” was indeed

⁵¹ Transcript No. X-KR-09/781-1 dated 11 March 2010. Judge Jesenković: So, we can review what you have said. I will ask you once again. Do you know if Alija was mentioned, and if not, who was possibly mentioned? If you do not know who, do you remember what they said, in what way they were beaten and with what?

Witness: As far as I remember, after the beatings, Vlatko was most poured with water to regain his consciousness. I remember this. **As far as I can remember but I cannot be 100% sure, Tomislav Vidović and the other beaten men mostly mentioned Alija in this story, but I was not there. I really do not know. I just heard this.** What I heard from their recounts when I came after the second-third day that is all I remembered. I really do not know.

Judge: OK, well. Thank you.

Judge Gluhajić: **OK. I will now definitely ask you. Did you hear at the time that Alija beat any of these persons or not, simply that?**

Witness: **Yes.**

abused while he was held in the garage. The Defense did not dispute this fact either. Protected witness "A" testified that he had bruises all over his body. The Panel has therefore concluded that as a result of this abuse, protected witness "A" sustained great suffering and injuries all over his body.

(d) The abuse of witness Ivan Keškić

83. Several witnesses testified that injured party Keškić was physically abused. In view of the foregoing, the Panel has established as proved that Keškić was physically abused while he was detained in the garage in Donjići.

84. Witness-injured party Ivan Kapetanović testified that he could not see what happened to Keškić: his teeth were broken; his face was deformed and had no tooth left thereupon; that he was beaten so much that the witness could not believe he was still alive; and also that they were jumping on his neck in their boots. That Keškić was abused was also confirmed by the injured party Glišić. Witness Glišić stated that Keškić was taken out of the garage, and that when he returned, they saw he was beaten. This witness added that they were punched, kicked and beaten with sticks by persons who took them out. Along this line, Glišić testified that within an hour after he had been beaten and brought to the garage, Ivan Keškić was beaten too. The witness stated that they were never beaten by only one person, but always by several of them. In addition, witness Kalajica also testified that Keškić was unconscious when he was thrown into the garage, literally as a bag of potatoes, and that he was beaten outside the garage.

85. Witness Ivan Kapetanović testified that Keškić's teeth were broken, that his face was deformed, that he subsequently had no teeth left, that he "*was beaten so much*" that he could not believe he was still alive, and that they jumped in boots on his neck. Witness Glišić had no information about the abuse of Ivica Keškić. Glišić himself testified in detail about the way in which he was abused. Among others, this witness identified the Accused Osmić as a person who abused him. Witness Keškić testified that he was called out so many times for the beating that, in sympathy with him, his relative once went out and received the beatings. However, when the guard saw it was not witness Ivan Keškić, they brought him back and said: "*the other Keškić*". Keškić testified that he was beaten in the garage on a 15-20 minute basis, and that he was beaten as soon as he arrived in the garage. The Accused Osmić called him out for the beating. They did not talk. The Accused beat him with whatever was handy: a baton, rifle butt, car tire hub. The witness cannot remember everything because he was semi-conscious rather than conscious. Witness Keškić further testified that the Accused beat him both inside and outside the garage, that this was repeated for a number of times, and that he could not remember whether Sijamija, Šego and witness B2 also beat him. The witness also explained in a convincing manner why he remembered the Accused Osmić as a person who beat him. More specifically, Keškić had known the Accused from before, wherefore he remembered him. Witness Keškić, however, does not exclude that he was also beaten by others. In addition, the Accused Osmić too confirmed that Ivica Keškić was abused. The Accused testified that it was Keškić who was abused most among the detainees in the garage after witness Glišić. The Accused, however, denied his involvement in the referenced abuse.

86. That Keškić was abused was confirmed by Prosecution witness Mario Franjić too. This witness testified that he saw Keškić upon his arrival, that he was beaten and that he had scarves on his face, but that he was not present when the detainees were beaten

(Keškić most of all). The witness added that he had heard the foregoing from Ivan Kapetanović, and that the hearsay had it that the Accused allegedly took the most active part in the abuse.

87. Prosecution witness Dragan Kasalo testified that Keškić was one of the persons whom the Accused most frequently took out of the garage. Witness Kasalo added that it was the Accused Osmić who abused the detainees most. This witness remembered that while he was in the garage Keškić was bleeding. The witness saw this because Keškić was lying right in front of him. Witness Kasalo thought Keškić would die of the beatings he received because he had all sorts of injuries all over his body, and his teeth were knocked out. Witness Dragan Kasalo identified the Accused Osmić as a person who had beaten Keškić in the garage, but cannot remember the day when this occurred. Witness A also identified the Accused Osmić as a person who (among others) beat Keškić. This witness testified about Keškić's injuries and about his losing consciousness too⁵². Witness Zdravko Križanac testified that Ivan Keškić was beaten both inside and outside the garage, and that the Accused Osmić called him out. This witness stated that the Accused Osmić took out his neighbors, and described a situation when the Accused beat Keškić. According to the witness, this was the Accused Osmić's reaction to Keškić's response. The witness remembered this because he had asked himself why Keškić could not just remain silent⁵³. The Panel is satisfied that Križanac indeed told the truth because of the fact that the Accused himself had described this situation. The Accused stated that he once came in the garage and greeted Keškić as a person whom he had known from before as his schoolmate. The Accused waived his hand because he thought Keškić told him to get lost (as he was told so by one Hozić who had earlier laughed at this)⁵⁴. Even though the Accused himself testified that he had perhaps only sideswiped Keškić at his shoulder, this Panel could not give credence to this statement as it was contrary to the above witness's testimony, which the Panel finds credible and convincing. In this respect, the Panel concludes that, as to this part, the Accused's evidence differs from the statement he gave during the investigation⁵⁵, when the Accused stated that he beat Keškić after Keškić had

⁵² Transcript No. X-KR-09/781-1 dated 4 March 2010. Judge: OK, about Ivan Keškić?

Witness: Ivan Keškić was beaten up. I can (say) this.

Judge: Who beat him?

Witness: **Everybody beat him; Alija beat him, Kajka beat him, the person whose name was, who was called Sarajka and a couple of more of them whom I do not know.**

Judge: Did you perhaps see some injuries on Keškić?

Witness: **Yes, he lost his consciousness for a couple of times. Once or twice he lost his consciousness.** (p.20)

⁵³ Transcript No. X-KR-09/781-1 dated 21 January 2010. Panel President-Judge: We are here primarily interested in Alija Osmić. You said he was present when you were beaten. Then you saw him beating Vlatko Kapetanović. **Did you see who else was beaten by Alija Osmić? Witness: Ivan Keškić.** Panel President-Judge: OK. Witness: Ivan responded to him something and they had a quarrel. I know that I questioned myself why didn't he keep silent, why he had to say to him anything. Panel President-Judge: So you saw this with respect to Ivan Keškić? Panel President-Judge: This all took place here in the garage and in front of the garage, didn't it? Witness: In front of the garage too (p. 27).

⁵⁴ Transcript No. X-KR-09/781-1 dated 1 July 2010. Witness–accused Osmić: I told him then: "So, what's up Keškić, what's new? He murmured, and to be honest, I did not understand him. Then I saw this Hozić laughing at me. Why do you laugh? He told you to get lost. Then I automatically waived my hand. I did not hit him as he avoided my blow. I did not even think to hit him. I do not know... Defense Counsel Čelik: Did you hit any part of his body?

Witness–accused Osmić: Perhaps I scratched his shoulder like this. That was all. (p. 9).

⁵⁵ **T-64A**-Suspect Questioning Record for Alija Osmić No.: KT-RZ-49/09 dated 10 September 2009 made in the BiH Prosecutor's Office („I also want to explain why Ivan Keškić was beaten. I know he was a special unit

told him to “*get lost*”. The Accused’s reasons for changing this statement were not convincing given the fact that, in the attempt to exculpate himself, the Accused stated that at the time he perhaps did not express himself correctly. That the Accused Osmić told truth in his statement given during the investigation supports the Accused’s confirmation that Keškić had offered him money to release him in return. However, the Accused denies this part of his statement being aware that it directly incriminates him now.

88. Having evaluated the witnesses’ statements individually and in combination, the Appellate Panel concluded that Keškić was abused while he was detained in the garage in Donjići and that, among others, the Accused Osmić abused him too.

(e) The abuse of witness Ivan Kapetanović

89. Witness-injured party Glišić testified that the injured party Ivan Kapetanović was with him in the garage. This witness thought that Kapetanović was beaten in the garage⁵⁶. That the minor Kapetanović was in the garage with captured members of the HVO and that he was abused in the garage was confirmed by witness-injured party Ivan Keškić too. This witness testified that Osmić had also beaten Ivan Kapetanović. The Accused himself admitted that Ivan Kapetanović was abused even though he did not consider such treatment as abuse. The Accused testified that “Megi” arrived, took Ivan Kapetanović out, and kicked him perhaps only once before other police officers intervened. The Panel however, cannot give credence to the testimony of the Accused Osmić in this part because it is obviously calculated to avoid the Accused’s criminal liability, and because the Accused is trying to minimize the extent to which Ivan Kapetanović was abused. It is, however, clear that the Accused had a negative attitude toward this injured person⁵⁷ because, according to the Accused, Ivan Kapetanović had a pendant on his military HVO trousers’ zipper with the “ARBiH” inscribed on it.

90. That the Accused Osmić was taking out Ivan Kapetanović to abuse him was testified by witness Dragan Kasalo. This witness remembers that the Accused mostly took out his neighbors, and that Ivan Kapetanović was one of those whom he mistreated most. Witness Kasalo cannot remember other persons, but he would recognize them if he saw them. This witness, however, also testified that because the door was closed, he did not eye-witness Ivan Kapetanović being beaten by the Accused. During the investigation this witness stated that he knew that, among others, the Accused took out Ivan Kapetanovic, and asked military information by kicking and punching him, hitting him with a rifle butt and stick at the same time. At the main trial, however, this witness testified that he did not see the Accused Osmić abusing Ivan Kapetanović. In view of the foregoing, the Appellate

member. We have known each other from childhood. As I already said, when he told me to get lost, I beat him. He also offered me money to release him in return”.

⁵⁶ Transcript No. X-KR-09/781-1 dated 19 January 2010. Panel President: OK, I am asking you because of this. Was Ivan Kapetanović perhaps, do you know if he was beaten in the garage? (p.70)

Witness: I think that he was beaten, and that this minor was beaten too. I think they were beaten. (p.71)

⁵⁷ Transcript No. X-KR-09/781-1 dated 8 July 2010. Prosecutor Terzić: Mr. Osmić, is it correct that you have stated this for the record: “I was present when Halilović aka Megi hit twice or three times Vlatko Kapetanović’s brother who had provoked him even before the conflict, and the other one, who was his friend. They were two youngsters who made problems. (p.29).

Witness – accused Osmić: Yes.

Panel gave credence to the testimony of witness Dragan Kasalo in the part in which the Accused Osmić took Ivan Kapetanović out, but not in the part in which he stated that he saw the Accused Osmić beating Ivan Kapetanović.

91. It also ensues from the testimony of witness Ivica Đikić that Ivan Kapetanović was indeed abused. Witness Đikić testified that Ivan Kapetanović was the one who was taken out most and that his nickname was "Vatra" because he had numerous tattoos. He had tattoos of the Lady and Jesus. This witness did not identify the persons who took out Ivan Kapetanović for the beating, but rather stated they were persons in uniforms whom he mostly did not know. Witness Kalajica also confirmed that Ivan Kapetanović was physically abused, but did not identify the perpetrators. The abuse of injured Ivan Kapetanović was confirmed by witness Zdravko Križanac too. Witness Križanac added that, at the time, Kapetanović was a minor, that he saw when Kapetanović was taken out⁵⁸, and that the Accused Osmić took the most active part in the abuse.

92. As Ivan Kapetanović's friend, Witness "A" described in detail the situation mentioned in para. 80 of this Verdict, which is indicative in terms of the description of the way in which Ivan Kapetanović was abused. More specifically, witness "A" and Ivan Kapetanović were called out by their nicknames to come in front of the garage. Ivan went out first, and witness "A" followed him. A guard from the Brigade Police was at the door. When witness "A" was on his way out, the guard "*punched him*", but Esad told him "Let them be". Once they were out, they were given a small piece of paper on which it was written: "*This is Herzeg-Bosnia.*" A U-letter and a cross were also written on the paper. When the witness started reading the small paper, or Ivan (he thinks it was Ivan), he thought that neighbor Esad would spare them. However, they started punching and kicking Ivan Kapetanović; they cursed his Ustasha's mother, and they were telling him: "*This is not your Herzeg Bosnia!*" Thereupon, they started beating the witness. After being beaten, the witness and Ivan Kapetanović were returned to the garage. Ivan Kapetanović himself testified about this situation. The witness stated he did not remember who beat him and where; that there were four-five soldiers, Eso⁵⁹ and Alija were there too, who gave him to read from a small piece of paper the following: "This is Herzeg Bosnia"; that they did not beat him with batons; that except for bruises, he had no severe injuries.

93. It undoubtedly ensues from the testimony of witness Glišić, Ivan Keškić, Dragan Kasalo, Ivica Đikić, Zdravko Križanac, witness "A" and the injured party himself that the injured party Ivan Kapetanović was abused. Along this line, it ensues from the statements of witness Keškić, witness "A" and the injured party himself that the Accused Osmić too is one of the persons who abused Kapetanović and inflicted on him severe suffering and injuries all over his body.

94. In view of the foregoing, the Appellate Panel has concluded that the Accused participated in the abuse of prisoners of war, and thereby inflicted upon them great suffering and injuries all over their bodies, as described in section 1 of the operative part of this Verdict.

⁵⁸ Transcript No. X-KR-09/781-1 dated 21 January 2010. Panel President-Judge: OK. Did you see Ivan Kapetanović being taken out?

Witness: I did. All of the Keškićs' were called out, in fact, this settlement, this part, who were probably in contact or around him, I do not know now. (p.26).

⁵⁹ Referring to Esad Handžić.

C. SECTION 2 OF THE OPERATIVE PART OF THE VERDICT

95. It ensues from the testimony of witness-injured party Ivan Kapetanović that after being brought from the garage in Donjići, captured members of the HVO were held on the premises of the Marxist Center-Nunnery in Bugojno. The witness's brother was brought there together with the witness and stayed with him all the time in a classroom of the Center. This witness thinks that they were held in the basement of this Center for about 20 days or a month. Consistently with this witness's testimony, witness-injured party Glišić confirms that after a while, the captured members of the HVO were relocated to the Marxist Center (Center), and that the Brigade Military Police had escorted them there. According to this witness, they were held in the Marxist Center for 10-15 days, and around the Feast of the Assumption, they were transferred to the Stadium. Witness-injured party Keškić also confirmed that they were detained in the Marxist Center. This witness testified that they were held in a basement for about 7 days. Prosecution witness Milenko Kasalo also confirmed that from the garage in Donjići, the captured members of the HVO were transferred to the Marxist Center, which was a sort of school. Members of the ARBiH took away the whole group of around 40-50 detainees. The witness further testified that he gave a statement and that he was thereafter detained in a basement for about 10-15 days. There were no beds, just some boards. This witness confirms that the Kapetanović brothers were also present in the Center and thinks that they were held in the basement for about 10-15 days, but was not certain about this.

96. Prosecution witness Ivica Đikić also testified that the captured members of the HVO were transferred from the garage in Donjići to the Marxist Center. This witness testified that before dawn the detainees were loaded onto a truck with a tarpaulin and transported to the Nunnery. The witness was not certain whether the whole group was transferred. They were escorted by some men in uniforms, but the witness could not identify them. Some lists of detainees were made after their arrival in the Nunnery, whereupon they were interned in a basement. The witness was not questioned and he does not know if others were questioned. They were given dry rations once. They could not go out, except to empty a bucket they used instead of toilette, which he did once. In addition to the detainees from the garage in Donjići, other captured members of the HVO were also brought to the Marxist Center-Nunnery. Prosecution witness Stipica Đapić testified that he was first detained in a garage in the settlement of Karadže and subsequently transferred to the Center. There were other persons in the Center, perhaps about twenty of them. This witness remembers that Ivica Keškić, Vlatko Kapetanović, and perhaps Mario Glišić subsequently arrived. Given that the witness is a physician by occupation, he sometimes went down to the basement on the guards' call to provide medical assistance to the abused, beaten and injured detainees.

97. Prosecution witness Mario Franjić testified that the detainees were transferred from the garage in Donjići to the Center. This witness stated that a truck with a tarpaulin came one morning to pick up the detainees. Witness Franjić testified that injured party Vlatko Kapetanović was loaded onto the truck, that his hands were untied wherefore he could get onto the truck. This witness remembered that, at the time, Vlatko wore an old winter jacket just not to be naked. The Appellate Panel gave credence to this witness's testimony because the witness precisely described the way in which they had been transferred. The foregoing testimony is particularly relevant in the part confirming that on 26 July 1993 Vlatko was present in the Center. Witness Anto Kapetanović, father of Vlatko and Ivan Kapetanović, also offered certain indirect information with regard to this Count of the Indictment. This witness testified that he had information that his sons had been taken to the Marxist Center. The witness found a soldier in the Center who had a list (of detainees),

and who told him that Ivan was there, but that Vlatko had been taken away.

98. Witness Josip Kalajica testified in detail about their transfer from the garage in Donjići to the Center. This witness stated that at first they were all held in classrooms on the floor; that subsequently, the selected civilians stayed up on the floor, while the others were interned in the basement; and that there was nobody in the basement when they came there. Prosecution witness Zdravko Križanac confirmed in part that the captured members of the HVO were transferred to the Center.

99. The Accused Osmić also did not contest that the captured members of the HVO, who had been held in the garage in Donjići, were transferred to the Marxist Center. The Accused stated that he was present at the time of their transfer, that the detainees were loaded onto a truck, that everyone went out of the garage and that the detainees were handed over to the ARBiH Command in Donji Vakuf.

100. In view of the foregoing, it ensues from the Prosecution witnesses' statements, essentially consistent and not contested by the Accused himself in this regard, that the captured members of the HVO were held in the Marxist Center-Nunnery in Bugojno since 26 July 1993.

1. Accused Alija Osmić was present in the Marxist Center-the Nunnery on 26 July 1993

101. That the Accused was present in the Marxist Center-Nunnery on the critical day follows from the testimony of the Prosecution witnesses to which the Panel gave credence in this part. The Panel has already noted that the Accused himself did not contest that he was present in the Center, but he rather contested that he participated in the commission of offenses described under Section 2 of the operative part of this Verdict.

102. Injured parties Ivan Kapetanović, Ivica Keškić and Mario Glišić, who, given that they directly participated in the events described in Count 2 of the operative part of the Verdict, were surely at that moment interested in observing the Accused Osmić, identified him as a person who had at the time abused the captured members of the HVO in the garage. Therefore, this Panel concluded that the witnesses' senses and attention were directed to the person who, as they thought, had their destiny in his hands. Indicative along this line is the testimony of witness Dragan Kasalo. Witness Kasalo thought that, while he was in the Center, the Accused was in the reception room, while the detainees were held in the basement. This witness testified that one day, one Velagić selected the detainees to perform labor, but that Osmić thereupon came and said: "*You have chosen all good men, go back, I will choose the men.*"⁶⁰ The Accused went on to remove the witness from the group of detainees selected for work, and chose others instead of him. Accordingly, the detainees thought that the Accused Osmić enjoyed all powers wherefore they were interested in observing him, and they could do so given the foregoing facts (that the

⁶⁰ Prosecution witness Mario Franjić also described a situation similar to this one. This witness testified that once the other guards in the Center had selected him to perform labor, the Accused Osmić came and asked their superior: „Why are you selecting wrong men? You, neighbor, sit down.“ (Transcript No. X-KR-09/781-1 dated 11 March 2010, p. 9).

Accused Osmić was a neighbor to most witnesses-injured parties, that they knew him by sight, that they went to school together, etc.).

103. Prosecution witness Milenko Kasalo also confirmed that the Accused Osmić was present and described the event with the injured party Vlatko Kapetanović.

104. Witness "A" testified that he did not see the Accused Osmić on the Center premises. The Appellate Panel observes that, according to the witness, he was held in the basement which consisted of one room partitioned off with a wall. It was a door-like wall through which one could enter the other part of the room. There was another wall in the other part of the room. Some detainees were held in the first part of the room, and some in the other part thereof. Therefore, this Panel concludes that Witness "A" could have no information as to whether the Accused was present on the Center premises. Prosecution witness Josip Kalajica confirmed this fact too. This witness testifies that he personally did not see the Accused while he was in the Center.

105. The statements of the witnesses who were held in the Center basement are inconsistent in relation to certain facts because not all witnesses testified that they had seen the Accused Osmić on the critical day. Bearing in mind that this was a large space, and in order to properly determine the facts, this Panel has examined in detail the testimony of witness B2. At the relevant time, witness B2 was a member of the Donji Vakuf Brigade within the ARBiH, whose Command was in the Marxist Center in Bugojno. This witness testified that, one day, following the conflict between the ARBiH and HVO and the surrender of the 1st Battalion and the 2nd Battalion, he was together with two police officers colleagues of his and a woman, when Enis Sijamija passed by driving a Mercedes vehicle. Also in the Mercedes vehicle were Osman Šego, sitting as a co-driver and the Accused Osmić. At the time, these persons were within the Military Police and wore uniforms. The witness also wore a uniform. The car stopped, Sijamija opened a window and told the witness to get in the car as they had to work off something. The witness thought that an intervention or apprehension was in question. Sijamija drove the vehicle toward the roundabout in Bugojno near the Center, and stopped in front of the Center building. When Sijamija parked the car, the witness, Šego and the Accused went out. They entered the Marxist Center premises. The witness went to a yard next to the building. The Accused Osmić admitted that a day prior to the event described by Witness B2, he stood guard from 12:00 to 16:00 hrs, that a pistol was stolen and that therefore he was not in a mood. Enis Sijamija, the then Deputy Commander of the Military Police Company, opened the door and called out the witness, Osmić, Osman Šego, Hajro and two other persons by their nicknames (Ziće and Mirzet). Thereupon they sat (Šego, the Accused and Hajro) in a black *Mercedes* vehicle, usually driven by Enes Handžić and Pajo, while Ziće and Mirzet sat in a white *Golf 2* vehicle. Enis Sijamija drove them to the Center. According to the Accused, the *Mercedes* vehicle was parked a little further from a small gate, behind the entrance to the Center. Thereupon they all went out of the Mercedes and *Golf* vehicles, and the Accused entered the Center together with one Ziće and Bakreni.

106. The Appellate Panel did not accept the alibi the Accused Osmić tried to obtain by examining the Defense witnesses Jahijat Karabeg and Namir Haračić. Obviously, the Defense tried to prove with these witnesses that on 26 July 1993 the Accused Osmić was in Vrbanja rather than in the Center. It ensues from witness Karabeg's testimony that on 26 or 27 July 1993, the Accused Osmić was in the area of Čolić's field in Vrbanja (Bugojno) all day long, that he had brought 5-6 detainees to exhume dead bodies, that the Accused stood with them and that he brought them water. Along this line, the witness himself cannot specify the date when the exhumations were carried out. Bearing in mind that the witness testified that he had known₃₅ the Accused's father, who was a member of

the ARBiH of which he was proud, the Panel cannot accept this witness's testimony as reliable. In addition, this witness testified that other police officers used to come there, and go to other sites, but that only the Accused was there with them all the time and did not leave them at all. According to the Panel, the foregoing would not amount to a logical sequence of events. In addition, Defense witness Namir Haračić testified that the Accused was present during the exhumations carried out at Čolić's meadow but that this occurred perhaps on 27, 28 or 29 July 1993. Therefore, this witness could not specify the exact day either. Even though this Panel notes that these critical events took place 19 years ago and that the witnesses cannot remember all the details, their statements could not result in a different state of facts given that the Accused himself confirmed his presence in the Center.

107. That the detained members of the HVO were abused in front of the Marxist Center exactly on this particular day was confirmed by the Prosecution witness Anto Kapetanović too. This witness explained how he managed to figure out the day on which his son, injured party Vlatko Kapetanović,⁶¹ had died. Exhibit **T-60** (Death Register excerpt for Vlatko Kapetanović, indicating 26 July 1993 as the date of his death) also confirms that these incidents took place on the first day of the detainees' arrival in the Center, and that since this day onwards, they no more saw Vlatko. This is consistent with the statements of the foregoing Prosecution witnesses.

2. The abuse of detained HVO members in front of the Marxist Center – the Nunnery

108. It ensues from the testimony of witnesses Ivan Kapetanović, Ivan Keškić, Mario Glišić and Witness B2 that, together with Enis Sijamija and Osman Šego, the Accused beat Ivica Keškić, Mario Glišić and Vlatko Kapetanović in front of, and inside the premises of the Marxist Center in the way as described in Section 2 of the operative part of this Verdict, and that as a result thereof, Ivica Keškić and Mario Glišić fell and remained lying on the floor in the corridor and in the yard of the Center, while Vlatko Kapetanović was pushed with blows through the door at the back exit from this Center and thereupon thrown in the trunk of a *Mercedes* passenger vehicle.

(a) The abuse of Vlatko Kapetanović

109. Witness Ivan Kapetanović testified that his brother was called out on the first day following their arrival in the Center, that the door opened and that outside he could see the Accused and some other men known to him (one Duvnjak). This witness also testifies that he has never seen his brother again after he had been taken out. His brother was called out on the first day. The witness indirectly learned from witness-injured party Ivica Keškić that his brother was abused. Witness Keškić told this witness that he saw from the top of the stairs when Vlatko was taken out and beaten, and that the Accused and one Dudo were present. Keškić also mentioned one Isijaniija. Ivica Keškić testified that while they were held in the Center, Vlatko Kapetanović, Mario Glišić and he were called out, as far as he remembered. After being called out, they climbed up the stairs. Several members of the

⁶¹ See para. 49 of this Verdict.

Brigade Police stood at the end of these stairs and the corridor, and a massacre started immediately. The witness first saw that a side-door or side exit was opened, and that a black *Mercedes* vehicle was parked there. The beating started and, at one moment, the witness fell on the ground. Then they started beating Vlatko and Vlatko fell on the ground too. This witness further testified that Vlatko fell as a result of the beating. One guard grabbed the witness's legs and dragged him to the toilette which was located on the left side of the way out from the Center corridor.

110. Witness-injured party Mario Glišić consistently testified that when he was in the basement of the Center, Vlatko Kapetanović was first called out and beaten. When Glišić was called out, Vlatko had already been beaten outside, and moaned on the ground. Thereupon they started beating Glišić on his other side.

111. The Accused Osmić also did not contest that Vlatko Kapetanović was taken out of the Center. The Accused testified that the referenced injured party was taken out, leaned against the wall by the door, and that Enis Sijamija started hitting him with an iron bar whereupon Vlatko fell down. The Accused remembers that while he was putting bandages on Glišić's head, Enis Sijamija hit Vlatko several times with an iron bar. The Accused stated that the building itself had a corridor with doors at both ends, and that the length of the corridor was perhaps about 15 meters. Allegedly, the Accused was 10 m far away from the place where Sijamija beat Vlatko.

112. Witness Milenko Kasalo provided certain information in his testimony about Vlatko. This witness testified that he was at the Center basement window looking through the bars when he saw the Accused coming toward the basement. This was exactly at the time when the Accused took Vlatko away. The window is looking toward the street in front of the Center. At this moment, the witness did not see if the Accused was alone, or if he got out of the car; he saw the Accused going toward the Center entrance. Vlatko went out, and thereupon other detainees came to the window. They said that the Accused pushed Vlatko in the car. Thereafter, Vlatko's brother Ivan stood at the window. The witness only knows that he was told to leave. The witness was not certain whether the basement had one or two windows, but it certainly had at least one. He was not present while Alija beat somebody. The witness was in the basement. The witness knows that some of the detainees who looked through the window with him said that Alija had thrown Vlatko in the car, but he did not see this.

113. Injured party Ivan Kapetanović further testified that the injured party Keškić subsequently told him that after the beating, the Accused and Isijanija threw his tied brother in the trunk of black *Mercedes* vehicle and drove him away. In this respect, Ivica Keškić testified that as a result of the beatings Vlatko fell down, whereupon the Accused and another member of the Military Police grabbed his legs and shoulders and threw him into a dark black old *Mercedes* vehicle. At this moment, a soldier grabbed the witness, dragged him into the toilette and left him there.

114. That the Accused participated in Vlatko's throwing into the *Mercedes* trunk was confirmed by Glišić too. Witness Glišić testified that while he was beaten on one side, two men, that is "Pajo" and the Accused, threw Vlatko into the trunk of the *Mercedes* vehicle parked on the right side, with its trunk turned toward the exit. This witness further testified that he was on the ground when Vlatko was thrown into the trunk of the dark blue *Mercedes*, and that he was pushed down the stairs.

115. Protected witness B2, who eye-witnessed these events, testified that while he was helping Glišić, there was a car with open doors waiting in front of the Center, and that

Sijamija told him to get in the car. Once the witness was in the car, they drove toward the roundabout. This witness testified that Sijamija subsequently told him that Vlatko Kapetanović was in the trunk.

116. Prosecution witness Ivica Đikić also testified that on the critical day Vlatko was thrown into the trunk of the *Mercedes* passenger vehicle. This witness stated that once, when he took out a bucket they used to relieve themselves because the toilette was on the Center floor, he saw through the yard door the *Mercedes* of Damir Tomas, and Vlatko inside the car wrapped in a blanket. The witness saw that the hood was opened and that Vlatko was in a semi-sedentary position. This, however, lasted just for a moment because the guard in the witness's escort pushed him and told him not to look around. The *Mercedes* engine was off, and some soldiers, probably ARBiH soldiers, were around it. After this, the witness did not see Vlatko any more.

117. The Accused did not contest that Vlatko was thrown into the *Mercedes* trunk. The Accused testified that the vehicle was parked on the main street, on a sidewalk in front of the fence. When he came to the exit door, having returned to pick up his baton, the Accused saw that Vlatko entered the trunk of *Mercedes* vehicle, and that Pajo closed the hood. Sijamija stood by the trunk wherefore the Accused assumed that he had thrown the injured into the trunk. There were many soldiers in the yard so he could not see what was going on. The Panel could not accept as true the foregoing submission of the Accused regarding the fact that the injured himself entered the trunk of the parked *Mercedes* vehicle, because it is obvious that the Accused wants to exculpate himself.

118. In view of the foregoing, the Appellate Panel finds it proved that the Accused participated in the abuse of Vlatko Kapetanović in the way as described in Section 2 of the operative part of this Verdict. In relation to the factual description in the second amended Indictment, this Panel has omitted the part which reads as follows: "*thus they drove him by this vehicle to the vicinity of the Guvno settlement and deprived him of his life.*" Since the Accused was not charged with the participation in the killing of Vlatko Kapetanović, the Appellate Panel concluded that leaving this part in the text would have implied that the Accused was involved in these acts. The Panel has therefore modified the referenced factual description.

(b) The abuse of Ivica Keškić

119. Witness Ivan Kapetanović testified that injured party Ivica Keškić was brutally beaten in the corridor of the Center, that Keškić was lying on the ground near the rear exit, and that he did not know who beat him. Witness Mario Glišić also testified that Keškić was taken out of the basement. This witness thinks that this had occurred an hour or two before Vlatko Kapetanović was taken to the *Mercedes* vehicle.

120. Keškić testified that he was physically abused in the Center. Witness Keškić stated that one day he was called out of the basement, and that once he was outside, he saw these persons among whom he recognized the Accused and one Sijamija aka Pajo. After being beaten and taken to the toilette, they did not return him back (to the basement). He spent around 20-30 minutes in the toilette, and at one moment he felt someone was pouring water over him and checking his pulse. It was in these moments that he slightly recovered. The witness testified that he did not remember if Sijamija beat him with an iron bar but does not exclude this possibility either. The witness also stated that he was

only taken out on the same day when Glišić and Vlatko Kapetanović were taken out too.

121. That Keškić was indeed physically abused while he was detained in the Center was confirmed by the Prosecution witness Stipica Đapić too. Being a physician by occupation, and being detained on the premises of the Center (on the floor), witness Đapić occasionally went down to the basement to help out the beaten or wounded detainees. This witness testified that most detainees had bruises, that their faces were deformed and almost unrecognizable; that they had difficulties with breathing as inhaling was problematic for them. The witness noted that he could not provide the detainees with any particular medical assistance given that he could merely give them some pain killers. Along this line, the witness remembered that he had helped Ivica Keškić. The Appellate Panel gave credence to this witness's testimony since he was a professional who was aware of Keškić's injuries, but who did not know the names of persons who had physically abused the detainee, the result of which were the injuries he sustained.

122. Contrary to these witnesses' statements, the Accused Osmić stated that on the critical day he did not see Keškić at all. This Panel could not accept the foregoing statement given that it was not supported with the adduced evidence.

123. It ensues from the statements of the foregoing witnesses that the Accused did participate in the abuse of Ivica Keškić in the way as described in Section 2 of the operative part of this Verdict.

(c) The abuse of Mario Glišić

124. Injured party Glišić testified that he was taken out of the basement and that he was beaten by military police officers, among whom he recognized the Accused and Sijamija. The witness testified that during the beating Vlatko Kapetanović was in the right section of the yard, while the witness was beaten in the left section. The injured party testified that as a result of the beatings, he sustained injuries but was not medically treated. However, two or three hours later, a military police officer came to take detainees to work. When the military police officer saw that the witness was all covered in blood, he took out a bandage from his pocket and bandaged the witness's head. The witness subsequently learned that it was protected witness B2 who did this. In addition, witness Glišić testified that he was beaten twice in the Center, and that the Accused Osmić once participated in the beating when Vlatko was taken away. That Glišić was physically abused was confirmed by Keškić too. Witness Keškić stated that he did not see what had happened with Glišić.

125. Witness Glišić's testimony is confirmed by the testimony of protected witness B2. The protected witness testified that Enis Sijamija and the Accused Alija Osmić went to pick up Glišić who was in the yard at the time. Sijamija, Šego and the Accused beat the Glišić, punched and kicked him. At one moment, Sijamija threw a stump at his head, as a result of which he probably sustained injuries on his skull. This lasted for about 10 minutes in the yard; Glišić was lying on the ground, but at the time the witness did not know who was in question. Protected witness B2 approached Glišić who had injuries on his head. His head was cut and smashed. The witness took out an emergency bandage and provided him with first aid, stopped the bleeding and returned him to the basement. While he was putting the bandage on Glišić's head, the soldiers went away. The witness heard them taking out another man. He heard the swearing and beating behind his back, but did not see who was taken out. Witness B2 helped Glišić because he could not walk alone.

Supporting the injured person under his armpits, the witness took him to the basement.

126. The Accused Osmić did not contest either that Glišić was abused. The Accused, however, did not admit that he participated in this abuse. The Panel did not accept this statement as credible since it was not corroborated by the other evidence adduced.

127. Therefore, the Appellate Panel has established that the Accused participated in the abuse of the injured party Mario Glišić in the way as described in Section 2 of the operative part of this Verdict.

D. SECTION 3 OF THE OPERATIVE PART OF THE VERDICT

128. That during the period from September 1993 through late January 1994 the captured members of the HVO were escorted to the premises of the BH Bank where the seat of Military Police of the 307th Motorized Brigade ARBiH was located, primarily ensues from the documentary evidence tendered in this case record⁶², that is, from many written orders, instructions and approvals signed by Enes Handžić, Deputy Chief of Security, under which the Military Police of the 307th Motorized Brigade were ordered to apprehend certain detained members of the HVO for “*preliminary interviews*”.

129. This fact was consistently confirmed by both the Prosecution and Defense witnesses. Defense witness Suvad Delić, who was a member of the ARBiH and a shift leader at the *Iskra* Stadium, testified that the detainees were apprehended for interviews, that members of the Military Police were coming to the Stadium and asking for certain persons, that a certain written document requested that individually named persons be taken to the BH Bank. This witness does not remember who signed the document but he is certain it was someone from the Military Police. This is so because no one could be taken away without an order, or otherwise he would have been responsible. Any arrival was recorded. A reduced total number of detainees meant that some detainees were taken for interrogation. Some detainees returned immediately, while some of them were held in the BH Bank. Witness Delić kept no records as to which detainee did not return to the Stadium. His superior was in charge of keeping such records. This Panel gave credence to this witness's testimony, which is convincing in this part, particularly in correlation with the testimony of Defense witness Ferid Čolić. At the relevant time, witness Čolić was as a member of the ARBiH. He was deployed at the *Iskra* Stadium as a guard. This witness saw members of the Military Police who came upon orders. A guard would take this piece of paper, some other guard would go to the dormitory, call out a particular detainee, enter his name in a log, and the police officer who came with the order would take him away. The record was kept for whoever came. Prosecution witness Josip Kalajica also described the procedure under which the detainees were taken away. This witness testified that the police would come to the *Iskra* Stadium with orders to pick up the detained HVO members, call out the detainees with full names and take the detained member of the HVO to the BH Bank.

130. Even though Defense witness Mirsad Čurić, the then guard at the *Iskra* Stadium, remembers that detainees were taken away from the Stadium, he does not know where

⁶² Among others, from documentary Exhibits **T-41-T43**.

they were taken, namely, he does not know if they were taken to the BH Bank. In this respect, this Panel concludes that this witness's testimony did not bring into question the fact that the detained members of the HVO were taken to the premises of the BH Bank for interrogation.

131. The foregoing fact was also confirmed by the statements of both the Prosecution and Defense witnesses who had secured the BH Bank building in Bugojno. In this respect, the Panel finds it necessary to examine the manner in which the object was secured, and the appearance of the building itself so as to determine if the detained HVO members were abused in the BH Bank, of which the Accused Osmić was found guilty.

132. Protected witness B1 testified that at the critical time he was a member of the Military Police of the ARBiH in Bugojno, that he was first deployed at the Cultural and Sports Center for a short period of time and thereupon to the BH Bank. Once they were removed to the BH Bank, the detainees were held in the basement of the Bank. According to the witness's information, these detainees were allegedly brought there to be interviewed and to give statements in writing. They were brought to the BH Bank and thereupon, when necessary, taken from the BH Bank to the building across the street where the persons who took written statements sat. After giving their statements, detainees were returned to the BH Bank and held there for a longer period of time.

133. Defense witness Muhamed Ajkunić testified that at the relevant time, as a member of the ARBiH Military Police, he was deployed at the reception of the BH Bank building. This witness further testified that four or five soldiers were at the reception, which was the only entrance to the BH Bank, and that they worked two-by-two shifts. Two men in the same shift would work for 12 hours each as it would be very difficult to endure for 24 hours. They had no particular tasks. When someone came in, they checked his identity. They occasionally walked around the building. They acted as sort of guards. Some persons were apprehended when witness Ajkunić was present. He does not know who these persons were. There were members of the HVO too. There was also a duty officer who was in charge. At the reception, they did not have to register persons who were coming to the Bank. The witness therefore thinks that the duty officer kept the records of apprehended persons as he was the one deciding what would be done with them. They would occasionally walk around the building, but they had no obligation to check upon the premises of the BH Bank. There was also a basement with two rooms in the BH Bank. The witness never went down to the basement, except at the beginning when he looked around the space. The reception is the only possible entrance in the BH Bank. Those men were probably locked up in the basement. The duty officer was there all the time. The duty officer and the Police Commander were in charge of the detainees. These detainees were brought in by the Military Police.

134. Defense witness Jasmin Huskić testified he was a member of the ARBiH Military Police deployed at the reception of the BH Bank. The witness further testified that they worked in shifts, and that in addition to him, the Accused, Muhamed Ajkunić and "Jaro" (the witness thinks his name is Mesud) were also there. They secured and monitored the building itself. They could see who came in and out but their duty was not to keep any records. They had a duty officer every day. Witness Huskić testified that detainees were brought in and taken away by the Military Police. The witness knew none of the apprehended persons. There were many apprehensions, and duty officers had to keep records of the number of brought detainees. As far as he heard, detained persons were held in the BH Bank basement. There were 2 basements in the Bank, but the witness did not go there. They did not have video-control so they had to come out and check the facility. When two of them were present,⁴¹ one would go around and the other would

stay. They were divided in shifts, and each guard worked for a half of shift. At first, two of them worked in a shift. The witness testifies that at the reception desk there were always the same 4 persons, except when somebody had to be privately absent. There was a long corridor leading from the reception. The witness saw that a basement was located on the right side of the corridor. The witness did not hear what was happening in the basement.

135. Injured party Mario Glišić also confirmed the information he had about certain detained members of the HVO being taken to the BH Bank premises for interrogation. Prosecution witness Ivica Kajić testified that he was taken from the *Iskra* Stadium to the premises of the BH Bank in a group of 5 detainees.

136. Prosecution witness Dragan Kasalo testified that while he was at the Stadium certain men were taken for interrogation, and remembered that the Jerkapić brothers, Dragan Miličević, Ivo Miloš and Niko Miloš were among them. The witness thinks they were taken to the BH Bank. The fact that the detained HVO members were taken for interviews is also confirmed by the Prosecution witness Milenko Kasalo. Witness Kasalo, however, had no information as to where precisely the detainees were taken.

137. Prosecution witness Mario Franjić testified that he was not taken anywhere for any interview, but he knew that many detainees were taken from the stadium to the BH Bank for informative interviews. Witness "A" also remembered that some of the detained HVO members, including Marko Krajinović, were taken to the BH Bank for questioning.

1. Accused Alija Osmić was present on the BH Bank premises in the capacity of a military police officer

138. The Appellate Panel finds it proved that, in the above stated capacity, the Accused Osmić was present on the premises of the BH Bank in Bugojno and carried out tasks at the BH Bank registration/admission desk.

139. Defense witness Muhamed Ajkunić testified that the Accused Osmić was deployed at the BH Bank registration desk, which the Accused did not contest either. The Appellate Panel has accepted this fact as proved given that the witness himself testified that he had known the Accused from before even though he had no closer contacts with him, and that he knew the Accused's father, who was a car-body painter.

140. Consistently with the foregoing testimony, Defense witness Jasmin Huskić testified that, as a member of the ARBiH Military Police during the critical period, he was deployed at the BH Bank registration desk, and that Muhamed Ajkunić, possibly Mesud Ajkunić (passed away) and the Accused were with him. Prosecution witness Ivica Kajić also testified that while he was in the BH Bank the Accused Osmić was present there, and that even though he did register the Accused's name, he did not really know who this person was at the time.

2. The abuse of Željko Miloš

141. In relation to Section 3 of the operative part of the Verdict, the Appellate Panel finds it proved that the statements of the protected witness B1, injured parties Željko Miloš, Ivica Kajić, and Josip Kalajica revealed that, together with other military police officers, the

Accused mistreated the apprehended detainees, including Željko Miloš, by punching, kicking and beating him with blunt items all over his body, and inflicted upon him great suffering and visible injuries all over his body.

142. In relation to this incrimination, the Appellate Panel first took into account the testimony of witness B1. Witness B1 recognized the Accused as one of the military police officers who had inflicted injuries upon detainees, and added that the Accused had beaten the detainees in the presence of his other colleagues too. Along this line, witness B1 testified that the detainees were beaten, as a result of which they had visible injuries, bruises, and broken teeth. Even though witness B1 was prohibited from speaking with the detainees, they complained to him that the military police officers had beaten them in the basement of the BH Bank. This witness further testifies that he had an opportunity to see certain military police officers inflicting injuries upon the detainees brought from the BH Bank. In addition to the Accused Osmić, the witness mentioned Enis Sijamija, Ivković, Šego, and Ale Ajanović. Witness B1 testified that the foregoing persons abused the detainees outside the basement (which was flooded with water), on the staircase and the landing place, while some of them were taken upstairs to the corridor. The detainees were beaten with rifles, punched and kicked. Residents in the neighboring buildings could hear shouting and yelling, and there were cases when at two, three or four o'clock in the morning, they complained of the noise and yelling. The witness could not complain to anybody about this. As far as he knows, nobody was provided with any medical assistance. Witness B1 remembers that one detainee died of the injuries sustained. He worked in the second shift, and remembers that while he was there, one detainee was beaten and hit with whatever was handy. The witness did nothing to prevent this abuse since he was a "*stranger*" (as he was not originally from Bugojno). The witness warned the perpetrators against doing this. He watched the abuse of detainees from the staircase fence. The beating sometimes took place in the dormitory's corridor. The witness was never present downstairs when the detainees were beaten. They were beaten at the staircase too. The Appellate Panel gave full credence to this witness's testimony particularly bearing in mind that the witness is not from Bugojno, and that therefore he had no trait of "*loyalty*" toward the Accused, as obviously the other guards did with regard to the abuse of detainees.

143. The Accused himself admitted that the detainees were abused in the BH Bank, namely that some of them were abused and some were not. The Accused stated that he was not present when they were abused, but he heard the moaning. At the time, it was a situation of "*you are either with us, or against us.*" There were people who did not like what was being done but nobody dared say anything. The witness saw Ivo Miloš beaten; he was the only one he knew. The witness saw him by accident the first time he came to the BH Bank. According to the Accused, all the events related to the abuse of detainees took place in the basement.

144. Contrary to the foregoing statements, Defense witness Muhamed Ajkunić testified that he had no information about any abuse, that he saw no injuries on the men leaving the BH Bank, or that anyone was beaten. He worked day/night shifts at the reception. Two of them worked in one shift, while one alone worked for 12 hours during one shift. This witness testified that he sometimes spent 2-3 hours with the Accused in the Bank. They would often sit down and have a cigarette. Usually, if the witness was on duty, the Accused was off duty. Having analyzed this testimony, the Appellate Panel concluded that even though this witness probably had certain information about the abuse of detainees (particularly if it is taken into account that, according to witness B1, the abuse lasted non-stop), this witness was mostly absent when the Accused was present there due to their

internal agreement on shifts. It ensues from the foregoing that this witness could not even know that the Accused abused the detainees.

145. The other guard in the BH Bank, Jasmin Huskić, also testified that he had no information that anyone was abused while he was in the BH Bank, that he did not know how many persons were detained on the basement premises, that he did not see the injured members of the HVO, and that he was not interested in this. It ensues from this witness's testimony that it was obviously calculated to avoid incriminating the Accused, because it is impossible that a guard would have neither heard nor seen anything during the entire time the abuse lasted. According to this Panel, this witness could not have any information that the Accused abused the detained HVO members because the Accused himself testified that the guards agreed among themselves that one would be on duty for 12 hours, then the other for 12 hours and sometimes for 24 hours in order to help out each other.

146. The testimony of witness-injured party Željko Miloš is of particular significance for the Panel's conclusion that members of the Military Police, including the Accused, abused the detainees. According to this witness, the BH Bank was a seat of the ARBiH police. The witness testified that following their arrival in the BH Bank, they were placed in the basement flooded with a couple of centimeters of water, which was dark, and in which other detainees were held too. The witness further testified that the detainees were taken out every couple of hours, that he was beaten, that the Accused personally beat him by telling him *"Here comes our police officer"*; that the Accused used everything handy to beat them, from rifle to baton; that there were three-four other men with the Accused at the time. *"These were just the first blows. You subsequently just faint and that's that. When you regain consciousness, they call you out again"*⁶³. They were held in the BH Bank perhaps for a couple of days. The others were beaten too. The detainees gave no statement there; they were just brought and beaten there. They would regain consciousness for an hour or two, and they were beaten again. Šabić came one day with other driver, loaded them into a car, and drove up to a Mujahedeen camp. People went missing up there. Fortunately, this witness was the only one who survived and escaped. On the ninth day following his flight, his photo was taken in Rama (Prozor), with the injuries he sustained in the BH Bank.⁶⁴ The witness was wounded in his shoulder during the flight. Željko Miloš did not

⁶³ Transcript No.: XK-RK-09-781-1 dated 18 February 2010. Prosecutor: Hm, you say (you were) moaning. I am asking you were you interrogated there? Witness: Well, there was, every couple of hours they did the beating.

Prosecutor: I am persistently asking you were there any interviews, and were you questioned? Who beat you? Witness: It was Military Police, this gentleman here, Alija Osmić.

Prosecutor: Did he personally beat you? Witness: He beat me personally.

Prosecutor: Did he question you? Witness: Nothing. He only came and said: „Here he is, our police officer!“

Prosecutor: Did he address you? Are you a police officer? Judge: Let the witness have some water before you continue.

Prosecutor: He addressed you, did he? Witness: Yes.

Prosecutor: You say he was beating you. How did he do it? Witness: With whatever was handy to him, from a rifle to a baton. I do not know, some bed parts, I do not know whatever was handy.

Prosecutor: In which room? Witness: It was a room down there, the size of which was perhaps 2m or 2x2m, and it was flooded with water.

Prosecutor: Was anyone else present there while Alija Osmić was beating you? Witness: There were 3-4 men who came with him. Those were the first blows. Subsequently, you just faint and that's that. When you regain your consciousness, they call you out again (p. 24).

⁶⁴ Tendered in the case record as Exhibit **T-7** (Ten photos tendered during the testimony of witness Željko Miloš).

mention the Accused's name in his earlier statements. However, he mentioned him in this testimony because, at the time, he did not know the Accused's name, but when he saw him this time, he recognized the Accused, and he was certain that the Accused was the person who beat the detainees. This explanation is very convincing for this Panel given that the injured party-witness was certainly directly interested in remembering the appearance of the person who had abused him, and who made decisions about his destiny in those moments. The Accused came to abuse him once and kicked the witness, whereupon the others started abusing him. The Accused knocked him down and the witness saw him no more. Other persons, who had the same last name as the witness, had no time to tell the witness who had beaten them as they were beaten on an hourly basis, or were unconscious. The witness also described the place where the detained members of the HVO were abused. The witness stated that there was a room size 2x1m, a staircase, and an "ante chamber" in which they were beaten. This room had no doors so others could see everything.

147. Witness Ivica Kajić confirms that the abuse took place in the BH Bank, and that he was present there at the time. This witness testified that no detainee was called out for an interview in the BH Bank except for Dominik Kajić. Witness Kajić further testified that he did not know who had beaten them because he was absent from Bugojno for a number of years wherefore he knew just a few people. In fact, the abusers did not hide. The only person you could point your finger at was Ado whose health condition was obviously deteriorated. They changed shifts. The beatings took place on the stairs and at the entrance, in front of the room where they were held. This room was on the right side, at the bottom of the basement stairs. They sat at these stairs in groups. This Ado had a police badge mounted on a piece of cable with which he beat the detainees. His colleagues would tell him: "*Ado, this one cursed your mother*". As a result, Ado would go crazy and start beating them. Even though the witness stated that the Accused's appearance was familiar to him, he could not resolutely say that it was the Accused who beat him. It was very difficult to list all the beatings. Sometimes, they were beaten day after day. Sometimes, there were 2-day breaks between the beatings. The witness cannot identify his abusers as he had to keep his head bowed. The witness thought he could be beaten if he caught someone's eye. Police officers always came to the door, called out someone by his name, and took him out. The witness had no visible injuries as a result of being abused. The witness thinks that, unlike the others, he was lucky in a way as he had no head or spine injuries, or broken ribs. Essentially, the abuse of detainees depended on a day. They were mostly beaten by hands, punched and kicked. For example, this Ado used the so called baton.

148. The testimony of Josip Kalajica supported the testimony of the foregoing witness. Witness Kalajica had certain indirect information that the detainees were abused in the BH Bank. This witness described the BH Bank as a "*quality torture site*"⁶⁵. This witness confirmed that he was held at the *Iskra* Stadium, that upon their return from the BH Bank

⁶⁵ Transcript No. : X- KR-09-781-1 dated 4 February 2010 (the transcript is not numbered). **Prosecutor Terzić:** When you say to the BH Bank, do you, as a captured former soldier, know what was in the BH Bank, when you say "taking to the BH Bank"? **Witness Kalajica:** The BH Bank was a good quality torture chamber where the men were taken, including Marko Krajinović, Ivica Bartulović, Ivan, Ivan Miličević or Jurčević, or Ivan Juričić, Ivan Juričić. They were there for 55 days. Having returned from the BH Bank, Ivica Kalajić spoke about unbelievable number of times they were tortured during the day, and the horror they had survived.

the detainees spoke about the traumas experienced there. The witness remembered that Ivica Kajić was among these detainees too.

149. Bearing in mind such a state of facts and the consistent statements of all the foregoing Prosecution witnesses, this Panel cannot accept the Accused's submissions that he did not go down to the basement where certain captured HVO members were held; that a duty officer was in charge of them; that he only went down there when they moved into the BH Bank; that he had no information that the detainees were questioned in the BH Bank. This is so because the Accused obviously wants to deny his participation in the referenced events.

150. In view of the foregoing, the Appellate Panel has established that the Accused committed the criminal acts as described under Section 3 of the operative part of this Verdict.

3. The abuse of Marko Krajinović

151. The Appellate Panel has established that the Prosecution presented insufficient evidence to conclude and determine that the Accused committed the offenses charged against him in relation to injured party Marko Krajinović. More specifically, the statement which Marko Krajinović gave to the ICTY investigators, and which constituted most of the grounds on which the Prosecution had relied, does not contain required instruction for the witness related to the CPC of BiH provisions. The referenced statement was not given within any investigations, and therefore it has no probative value so as to constitute the grounds for a convicting verdict. Marko Krajinović passed away before the trial⁶⁶, wherefore the Defense could not cross-examine him. This Panel notes that pursuant to Article 3(2) of the Law on the Transfer of Cases from the International Criminal Tribunal for the Former Yugoslavia to the Prosecutor's Office of Bosnia and Herzegovina and the Use of Evidence Collected by the ICTY in the Proceedings before the Courts in BiH, a convicting verdict shall not be based solely or to a decisive extent on the prior statements of witnesses who did not give oral evidence at trial, wherefore the requirement to accept the referenced evidence has not been satisfied.

152. Notwithstanding that this Panel does not want to contest that Krajinović was abused, it cannot determine on the basis of this witness's statement that it was the Accused Osmić who abused him. More specifically, pursuant to the principle of *in dubio pro reo*⁶⁷, the Prosecutor bears the burden of proving the Accused's guilt, that is, the prosecution must prove his guilt beyond a reasonable doubt. This is so because in case that any reasonable doubt exists with regard to the existence of facts constituting the alleged criminal offense, the decision must not be rendered to the prejudice of the Accused.

⁶⁶ As ensues from documentary Exhibit: **T-8** – Death Register excerpt for Marko Krajinović, issued on 14 April 2010 in Bugojno.

⁶⁷ Prescribed under Article 3(2) of the CPC of BiH: „A doubt with respect to the existence of facts composing characteristics of a criminal offense or on which depends an application of certain provisions of criminal legislation shall be decided by the Court with a verdict and in a manner that is the most favourable for accused“.

153. Therefore, this Panel has held that the indirect statements of other Prosecution witnesses (Stipica Đapić and Ivica Kajić) cannot “strengthen” the value of Krajinović’s testimony, that therefore a convicting verdict cannot be based on this part of Krajinović’s testimony.

154. In view of the foregoing, the Appellate Panel has omitted from Section 3 of the operative part of the Verdict the charges pertaining to Krajinović.

III. LEGAL EVALUATION AND QUALIFICATION

155. Having evaluated the adduced evidence, individually and in combination, the Appellate Panel concluded that it was proven that the Accused Alija Osmić committed the criminal offense of War Crimes against Prisoners of War under Article 144 of the CC of SFRY.

156. The essential elements of the criminal offense of War Crimes against Prisoners of War under Article 144 of the CC of SFRY are as follows: 1) violation of the rules of international law; 2) the existence of protected category of prisoners of war; 3) commission of some of the foregoing acts, concretely the causing of great sufferings or serious injury to the bodily integrity or health.

157. Article 3(1)(a) of the Geneva Convention Relative to the Treatment of Prisoners of War prescribes that “In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply the following provisions implying 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, shall in all circumstances be treated humanely, without any adverse distinction founded on any grounds. To this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture”.

158. In view of the foregoing, and pursuant to the rule of Article 3(1)(a) of the Geneva Convention Relative to the Treatment of Prisoners of War, it is necessary to determine the existence of both an armed conflict (of non-international character) and a protected category of persons.

159. Article 4(A) of the Geneva Convention Relative to the Treatment of Prisoners of War⁶⁸ provides a definition of prisoners of war as a protected category of persons. In order

⁶⁸ Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy: 1) Members of the armed forces of a Party to the conflict as well as members of militias or volunteer corps forming part of such armed forces, 2) Members of other militias and members of other volunteer corps, including those of organized resistance movements, belonging to a Party to the conflict and operating in or outside their own territory, even if this territory is occupied, provided that such militias or volunteer corps, including such organized resistance movements, fulfil the following conditions: a) That of being commanded by a person responsible for his subordinates; b) That of having a fixed distinctive sign recognizable at a distance; c) That of carrying arms openly; d) That of conducting their operations in accordance with the laws and customs of war; 3) Members of regular armed forces who profess allegiance to a government or an authority not recognized by the Detaining Power; 4)

to establish if the treatment accorded by the Accused to the prisoners of war, that is, *in concreto* the captured members of the HVO, was in violation of Article 3(1)(a) of the Geneva Convention Relative to the Treatment of Prisoners of War, it should be determined if the injured persons in the concrete case were prisoners of war.

160. Therefore, in order for the Appellate Panel to establish violations of Common Article 3(1)(a) of the Geneva Convention Relative to the Treatment of Prisoners of War, the Prosecution must prove that the victim was a person who took no active part in the hostilities at the time of the commission of criminal offense.

161. "Persons taking no active part in the hostilities" also include those placed *hors de combat* by sickness, wounds, detention, or any other cause. In other words, captured persons who prior to detention were members of armed forces, or took part in armed hostilities fall within the group of protected persons in terms of Common Article 3.⁶⁹ Protocol Additional to the 1977 Geneva Conventions relative to the Protection of Victims of International Armed Conflicts has recognized the status of a combatant to any person being a member of organized armed forces, groups and units which are under a command responsible for the conduct of its subordinates and shall be subject to an internal disciplinary system which, *inter alia*, shall enforce compliance with the rules of international law applicable in an armed conflict. Combatants are obliged to distinguish themselves from the civilian population while they are engaged in an attack or in a military operation preparatory to an attack.

162. It ensues from the established state of facts that the Accused took the above mentioned prohibited acts during the armed conflict,⁷⁰ and against a protected category of persons: members of the HVO-a, that is, prisoners of war. In relation to this, the Appellate Panel concludes that the Accused Alija Osmić was aware of his offense and that he wanted the execution thereof, namely that the Accused was aware of the status of victims, and that by his actions during the armed conflict he violated Article 3(1)(a) of the Geneva Convention relative to the Treatment of Prisoners of War by inflicting onto his victims great suffering or serious injury to bodily integrity, as stated in the operative part of this Verdict. Thereby, the acts of the Accused have satisfied all the essential elements of the criminal offense of War Crimes against Prisoners of War in violation of Article 144 of the CC of SFRY, of which he was found guilty.

Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, war correspondents, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model; 5) Members of crews, including masters, pilots and apprentices, of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law; 6) Inhabitants of a non-occupied territory, who on the approach of the enemy spontaneously take up arms to resist the invading forces, without having had time to form themselves into regular armed units, provided they carry arms openly and respect the laws and customs of war.

⁶⁹ *Prosecutor v. Mladen Naletilić "Tuta" and Vinko Martinović "Štela"*, case No. IT-98-34-T, Verdict, 31 March 2003. (*Naletilić and Martinović*, First Instance Judgment), para 229. See also the Trial Judgment in *Blaškić*, para. 177 which quotes the Trial Judgment in *Tadić*, para 615.

⁷⁰ See paras. 22-26 of this Verdict in relation to the existence of an armed conflict.

IV. APPLICATION OF SUBSTANTIVE LAW

163. Article 3 of the CC of BiH prescribes the principle of legality as one of the basic principles of the criminal procedure. It reads as follows:

“(1) Criminal offences and criminal sanctions shall be prescribed only by law.

(2) 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.”

164. Article 4 of the CC of BiH prescribes the principle of time constraints regarding the applicability of the criminal code and reads as follows:

“(1) The law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence.

(2) 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.”

165. Article 4a) of the CC of BiH also prescribes an exemption from the application of Articles 3 and 4 of the CC of 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.”

166. Therefore, it ensues from the foregoing provisions that, as a rule, the law which was in force at the time the criminal offense was perpetrated (*tempus regit actum*) shall apply to a perpetrator thereof.

167. Any departure from this principle is possible only in the interest of the accused, that is, solely provided that the law was amended after the perpetration of the criminal offense, and provided that the amended law is more lenient to the perpetrator. The issue of which law is more lenient to the perpetrator shall be resolved *in concreto*, that is, by comparing the old and the new law in relation to each concrete case individually.

168. Comparing the texts of laws, however, can provide a certain answer merely if the new law has decriminalized something that was prescribed as a criminal offense under the old law, in which case the new law is obviously the more lenient law. In all other cases, when the criminal offense is punishable under both laws, it is necessary to determine all the circumstances that can be relevant to the selection of a more lenient law, that is, the law which provides a more favorable outcome to the accused.

169. Which law is more lenient shall depend on relevant circumstances. These circumstances primarily pertain to the provisions on sentencing, fashioning or reduction of sentence (which law is more lenient in this respect), caution measures, possible

auxiliary punishments, new measures that are being applied instead of a more stringent punishment (e.g. community service), security measures, legal consequences of the verdict, and the issue of whether the new law prescribes any grounds for the exclusion of unlawfulness, criminal liability or culpability, etc.

170. In the concrete case, both the law which was in effect at the time the criminal offense was committed (CC of the SFRY), and the law presently in force (CC of BiH) prescribed the criminal acts of which the Accused was found guilty as a criminal offense of War Crimes against Prisoners of War.

171. In view of the foregoing, it is clear that there are legal requirements to conduct the criminal proceedings against, and to punish the perpetrator of the criminal offense of War Crimes against Prisoners of War. This is so because the actions taken by the Accused are defined as a criminal offense under both the earlier applicable law, that is, the law which was in effect at the time the criminal offense was perpetrated, and under the presently applicable law, that is, the law which is in effect at the time of the main trial.

172. Which law is more lenient to the perpetrator shall be further evaluated by comparing the punishment prescribed by the law which was in force at the time of the criminal offense and the presently applicable law.

173. Under Article 175 of the CC of BiH, the criminal offense of War Crimes against Prisoners of War is punishable by a sentence of imprisonment for a term not less than ten (10) years or a long-term imprisonment. On the other hand, Article 144 of the CC of SFRY prescribes a sentence of imprisonment for a term not less than five (5) years or death sentence. Which law is more lenient shall always be determined *in concreto*, that is, by evaluating all circumstances pertaining to a concrete case.

174. In the case at hand, while determining which law is applicable to the concrete perpetrator, the Court shall compare the legal minimum sentence prescribed by both laws for the same criminal offense, and determine which law is less stringent for the perpetrator. More specifically, taking into account the acts of commission of the criminal offense, the form of the Accused's participation, and the degree of his responsibility, the Accused Osmić was found guilty because by violating the rules of international law during the war and the armed conflict between the ARBiH and the HVO, he abused the detained members of the HVO who had at the time enjoyed the status of a protected category of prisoners of war. This Panel concludes that the sentence in this concrete case should be fashioned toward the legal minimum prescribed sentence for the referenced criminal offense. Accordingly, comparing the sentence prescribed by the CC of SFRY and the CC of BiH in relation to the legally prescribed minimum, it is easy to determine that the CC of BiH is not a more lenient law to the perpetrator. This is so because the legally prescribed minimum sentence for the criminal offense of War Crimes against Prisoners of War under this law is imprisonment for a term of ten (10) years. In view of the foregoing, and pursuant to Article 4 of the CC of BiH, the Appellate Panel concludes that in the concrete case it is necessary to apply the CC of SFRY as the law which was in effect at the time the criminal offense was perpetrated. This is so because the subsequently passed law is not more lenient or more favorable to the Accused Osmić in the case at hand.

175. In view of the foregoing, the finding of the Appellate Panel is that the adopted CC of the SFRY should be applied to Accused Alija Osmić, as the law that was in force at the time the criminal offense was committed.

V. DECISION ON SENTENCE

176. Having applied the provisions on the reduction of sentence, the Appellate Panel imposed on the Accused Alija Osmić a sentence of imprisonment for a term of 3 (three) years. The Appellate Panel concluded that the punishment is appropriate to the gravity of the offense and the Accused's participation and role in the incriminating events, and that thereby the purpose of criminal sanction in terms of Article 33 of the adopted CC of SFRY will be achieved.

177. In view of the foregoing, the Appellate Panel has evaluated the extenuating and aggravating circumstances. Pursuant to the ICTY jurisprudence, this Panel has taken into account that the Prosecution must determine the aggravating circumstances⁷¹ beyond a reasonable doubt. The Defense, on the other hand, must establish the condition on the balance of probabilities – that more probably than not such a condition existed at the time⁷².

178. In meting out the sentence, the Panel has found no aggravating circumstances on the part of the Accused Alija Osmić. As to the mitigating circumstances on the other hand, the Panel took into account that the Accused had no prior convictions. The Panel was also mindful of the Accused's family situation (married, father of two minors, and seriously ill wife). Even though accused persons are expected to conduct correctly and observe the Court, the Panel has noted that the Accused behaved properly and observed the Court during the entire proceedings. This is apparent from the fact that the Accused has expressed additional respect for the Court, and at his own request, started serving his sentence of imprisonment under a non-final verdict even though he had already filed an appeal.

179. The Panel further concluded that the mitigating circumstances existed in the concrete case, which is apparent from a wider context within which the incriminating events took place, that is, from the difficult circumstances in which the Accused acted.

180. More specifically, just before the incriminating events took place in the Bugojno area as a result of the conflict, the Accused knew some of the killed Bosniaks either personally, or as his friends' close relatives. Bodies of these victims were found exactly during the days when the referenced events took place, or in the close vicinity of the crime scene. As a result of the foregoing, the population was embittered, a specific situation of grief and chaos⁷³ was created, due to which the acts of the Accused to a large extent constituted a reaction to the previous events. Therefore the Appellate Panel has held that the Accused's acts, participation and criminal liability could not be evaluated outside of the

⁷¹ Second Instance Judgment in *Čelebići*, para. 763; Second Instance Judgment in *Kajelijeli*, para. 294.

⁷² See, e.g. Second Instance Judgment in *Čelebići*, para. 590; Second Instance Judgment in *Kajelijeli*, para. 294.

⁷³ Testimony of witness Suvad Delić; O-10: Operative Report of the OG West Command, strictly conf. No.: 04/510-93, dated 20 July 1993; O-12: Document of SIS Bugojno, dated 28 June 1993 sent to the SIS Administration Mostar and Prozor; O-13: Regular Operative Report of the OG West Command, strictly conf. No. 03/474-93 dated 11 July 1993; O-15: Document of SIS Prozor dated 30 June 1993 sent to the *Dr. Ante Starčević* Brigade.

context of overall events, since such an examination would be partial, and would not satisfy the standards as prescribed under Article 41(1) of the CC of SFRY. In view of the foregoing, the Appellate Panel established that, in their entirety, all the referenced circumstances constitute a particularly mitigating circumstance justifying the application of the referenced provisions pertaining to the reduction of sentence.

VI. CUSTODY CREDIT

181. Pursuant to Article 50(1) and (2) of the CC of SFRY, the time the Accused spent in custody under the Decision of the Court of BiH dated 10 September 2009 No.: X-KRN 09/781 from 9 September 2009 until 8 October 2009, from 13 October 2009 until 22 April 2010, under the Decision of the Court of BiH No. S1 1 K 003429 09 Krl from 4 March 2011 until 29 March 2011, and serving the sentence of imprisonment from 29 March 2011 until 24 November 2011 under a non-final Verdict of the Court of BiH No. S1 1 K 003429 09 Krl dated 4 March 2011, was credited toward the sentence of imprisonment.

VII. DECISION ON THE COSTS OF PROCEEDINGS AND CLAIMS UNDER PROPERTY LAW

182. In view of the fact that the Accused is indigent and father of two minors, and that the Accused's wife is severely ill with cancer, the Appellate Panel has fully relieved the Accused of the duty to reimburse the costs of the criminal proceedings pursuant to Article 188(4) of the CPC of BiH. As to the acquitting part of the Verdict, the costs of the criminal proceedings will be paid from the budget appropriations pursuant to Article 189(1) of the CPC of BiH.

183. Given that the data obtained during the referenced criminal proceedings provided no reliable basis for either a complete or partial award, the injured parties were, pursuant to Article 198(2) of the CPC of BiH, instructed to pursue their claims under property law in civil action.

Record-taker: PRESIDENT OF THE PANEL

Melika Murtezić **JUDGE**

Azra Miletić

NOTE ON LEGAL REMEDY: No appeal lies from this Verdict.