

SUD BOSNE I HERCEGOVINE

СУД БОСНЕ И ХЕРЦЕГОВИНЕ

Number: X-KRŽ-05/04

Sarajevo, 7 August 2007

IN THE NAME OF BOSNIA AND HERZEGOVINA!

Court of Bosnia and Herzegovina, the Panel of the Appellate Division of Section I for War Crimes comprised of Judge Azra Miletić, as President of the Panel, and Judges Jose Ricardo de Prada Solaesa and Finn Lynghjem, as the Panel Members, with Željka Marenić participating as a legal advisor, in the criminal case against the accused Boban Šimšić for the criminal offence of Crimes against Humanity in violation of Article 172 (1) (h) in conjunction with Subparagraphs a), d), e), f), g), i) and k) of the Criminal Code of Bosnia and Herzegovina, with respect to the Indictment of the Prosecutor's Office of Bosnia and Herzegovina Number KT-RZ-2/05 of 28 June 2005, confirmed on 8 July 2005, upon the trial held in the presence of the Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina Mirko Lečić, the accused Boban Šimšić and his Defence Counsel, attorney Veljko Čivša, rendered and on 14 August 2007 publicly announced the following

VERDICT

THE ACCUSED BOBAN ŠIMŠIĆ, son of father Slobodan and mother Jelena, nee Mosić, born in Višegrad on 7 December 1967, with permanent residence in ..., Municipality of ..., ethnic ..., police officer by occupation, completed secondary education - locksmith, married, father of two minor children, served the military term as member of the former JNA in 1986 in Štip, registered in the military records of the Municipal Department of the Ministry of Defence in Višegrad, has not been decorated, indigent, no previous convictions, citizen of ..., personal ID number ..., in custody of the Court of BiH since 24 January 2005

Is found guilty

Because:

As a part of a widespread and systematic attack of the Serb Army, Police and paramilitary Serb formations led against the Bosniak civilian population in the territory of the Višegrad Municipality, being aware of that attack, as a member of the Reserve Police Forces of the Republika Srpska Ministry of the Interior, Višegrad Police Station, in the period from April to July 1992, he persecuted Bosniak civilian population on political, national, ethnic, cultural and religious background, by committing murders, incarceration, torture, enforced disappearance of persons and assisting in the rape inasmuch as:

1. On 18 June 1992, at around 10:00 am, together, in a group of several members of the Serb

Army and Police armed with rifles, he participated in the attack on the village of **Kuka** in the Višegrad Municipality and arrest and unlawful imprisonment of several dozens of Bosniak civilians, including women, children and men whom they took and detained on the premises of the Hasan Veletovac Elementary School in Višegrad, except for Omer Karišik and Redžo Šabanović whom they took away from the village and who have been unaccounted for ever since;

1a. On 25 July 1992, together, in a group of approximately ten members of the Serb Army and Police, he participated in the attack on the village of **Velji Lug** in the Višegrad Municipality in which, armed with rifles, they killed Mediha Ahmetpahić, Amela Ahmetpahić, Razija Ahmetpahić, Fata Sućeska, Safet Aljić, Latifa Ahmetpahić, Smaila Memišević, set ablaze the houses and business facilities owned by Bosniaks and took away several dozens of Bosniak civilians, including women, children and men and unlawfully detained them on the premises of the Hasan Veletovac Elementary School in Višegrad;

2. In the second half of June 1992, as a member of the Reserve Police Forces of the Republika Srpska Ministry of the Interior of Višegrad Police Station, while performing the duty of the guard in charge of securing Bosniak civilians detained on the premises of the **Hasan Veletovac Elementary School** building in Višegrad, several hundreds of them including women, children and men, together with other members of the Serb Army, Police and paramilitary formations, he participated in the killings, enforced disappearance and torture of the detainees, and he aided and abetted in coercing girls and young women into sexual intercourse in as much as:

2.a) On an undetermined date in the second half of June 1992, together with Milan Lukić, he singled out the Bosniak civilians **Ismet Bulatović, Šemso Poljo, Eniz Smajić** from the premises of the Hasan Veletovac Elementary School in Višegrad in which civilians were incarcerated, and they took them out of the school, whereupon they have been unaccounted for,

2.b) During the second half of June 1992, on several occasions, he singled out girls and young women who were unlawfully detained on the premises of the Hasan Veletovac Elementary School and took them away for procuring to other members of the Serb Army who were committing multiple rapes, beating up and humiliation of a number of female persons including: H.L.; Š.F.; A.N.; N.A.; H.S.; M.Z.; U.M.; H.A.

2.c) On an undetermined date, most likely on 28 June 1992, while being aware of acts which were going to be committed, he allowed Milan Lukić and other members of the Serb Army to enter the premises of the Hasan Veletovac Elementary School where Bosniak civilians had been unlawfully detained, whereupon they:

- singled out around twenty men and ordered them to go into another room where they kicked, punched and hit them with solid objects, inflicting serious physical injuries and mental

sufferings on **Jusuf Poljo, Mehmed Bajramović, Ramo Hurem, Hamed Hadžić, Ibrišim Hadžić, Avdo Aljić, Avdo Ferić, Abid Alijašević, Ibro Memić, Nail Ramić, Ibro Šabanović**, after which, **in the same night, Mehmed Bajramović was taken out of the building** of the Hasan Veletovac Elementary School whereupon he has been unaccounted for, and the next morning, when Mehmed's wife asked the accused Šimšić to tell her what had happened to her husband, he cursed “her Baliija’s mother“ */translators note: Baliija is a derogatory term for Muslims/* and slapped her across the face so that she fell down to the ground with her child;

- singled out **Hamed Hadžić** whom they beat up kicking him and treading on his body while he was lying on the floor, and when **Haša Hadžić**, Hamed' wife, ran up to beg that they refrain from abusing him because he was a heart patient, she herself suffered serious physical abuse having received multiple blows on the jaw, and after she had suffered the jaw fracture due to the force of the blow and fallen down, they continued with kicking her all over her body;

- after the accused, together with a group of the Serb Army members, had taken the minor girl S.H. out of the room in which the civilians were imprisoned, and after the girl had managed to escape and free herself, they had immediately singled out her mother H.R. aka Šuhra and in a corridor one of the soldiers from the group, holding her rather long hair with his both hands, lifted her off the ground and turned her body several times, thus pulling out most of her hair after which he started beating her on the head, chest, legs and back saying: “Why did you tell S. to run away from us” and then led her into the room together with the Accused and said: “Now we’re going to rip your hearts out and fry them on these plates”, pointing at red-hot plates of an electric stove and the Accused said laughing: “You’ll eat now until you’re stuffed”, and then the unknown soldier struck her again and on that occasion he broke her nose thus causing her heavy bleeding;

- took **Ibro Šabanović**, Bosniak civilian, out of the large room in which he was unlawfully detained together with other civilians into the corridor where Milan Lukić cut his throat with a knife and then threw his cut-off head among the other detained civilians;

T h e r e f o r e,

by the actions described in Sections 1, 1a, 2a, 2b, 2c of the operative part of the Verdict, as a part of the widespread and systematic attack directed against the Bosniak civilian population, being aware of such attack, he persecuted Bosniak civilian population on political, national, ethnic, cultural and religious grounds, in connection with murder, detention, torture, enforced disappearance of persons and aiding and abetting in the rapes,

Whereby he committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with Subparagraphs:

a) depriving another person of his life (murder),

- e) imprisonment,
 - f) torture,
 - g) coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to him, to sexual intercourse or an equivalent sexual act (rape);
 - i) enforced disappearance of persons;
- all of this in conjunction with Articles 29 and 31 of the Criminal Code of Bosnia and Herzegovina,

hence, by applying the referenced legal provisions and Articles 39, 42 and 48 of the Criminal Code of Bosnia and Herzegovina, the Court

S E N T E N C E S

HIM TO IMPRISONMENT FOR A TERM OF 14 (fourteen) YEARS

Pursuant to Article 56 of the BiH CC, the time spent in custody pending trial, starting on 24 January 2005 until committal to serve the sentence, shall be credited towards the sentence of imprisonment of the Accused.

Pursuant to Article 188 (4) of the BiH CPC, the Accused is relieved of duty to reimburse the costs of criminal proceedings.

Pursuant to Article 198 (1) of the BiH CPC, the injured parties Nail Ramić, Ibrumša Agić, Cura Gluščević, H.H., N.A., Hasena Bajramović, Vasvija Gluščević, Hajrija Kapetanović, Almasa Ahmetpahić, Almir Aljić, Salem Ahmetpahić, Ibro Memić, M.U., Fehima Čakić, Sajma Šabanović, Rusmira Bulatović, Fatima Poljo, L.H., Kada Spahić, F.Š., Ševka Šehić, R.H., Timka Kapetanović, Haša Hadžić and Ramiza Šabanović with their claims under property law are instructed to take civil action.

By contrast:

The accused Boban Šimšić

is acquitted of the charge
(Article 284, Paragraph c)

that:

1. On 17 June 1992, together with a group of several members of the Serb Army and Police armed with rifles, he participated in the attack and unlawful arrest of several dozens of civilians from the village of Žlijeb, including women, children and men, first firing their rifles at Bosniak houses ordered them to leave their houses and property and gather at the location of Carina; then they crammed them into the trucks by which they transported them and detained on the premises of the Firehouse in Višegrad;
2. On an undetermined date in the second half of June 1992, he took five girls and five young women, including H.H., out of the room in the **Firehouse** in Višegrad where the Bosniak civilians were detained, and took them to the adjacent room, and then, together with two Serb soldiers he beat them first with batons and kicked them and then, after all the girls and women had stripped naked upon his order, they raped them by turns, which lasted for two or three hours, on which occasion H.H. sustained injuries to her head in the form of hematomas and bumps as well as injuries to genitals in the form of bleeding;
3. On 18 June 1992, together with Milan Lukić, he singled out the following Bosniak civilians from the room in the Firehouse in Višegrad in which they were previously unlawfully incarcerated: Mujo Gluščević, Hasan Gluščević, Hasib Gluščević, Meho Agić, Emin Agić, Meho Softić, Samir Softić, Mustafa Šabanović, Avdija Nuhanović, Sead Hodžić, Adem Kozić, Dželal Hodžić, Dževad Hodžić, Salko Sućeska, Huso Bulatović, Husein Vilić, Hamed Kešmer, Ibrahim Kešmer and took them out of the Firehouse whereupon they have been unaccounted for, with the exception of Mujo Gluščević, Ibrahim Kešmer, Hamed Kešmer, Samir Softić, Emin Agić, Hasib Gluščević, Sead Hodžić, Huso Bulatović, Dželal Hodžić and Adem Kozić whose corpses were found during the exhumation at the location of Slap-Žepa;
4. In June 1992, while imprisoning civilians on the premises of the Hasan Veletovac Elementary School, the Accused, together with other members of the Serb Army and Police, participated in the forcible **appropriation of money and golden jewelry** from several hundred of imprisoned Bosniak civilians on which occasion they searched the civilians ordering them stripe naked, and extorted money from the imprisoned civilians by taking a group of male prisoners out of the prison room and demanding that their wives and mothers collect ransom money if they wanted to see them alive again;
5. During the stay on the premises of the Hasan Veletovac Elementary School, in the second half of June 1992, the Accused, together with other members of the Serb Army and Police, participated in the **beating up** of the unlawfully imprisoned Bosniak civilians by singling out a group of about twenty prisoners, including Ramo Hurem, Ibrišim Hadžić, Amer Hadžić, Avdo Ferić, Mustafa Smajić, Nail Ramić, whom they would order to beat one another all over their bodies with a wooden shaft (wooden handle of a pick) which caused many to fall on the ground, and of all prisoners they in particular used to beat up every night Nail Ramić whom, on the first day he was imprisoned, they placed under the basket while a group of Serb soldiers including the Accused were playing basketball targeting alternatively the basket and Nail's head with the ball so strongly that the injured party, Nail, would fall unconscious; on one of the subsequent evenings, the Accused, together with several unknown Serb soldiers, took Nail Ramić and four other prisoners out of the prison room and beat them up in another room by

punching them and kicking them with their army boots and rifle butts on their head and back and pulled their hair out, which caused Nail to faint, while his eyes were completely shut due to the blows he received on the eye area; during the search and appropriation of money from Mehmed Spahić, the Accused beat him up by hitting him several times with the rifle butt on the chest, head and the area between his shoulders due to which he was not able to walk without assistance so that some prisoners carried him on their arms on their way back to the prison room;

- because it has not been proved that the Accused committed the referenced criminal acts constituting the criminal offence – Crimes against Humanity in violation of Article 172 (1) of the BiH Criminal Code.

REASONING

By the Indictment of the Prosecutor's Office of Bosnia and Herzegovina (Prosecutor's Office of BiH), Number KT-RZ-2/05 of 28 June 2005, amended at the main trial of 19 June 2006, the accused Boban Šimšić was charged that, by the actions detailed under Counts 1a, 1b, 2, 3, 4a, 4b, 4c, 5a, 5b, 5c, 5d, 5e, 5f, 5g and 5h, he committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with Subparagraphs a), d), e), f), g), i) and k), and all of these in conjunction with Article 29 of the BiH CC.

By the Verdict of the Court of Bosnia and Herzegovina, Number X-KR-05/04 of 11 July 2006, the accused Boban Šimšić was found guilty that, by the acts described in the operative part of the referenced Verdict, under Sections 5b) he aided Serb Army members in causing enforced disappearance of persons and 5e) aided Serb Army members in coercing another person by force or by the threat of immediate attack upon their limb to sexual intercourse or an equivalent sexual act (rape), he committed the criminal offence of Crime against Humanity in violation of Article 172 (1) of the BiH CC, in conjunction with Paragraph i) – in relation to Section I.5.b) of the operative part and Subparagraph g) in relation to Section I.5.e) of the operative part, and these all in conjunction with Article 31 of the BiH CC (Accessory).

For the aforementioned criminal offence the first-instance Court sentenced him to imprisonment for the term of 5 years, and pursuant to Article 56 of the BiH CC, the time spent in custody pending trial, starting on 24 January 2005, was credited towards the sentence, whereas pursuant to Article 188 (4) of the BiH CPC, he was relieved of the duty to reimburse the costs of the criminal proceedings.

By the same Verdict, the Accused was acquitted of the charge that, in the manner described under Sections 1b), 2, 3, 4a), 4c), 5a), 5c), 5d), 5f), 5g) and 5h), he had committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with Paragraphs a) depriving another person of his life (murder), b) forcible transfer of population, e) imprisonment, f) torture and k) other inhumane acts of a similar character intentionally causing great suffering or serious injury to body or to physical or mental health, and all as read with Article 29 of the BiH CC, so that the charge that the Accused, under Sections 1a) and

4b), had committed the criminal offence of Crimes against Humanity in violation of Article 172 (1) h) in conjunction with Subparagraphs f) and k) of the BiH CC, was dismissed.

By the Decision of the Appellate Panel, Number KRŽ-05/04 of 5 January 2007, appeals of the Prosecutor's Office of BiH and the Defence Counsel for the accused Boban Šimšić were upheld, so that the Verdict of the Court of BiH, Number X-KR-05/04 of 11 July 2006 was revoked in respect of the convicting and acquitting part, and it was ordered that a trial be held before the Panel of the Appellate Division of the Department I for War Crimes of the Court of BiH.

At the trial which was held, pursuant to Article 317 of the BiH CPC, before the Appellate Panel of the Court of BiH, the Prosecutor of the Prosecutor's Office of BiH read out the amended Indictment, Number KT-RZ-2/05 of 19 June 2006, completely maintaining the opening statement given in the first-instance proceedings.

In the opening statement, the Defence Counsel for the Accused made a short reference to the evidence adduced at the previous trial, and he announced the presentation of new documentary evidence.

According to the Decision of the Appellate Panel, pursuant to Article 317 (2) of the BiH CPC, the following evidence was adduced during the trial before the Appellate Panel:

As evidence of the Prosecutor's Office of BiH, audio and video recordings of the following witnesses were heard and viewed: H.H., N.A., Hasena Bajramović, Ahmo Karišik, Hajra Kapetanović, Hamdo Ahmetpahić, Ibrumša Agić, Cura Gluščević, Vasvija Gluščević, Almasa Ahmetpahić, Almir Aljić, Salim Ahmetpahić, Ibro Memić, Fehima Čakić, Sajma Šabanović, Rusmira Bulatović, Nail Ramić, Fatima Poljo, Kada Spahić, L. H., M. U., F. Š., Ševka Šehić, Timka Kapetanović, R. H., Haša Hadžić and Ramiza Šabanović, as well as the confrontation between the witnesses Almasa Ahmetpahić and Slaviša Jovanović.

In addition, the Court reviewed a video recording of the statement given by the expert witness Dr. Hamza Žujo (report by forensic medicine expert witness and exhumations conducted at the place of Slap near Žepa and Točilo), Dr. Zdenko Cihlarž (report by forensic medicine expert witness and exhumations conducted in the area of the place of Velji Lug, Višegrad Municipality) and by the forensic pathologist Dr. John Clark who conducted forensic pathology analysis and identification of the victims from the mass grave Slap-Žepa, Rogatica Municipality; also, the Record of the statement of the witness Muniba Gluščević – the statement given for the Record of the Crime Police Sector in Goražde of 27 January 2004 – was read out.

Furthermore, the examination of the following documentary evidence was made: Judgment of the International Criminal Tribunal for the former Yugoslavia (ICTY) IT-98/32 "Višegrad" Prosecutor versus Mitar Vasiljević, Witness Examination Record for Nail Ramić made at the Goražde Crime Police Sector Number: 0702/3-1 of 27 January 2004 and Witness Examination Record for Nail Ramić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 26 May 2005, Witness Examination Record for Ibrumša Agić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 26 May 2005, Witness Examination Record for Cura Gluščević made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 31 May 2005, Witness

Examination Record for Hedija Hodžić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 30 May 2005, Witness Examination Record for Naila Ahmetagić made at the Goražde Crime Police Sector Number: 07-2/3-1 of 9 April 2004 and Witness Examination Record for Naila Ahmetagić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 25 May 2005, Witness Examination Record for Vasvija Gluščević made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 24 May 2005, Witness Examination Record for Hajra Kapetanović made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 30 May 2005, Witness Examination Record for Almasa Ahmetspahić made at the Goražde Crime Police Sector Number: 07-02/3-1 of 1 February 2005 and Witness Examination Record for Almasa Ahmetspahić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 31 May 2005, Witness Examination Record for Hamdo Ahmetspahić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 3 June 2005, Witness Examination Record for Ahmo Karišik made at the Goražde Crime Police Sector Number: 07-02/3-1 of 7 January 2004 and Witness Examination Record for Ahmo Karišik made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 3 June 2005, Statement by Ahmo Karišik of 29 October 1999, Witness Examination Record for Almir Aljić made at the Goražde Crime Police Sector Number: 07-02/3-1 of 1 February 2005 and Witness Examination Record for Almir Aljić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 27 May 2005, Witness Examination Record for Salim Ahmetspahić made at the Goražde Crime Police Sector Number: 07-02/3-1 of 1 February 2005 and Witness Examination Record for Salim Ahmetspahić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 27 May 2005, Witness Examination Record for Ibro Memić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 21 June 2005, Witness Examination Record for Mula Užičanin made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 31 May 2005, Witness Examination Record for Fehima Čakić made at the Goražde Crime Police Department Number: 07-02/3-1 of 8 February 2005 and Witness Examination Record for Fehima Čakić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 26 May 2005, Witness Examination Record for Saima Šabanović made at the Goražde Crime Police Sector Number: 07-02/3-1 of 19 November 2003 and Witness Examination Record for Saima Šabanović made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 25 May 2005, Witness Examination Record for Fatima Poljo made at the Goražde Crime Police Sector Number: 07-02/3-1 of 5 May 2004 and Witness Examination Record for Fatima Poljo made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 24 May 2005, Witness Examination Record for Rusmira Bulatović made at the Goražde Crime Police Sector Number: 07-02/3-1 of 5 May 2004 and Witness Examination Record for Rusmira Bulatović made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 24 May 2005, Witness Examination Record for Latifa Hodžić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 30 May 2005, Witness Examination Record for Kada Spahić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 26 May 2005, Witness Examination Record for Fata Šabanović made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 24 May 2005, Witness Examination Record for Ševka Šehić made at the Goražde Crime Police Sector Number: 07-02/3-1 of 5 May 2004 and Witness Examination Record for Ševka Šehić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 25 May 2005, Witness Examination Record for Razija Hurem made at the Goražde Crime Police Sector Number: 07-02/3-1 of 8 February 2005 and Witness Examination Record for Razija Hurem made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 25 May 2005, Witness Examination Record for Haša Hadžić made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 25

May 2005, Witness Examination Record for Timka Kapetanović made at the Prosecutor's Office of BiH Number: KT-RZ-2/05 of 30 May 2005, Death Certificate for Redžo Šabanović Number: 04-202-7218/04 of 30 November 2004, Death Certificate for Ismet Bulatović Number: 202-5293/04 of 21 June 2004, Exhumation Record, Cantonal Court in Sarajevo Number: Kri-364/00 with photo-documentation, sketch of the scene and autopsy report (Mujo Gluščević), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-358/00 with photo-documentation, sketch of the scene and autopsy report (Ibrahim Kešmer), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-357/00 with photo-documentation, sketch of the scene and autopsy report (Hamed Kešmer), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-332/00 with photo-documentation, sketch of the scene and autopsy report (Samir Softić), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-367/00 with photo-documentation, sketch of the scene and autopsy report (Emin Agić), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-347/00 with photo-documentation, sketch of the scene and autopsy report (Hasib Gluščević), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-448/00 with photo-documentation, sketch of the scene and autopsy report (Sead Hodžić), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-335/00 with photo-documentation, sketch of the scene and autopsy report (Huso Bulatović), Exhumation Record, Cantonal Court in Sarajevo Number: Kri-334/00 with photo-documentation, sketch of the scene and autopsy report (Dželal Hodžić), Reports on forensic search of the scene, Ministry of Internal Affairs – Sarajevo (refers to evidence under Number 52-58), six (6) reports, Exhumation Record, Cantonal Court in Sarajevo Number: Kri-456/00 with photo-documentation, sketch of the scene and autopsy report,

Exhumation Record, Cantonal Court in Sarajevo Number: Kri-493/00 with photo-documentation and autopsy report (Hasan Gluščević), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene Number: 14/2003, Report on Forensic Expertise and DNA Analysis for Safet Aljić (case Number 608), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene Number: 14/2003, Report on Forensic Expertise (case Number 609), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene Number: 14/2003, Report on Forensic Expertise (case Number 610), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene Number: 14/2003, Report on Forensic Expertise (case Number 611), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene Number: 14/2003, Report on Forensic Expertise (case Number 612), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene No: 14/2003, Report on Forensic Expertise (case Number 613), Photo-documentation of the exhumation, Velji Lug, Višegrad, Number: 15/03 with sketch of the scene Number: 14/2003, Report on Forensic Expertise (case Number 614), Report on On-site Investigation, Cantonal Court Goražde Number: Kri-4/03 of 27 May 2003, Report on completed exhumation dated 19 May 2003 of the Federation Commission on Missing Persons, Official Note, Cantonal Court Goražde Number: Kpp: 2/05 of 28 January 2005, Receipt on Hand-over of a person deprived of liberty, Court Police Number: Sp-10-19/05 of 24 January 2005, Receipt on Take-over of a person deprived of liberty, Number: Sp-10-19/05 of 24 January 2005, Record on Depriving of Liberty, Police Administration Sarajevo Number: 09-12/01-04-7-2808 of 24

January 2005, Decision on Custody, Cantonal Court Goražde No: Ki:21/02 of 15 April 2003, Decision on Extending the Custody, District Court Istočno Sarajevo Number: Kv-8/05 of 23 February 2005, Decision on Extending the Custody, Supreme Court of the Republika Srpska Number: Kr-17/05 of 12 May 2005, Decision of the Supreme Court of the Republika Srpska Number: Kž-76/05 of 9 May 2005, Decision of the Supreme Court of the Republika Srpska Number: Kž-88/05 of 14 June 2005, Official Note of the meeting held in the United Nations Mission in Sarajevo of 11 May 2005, Official Note of an interview with Hazim Ahmetagić made in the Prosecutor's Office of BiH on 23 June 2005, Photograph of the suspect Boban Šimšić, Sentencing Report of Višegrad Police Station Number: 13-1-11/02-234-60/05 of 6 June 2005, Employment Record for Boban Šimšić, Memo of the Public Security Centre Istočno Sarajevo, Višegrad Police Station Number: 13-1-11/01-29-52/05 of 17 June 2005.

At the trial, a review of the 1 August 1992 Payroll was conducted. This Payroll includes the members of the reserve police forces of the Višegrad Public Security Station employed on permanent basis who were paid June 1992 salaries. The following documents were also reviewed: Death Certificate for Samir Softić Number 03-202-225/05 of 11 July 2005, Death Certificate for Hasan Gluščević Number 03-202-223/05 of 11 July 2005, Death Certificate for Dželal Hodžić Number 03-202-224/05 of 11 July 2005, Death Certificate for Omer Karišik Number 03-202-221/05 of 11 July 2005, Death Certificate for Redžo Šabanović Number 03-202-222/05 of 11 July 2005.

With the agreement of the parties, video-recordings of the testimonies of the following witnesses of the Defence were reviewed: Almasa Ahmetpahić, Fata Šabanović, Munir Ahmetagić, Samir Bulatović, Asmir Spahić, Stojan Papić, Dragoljub Papić, Zoran Šimšić, Milosav Šimšić, Stanimir Šimšić, Goran Miličević, Miloje Joksimović, Hana Softić, Ilija Gavrilović, Slaviša Jovanović, Slaviša Đurić, as well as the testimony of the accused Boban Šimšić which he gave as a witness, and also the video-link of the testimony of the witness Mitar Vasiljević given by video-conference between a detention unit in Graz (Austria) and the Court of BiH.

Also, the video-recording showing the testimony of the expert-witness of the Defence Sekula Mičić (forensic graphologist analysis) was viewed as well..

Besides, the testimonies were read out from a transcript of the trial before the ICTY in the Mitar Vasiljević Case, more precisely, of the Witness VG 105, as well as the statements of the witness Timka Kapetanović given to a Hague investigator on 23 March 2001 and A.N. of 12 June 2000, also given before an ICTY investigator.

Material evidence of the Defence were reviewed: DVD recording of the statement of the witness Ismet Softić, given on 10 August 2005 (evidence secured by the court), documents of the State Commission for the collection of facts on war crimes committed in the territory of the RBiH Numbers 9067/95 and 4480/94, Statement of Fata Šabanović Number 9067/95 of 1995, given to the employees of the State Commission for the collection of facts on war crimes, Official Letter of the Prosecutor's Office of BiH Number KT-RZ-2/05 of 18 August 2005, ICRC records on missing persons in the territory of BiH, issue of 1998, pages 355 and 357, Official Note of the Goražde Crime Police Sector Number 07-02/3-1-39 of 6 June 2003, ICTY Judgment Number IT-98-32 in the Prosecutor versus Mitar Vasiljević Case, photo-

documentation, Death Certificate for Dželal Hodžić Number: 03-202-224/05 of 11 July 2005 issued by the Registry Office of the Višegrad Municipality, medical documents of the Health Institution in Užice for Slaviša Jovanović, Certificate Number 136/12.05.2006 of the Stara Pazova Red Cross of the place of residence of Slaviša Jovanović, Certificate of Employment Number 255/06 of 11 May 2006 for Milosav Šimšić, Death Certificate Number 03-202-287/05 of 7 September 2005 for Dragomir Šimšić, Death Certificate for Perko Šimšić Number 03-202-288/05 of 7 September 2005.

Furthermore, the following video-recordings of evidence obtained by the Court in the first-instance proceedings were also reviewed: Statements of the witnesses Elbisa Ahmetaš and Selma Kilalić, Statement of the expert witness Prof. Esad Bilić (graphologist expert witness), video-recording of the crime scene investigation in the Višegrad Firehouse and Hasan Veletovac Elementary School, currently named Vuk Karadžić, and also the photo-documentation and the sketch of the scene under Number 17-02/8-04-1-13/06 were reviewed.

At the trial, the Defence filed the following written documents as new evidence: the Certificate of the Novi Grad Municipality Number 04-41-7-SL/07 of 14 February 2007 for Omer Karišik, Certificate of the VJ 5068 Number 30-25-22-12-03/41-1-2-80/00 of 17 April 2000 for Omer Karišik, Certificate of the Town Command of Visoko Number 06-650-42/95 of 24 October 1995 for Redžo Šabanović, Certificate of the Zenica Administration for Defence Number 19-17-04-34-1-4-255/01 of 11 July 2001 for Fata Šabanović, Certificate of the Federation Ministry of Defence Number 18-17-04-41-1-86-1/04-221 of 19 October 2004 for Redžo Šabanović, Decision of the Municipal Secretariat for Protection of War Veterans and Invalids Number 09/2-5621-1.1/95 for Fata Šabanović and Official Letter of the Ilijaš Municipality Number 03-41-11/07 of 25 January 2007 for Fata Šabanović.

Both parties proposed the adducing of new evidence which was not adduced during the first-instance proceedings, and in this regard, the Prosecutor's Office of BiH proposed that Medina Trebo be heard as a witness, whereas the Defence proposed that Amra Hendo be heard as a witness in respect of the circumstances of taking the statement of the witness Almasa Ahmetpahić at the Goražde Ministry of the Interior, and also in respect of taking statements of some other witnesses. The Defence further proposed that, pursuant to Article 4 of the Law on the Transfer of Cases, the fact that the accused Mitar Vasiljević was hospitalized in the Užice Hospital, Orthopedic Clinic, in the period from 14 to 28 June 1992 due to fracture of the leg, laid down in the Judgment of the Hague Tribunal from the Vasiljević Case be accepted as proved, and in this regard, that the Court officially obtain the transcripts from the trial before the ICTY in the Mitar Vasiljević Case, of the witnesses Aleksandar Mojević (3 December 2001), Miloško Vasiljević (16 November 2001), Petar Mitrović (19 and 20 November 2001), Ilija Zečević (19 November 2001), Ratomir Šimšić (20 November 2001), Živorad Savić (20 and 21 November 2001), Goran Lončarević (21 and 22 November 2001), Miloje Novaković (22 November 2001), Dobrivoje Sikirić (22 November 2001), Radomir Vasiljević (22, 23 and 26 November 2001), Milena Tomašević (26 November 2001), Slobodan Simić (26 and 27 November 2001), Slavica Pavlović (27 and 28 November 2001), Borislav Martinović (29 November 2001), Slavica Jevtović (29 November 2001) and Ivan Jovanović (29 and 30 November 2001); as well as documents: Record Book of the Health Center in Višegrad for the year 1992 (Exhibit No. 26), Record Book of all the patients for the year 1992 of the Užice

Hospital (Exhibit No. 136), Book of patients from the theater of war of 6 April 1992 of the Užice Hospital (Exhibit No. 137), Discharge Card of the Užice Hospital for Mitar Vasiljević (Exhibit No. 30), and it was proposed in writing that the forensic medicine expert witness Dr. Igor Đokić and the maxillofacial surgery expert witness Dr. Ratko Radović be summoned.

The Court rejected the stated proposals of the Prosecutor's Office of BiH and of the Defence, finding that the Prosecutor's Office of BiH had not provided valid reasons, which could be regarded as legitimate, stating that the hearing of this witness was not possible in the first-instance proceedings, whereas in respect of the witness of the Defence, the Panel found that it was indisputable that Amra Hendo, the employee of the Ministry of the Interior, had made official notes on the interview made with Almasa Ahmetpahić, and it considered that summoning her as a witness was not necessary and that it would not be essential for establishing relevant facts in these criminal proceedings.

As for the other pieces of evidence proposed by the Defence which refer to the hip injury of the Defence witness Slaviša Jovanović at the time of the critical event in the village of Velji Lug and the alibi of Mitar Vasiljević for the period between 14 and 28 June 1992, the Panel found that those facts were irrelevant for the adjudication in this legal matter, because as such they do not exclude the possibility that the Accused took the actions in the stated time periods, as charged, since he is prosecuted for the actions which he personally and willfully took.

In addition, the Panel reviewed the ICTY Judgment in the Hague, Number IT-98/32, and it assessed, in the first place, that Mitar Vasiljević's alibi could not be the fact that could be accepted as established because it could not pass the test for accepting facts as established given that it refers to the individual criminal responsibility; also, based on the Reasoning of the referenced Judgment and as a result of the presented evidence, through evaluation of the evidence, after completion of the testimony of the witness from the list, dated 19 May 2007, whose transcript was requested to be read out, it ensues that even the Tribunal did not find that Mitar Vasiljević's alibi was an established fact, but he was acquitted of charges for the critical period, by the application of the *in dubio pro reo* principle.

Procedural Objections-

In the Status Conference of 14 February 2007, attorney Veljko Čivša, Defence Counsel for the Accused, raised an objection concerning the composition of the Panel in respect of the rendering the Verdict "In the Name of BiH" pursuant to the Criminal Procedure Code of BiH, given that the Panel is composed of two international judges and one local judge, and all of this in relation to the Right to a fair trial referred to in Article 6 (1) of the ECHR, stipulating that the accused is entitled to a fair trial before an independent, impartial, competent tribunal established by law.

The Court completely refused this objection, given that according to the European Convention on Protection of Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court for Human Rights (ECtHR), the primary institutional guarantee for a fair trial

is that decisions shall not be taken by political institutions, but by impartial and independent court established by law. It is beyond doubt that this Court is free to take decisions impartially, and that it is competent to try this case on the basis of law. The objection with regard to the impartiality is a very serious one and it concerns each single member of the Panel, as well as the Panel as a whole. It is a well known fact that this Court differs, both in its organization and its jurisdiction, from other courts in Bosnia and Herzegovina. The Law on the Court of Bosnia and Herzegovina was adopted by the Parliamentary Assembly of BiH, which implies that it was adopted on the basis of the decision rendered by the supreme legislative body of the State. Article 65 of this Law stipulates:

(2) The President of the Court, after consultation with the international Registrar shall be competent to assign judges of Section I and Section II of the Criminal and Appellate Divisions to any Chamber, or Panel. Section I and Section II Panels shall be composed of both national and international judges.

(4) During the transitional period, a number of international judges may be appointed to Section I and Section II of the Criminal and Appellate Divisions. An international judge may be appointed to both Section I and Section II of the Criminal and Appellate Divisions. International judges shall not be citizens of Bosnia and Herzegovina or of any neighboring state.

(5) An International judge of Section I and Section II of the Criminal and Appellate Divisions may serve as a preliminary proceeding judge, a preliminary hearing judge or as a single trial judge in proceedings before Section I and Section II of the Criminal and Appellate Divisions.

(6) An International judge of Section I and Section II of the Criminal and Appellate Divisions may serve as a judge in the panel as referred to in Article 24 (6) of the Criminal Procedure Code of Bosnia and Herzegovina, including the panel as referred to in Article 16 of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses of Bosnia and Herzegovina, in proceedings before Section I and Section II of the Criminal and Appellate Divisions.

Furthermore, Article 21 of the Rules of Procedure of the Court of BiH stipulates:

(1) Permanent panels of Section I and Section II of the Criminal and Appellate Division (hereinafter: Section I and Section II) shall be composed of three judges, one of whom shall be the Presiding Judge as decided by the President of the Court. There shall be international judges assigned to each panel during the transitional period pursuant to the Law on the Court of BiH.

(4) A judge from a permanent panel may serve as a preliminary proceedings judge, preliminary hearing judge, individual trial judge or a panel member in accordance with the law. If the law does not define the composition of the Court when deciding on a

certain issue, the individual judge or the presiding judge of the panel assigned to the specific case shall be competent to render decision.

The wording of the quoted articles of the Law on the Court and the Rules of Procedure of the Court is provided for the transitional period which, under the Law on the Court, will not last longer than 5 years, whereupon only local judges will try the cases before this Court. Given that this Court is established under the law, and that the legislator defined the term of office of the international judges who, as is prescribed, may *inter alia* serve as an individual trial judge, and by that very fact (e.g. under the agreement of parties) reach a verdict “In the Name of BiH“, in that way, the independence and impartiality of the Court are not called into question nor is the right of the Accused to a fair trial, as guaranteed by Article 6 of the ECHR, violated. The attribute "national court“ does not arise from the nationalities of judges, but from the fact that it is established on the law which is a part of internal legislation.

Evaluating all the adduced pieces of evidence, both individually and in their correlation, the Court decided as stated in the operative part for the following reasons:

General elements of the criminal offence

The following general elements of this criminal offence ensue from the legal definition of the criminal offence of Crimes against Humanity referred to in Article 172 (1) of the BiH CC, in conjunction with the acts of commission stated in the operative part of the Verdict, with which the accused is charged:

- the existence of a widespread or systematic attack,
- that the act was committed as a part of such attack,
- that the attack was directed against civilian population,
- that the Accused knew about such attack.

The Prosecutor's Office claimed that, at the time when the Accused committed the offences he is charged with, there was an ongoing widespread and systematic attack of the Army and Police of the Serb Republic who were assisted by the JNA forced and paramilitary units who used to come from Serbia and Montenegro, which was directed against civilian population of Bosniak ethnicity in the area of the Višegrad Municipality and in Eastern Bosnia.

For the purpose of proving this essential element of the criminal offence of War Crimes against Humanity, the Prosecutor's Office moved that the Court review the Judgments of the ICTY Trial and Appellate Chambers in the Prosecutor versus Mitar Vasiljević Case, more specifically, IT-98-32-A of 25 February 2004 and IT-98-32-T, the Judgment of 29 November 2002, and pursuant to Article 4 of the Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of BiH and the Use of Evidence Collected by ICTY in Proceedings before the Courts in BiH (Law on Transfer), to accept as established the facts referring to the existence of a widespread and systematic attack (widespread and planned attack) on civilian Bosniak population as set out in the referenced Judgments and detailed in the proposal of the Prosecutor's Office of BiH of 20 February 2006.

Considering the Motion of the Prosecutor's Office referred to above, pursuant to Article 4 of the Law on Transfer, the Court decided to partially grant the Motion. Thus, some of the facts established in the final ICTY Judgment in the Prosecutor vs. Mitar Vasiljević case (IT-98-32) were accepted as relevant, and those are:

- „From early 1992, Muslim citizens were disarmed or requested to surrender their weapons. In the meantime, Serbs started arming themselves and organised military training.“(p. 41) .
- „Muslims also attempted to organise themselves, although they were much less successful in doing so“. (p. 41)
- „From 4 April 1992, Serb politicians repeatedly requested that the police be divided along ethnic lines “. (p. 42)
- „Soon thereafter, both of the opposing groups raised barricades around Visegrad, which was followed by random acts of violence including shooting and shelling.“ (p. 42)
- „Many civilians fearing for their lives fled from their villages“. (p. 42)
- „The JNA also set up negotiations between the two sides to try to defuse ethnic tension“. (p. 43)
- „Some Muslims, however, were concerned by the fact that the Uzice Corps was composed exclusively of Serbs“. (p. 43)
- „Soon thereafter, convoys were organised, emptying many villages of their non -Serb population“. (p. 44)
- „On one occasion , thousands of non-Serbs from villages on both sides of the Drina River from the area around the town of Visegrad were taken to the football stadium in Visegrad“. (p. 44)
- “On 19 May 1992, the JNA withdrew from Visegrad. Paramilitary units stayed behind, and other paramilitaries arrived as soon as the army had left town. Some local Serbs joined them “. (p. 45)
- “Those non-Serbs who remained in the area of Visegrad, or those who returned to their homes, found themselves trapped, disarmed and at the mercy of paramilitaries which operated with the complicity, or at least with the acquiescence, of the Serb authorities, in particular by the then Serb-only police force”. (p. 47)
- “As early as June 1992, non-Serb civilians were arbitrarily killed”. (p. 49)
- “Many other incidents of arbitrary killings of civilians took place in Visegrad during this period”. (p. 51)

- “From early April 1992 onwards, non-Serb citizens also began to disappear”. (t. 51)
- “Hundreds of other Muslim civilians of all ages and of both sexes were exhumed from mass graves in and around Visegrad municipality“ (p. 52)
- “The number of disappearances peaked in June and July 1992. Sixty-two percent of those who went missing in the municipality of Visegrad in 1992 disappeared during those two months. Most if not all of those who disappeared were civilians”. (p. 53)
- “Many non-Serb civilians who had not yet fled were systematically expelled in an orderly fashion. Convoys of buses were organised to drive them away, and the police force sometimes escorted them”. (p. 55)
- “Muslim homes were looted and often burnt down”. (p.55)
- “The two mosques located in the town of Visegrad were destroyed”. (p. 55)
- “Today, most of the people living in Visegrad are of Serb ethnicity”. (p.56)

This part of the Judgment of the Trial Chamber was not contested by the final ICTY Judgment.

Article 4 of the Law on the Transfer of Cases stipulates that the courts, after hearing the parties, may *proprio motu* or at the request of a party decide to accept as proven those facts that are established by legally binding decisions in any other proceedings by the ICTY. Given that the Law on the Transfer of Cases does not stipulate criteria which must be met in order for a particular fact to be regarded as “adjudicated“, reviewing the facts relevant for the adjudication in this legal matter and bearing in mind the obligation to respect the rights to a fair trial guaranteed by the European Convention on Human Rights and Fundamental Freedoms (ECHR), as well as by the BiH CPC, the Panel applied the criteria which the ICTY, in this regard, established in the Decision of 28 February 2003 in the Prosecutor versus Momčilo Krajišnik Case.

The referred criteria which supplement Rule 94 (b) (judicial notice) of the ICTY Rules of Procedure and Evidence require that an adjudicated fact may be admitted if it is distinct, concrete and identifiable; if it is restricted to factual findings and does not include legal characterizations; it was contested at trial and forms a part of judgment which has either not been appealed or has been finally settled on appeal; it was contested at trial and now forms a part of judgment which is under appeal but falls within issues which are not in dispute during the appeal; furthermore, it does not attest to the criminal responsibility of the accused; it is not the subject of a (reasonable) dispute between the parties in the case; it is not based on plea agreements in previous cases and it does not impact on the right of the accused to a fair trial. Given that the cited facts from the ICTY final judgments completely fulfill the referenced criteria, having considered them, the Court draw a legal conclusion about the existence of a wide-spread and systematic attack on civilian population, as was correctly established by the first-instance Verdict of this Court.

The conclusion that it indeed was a widespread and systematic attack directed only against the Bosniak civilian population is additionally substantiated by the statements of the heard witnesses, both the witnesses for the Prosecution, including among others Nail Ramić, N.A., Fatima Poljo, Fata Šabanović, Ibro Memić, R.H., Almasa Ahmetpahić, and the witnesses of the Defence: Hana Softić, Ismet Softić, Asmir Spahić and Stanimir Šimšić. All these witnesses confirmed and described in their statements that, at the time stated in the Indictment, a mass persecution, ethnic cleansing, murder and rape of a large number of people – Bosniak civilian population – were committed, due to which that population was exposed to a constant physical and mental abuse.

From the statements of the referenced witnesses, in respect of the accepted facts, and bearing in mind the pattern and the dynamics of the committed crimes which took place in the area of the Višegrad Municipality (murders, rapes, taking people away, expulsion, destruction and looting, and destruction of property) at the relevant time period, the Appellate Panel concludes that the acts of violence which resulted in a large number of victims, were of an organized and systematic nature, and that they were aimed solely at Bosniak civilian population.

Regarding the other essential elements of the criminal offence, it is beyond doubt that in the indicated time period the Accused was a member of the Reserve Forces of the RS Police, which ensues from the Certificate of the Ministry of the Interior - CJB */Public Security Center/* Istočno Sarajevo Number 13-05/1-110.128/05 of 15 April 2005 confirming that Boban Šimšić, born on 7 December 1967 in Višegrad, was employed by the RS Ministry of the Interior, Višegrad PS */Police Station/* as a police officer from 19 December 1993 to 15 October 2003, and the Payroll of the CJB Trebinje-SJB */Public Security Service/* Višegrad dated 1 August 1992 indicating employees on a permanent basis and Reserve Forces of Police to be paid salaries for June 1992, where under number 35 the name of Boban Šimšić was listed. Besides, this ensues also from the testimonies of witnesses Ilija Gavrilović and Goran Miličević who were heard as witnesses for the Defence. Finally, this fact is not contested by the Accused either as, in the testimony he gave as a witness during the hearing, he confirmed that he had been mobilized in the Reserve Forces of Police on 19 April 1992.

Bearing in mind the aforementioned, it has been found that the Accused was a part of the dominant army and police formation which carried out the attack expounded above. From other facts and circumstances the Panel found the existence of a further nexus between the acts of the Accused and the attack at the civilian population, more specifically, the fact that the actions and perpetrations of the Accused were directly connected with the attack.

In particular, as a member of the Reserve Police Forces, performing his regular police duties of which he himself testified, the Accused could not have been unaware of the daily developments due to the massive scale of the attack and the comprehensiveness of the operation of the Serb forces in the territory under their control. In the particular case, it was by no means a sporadic and an isolated incident, or individual crimes which could be regarded as exception, but it was a systematic method of behavior towards the Bosniak civilians, their lives, freedom and property.

Relevant evidence which will be stated for each Section of the operative part of the Verdict respectively confirms that the accused Boban Šimšić was involved in terrorizing of the non-Serb population in the villages and in the Hasan Veletovac Primary School where Bosniak civilians were unlawfully detained at the critical time period. He was present, i.e. he saw and personally participated in the events which took place in the villages of Kuka and Velji Lug, and consequently he must have known about the attack at the Bosniak civilian population. Each individual offence of the Accused of which he was found guilty by this Panel on the basis of the adduced evidence, was committed by the Accused while he was a member of the Reserve Forces of the RS Police and was aimed at civilians, and it arises from the overall assessment of the heard witnesses' statements, which will be analyzed in detail during their assessment in respect of individual actions which the Accused took, that not only did he know about the existence of a widespread and systematic attack, but his actions constituted a part of that attack.

More specifically, the fact that the Accused participated in the attack at the villages of Kuke and Velji Lug and enabled the abuse, forced taking away and murders, as well as rape of the forcibly detained Bosniak civilians which, beyond doubt, fit in the context of a great number of the acts of violence taking place at the time, clearly indicates that the Accused was fully aware of his actions and their consequences, and he just wanted them to be a part of such an attack, whereby all the essential elements of the criminal offence of Crimes against Humanity are met.

Individual Sections of the Operative Part of the Verdict

In respect of the specific actions that include all the essential elements of this criminal offence, the Panel concluded, based on the following pieces of evidence, that the Accused committed the criminal offence as indicated in the operative part of this Verdict:

In respect of the criminal actions of which the Accused has been found guilty under **Section 1** of the convicting part of the Verdict (Count 2. of the amended Indictment) which refers to the fact that on 18 June 1992, at around 10:00 hours, together, in a group of several members of the Serb Army and Police armed with rifles, the Accused participated in the attack on the village of Kuke in the Višegrad Municipality, the arrest and unlawful imprisonment of several dozens of Bosniak civilians, including women, children and men whom they took away and incarcerated in the premises of the Hasan Veletovac Elementary School in Višegrad, except for Omer Karišik and Redžo Šabanović whom they took away from the village after which they have been unaccounted for, the Court bore in mind, in the first place, the testimony of the witness Šefka Šehić as she was a direct eye-witness of the referenced event, as well as the testimonies of the witnesses Ramiza Šabanović and Ahmo Karišik.

More specifically, the witness **Šefka Šehić** stated in her testimony that she had to leave her village of Mala Gostilja because of Chetniks who wanted to cleanse it and that she knew that all villages in Župa, on the right shore of the lake facing Serbia, had been torched and cleansed by Chetniks and that they had fled to Višegrad shortly before May. When they decided to go to Žepa, there were more than 50 of them; they reached Kuka and were watching with

binoculars the following 5 members of the Šimšić family coming down: Boban who unlike the others had a beard, Andrija, Cane, Milosav and Zoran.

Boban, Milosav and Andrija wore camouflage Chetniks' uniforms and were equipped with bombs and Kalashnikovs. When the shooting started, the people dispersed and about ten remained, so they were captured. Cane drove them as far as Gornja Kuka wherefrom they were marched on by Boban and Andrija. They met there Omer Karišik and Redžo Šabanović tied with a measuring tape. She did not know how they had captured Redžo and Omer, but she stated that Boban had had a black thing on his hands and that he had used that to hit them in their heads, which she had seen from the distance of 2-3 meters. She further noted that the Accused had ordered the women to move downhill. Besides her, the group consisted of Hajrija Pjevo, her son Sudo who had epilepsy, Hanifa Šabanović, Ramiza Šabanović, Rahima Šeta, Mujesira Karahodža and her two children. Boban torched Himzo Šabanović's house. He threw something into the loft and it immediately caught fire. She explained that in the front there were women followed by Omer and Redžo, whereas Boban and Andrija were behind them all; "he had a Kalashnikov and if someone went astray, he would hit him/her with a rifle butt". Some 4-5 meters further down from Alija Junuzović's house there was a water-well. The women took a look and saw Mirsad Karišik-Kemura lying dead. Boban ordered them to wait near the school and he ordered Omer and Redžo to come in the house of Alija Junuzović, which they did. Boban and Andrija followed them. She did not walk two meters away when the house burst into flame. The witness did not see that Omer and Redžo came out of the house, (they did come in – but they did not come out), nor did she see that Boban Šimšić and Andrija moved away from the house. She saw Boban later in the Hasan Veletovac Primary School, only his beard was shaved, then . She spent two days and one night and a half in the school; she did not dare to come out because the shooting came from all directions. "A Muslim could not walk around Višegrad any more." During the time spent at the school it seemed to her that Boban had not left the place at all, neither he nor Miloje or Lukić or Mitar Vasiljević; according to her, "they had the power".

The Court gave full credence to the testimony of this witness given that she described without any hesitation the developments in the village of Kuke, from the time of her arrival in the village of Kuke until the time of her being taken to the Hasan Veletovac Primary School, stating all the relevant details pertaining to the presence and the role of the accused Boban Šimšić in the events that took place in the village of Kuke, even more so since her statements given at the Crime Police Sector in Goražde of 5 May 2004 and at the Prosecutor's Office of BiH on 25 May 2004, do not essentially depart from the testimony given at the main trial. The insistence of the Defence on the difference in the statements given at the Prosecutor's Office and at the main trial, in respect of the fact of her being captured, given that she stated at the Prosecutor's Office that about ten of them were captured by Stanimir Šimšić, aka Cane, Milosav Šimšić and Andrija Šimšić, without mentioning Boban Šimšić and Zoran Šimšić whom she mentioned at the main trial, this Panel does not find as decisive for establishing the essential facts referring to the criminal responsibility of the Accused for this Count of the Indictment.

In particular, there are no illogical or inconsistent points in the testimony of this witness when she described the participation of the Accused in the events in the village of Kuka, that is, when she testified about the fact that the Accused had participated in capturing the Bosniak

civilians, torching the houses and in the enforced disappearance of Omer Karišik and Redžo Šabanović, so that the Panel did not have a single reason not to believe the story of this witness as a reliable one, given that, in the particular case, she is not the only witness – eye-witness – of those events and acts of the Accused.

The witness who entirely confirmed the established facts of this Section of the operative part of the Verdict is Ramiza Šabanović who personally was among the detained women in the village of Kuka, as was Šefka Šehić, too.

Describing her experience, this witness stated that until the war, she had lived with her husband and two sons in the village of Kuka. When the war began together with them, she was hiding in the woods from the Serb Army lest they be killed. That Army was shooting at their houses. They were hiding from May to June 1992; when they started moving towards Žepa, the soldiers split them and began shooting at them; there were 30 of them. Then, everyone fled to the woods. They killed her 13-year old son. Among the soldiers, she recognised Boban Šimšić and Cane. Boban was corpulent and blond; she recognised him as she used to visit his mother, whose name she forgot, to have a sweater knitted by her. The witness explained that there were six of them – Šefka, Safka, Salka, Hajrija, her son and the witness herself. She confirmed that Boban had taken over Omer and Redžo from some people; their hands were tied together. The Accused said that he would take the two of them towards Žlijeb and he said to the women that they should wait near the school. She further stated that, in addition to hers, the house of Alija Junuzović was also torched.

Although the referenced testimony of the witness Ramiza Šabanović is somewhat chronologically incoherent, it is by no means a reason, nor can it be a reason not to give credence to this testimony, as being objective and reliable one. To the least extent can some incoherence in this testimony be attributed to the witness herself, but it is more the omission of the one who asked the questions to which the witness answered following their sequence.

As the statements of the referenced women-witnesses are in essence consistent, and as they stated their opinion quite clearly about all the details that, given the circumstances under which the event took place, they objectively were able to recall, the Court, on the basis of these statements concluded, beyond any doubt, that the Accused committed the criminal offence, as indicated in the Section 1 of the operative part of this Verdict.

Besides, the statements of these women-witnesses are completely substantiated by the statement of the witness Ahmo Karišik who also recognized in the village of Kuka, on 18 June 1992, the accused Boban Šimšić in the group of soldiers who were in the village on that date, clearly describing the way in which Redžo Šabanović and Omer Karišik were captured, the way in which the women were told to go towards the school in Vlahovići, and the role of the Accused in that all, that is, in which way he participated in capturing Redžo Šabanović and Omer Karišik who have been unaccounted for ever since and who have not been found to date, as the witness Fata Šabanović, Redžo Šabanović's wife, confirmed in her statement.

The aforementioned is supported by Death Certificates for Redžo Šabanović and Omer Karišik indicating that both persons died on 18 June 1992 in the place of Kuka, the Višegrad Municipality.

Furthermore, the factual description of the Indictment shows that Mirsad Karišik aka Kemo was murdered during the attack on the village of Kuka. However, the Panel could not positively establish all the essential circumstances of that event and whether and to what

extent the accused Boban participated in it, which is why the Accused was not found guilty of these actions as charged in the Indictment.

Furthermore, in view of **Section 1a** of the operative part of the Verdict (Count 3 of the amended Indictment) in respect of which the Accused was found guilty, and it refers to the fact that, on 25 July 1992, in a group consisting of approximately ten members of the Serb Army and Police, he participated in the attack on the village of Velji Lug in the Višegrad Municipality, and in that attack, armed with rifles, they killed Mediha Ahmetpahić, Amela Ahmetpahić, Razija Ahmetpahić, Fata Sućeska, Safet Aljić, Latifa Ahmetpahić, Smaila Memišević, torched the houses and business facilities owned by Bosniaks and took away several dozens of Bosniak civilians, including women, children and men, and unlawfully detained them on the premises of the Hasan Veletovac Elementary School in Višegrad, testimonies were given by Almasa Ahmetpahić, Hamdo Ahmetpahić, Almir Aljić, Salim Ahmetpahić, Slaviša Jovanović and Slaviša Đurić.

The witness Almasa Ahmetpahić was a direct eye-witness of this event. She stated in her testimony that she had lived in a household together with her father and mother in the village of Velji Lug until 25 July 1992 and that, after the murder of her mother on 25/26 July she crossed the Drina reaching the territory under control of the Army of BiH. On 25 July 1992, she was at home with her mother Razija, Latifa Ahmetpahić and Tima Aljić. She recalled that there were other inhabitants in the village that night and she mentioned Osman Ahmetpahić, Mediha Ahmetpahić with her nine months old baby and some other female relatives from the Sućeska family. She woke up at around 6 in the morning, she heard shooting from automatic weapons, rushed out of the house and saw Mediha and the baby. She explained that Mediha had intended to leave the village at dawn because she stayed in the wood at daytimes because of her small baby, whereas at nights she would go down to the village. She started towards the wood in the morning carrying her baby, and came across some soldiers. She went out of the house barefoot and poorly dressed. From the distance of some 20 meters, she saw a soldier coming from the direction of the wood. The soldier yelled at her to stop and she stopped for a while but then took flight. There was an orchard between the soldier and the witness, which made it difficult for the soldier to take aim. A shooting was heard and she hid herself in some bush, a raspberry bush next to the house, hoping that he would not see her there. From that raspberry bush, one could clearly see the house entrance door, the road going by the house and her gate, so that she saw her mother and Latifa rushing out of the house. She did not see Tima, they, continued running on. The soldier started running after them. A burst of fire was heard, and then a single-shot fire as well. Then, her mother and Latifa's painful scream was heard. Then a soldier appeared and she recognised Slaviša Jovanović. She was about to get up and to speak to him. The soldier then said: "Boban, I killed two, but one got away, to hell with them". Then she realised that she had escaped, and Boban was standing in front of her house (the witness pointed with her hand to the accused Boban Šimšić at the main trial), he had an automatic rifle with a folding butt and so had Slaviša Jovanović. Boban was carrying a small pail in his hand. He entered the house and went out a couple of minutes later; shortly after, a smoke appeared from the house, Boban walked up to the gate and went on, together with Slaviša Jovanović, along the road to the village. She alone withdrew uphill a couple of meters and she saw Mediha with the baby, her mother and a girl whose family name was Sućeska. Boban and Jovanović approached the house of Safet Aljić and then she heard the voice of

Safet's mother saying, "What's going on, brothers", and then a burst of fire was heard, and the house began to burn shortly after and, some 5-10 minutes later, the other houses also began to burn. She saw fire, flames, smoke; she heard Safet screaming in pains. She heard the voice of Smajila, Mediha's mother, and she could see Mediha with her baby. She also saw a soldier with his hair trimmed short, wearing an olive drab uniform and with a rifle in his hand; he was turned to the witness with his back. Mediha's mother begged the soldier to spare her daughter and the small baby telling him that she had already lost two sons. The soldier told her to stop talking. He was pushing them to walk on, so that they were out of the witness's sight and afterwards a burst of fire was heard. Some 10-15 minutes later, she saw the following scene: the mother was still holding her baby, both were lying down, the others were lying one over the other. Voices were heard but she was not able to say what they were talking. Most distinctive were screams and cattle roaring. She heard Safet moaning with pain. Later on, no sound was heard. They withdrew leaving behind only the ashes. Together with a flock of sheep, she also withdrew to the woods, alone. She went to the spot wherefrom the entire village could be seen (she saw a lot of cigarette butts and small chocolates there, and thus she realized that they had spent the whole night there waiting for the dawn to attack them). She was standing there for an hour, barefoot, not knowing which way to take. She came back to her house again and took her mother's boots from under a metal sheet. A shot was heard and she left the village again. She went at the top of a hill and from there she saw some people standing on the road. She thought that her father might have been among them and she went there. Lenka Stanimirović received her and sent her to Budimir Pecikoza, and when his wife saw her, she began to wail asking her what happened. She was just shrugging saying that she did not know. Budimir said to her that he was not able to escort her, but he instructed her to keep going through as far as the village of Jelaš and to contact his sister's son there in order for her to be escorted by him to Bajina Bašta, to use the name of his daughter on that occasion, to introduce herself as a refugee from Bosnia, to say that she was a Serb, and he gave some bread and cream to her. Once she was about to set off, Radmila Stanimirović came and escorted her to the end of the road. When she got into the maize stubble field, Radmila called her, which her father heard and saw her getting out of the maize stubble field. She started crying saying that she wanted to go to her mother. So, they returned and reached the place where her mother was lying, and there was blood all around, and the result of the burst of fire was evident on both of them (wounds on both legs). She took three rings from her mother and then they withdrew deeper in the woods where other Muslim people were also hiding. The witness stated that she had seen Boban Šimšić for the first time in February 1992 when they were stopped at a barricade for a check up. On that occasion, a driver who was an Orthodox Christian, whose name was Slaviša Đurić and who was her brother's friend, said to her: "That is Boban Šimšić". In response to the specific question as to whether she was certain that the person she had seen at the barricade was the same one she had seen in front of her house, the witness answered affirmatively, saying: "One hundred percent". She knew Slaviša Jovanović from Višegrad, from school. He was from the village near hers. They used to take the same path to school.

Carefully assessing the statement of the witness Almasa Ahmetspahić concerning the events that occurred in the village of Velji Lug and, in this regard, the participation of the Accused in those events, the Panel completely accepted this statement as true and credible. The point is that she is the witness who, clearly and without any hesitation, identified the Accused as a

person whom she had recognized in the village of Velji Lug not only at the main trial, but also in the Witness Examination Record at the Goražde Crime Police Sector of 1 February 2005 and the Witness Examination Record at the Prosecutor's Office of BiH of 31 May 2005. This is a consistent, convincing and, above all, impressive testimony which does not call into doubt the fact that the Accused, in the way as described by the witness, participated in the attack on the village of Velji Lug when Mediha Ahmetpahić, Amela Ahmetpahić, Razija Ahmetpahić, Fata Sućeska, Safet Aljić, Latifa Ahmetpahić and Smaila Memišević were murdered.

This statement was not called into doubt due to certain differences in the statements given to the police and at the main trial, referring to the following: the distance from which she saw the soldier running towards her (20 or 100 meters), the distance from the house she covered escaping upon seeing Slaviša Jovanović (8 or 20 meters), whether or not she sought the traces of shots on her mother's body when she came to the house burnt down, and how she explained that, when she had come to her house and found the boots, she did not look for her mother's body at that moment, on which the Defence insisted trying thus to call into doubt the testimony of the witness. The point here is not about the differences which would, in their essence, call into question the established state of facts, nor do they call into question the truthfulness of the testimony from which it is evident that this witness did not say something which she had heard or learnt, but she said exactly what she had gone through and experienced. Assessing the statement of this witness, the Panel could not disregard the circumstances under which the event took place and the traumatic situation in which the witness had found herself (attack on the village, murder of her mother and neighbors, torching the houses and the fear for her life), given that the witness herself stated in her statement that "the whole of the event which happened that morning, it was at that time my waking up from a sleep, fear... you can't realize that it is happening to you", and consequently, completely understandable are certain discrepancies in her statement which do not lead to a different conclusion on the facts than the one based on which the Accused has been found guilty.

Given the aforementioned, the statement of the witness Slaviša Jovanović by which the Defence tried to contest the averments of the witness Almasa Ahmetpahić as well as the confrontation between those witnesses when the witness Jovanović disclaimed his presence in the village of Velji Lug on that particular occasion, did not call the Court into doubt in respect of the veracity of the witness Almasa Ahmetpahić's statements nor were they regarded as relevant for establishing decisive facts relative to the participation of the Accused in the referenced event, given that the witness Slaviša Jovanović did deny that he personally had participated in the attack on the village of Velji Lug, the reply of which is considered by the Panel as quite predictable and logical, since this witness is personally interested in the outcome of these proceedings (it is understandable that he wants to avoid criminal responsibility for the participation in the crime), but he did not state that the Accused personally did not take part in the referenced event.

Furthermore, the fact that the witness Almasa Ahmetpahić answered the question of the Defense Counsel affirmatively, i.e., stated that the person in question was Slaviša Jovanović, born in 1969, although it is evident from the available documentation that it actually is Slaviša Jovanović, born in 1962, does not call into doubt her entire statement, and it is questionable if

the witness understood at all this (trick) question of the Defence, and after all, why should the witness know Slaviša Jovanović's year of birth.

As for the establishing of the fact whether the witness Almasa Ahmetpahić knew the accused Boban Šimšić prior to that time, the witness of the Defence Slaviša Đurić stated that he had not known the accused Boban Šimšić until 2003 and that he had no encounters with him of any kind. Until that point of time, he knew about Boban only that he was a police officer whom he used to see in Višegrad. He stated that he did not know Almasa Ahmetpahić, nor did he say to anybody before the year 2003: "This is Boban Šimšić".

The Panel did not take this statement as true and credible because, in the reverse case, it would be quite legitimate to ask the question as to why the witness named Slaviša Đurić, of all, as the person who showed Boban Šimšić to her at the barricade, or why would she fabricate that event, for a still stronger reason that she must have known that, following her statement, he could be summoned by the Court to answer that question. However, if for the Court the statement of the witness Almasa Ahmetpahić was convincing, and given that she categorically maintained the assertion about the way in which she had previously seen Boban Šimšić, stating the name and address of the person who showed him to her then, the Court could not trust the testimony of the witness Slaviša Đurić and it regarded him as partial in favour of the Accused.

Finally, the credibility of the statement of the witness Almasa Ahmetpahić is not impaired even by the Official Note of the Goražde Crime Police Sector of 6 June 2003. In particular, this concerns the Official Note of the police interview made on 14 May 2003 in the place of Velji Lug with Almasa Ahmetpahić in respect of the circumstances under which her mother Razija Ahmetpahić was murdered. In this Official Note the witness did not mention Boban Šimšić at all as a person who had participated in the events in the village of Velji Lug.

However, the Court notes that this Official Note was made subsequently, 20 days after the interview with Almasa Ahmetpahić (the interview of 14 May 2003, the Official Note of 6 June 2003), so that the witness did not know what had been written in the Official Note, nor did she read it or signed it. Since the Official Note was not made in line with the applicable legal regulations and is void of necessary warnings, it cannot be regarded as the statement of the witness obtained during the investigation and, as such, its content cannot be presented to the witness during the questioning at the main trial in the way as requested by the Defence.

Taking into account the psychological state of the witness during that interview affected by the exhumation of her mother's mortal remains (the witness herself stated that she was under stress on that occasion and that she was more interested in finishing the matter for which they had come there, than in the statement she made), then it is one piece of evidence more for which the statement cannot be accepted as a proof to challenge her testimonies given subsequently in the course of the proceedings and on the basis of which a conclusion could be drawn that this witness was not telling the truth in her statements given to the police, the Prosecutor's Office and at the main trial.

In addition to the witness Almasa Ahmetpahić, the witnesses Hamdo Ahmetpahić, Almir Aljić and Salim Ahmetpahić also testified about the events in the village of Velji Lug. In their statements referring to those parts of the event about which they, as witnesses, were knowledgeable, they substantiated in the essence, the statement of the witness Almasa Ahmetpahić.

The referenced witnesses consistently stated that at the night before the attack on the village, the attack occurred in the morning on 25 July 1992, they slept by Hamdo's house which was nearest to the woods. In the morning, the shootings woke them up. Witness Hamdo Ahmetspahić stated that soldiers had invaded the village killing and setting to fire everything they had come across. At that time, his wife Razija, daughter Almasa, neighbors Latifa Alispahić and Tima Aljić started getting out of the house, and they ran behind the house, which the witness could not see because of the fence. A shot was heard, and then, another burst of fire, and then the screams of his wife and Latifa could be heard. Then, he heard a male person saying: "Boban, I killed two women, but one got away from me, to hell with her." He also saw two soldiers who torched his house as well, but was not able to recognize any of them. He recalled that had heard the voice of the neighbor Safija Aljić (60-70) and her husband Safet, and then he heard the moan and shots. Later on, he saw on the road his wife Razija and Latifa lying one over the other, and then he looked for his daughter Almasa. He heard someone calling her by her name, and when they met, he told her that her mother had been killed. Afterwards, on her asking, they went to the place where her mother's body was lying. In his testimony the witness Almir Aljić also confirmed that on two occasions he had heard the name of Boban being mentioned, more precisely, it was for the first time when Rade Lukić said: "Hurry up, Boban, I have to capture this man alive", which referred to the witness's father Safet, and for the second time, when the neighbor Radmila or Lenka said: "Boban, do not harm Safet, he is our neighbor". They took his father back to the village where the witness's grandmother was, who begged them to release him. Then, nothing else was heard, the houses burst into flame, whereas the witness Salem Ahmetspahić stated that he had heard the voice of the woman by the name of Radmila saying: "Boban, what are you doing?" Also, the witness Almir Aljić confirmed that he had seen behind the house four female corpses and a baby corpse whereas, on his way to the woods, he found the corpses of Razija Ahmetspahić and Latifa, which was also stated in the testimony of the witness Salem Ahmetspahić who also stated that he knew that Almasa Ahmetspahić had been in the village on that day and that she had told him that a soldier said the following after the murder of her mother and Latifa: "Boban, I killed two women and one got away from me", cursing their balija's mother.

Furthermore, all of the three referenced witnesses confirmed the testimony of the witness Almasa Ahmetspahić in respect of the fact of the murder of Safet Aljić whose body was found by his house.

Keeping in mind the statements of the mentioned witnesses which in essence are mutually consistent and complementary, the Court is confident of their credibility and truthfulness. The witnesses quite clearly testified about all the details which they actually were able to observe and recall, taking into account the circumstances under which the event had taken place, and as such, their statements logically substantiate the statement of the witness Almasa Ahmetspahić. In respect of the presence and participation of the accused Boban Šimšić in this event, the truth is that these witnesses' statements are consistent in that they did not see him at that time, nor did they know him from before. However, uncontested is the fact, on which all of these witnesses' statements were consistent, that they had heard one man calling another by the name of Boban, and they had also heard Radmila Stanimirović mentioning that name. In itself, this does not necessarily mean that it was the accused Boban Šimšić, but given the

statement of the witness Almasa Ahmetspahić who saw and recognized the Accused, it is indeed beyond doubt that the person about whom the witnesses spoke, was the accused Boban Šimšić, himself. All the more so, in view of the fact that the Court at no point was led to suspect that another person existed at the same time and in the same place by the **name** of Boban. The name is most often used as a nickname for the name Slobodan and it is specific for that.

The factual allegations of the Indictment referring to murders and taking civilians away in unknown direction, and torching the houses and industrial facilities in those villages, as stated by the witnesses for the Prosecution, have also been confirmed by objective evidence, or rather, by the results of the exhumation and identification of the murdered Bosniak civilians. The Court inspected the contents of the following documents: Photo-documentation, Number: 15/2003, subject: Body Exhumation, place: Višegrad – Velji Lug, date of taking the photographs: 14 May 2003, NN 613 1, 2, 3 and 4. These photographs show, both from the close and distant perspective, the locality of the local graveyard in the village of Velji Lug, Višegrad Municipality, where mortal remains of the body that most likely belonged to Razija Ahmetspahić were exhumed, which is indicated by the numbers 613.5 and 6. These two photographs show the parts of the mortal remains of exhumed bodies. The seventh photograph shows the internal contents of the gravesite. Sketch of the scene, Number: 14/2003, subject: Body Exhumation, place: Višegrad-Velji Lug, date of drawing: 14 May 2003. NN 613 and 614 the sketch of the scene shows the graveyard of the Ahmetspahićs on the slope above Velji Lug which is connected by a local village road. The assumption is that, in the said graveyard, within the distance of about 20 meters, the bodies of Razija Ahmetspahić and Lemana are located in two graves marked with numbers 613 and 614 respectively, the Cantonal Prosecutor's Office in Goražde, No. Ktn-1/2004, Cantonal Prosecutor: Mirsad Bilajac, Report on Forensic Pathology Re-expertise, Gravesite: locality of Velji Lug, Municipality of Višegrad, on 14 May 2003, Date of Re-expertise: 27 February 2004, place: Vitkovići, case number: 608-A, B, C, D, E. Conclusion: the examined and described skeletons are remains of human origin and they belong to at least five (5) persons, 3 female adults, 1 male and 1 infant 608-E. On a fragment of the broken bones of the skull roof there is a defect which looks like a bullet exit perforation and, on the preserved skull, there is a diagonal defect on the frontal bone which was possibly caused by gunshot-graze effect (Zdenko Cihlarž, Expert Team Leader). Photo-documentation, Number 15/2003, subject: Body Exhumation, place: Višegrad-Velji Lug, date of taking the photographs: 14 May 2003, NN 60 1 and 2. These photographs show the locality of the village of Velji Lug in the Višegrad Municipality, where a mass grave was found with the remains of at least 5 victims, as follows: Mediha and Amela Ahmetspahić, Smajl Memišević, Fata Sućeska and Safet Aljić. The 3rd photograph shows the contents of the mass grave. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19. On all the aforementioned photographs, from close or distant perspective, exhumed human bones are seen being marked with numbers A, B, C, D and E. On photograph 20, as marked with a black arrow, skull defects on one of the bodies in the described mass grave are presented under number A. A DNA analysis will precisely identify the bones of persons who are supposed to be in the mass grave 21 and 22. These two photographs show a child's snow-suit found in the mass grave, which supposedly belonged to Amela Ahmetspahić, a baby girl born on 3 October 1991 in Foča, and a child's underwear (waterproof pants) and a toy can be seen next to it. The sketch of the scene, Number: 14/2003, subject: Body Exhumation, location: Višegrad-Velji Lug, date of drawing: 14 May 2003. The sketch of the scene shows a wider area of the place

of Velji Lug in the Višegrad Municipality where a mass grave was detected. The mass grave was found about 100 meters away from the ruined housing facilities where the houses of Ramo Ahmetspahić, Omer Aljić and others were located. It is assumed that the bodies of Mediha and Amela Ahmetspahić, Fata Sućeska, Smajil Memišević and Safet Aljić are in the mass grave in the place of Velji Lug shown in the sketch.

Section 2.a of the operative part of the convicting part of the Verdict

Furthermore, the Accused is charged (Count 5.b. of the amended Indictment) that he took part in taking away of the following detained civilians from the Hasan Veletovac Primary School: Ismet Bulatović, Šemso Poljo, Eniz Smajić, Salem Žunić, Rasim Karahodžić, Jusuf Poljo, and Mehmed Memić after which they have been unaccounted for.

In respect of this Count of the Indictment, Rusmira Bulatović, Fatima Poljo, Hasena Bajramović, Nail Ramić, Hurem Razija and Ibro Memić testified.

Witness Rusmira Bulatović, the wife of Ismet Bulatović who was taken away on that occasion, was a direct eye-witness of that event. She stated in her testimony that she knew Boban Šimšić as they were neighbors. She remembered being at her farm until Bairam, it was spring, she could not remember exactly, but she remembered that Boban Šimšić's "Chetniks" had come, lined them up in front of the house in order to shoot them. After that, they were expelled from their house and taken to the school. She estimated that there had been approximately 300 people detained in the school. Boban Šimšić, who was a police officer, used to come to the school. The witness remembered very well that her husband Ismet, Šemso Poljo and another man whose name she did not know had been taken by Boban Šimšić and Cvijović. She has not found out anything about her husband since that time. When her son asked where they were taking his father, Boban said that he would be exchanged. The witness also stated that her husband Ismet was on good terms with the Accused, which was also stated by the Accused during the testimony.

Her statement was confirmed by the witness Fatima Poljo, the wife of Šemso Poljo who was also taken away together with Ismet Bulatović. She stated that her husband Šemso Poljo had been taken away from the Hasan Veletovac school where they had been detained, by one Cvijović, the accused Boban Šimšić, Milan Lukić, Sredoje Lukić and Dragan Lukić. Boban told them that they were to go to the SUP /Secretariat of Interior Affairs/ to give some statements, after which they have been unaccounted for.

The testimonies of these two witnesses are essentially consistent, since they gave congruent accounts of the manner in which their husbands had been taken away, for which reason the Court is satisfied that the testimonies are reliable and truthful, especially bearing in mind that this concerns the testimony of close persons (relatives) who, given the importance of the event to themselves, certainly have preserved memory of all the circumstances and details of what had been happening then.

In addition, Hasena Bajramović also testified about the taking the men away. She stated that Ismet Bulatović, Šemso Poljo and Šemso's son Enes had been called by Boban Šimšić personally, and that, together with him, there were the other Serb soldiers, mentioning the names of Mitar Vasiljević, Milan and Sredoje Lukić, Miloje Joksimović, Goran Miličević and

one Milomir a.k.a. Čiro, which was also confirmed by the witness Razija Hurem who said in her statement that Ismet Bulatović, Šemso Poljo and Eniz Smajić had been taken away by Boban, Lukić and some others.

Finally, Ibro Memić also testified about this Count of the Indictment stating that three men, Šemso Poljo, Ismet Bulatović and Eniz Smajić, had been taken away from the school by soldiers, as did Nail Ramić who stated that Ismet Bulatović, Šemso Poljo and Eniz Smajić had been at the Hasan Veletovac school and that they had been taken away one night never to return. Boban Šimšić was on duty that night.

By a comprehensive analysis of these statements the Panel found with certainty that, first of all, the civilians had been taken away from the Hasan Veletovac Elementary School and then that the accused Boban Šimšić, together with Milan Lukić and his group, had participated in that taking away of people, after which those people have been unaccounted for. The Court notes that the statements of the referenced witnesses are not identical, but are consistent in respect of the actions of the Accused and his participation in the commission of the referenced criminal offence, and the observed inconsistencies are the product of the circumstances under which the event took place and different perceptions of each of those witnesses, as well as different capabilities to observe and perceive details and, above all, their capability to present before the Court what they were able to objectively recall even after the lapse of such long period of time. Besides, the Court does not find that the differences between their statements call into question the credibility of these statements, and thereby of the correctness of the factual findings.

Given that the Court did not find with certainty from the testimonies of the heard witnesses that, on that occasion, Salem Žunić, Rasim Karahodžić, Jusuf Poljo and Mehmed Memić had been taken away from the Hasan Veletovac Primary School besides Ismet Bulatović, Šemso Poljo and Eniz Smajić, because none of the witnesses linked clearly and definitely their taking away and disappearance with that event, or with the Accused, the Court omitted their names from the operative part of the Verdict considering that taking them away in this event was not proved beyond any doubt.

Establishing the criminal actions of which the Accused was found guilty under **Section 2b)** of the operative part of the convicting part of the (Count 5.e. of the amended Indictment), the Court has drawn its conclusion about the guilt of the Accused by assessing the testimonies of the witnesses Sajma Šabanović, Hasena Bajramović, L.H., M.U., F.Š., A.N., Fatima Poljo and Timka Kapetanović.

More specifically, all the referenced witnesses were detained in the Hasan Veletovac Primary School in the second half of June 1992 and, in their statements, all of them confirmed multiple rapes, beating up and humiliation of females in the that school, as well as the role of the accused Boban Šimšić in that.

Thus, witness Hasena Bajramović maintained that she knew that, together with a group of Serbs, the Accused used to single out women saying “you, you, you” and they would leave only to be raped. It is known that they took out N.A., A.N., aka Dada, Z.M., and R.H. Such a

way of selecting the girls and young women by the Accused was also consistently confirmed by the witness F.Š. who stated in her testimony that, when Boban Šimšić would come to the school with the others, he pointed his finger at women and girls saying: “you, you, you”; these women would go somewhere, whereas the others did not dare to ask where. On their return, they were tearful; some looked as if insane, they entered the school shaking”, as was the witness H.L. who stated that she had been raped and she quite clearly and convincingly described that, on the first day of their arrival in the school, she and two other girls had been taken away. Boban Šimšić, together with three other soldiers, pointed his finger at the women who were to get up and come with them. She and two more girls were singled out. The witness begged him not to go because she had a baby. Yet, she had to leave the baby and they took her upstairs.. Boban Šimšić assigned to classrooms, one girl and one soldier per classroom. She was raped by a soldier of “Bijeli Orlovi” (*translator’s note: “White Eagles”*). He threatened her not to tell anyone what had happened to her because he would kill both her and her child. She did not see Boban Šimšić entering any classroom with any girl. After that she returned to the gym. Their hair was messed up and eyes tearful. The accused Šimšić was deciding which women would be taken out by pointing his finger at the women who were expected to get up and follow him.

The witness Fatima Poljo, talking about taking the women away, stated that Boban himself had taken away her sister’s daughters N. and S., that her late sister begged Boban not to take S. because she had a 9-month-old baby, and after that they returned her but took away N., and L. and three more women, whereas the witness Sajma Šabanović stated in her statement that on one occasion before dark, Boban Šimšić asked whether there was anyone to make coffee for them, and when the witness and Šefka volunteered he responded to them that they did need grandmothers when there were girls around there. So, beside others, D.A., R.H. and Z.M. went there and stayed for 2-3 hours, although it takes five or ten minutes to make coffee, and upon their return they did not say anything about what was happening to them and no one dared to ask them anything about that.

The witness M.U. also testified about what she had experienced at the Hasan Veletovac Primary School, saying that Milan Lukić took out her and the girl A.H., and then he and another soldier had taken them to a building in which the other soldier took her to an apartment and raped her there, whereas the witness A.N. also confirmed that Milan Lukić had raped her, too, and that, besides her, other women had been taken out and raped, mentioning among the others F. Š., D.N., Z.M. and R. As for herself, she said that they had taken her out every other night for rape, they would first sadistically abuse her, especially Milan Lukić, while the others were laughing, beating and striking her, and that she used to see the accused Boban together with the others in the room where all that was taking place.

Finally, the witness Timka Kapetanović stated in her testimony that during her detention in the school, young females, twin sisters, had been taken away but she could not tell who had done that. The Prosecutor showed her the statement she gave during the investigation on 30 May 2005, where she stated that she had seen Boban Šimšić entering the gym and single out young girls to follow him, and on their return they looked awful, they were speechless, disheveled, and it was obvious that they had been abused. After the Prosecutor asked why she changed her

statement, the witness said that she had been younger then and knew better, that she was excited, and finally said that what she had stated before was true.

For the Court such explanation of the witness is convincing, given that she is an elderly woman who indeed seemed to have been excited and embarrassed for her coming to the Court to testify. Given that her statement from the investigation in respect of taking the girls away to be raped is completely consistent with the statements of some other witnesses, the Court did not have any reason not to base on this testimony among the others, its conclusion concerning this Count of the Indictment being proved beyond any doubt in respect of responsibility of the Accused.

Estimating the referenced statements, the Court reached the conclusion that they are objective, convincing and mutually consistent. The fact is that statements of some of these witnesses seem to be inconsistent in some parts, but their statements must be placed, first of all, within the context of the time in which the said events took place and the fact that they went through extremely traumatic experience, being exposed to severe mental and physical abuse by a number of persons, and then, one has to bear in mind their feeling of sadness, being hurt and ashamed for what had happened to them, and therefore, difficult recalling of all the details, and taking into account the aforementioned, they cannot be reasonably expected to state with absolute certainty (which after all cannot be expected from the other witnesses who testified in this case) all the details of the then events in the Hasan Veletovac school.

However, they did testify very clearly and unequivocally about all the relevant circumstances referring both to the status and the role of the Accused at the Hasan Veletovac school and also in respect of the actions took by him, and evaluating these statements, the Court established beyond doubt that the Accused procured girls and young women, who were unlawfully detained on the premises of the "Hasan Veletovac" Primary School, for other members of the Serb Army who multiply raped, beat up and humiliated those women (as one of the witnesses, Nail Ramić said - women were taken out and when they returned they were in a bad condition, their hair was messed up, their clothes torn up, they were brutally tortured, some cried). The injured parties, realistically, did not have any opportunity to avoid the rape, and each attempt of avoiding it posed the risk to their life or limb.

It clearly ensues from the adduced evidence that the Accused was aware of the fact that the girls and young women would be raped, and given that he personally singled them out from the gym, pointing his finger at them, he was willing to help the Serb soldiers to rape those women, and by selecting and taking the women out, he provided a moral support to the direct perpetrators of the offence.

On the contrary, by the assessment of the adduced evidence, the Court did not establish that the Accused directly took the acts of rape, beating up and humiliating the Bosniak women, but he aided the main perpetrators to do that, for which reason, in line with that, the factual description of the Indictment amended and the words "on a daily basis" were omitted from the operative part of the Verdict, since the Accused, as a guard in the school, worked in shifts, so it is evident that he was not present in the school on a daily basis.

While establishing the criminal actions the Accused was found guilty of under **Section 2c) of the operative part** of the convicting part of the Verdict (Count 5.h of the amended Indictment, the Court drew its conclusion about the guilt of the Accused by evaluating the testimonies of the heard witnesses, on which basis, it reliably found that the Accused had taken the referenced criminal acts.

More specifically, at the relevant time, the Accused was a member of the police reserve forces of the Višegrad Public Security Station and was a guard in the Hasan Veletovac Primary School in which Bosniak civilians were unlawfully detained. This fact beyond doubt ensues from the statements of the heard witnesses who, at the time, were detained in that school, in the first place of the witnesses Nail Ramić, Razija Hurem, L.H., N.A., Hasena Bajramović, and this was also confirmed by other witnesses who at the time were, as was the Accused, assigned the same duty as he, including among the others Goran Miličević who stated in his statement that he had been mobilized in the reserve police forces, as was Boban Šimšić, that as Šimšić, he was securing the citizens in the Hasan Veletovac school, pursuant to the assignment schedule they would receive at the Station, so that two police officers would go to the school, and each shift lasted 12 hours; the day shift was from 7 am until 7 pm, and the night shift was from 7 pm until 7 am. He recalled that he had worked one day shift together with Boban Šimšić.

In respect of the referenced charges, the witness Hasena Bajramović clearly and precisely testified that on the second night upon the arrival in the school (they came on 21 June) a list of men, women and girls was made (S.H. was called to make the list), and after the list had gone, in the evening Boban Šimšić, Milan and Sredoje Lukić, one Cvijeto and some other people whom she did not know, came and called out the people to go into another room. There were around 50 men on that list. Boban was calling them out, whereupon each one whose name was called out had to get up and to go to the other room. Ibro Šabanović, Avdo Ferić, Avdo Aljić, Hamed Hadžić, Ibrišim Hadžić, Mustafa Smajić, Mehmed Bajramović (her husband), Jusuf Poljo, Ramo Hurem, Nail Ramić, Ibro Memić, Abid Alijašević were called out; she did not mention all the people called out. After they had been taken out into the other room from which loud weeping, screaming and crying could have been heard, which lasted for 10-15 minutes, they came back beaten black and blue, being in a very poor condition, some walking in with great difficulty. When they had brought them back, they turned the light off. Her step-daughter Medina was crying, begging him to release her father and to stop beating him, but Boban said to her to get back on her place and sit down. When the people came in, her husband was blue, red, he did not have his teeth at all, and his blood was oozing out; her step-daughter said to her that her father's tongue had been cut off. Then, they were taking men out again, and it was her husband's turn, he left, and there remained some elderly women and children. Thereafter, she never saw her husband again. She remembered that Boban had asked her where her husband was, she had been holding in her arms a child who still had not turned three years of age, and she had answered to him "You took him away, Boban. I don't know anything about him". He answered to her that their turn would come, too; he slapped her face so hard that she fell down with her child; she was semiconscious and she could not recover immediately.

The Court gave full trust to the statement of this witness, given that throughout her statement she confirmed in full the allegations of the Indictment, and she consistently and unequivocally

marked the Accused as the person who committed the criminal offences indicated in this Count of the Indictment.

The veracity of this was also confirmed by other witnesses heard, and thus the witness Haša Hadžić stated in her statement that she had been “forced” to the Hasan Veletovac school where she had found Boban Šimšić, Dragan Lukić, Milan and Sredoje Lukić, and there were some other soldiers, too. The women who were at school together with her said to her who Boban Šimšić was (Ševka, Timka, Šuhra), and she recognized him at the main trial. Boban wore a military uniform then, a police uniform, and he himself and Dragan Lukić were the ones who spent more time in the school than anyone else. Apart from women, there were men in the school who were all separated later from women and forced out into the corridor; they brought out 60 men to beat them and to slit their throats, and later on, they forced out the children, males. Little Medina came hurriedly over and said to Boban: “Uncle, don’t beat my father”. She cried that they had cut her father’s tongue off and she rushed down into the gym. Mehmed was all covered with blood.

Kada Spahić, stated during her testimony that her husband had told her that he had been beaten in the school by Milan Lukić and Mitar Vasiljević. She remembered that Nail Ramić, Ibro Memić, Ibrišim Hadžić, Hasib Šabanović, Ramo Hurem and others had been beaten up. Making the statement about the same event, Sajma Šabanović confirmed that men had been taken out into the corridor and beaten, mentioning Milan Lukić in this context, forcing them to sing Chetniks’ songs. Among them, her son was also brought out. She is confident that Boban Šimšić was on duty that night, but she does not know if he took part in the beating. She also stated that she had often seen Boban, whenever he was on guard, and whenever Milan Lukić came, Boban was on guard and he would always let Milan Lukić in to abuse people, to beat them and to do whatever he wanted.

The witness Ševka Šehić stated in her testimony that it had been June when she had had to leave her village and when she had been brought to the Hasan Veletovac school. The first night they slept in the school, and on the second day they were crammed in two trucks, and when they reached a spa in the Vilina Vlas the shooting started at them, they were not allowed to go down the Drina, and were brought back to the school by the same trucks; they arrived late in the afternoon, Tasić Radoje wrote down their names, the families Šehić, Hurem, Šabanović, Karišik, one next to the other, as Tasić said. She knows that the men were taken out of the gym and beaten up, she does not know the exact date, but she knows that the accused Boban took them out and Lukuć did as well, “there were many of them”. They beat Ibro Memić so badly that there was a pool of blood, and there were 20 more people, all of them died 6-7 years later due to such a brutal beating. A little girl came over, Elvedina Bajramović was her name, and said: “They cut off my father’s tongue”, and she fell down and fainted.

About this event also testified the witness Fehima Čakić who stated that on 24 June she had left her village of Velika Gostilja because Mikan and Miloje Joksimović had come there and said to them that they must move out. Vehicles arrived and brought them to the school in Višegrad. They said to them that they must spend the night there. In the morning they said to them that the trucks broke down so that they returned to the same gym. Late in the night, they came and collected their men and took them away, whereas, they turned off the light in their

room. They wanted to slit their throats. They were yelling: “Ćiro, hurry up!” When a woman screamed after her husband and started running after him, one little girl let out a scream saying that they killed her father, the child fell down, she was about to pick her up, but did not have the strength.

In respect of the event in the primary school, the statement of this witness is objective and as such accepted, because it consistently confirms the statements of the other witnesses who made statements about the issue.

However, this witness does not state in her statement that on that occasion the accused Boban Šimšić was at the school and at some point she says that he did not even guard them at all, although it arises from the testimonies of all the other witnesses heard, and also from the statement of the accused himself, that he was a guard at the school. Besides, the statement of the witness given during the investigation, when she stated that the Accused had often stayed there and that he had often abused elderly people, is completely consistent with the testimonies of other witnesses who testified about the events at the school, so that the Court could not give credence to that part of her testimony given at the main trial (after all, in her testimony at the main trial, the witness does not categorically claim that the Accused was not present, and she answered the question quite vaguely: “There was no difference among them, all colleagues, all the same. One cannot know in all that screaming and shouting, women falling down, blood gushing out from men. I wasn’t able to know.”

The witness of the Defence Asmir Spahić also testified about the incident of beating the men. He stated that on the second night upon the arrival in the school gym (he was brought on 24 June), Milan and Sredoje Lukić had come and taken away all the men to be shot. He did not know what was going on outside, but those who came back were beaten black and blue. That night the electricity was off so that the visibility was poor.

Indeed, this witness denied the presence of the Accused on that night, stating that he saw Boban only during the day shift. However, bearing in mind the consistent statements of other witnesses heard, and with regard to the fact of the presence of the Accused, which the Court trusted in full as being clear, consistent and objective, the witness Asmir Spahić’s statement could not bring the Court into doubt and cause a different factual finding and acquittal of the Accused of the criminal responsibility.

Bearing in mind the testimonies of the stated witnesses, the Court did not accept as proved the allegations of this part of the Indictment, given that none of the witnesses confirmed that Mehmed Bajramović’s tongue had indeed been cut off, and their statements about that are mainly based on the stories of other people, mainly on what Mehmed’s daughter said: “They cut off my father’s tongue.” This part of the factual description given in the Indictment is omitted in the operative part of the Verdict, as a conclusion like this cannot be determined beyond any doubt on such statement alone.

Furthermore, Hasena Bajramović, Ševka Šehić, R.H., Haša Hadžić - the injured party herself, and Fehima Čakić and Asmir Spahić testified about the beating up of Hamed Hadžić and his wife (Count 5 c of the amended Indictment) on the same night when the men had been taken out and beaten up.

Thus, the witness – injured party Haša Hadžić stated in her statement that on that night the men had been separated from women, driven out into the corridor, which she had seen when she got out and told about her husband. She was not able to see those who were calling the roll. After Šefka Šehić said: “They slit Ibro Šabanović’s throat”, she got out into the corridor to defend her husband, Boban said to her to get back, cursing Alija and Murat and God to her, and as she refused to get back, he hit her with his fist and dislocated her jaw, and later on, he returned and he did the same from the other side, the consequences of which she feels even today. She fell down as a result of the blow, and Boban moved away from her. She was lying in the corridor, as she lost her consciousness. When she recovered and opened her eyes and when the Accused noticed that, he grabbed her by her plaits and forced her into the gym. In the gym, he hit her lower leg, so that she fell down, and he was after her there hitting her as much as he wished. Later on, Boban came to the door and wondered how she was still alive, so the witness said: “I may swear that there is no lie in this”. Boban pulled her arm and told her to take all the clothing off and when one of them appeared, Boban asked for a knife on three occasions to slaughter the Muslim woman, that she was naked and an unknown person said to Boban that he could do that whenever he wanted to as that was all in his hands, and he threatened her not to put her clothes on when he was on his way to switch the light off.

Although there is certain confusion of time and space in this statement of the witness, it nevertheless does not call into doubt this statement in respect of an essential fact and that is the presence and the role of Boban Šimšić in these events. The confusion in this statement can be attributed more to the (in)capability of this witness to interpret what objectively was memorized, rather than to her intention to tell untruth and to invent a story. Besides, it would be too much to expect from this witness to remember all details after the lapse of time, bearing in mind all the terror and fear experienced, and to present the chronology of all the events of that night (from beating up the men to the murder of Ibro Šabanović). That she failed to tell the events in the sequence as some witnesses did does not mean at all that those events did not really happen or that this witness should not be trusted for that reason. The insistence of the Defence on the fact that the witness in one part of her statement given at the Prosecutor’s Office was talking, in respect of those events, about Mitar Vasiljević, but not about Boban Šimšić, does not devalue this statement to the extent to acquit the accused Boban Šimšić of responsibility, given that, both in her testimony at the main trial and in her statement given during the investigation, this witness consistently maintained the assertion that the Accused was present and that he took part in beating her up.

The veracity of this statement was confirmed by the witnesses Hasena Bajramović and Šefka Šehić, as well as the witness H.R., who consistently stated that Haša, after they had taken her husband Hamed out of the gym into the corridor to beat him, got out following them and begging that they let him go as he was a heart patient. Hasena Bajramović pointed out that it was at the time when her daughter begged them to spare her father, and then Boban, after he had come in and stood in the middle of the gym, said: “Don’t get in here. They’ll be back”. Haša’s husband was unconscious and they ordered Haša to strip herself naked, and Boban and Mitar Vasiljević asked for a knife to slit her throat; she was naked for half an hour, they were beating her, hitting her, “her jaws were swollen, they were pulling her around the gym holding her hair”.

The witnesses, Šefka Šehić and H. R. stated consistently that Haša's husband Hamed had been beaten up by Milan Lukić and the accused Boban Šimšić. In describing that event, H. R. states that Hamed was thrown down on the ground and that they "stepped all over him". Both witnesses confirm that of all people in the sport hall, they beat Haša Hadžić the most by kicking her and forcing her to strip, and that the accused Boban Šimšić participated in that, too.

Although the witness H. R. stated before the Prosecutor for the record on 25 May 2005, and in the police on 8 February 2005 that Hamed Hadžić had been beaten up in front of everybody in the sport hall, and not in the corridor as she said at the man trial, based on which the Defense attempted to discredit this testimony, the Court observes that there is no uncertainty in the testimony of this witness and that with her evidence she entirely confirmed the testimonies of the previously mentioned witnesses regarding the participation of the accused in the events concerned. Bearing in mind the traumatic circumstances and the fear which this witness experienced herself that evening, which will be further discussed below, as well as the elapsed period of time, it is indeed unrealistic to expect from the witness to remember precisely and specifically whether someone was beaten up in the corridor or in the sport hall. What is important and common for all these testimonies is an honest, consistent and convincing testimony of all the mentioned witnesses, based on which the conclusion can be drawn beyond any doubt about the criminal responsibility of the accused and his participation in the stated actions.

In addition to the mentioned witnesses, the witness Fehima Čakić, and the Defense witness, Asmir Spahić, also testified with regard to this event.

The witness Fehima Čakić stated that she had seen when Haša Hadžić was beaten up, whom she had known as well as her husband Hamed, they were neighbors, and she also knows that Hamed died in Goražde, emphasizing that "he was beaten up, his father was beaten up, they did all sort of things to them". She explains that Haša was in front of her when she was beaten up by a man "with a red apron on, a heat on his head, who wanted a knife to slit her throat, when Haša made an "aaa" sound, he again hit her, and she was naked, only in her undershirt. Some men were good and protected her, he told him not to beat her any more and that it was enough". The witness Asmir Spahić confirmed this in essence, stating that the only person who went out to the corridor where the men were maltreated that evening, was Haša Hadžić, "she went out in one moment because they were beating her man, and when they saw her there, they brought her back (to the sport hall), he beat her up in front of them, forced her to strip and took a knife to slit her throat. However, as someone said 'Please don't, Kum' /*translator's note: close or family friend*/, he does not know whether it was his nick name, so he did not do it in front of them".

These witnesses consistently confirm that Hamed Hadžić and his wife Haša were beaten up that evening, as also stated by the other witnesses who testified about this event, and therefore there is no reason for the Court not to give credence to this part of their testimony. However, although both these witnesses give imprecise statements with regard to the persons who were present there on that occasion, without mentioning any names, not even the name of the

accused Boban Šimšić, and bearing in mind the testimonies of the other witnesses who were categorical and consistent with regard to the fact of the presence of the accused also to the event concerned, and to whom the Court therefore gave full credence in their entirety, the stated testimonies of the witnesses Fehima Čakić and Asmir Spahić could not lead to a different factual conclusion with regard to this act of commission of which the accused was found guilty.

The injured parties, R.H., Š. F., Nail Ramić, Fehima Čakić and Kada Spahić, testified about the beating up and torturing of R. H. aka “Šuhra” (Count 5.d of the amended Indictment).

The injured party R.H. herself, stated in her statement that she had been in the camp (the school) with her family, among others with her daughter S., who was 17 years old at the time. They were brought to the school in late June 1992. S. was with her until they took her away, an unknown man whose hair was all white, as if he had had streaked hair, and one Ćiro, whose name she does not know, and both were soldiers of Milan Lukić and they were always coming in that group. That evening, when they had taken her to the upper floor of the school, S. managed to escape and thereafter an unknown man came, called her to come out, namely called her by her name Š., which is her second name in addition to R. He asked her whether she was the mother of S., and when she confirmed so, he wrapped her long hair around his hand and pulled her. There was a fire in the middle of the corridor made of cardboards, while all the lights were turned off. He brought her to a room, where she saw stoves, one next to another, and the heating plates were glowing hot, and Boban appeared later. A soldier asked her why she had instructed her daughter to run away, he cursed her gipsy mother and was hitting her head against a table and broke her nose. She stated that Boban had put a stocking mask on and came there to assist that soldier. One of them punched her, she fell down and the other one lifted her off the ground, and then it was happening all over again. Boban was kicking her with his boots, she sustained injuries, her broken nose was bleeding and her mouth was bleeding, they tore out her hair, skin and all. While beating her up, the soldier was telling her “We will now pull out your hearts and roast them on these heating plates”, and next to him stood Boban Šimšić and only laughed and said “Now you will eat”. The soldier continues hitting her head against the table, the door, she saw that her nose was broken and she was bleeding heavily. He was twisting both her hand in order to break them, but at the time she was somewhat stronger so she kept her hands stiff.

Bearing in mind that this witness, in her statement given in the Police – Crime Police Sector in Goražde of 8 February 2005, and in her statement given in the BiH Prosecutor’s Office on 25 May 2005, and at the main trial too, consistently named the accused Boban Šimšić as the person who was present, and who even participated in her torture, the Court has no reason to conclude that this witness is not telling the truth. The fact is that certain inconsistency exists with regard to the sequence of the events, as presented by the witness, but such presentation did not bring into question the truthfulness and credibility of the testimony itself.

In addition, this testimony was confirmed by the testimonies of other witnesses (regarding the parts about which those witnesses had knowledge). Thus the witness Š. F. stated that she knew H. R., aka “Šuhra”, and that she knew she had been abused in the school in which they had been detained. One evening, they took her out, they came and said “Šuhra, come out”. It was Boban Šimšić, Šuhra went out, returned after a while, and some two hours later, someone

came again, told her to get up and to go with him. The witness assumed it was someone who had known Šuhra and who knew precisely where she was. When the morning came Šuhra appeared at the door, her face was blue, she did not have a part of hair at all, and she was wrapped in something. This witness also stated that she had spoken with S. H. prior to this event, and that she had told her that Boban Šimšić had taken her away twice. She did not dare ask her whether she was raped since they were not allowed to ask each other anything. The witness Nail Ramić also testified with regard to this event. In his testimony, he stated that he had not seen when Šuhra was taken out, but that he saw when they lit torches that Šuhra was lying under the table, in torn clothes, in an appalling condition, unconscious, with no clothes on her, with her hair completely pulled out. The witness Kada Spahić also testified about this event and stated that after the escape of S., R.H. was taken to another room and beaten up there. Her husband told her that he had seen Šuhra under the table, dead, only with her slip on, while the others who were there before her husband said that they had been there when she had been beaten and that one Đurić, they called him “Ćiro” said “that’s enough, you killed her”. The witness personally saw “Šuhra” after that and confirmed that she was all blue and in blood, that no one could talk to her since she kept her eyes closed. Therefore the Court had no reason not to give credence to this witness and a part of her testimony when she speaks about what she was told by her husband. The witness further stated that Boban Šimšić was at the door, for a while, and explains that he mostly moved around them, as well as Lukić, and when he would tell them not to be afraid, that he would be at the door that night, and that nothing would happen to them that night, the biggest massacre would happen on that particular night when they would come to beat the men.

The witness Fehima Čakić also confirmed that H. R. was beaten up. To tell the truth, this witness stated that she was not present and that she did not see when she was beaten up, because she had run away then, and when they returned her to the sport hall, Šuhra was all blue, black. She asked what had happened to Šuhra and she was told that her daughter had escaped from the school, so they caught Šuhra and beaten her up. She repeated that she did not see when they had beaten her, but that she saw Šuhra all swollen and black.

Having found that the stated testimonies of the witnesses are mutually complementary with regard to all essential facts, that they are objective and convincing, the Court had no reason not to give credence to these testimonies, since it was of the opinion that they constituted a reliable basis for establishment of the criminal actions of the accused, as stated in this section of the operative part of the Verdict.

The witness H. R. testified about the killing of Ibro Šabanović happening that same evening, who stated that she had been taken out from the sport hall after the escape of her daughter S., and she saw in the corridor that a man’s throat was slit behind the door. This was done by Milan Lukić who had a knife in his hand (and the witness showed her neck), while Boban Šimšić stood next to him and held the hair of Ibro Šabanović, that is, his head, with his hands. However, she did not watch that through the end, because she was taken away further. The witness also stated that she had seen the elderly and the children in the corridor, which was confirmed by the witness Sajma Šabanović in her testimony, who stated that Ibro Šabanović was taken away the night when the men and the children were taken out to the corridor and abused, that it was dark when someone called out Ibro, and that Ibro had never come back.

The witness R.H. further stated that she heard later, people told her that the head of Ibro Šabanović was thrown in among the people.

Although she stated for the record in the Prosecutor's Office that she saw the moment when Lukić made a move with his knife and when the blood gushed forth, there is no essential difference for the Court between these two statements, since the witness describes the scene which she saw in the identical manner. The fact that at the main trial she did not literary say that she had seen the knife move and the blood, does not mean that that the witness did not tell the truth, all the more so because a conclusion can be undoubtedly drawn from her testimony given at the main trial with regard to the destiny of Ibro Šabanović.

This was also confirmed by the other examined witnesses. Thus Š. F., A. N. and Asmir Spahić consistently confirm that on that critical night they came and took Ibro Šabanović away. The witness Š. F. states that on that critical evening, the electricity was cut off in the school, that they saw something was burning somewhere, that a shadow came to the door and asked who among them was Ibro Šabanović. When Ibro went out to the corridor she heard a scream, as if someone screamed. At that moment, a panic was created in the school, she heard that something had fallen on the floor, as if an object flew in among them, and thereafter she heard a voice saying „Ibro Šabanović's head". Thereupon she heard that something was broken and heard the people rushing out somewhere, but she did not see what was happening. At that moment, N. approached her and told her "Fata, let's run away, my uncle's throat was slit". The following morning, the people who had escaped were caught and returned to the school. This is confirmed also by the witness A. N. in her statement, who precisely said that Milan Lukić called Ibro Šabanović to come out form the sport hall, and that he entered the hall together with Boban Šimšić. After they had taken him out form the hall, they first head laughter, sadistic actions, and after 10-15 minutes Ibro's head was brought in by Milan who said“ Balias, tonight is Vidovdan, you will all end up like this“. Boban also came in with Milan at the time, they all came in. It was not difficult for her to recognize that it was Ibro's head, since he was her uncle, and in addition to that, he had big moustache. This could be seen because someone was holding torches. A man broke the window glass and she jumped out from the school.

Finally, the Defense witness, Asmir Spahić also stated that in the darkness they called Ibro Šabanović, he went out and never returned back. While they were beating up Haša Hadžić, someone said "they slit the throat, they killed Ibro", a general panic started, a man broke a side door to that hall from the stadium side, and around 40 persons jumped out then, some of them were returned the following morning, while some have been missing to this date. It was then when they stopped the maltreatment. His people did not go anywhere until 7-8 o'clock, when two policemen, who were in the shift, came and told them that they could not go to the corridor "because all sorts of things happened that night", until it was cleared up. Younger persons were called out to clean, they saw blood but not the body.

The admissibility of the testimony of this witness with regard to the presence of Boban Šimšić that evening in the school was already discussed before, however, this witness, like the other mentioned witnesses, confirms that the night when Ibro Šabanović was taken out he was killed, and that on that occasion, the accused Boban Šimšić was present indisputably ensues from the testimonies of the other examined witnesses, whose testimonies, viewed within the context of the overall events of that evening, testify in the convincing and consistent manner about his presence and his connection with this event. Bearing in mind that none of the

witnesses examined confirms the testimony of the witness H.R., that it was the accused who held the head of Ibro Šabanović while Milan Lukić slit his throat, the Court omitted this act from the factual description of this portion of the operative part of Verdict, since it was not able to establish the stated fact beyond any reasonable doubt only based on that testimony.

Upon drawing logical conclusions and correlating the testimonies of all the stated witnesses, and the evaluation of the factual circumstances in their entirety, the Panel finds that the accused Boban Šimšić was undoubtedly a guard in the Primary School “Hasan Veletovac”, that he secured the detained civilians when Milan Lukić was arriving with other Serb soldiers, that is, that the accused himself, although aware that Lukić was entering the school with other Serb soldiers only in order to plunder, torture, rape, abuse and kill Bosniak civilians, enabled them to enter the school. All the testimonies of the examined witnesses are essentially mutually consistent in relation to the events of the relevant night in the sport hall of the school, and the fact that with his behavior, the accused Boban Šimšić actively partook in all that happened. The testimonies of the witnesses are sincere and credible to the decisive extent, and they logically describe all the events of that night, while certain differences in the chronology and the description of the events, both mutually and in the testimonies of certain witnesses given at the main trial and in the investigation, do not have any decisive significance with regard to the establishment of the state of facts concerning this section of the operative part of the Verdict, and their nature is not such so as to bring into question the credibility of their testimonies. All the inconsistencies noticed with respect to the events described, as already stated before, are the product of their different ability and capacity, both to perceive and also to remember and reproduce what was seen and memorized, and certainly not of their intention not to tell the truth. In the opinion of this Panel, during the cross-examination and the evidence adducing, the Defense failed in bringing into question the presence of the accused in the events that occurred that night. The insistence on the fact that the witnesses testify differently as to whether something happened in the corridor or in the sport hall, what happened prior to that, and what later on, what night in a sequence it was or on which date it precisely happened, bearing in mind the horror, fear and trauma experienced by the witnesses, both on that particular night and on the subsequent nights, is, to say the least, unreasonable and cannot bring into question the established state of facts.

All the witnesses agree in one fact – it was the second half of June, while the precise time determination, bearing in mind the nature of the crime and the circumstances under which it was committed, could not have been expected on the part of the witnesses, although, according to the assertions of the witness A.N., Milan Lukić explicitly said “tonight is Vidovdan”, which points to the certainty that it was the night of 28 June 1992. What is indeed important and what the witnesses mostly confirmed is that the accused himself was securing the detained civilians on that night when Milan Lukić and the others entered, and that after that entrance everything happened in the manner as described in the factual description of the operative part of the Verdict.

Statements of the witnesses are not identical (even if they were identical, it would constitute a problem, since an impression could be gained that they were speaking upon instructions), but they are consistent with regard to the actions of the accused and his participation in the commission of the criminal offense concerned, and therefore this Panel concludes that they are clear, authentic and therefore reliable, while the objective events were not contested by the

Defense witnesses either, although they did state that on that occasion they did not see the accused Boban Šimšić in the school. The Court did not give credence to this segment of their testimonies, considering that they remained alone with their assertion, bearing in mind the clear and undoubted testimonies of the other witnesses who did not have any second thoughts with respect to the presence of the accused, all the more so because the witness Fehima Čakić, without a real explanation, changed her statement given in the investigation, which has already been discussed above.

In addition to this, the fact that “bad and stupid” things were happening whenever the accused was on duty ensues from the testimonies of the examined witnesses, as the witness Nail Ramić mildly put it, and which was confirmed, among others, by the witnesses Sajma Šabanović, N. A., Hasena Bajramović, Kada Spahić. The accused was the reserve policeman, and in that capacity obliged to protect citizens – civilians, as the accused himself stated in his testimony, that is, he was responsible for securing the Bosniak civilians detained in the Primary School “Hasan Veletovac”, and not to allow Milan Lukić and other members of the Serb army to enter the school, to kill, to beat and rape them. Many witnesses confirm that this was possible by stating the example of Goran Miličević, who was also a reserve policeman, assigned to be a guard in the primary school, during whose duty on guard there were no problems of such kind in the school, and who resolutely stood up to Milan Lukić and his group. Thus the witness Nail Ramić states in his testimony that “there was one Goran Miličević, and when he was on guard, he did not let anyone maltreat us”, the witness N. A. stated that Goran Miličević was trying to protect them as much as he could, when Goran was on guard there was no abuse, or only slight, and she heard an argument once in the corridor when Goran was saying “do not touch the people, do not touch the children, do you have any feelings, do you have any consciousness”, he used to bring them water and make tea for the children, while the witness Asmir Spahić states that Goran Miličević did not allow anyone to maltreat them, and when he once came to the night shift and when he saw what the people looked like, he said “sleep peacefully tonight, no one will do any harm to you”. This witness also stated that they considered the policemen who guarded them as a salvation straw, but that they did not think they had been guarded so that something bad would not happen to them, but rather to prevent them from going anywhere. Unlike the foregoing, none of the witnesses said that the accused had even tried to do anything like that. The Prosecution witnesses, like the Defense witnesses, undoubtedly agree concerning the type of personalities that Milan and Sredoje Lukić are, their reputation, both theirs and of the members of their group. Therefore, it is difficult even to imagine that the accused, as a policeman who was aware of the events in Višegrad, where, as one witness said “Muslims could not freely move around”, did not know and was unaware of their intention to commit crimes. On the contrary, by enabling Milan Lukić and the others to enter the school, although he could have opposed to that successfully, or at least could have tried to, the accused was not only aware of their criminal intent, but he also shared that intent with them, wanting the prohibited consequence (death, rape, physical and mental sufferings) as his own, in which manner he contributed to a decisive extent to the commission of severe crimes against the civilians, to which the accused had an affirmative attitude even when not participating in them, while without such attitude of the accused towards the actions described (enabling Lukić and his group to enter the school), such crimes would not have been possible.

Bearing in mind all the foregoing, the Panel established in quite reliable manner any beyond any doubt that the accused committed the criminal actions in the manner, at the time and at the

places as precisely stated under Sections 1.), 1a.), 2a.), 2b.) and 2c) of the operative part of the convicting part of the Verdict.

When it comes to the application of substantive law and legal qualification of the offense, bearing in mind the principles prescribed under Articles 3. 4. and 4a) of the Criminal Code of Bosnia and Herzegovina, the Panel applied in the case at hand the Criminal Code of Bosnia and Herzegovina, and found that by the stated actions, the accused committed the criminal offense of Crimes against Humanity in violation of Article 172 (1) items a), e), f), g) and i) of the stated Code.

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

The principle of legality has also been prescribed by Article 7 (1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR) and Article 15 (1) of the International Covenant on Civil and Political Rights (hereinafter: the ICCPR).

Article 7 (1) of the ECHR prescribes: “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”

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

Accordingly, these provisions prescribe the prohibition of imposing a heavier penalty, but they do not stipulate the obligatory application of the most/more lenient law (if the law was amended on several occasions) on the perpetrator in relation to the punishment applicable at the time of the commission of the criminal offence.

However, Article 7 (2) of the ECHR prescribes: “This article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by civilized nations.” On the other hand, Article 15 (2) of the ICCPR reads: “Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was

committed, was criminal according to the general principles of law recognized by the community of nations.”

Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR contain provisions constituting exceptions to the rule established under Article 7 (1) of the ECHR and Article 15 (1) of the ICCPR.

Finally, the same exception is envisaged in Article 4a) of the CC of BiH prescribing that Articles 3 and 4 of the CC of BiH shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of international law. Thereby, in fact, Article 7 (2) of the ECHR and Article 15 (2) of the ICCPR were adopted, thus providing for exceptional departure from the principle referred to in Article 4 of the CC of BiH, as well as the departure from obligatory application of a more lenient law in the proceedings concerning criminal offences according to international law. It is exactly the case in these proceedings against the accused, as it actually concerns the incrimination which includes the violation of the rules of international law.

The state of Bosnia and Herzegovina as a successor state of the former Yugoslavia ratified the ECHR and ICCPR and thereby these agreements are obligatory for it, and the authorities of Bosnia and Herzegovina, including courts, must apply them. Therefore, Article 4a) of the CC of BiH is merely national legal reminder, as it is not necessary for the application of these agreements.

Article 172 of the CC of BiH prescribes the criminal offence of Crimes against Humanity defined under Article 5 of the ICTY Statute as specific offences “when committed in armed conflict, whether international or internal in character, and directed against any civilian population.”

At the time of the commission of the offences, Crimes against Humanity were not explicitly prescribed under Criminal Codes in Bosnia and Herzegovina.

The customary status of punishability of crimes against humanity and prescribing individual criminal responsibility for their commission in 1992 was confirmed by the UN Secretary General (Report of the UN Secretary General pursuant to paragraph 2 of the Security Council Resolution 808, 3 May 1993, paragraphs 34-35 and 47-48), the International Law Commission (Commentary to Draft Code of Crimes against the Peace and Security of Mankind (1996), Article 18), as well as the jurisprudence of the ICTY and the International Criminal Tribunal for Rwanda (ICTR) ICTY, Appellate Chamber, *Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraph 141; ICTY Trial Chamber, *Tadić* judgment dated 7 May 1997, paragraphs 618-623; ICTR, Trial Chamber, *Akayesu*, 2 September 1998, paragraphs 563-577.

These institutions have assessed that the punishability of the crimes against humanity constitutes an imperative norm of international law or jus cogens (International Law Commission, Commentary to the draft articles on Responsibility of States for Internationally Wrongful Acts (2001), Article 26), which is why it is indisputable that in 1992, crimes against humanity constituted a part of customary international law. This conclusion was confirmed by the Study on Customary International Humanitarian Law (Jean-Marie-Henckaerts and Louise

Doswald-Beck; Customary International Humanitarian Law, ICRC, Cambridge University Press, 2005), produced by the International Committee of the Red Cross. According to the Study, “Serious violations of international humanitarian law constitute war crimes” (Rule 156), “Individuals are criminally responsible for war crimes they commit” (Rule 151), and “States must investigate war crimes allegedly committed by their nationals or armed forces, or on their territory, and, if appropriate, prosecute the suspects. They must also investigate other war crimes over which they have jurisdiction and, if appropriate, prosecute the suspects.” (Rule 158)

Article 4a) of the CC of BiH deals with “the general principles of international law”. Article 7 (2) of the ECHR deals with “the general principles of law recognized by civilized nations”, and Article 15 (2) of the ICCPR with “the general principles of law recognized by the community of nations”. Since neither international law nor the ECHR recognize a term identical to the one used in Article 4a) of the CC of BiH, this term actually constitutes a combination of “the principles of international law” as recognized by the UN General Assembly and the International Law Commission, and “the general principles of law recognized by the community of nations”, as recognized by the Statute of the International Court of Justice and Article 7 (2) of the ECHR, as well as Article 15 (2) of the ICCPR.

The principles of international law as recognized by the General Assembly Resolution 95(I) (1946) and the International Law Commission (1950) pertain to the “Charter of the Nurnberg Tribunal and the Judgment of the Tribunal”, thus to crimes against humanity. “Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal” adopted by the International Law Commission in 1950 and submitted to the General Assembly, Principle VI.c. prescribes that Crimes against humanity are punishable as crimes under international law. Principle I prescribes: “Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.” Principle II prescribes: “The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.”

The jurisprudence of the European Court of Human Rights emphasizes the application of of Article 7 (2) in relation to the application of Article 7 (1) of the ECHR in several similar cases (See e.g. ECHR Judgment in the *Naletilić v. Croatia* case, 51891/99 and the Judgment), in which the subject matter of discussion was the existence and punishability of crimes against humanity as a criminal offence. In the *Kolk and Kislyiy v. Estonia* case the European Court “recalls that that the interpretation and application of domestic law falls in principle within the jurisdiction of the national courts... (See *Papon v. France* No. 54210/00, ECHR 2001-XII and *Touvier v. France*, No. 29420/95, decision of the Commission dated 13 January 1997), which is applicable also when the domestic law pertains to the rules of general international law or international treaties.

Accordingly, the criminal offence of crimes against humanity can in any case be subsumed under “general principles of international law” referred to in Article 4a) of the CC of BiH. Therefore, regardless of whether viewed from the viewpoint of international customary law or the viewpoint of “principles of international law”, it is indisputable that crimes against

humanity constituted a criminal offence in the period relevant to the Indictment, and that the principle of legality has been met. In doing so, the fact should not be neglected that the criminal acts referred to in Article 172 of the CC of BiH can be found in the law that was in effect in the relevant time period (the CC SFRY), in other words that the acts charged in the Indictment were punishable under the then applicable criminal code. Finally, with regard to Article 7 (1) of the ECHR, the Court notes that the application of Article 4a) is additionally justified by the fact that the pronounced punishment is in any case more lenient than the death penalty applicable at the time of the commission of the offence, which satisfies the application of the principle of time constraints regarding applicability of the criminal code. In addition to this, in the decision upon the appeal by Abduladhim Maktouf, the Constitutional Court of Bosnia and Herzegovina concluded on 30 March 2007 that in the concrete case the issue of application of the CC BiH in the proceedings before the Court of BiH did not constitute a violation of Article 7 (1) of the European Convention.

When it comes to the qualification of individual acts undertaken by the accused, the Panel established that the acts described under Sections 1 and 1a of the operative part of the Verdict include all substantive elements of the criminal offence of Crimes against Humanity in violation of Article 172 (1) (e) of the CC of BiH, given that the established state of facts suggests that the acts undertaken by the accused constitute beyond any doubt the deprivation of personal freedom by violating the fundamental rules of international law since the detainees were not voluntarily present in the Primary School *Hasan Veletovac* and had no possibility to leave that place (as the witness Asmir Spahić said “the guards were there to prevent us from going anywhere). Having acted with the direct intent, since he was aware of the act of commission and wanted to commit the act, the accused committed beyond any doubt the criminal offense as charged under the stated counts.

In the acts described under Sections 1, 2a) and 2c) all substantive elements of the criminal offence of Crimes against Humanity in violation of Article 172 (1) (i) of the CC of BiH have been met, given that it ensues beyond any doubt from the adduced evidence that the accused, as a member of the RS police, participated in the arrests of civilians on no grounds, after which those people have been unaccounted for. To wit, the accused was aware in which capacity he acted when he arrested the civilians, intending by their abduction to remove them from the protection of law, in which manner he also acted with the direct intent.

Furthermore, in the acts described under Sections 1a) and 2c), all substantive elements of the criminal offence of Crimes against Humanity – depriving another person of his life (murder) in violation of Article 172 (1) item a) of the CC BiH have been met, since it ensues from the established state of facts that the persons mentioned in these Sections of the operative part of the verdict were deprived of their lives, and pursuant to the described and proved actions of the accused with regard to the Sections concerned, he acted with direct intent, being aware of the act he committed and wanting the commission of the act.

In the acts described under Section 2b) of the operative part of the Verdict, all substantive elements of the criminal offence of Crimes against Humanity – aiding in coercing another by force or by threat of immediate attack upon his life or limb, or the life or limb of a person close to her, to sexual intercourse or an equivalent sexual act (rape), sexual slavery, or any

other form of sexual violence of comparable gravity in violation of article 172 (1) item g) of the CC BiH, in conjunction with Article 31 of the CC BiH have been met. With regard to this Section of the operative part of the Verdict, it clearly ensues from the evidence adduced that the accused was aware of the fact that the girls and young women would be raped, and since he personally singled them out from the sport hall by pointing his finger at them, he also had the will to help Serb soldiers to rape those women.

Finally, it ensues from the evidence adduced that by the acts described under Section 2c) of the operative part of the Verdict, the accused committed the criminal offense of Crimes against Humanity – torture in violation of Article 172 (1) item f) of the CC BiH.

Relevant elements for the commission of the act of torture are as follows: that the crime was committed against a person who was under control of the perpetrator, that severe physical or mental pain or suffering were inflicted on the victim by the crime, that the crime is intentional, and that it is not a consequence of the execution of legal sanctions. With regard to this criminal act, the results of the evidence adduced suggest beyond any doubt that all the statutory elements of the action charged have been met, that the accused was entirely aware of them, and that he wanted their commission.

For all the foregoing, the Panel concludes with certainty that each of the stated actions of the accused constitutes a severe and flagrant, contrary to international law deprivation of fundamental rights of a person, such as the right to life, freedom and safety, the right not to be subject to torture or cruel and humiliating treatment, **and all for being a member of a group of people or a community of another, that is, different ethnicity, religion, namely exclusively on a discriminatory basis and with discriminatory intent.** By acting with direct intent, aware that by taking the actions concerned he is violating the rules of international law, with the fact that in addition to that he wants the prohibited consequence, this Panel concludes that, regardless of the number of acts of commission, the accused committed a compound criminal offense of **Crimes against Humanity–persecution referred to in item h)**, in conjunction with items a), e), f), g) and i), Paragraph 1 of Article 172 of the CC BiH, in conjunction with Article 29 and 31 of the CC BiH, of which crime he was found guilty.

The Court found no grounds for the Defense assertion that forcible disappearances and rapes were not accepted as crimes against humanity pursuant to the customary international law. To wit, the Court notes that the stated actions are indisputably criminal offenses which at the time of war acquire the characteristics and the meaning of war crimes, and when a certain action is prescribed as a crime at the time when it was taken, – if it is committed with a high degree of cruelty, inhumanity and general criminal conduct, which, in addition, is a part of a plan and system in the crime commission judges have a discretion to qualify such action as a crime against humanity too, because it is a dynamic process which adjusts to the time and indisputably new ways of crime commission.

Furthermore, the prohibition of rape and severe sexual abuse during armed conflicts has become a part of international customary law. It gradually emerged from the explicit prohibition of rape referred to under Article 44 of the Lieber’s Code and general provisions referred to under Article 44 of the Book of Rules in the Annex IV to The Hague Convention, which should be interpreted together with the “Marten’s clause” which is stated in the in the

Preamble of the Convention. Although the Nurnberg Court did not conduct separate criminal prosecutions for the rape and sexual assaults, the rape has been qualified as crime against humanity pursuant to Article II (1) (c) of the Law No.10 of the Control Council.

The International Military Court in Tokyo convicted generals Toyoda and Matsui based on their command responsibility for violations of the laws and customs of war which were committed by their soldiers in Nanking, which included a mass scale rape and sexual assaults. The former Japanese Minister of Foreign Affairs, Hirota, was also convicted of such crimes.

This decision, as well as the decision of the Military Commission of the United States in the *Yamashita* case, in addition to the fact that the fundamental prohibition “violation of personal dignity” from the common Article has become a part of international customary law, have contributed to the development of universally accepted norms of international law which prohibit rape and severe sexual assaults. Those norms are applicable to any armed conflict.

In addition to this, no international human rights instrument prohibits explicitly rape and other severe sexual offenses, and yet, those criminal offenses are implicitly prohibited by the provisions protecting the bodily integrity, which constitute a part to all relevant international treaties. The right to bodily integrity is a fundamental right which is reflected in national legislature, and therefore it undoubtedly constitutes a part of international customary law.

With regard to enforced disappearances, the Appellate panel finds that, pursuant to the ICTY jurisprudence, mutilation and other forms of severe bodily injuries, beating up and other violent offenses, severe physical and mental injuries, enforced relocation, inhuman and humiliating treatment, enforced prostitution and **enforced disappearance** of persons are listed in the ICTY case law as the offenses falling under the category of “other inhumane offenses”.

Bearing in mind the *principle nullum crimen sine lege*, the Appellate Panel notes that the **category of “other inhuman acts, as a general category of crimes against humanity, constitutes a part of international customary law, while the fact that that the CC BiH singled out the enforced disappearance of persons and defined it separately in Article 172 (1) item i), and “other inhumane acts” methodologically categorized under item k) of the same Article**, does not deny this act the status of a norm of international customary law in any case.

It should be also noted that “other inhumane acts” themselves constitute crime pursuant to international criminal law. In support of the above, the Panel notes that convicting judgments were rendered on that basis by the International Military Court in Nurnberg, the ICTY, and the International Tribunal for Ruanda (with reference to the Military Court in Nurnberg, see e.g. *The Medical Case, the Justice Case, the Ministries Case and the High Command Case, Trials of War Crimes*, Vol. I, p. 16, Vol. II, p.175-180, Vol. III, p.23, Vol. XIV, p.467, Vol. X, p.29,36, 462; the ICTY, the first instance judgment in the *Kupreškić* case, the first instance judgment in the *Kvočka* case, the first instance judgment in the *Naletilić* case, the first instance judgment in the *Galić* case; for the International Tribunal for Ruanda, see e.g. the first instance judgment in the *Akayesu* case).

In deciding about the sanction, the Panel was guided by the general rules for meting out punishment referred to in Article 48 of the CC BiH, and also by the purpose of punishment prescribed under Article 39 of the CC BiH. The panel is therefore satisfied that the purpose of punishment will be entirely achieved by the imposed sentence, bearing in mind the degree of criminal liability of the accused and the gravity of the consequences that ensued.

The Panel is of the opinion that the punishment should reflect the gravity and the severity of the crime, that it must ensure an adequate punishment for the perpetrator and achieve the final goal, that is, the justice as a universal principle.

With regard to the mitigating circumstances, the Panel took into account that the accused is a family man, father of two minor children, without prior convictions, while with regard to the aggravating circumstances, the number of criminal actions the accused was found guilty of and their continuous nature. Truly, the Court did not find any particular cruelty and persistency in the commission of the crimes, but at the same time, the accused committed certain criminal acts as a guard from whom it was expected to protect the civilians, who constituted an especially vulnerable category due to the fact that they were detained for a number of days.

Bearing in mind that this particular criminal offense constitutes one of the most severe offenses of violation of international humanitarian law with grave consequences, the sentence of imprisonment for a term of 14 years imposed on the accused constitutes an adequate reflection of the gravity of the offense, its consequences, the motives due to which it was committed, as well as the degree of criminal liability of the accused, by which both individual and general prevention will be achieved, that is, a warning to others not to commit the same or similar crimes.

Pursuant to Article 56 of the CC BiH, the time the accused spent in custody starting from 24 January 2005 shall be credited towards the imposed sentence, while with respect to his poor financial standing, pursuant to Article 188 (4) of the CPC BiH, the accused shall be relieved of the duty to compensate the costs of the criminal proceedings, since the sustenance of the persons for whose support he is responsible would be brought into question if the costs were paid by the accused.

In deciding on the property claim, along the lines of Article 198 (1) of the CPC BiH, the Court instructed the injured parties, whose names were stated in the operative part of the Verdict, that they may take a civil action to pursue their claims under property law, because the establishment of the facts with regard to the amount of property claim would require a considerable period of time which would delay these criminal proceedings.

When it comes to the acquitting part of the Verdict regarding Count 1b) of the amended Indictment, under which the accused is charged that on 17 June 1992, together with a group of several members of the Serb army and police, armed with rifles, he participated in the attack and unlawful arrest of several dozens of civilians from Žlijeb, including women, children and men, their confinement, by prior shooting from the rifles at the Bosniak houses, and thereafter ordering them to leave their houses and property, and gather at the location of Carina, thereupon loading them into trucks by which they drove them to the premises of the Firehouse in Višegrad, the Court examined the witnesses - Nail Ramić, Cura Gluščević, Vasvija Gluščević, H. H., Ibrumša Agić, Hana Softić and Ismet Softić.

The witness Nail Ramić testified that he knew the accused well, that they were on good terms before the war as neighbors in the village of Žlijeb, that at the beginning of the war he used to see the accused who was armed and wearing a uniform coming with a group of people to the village; that the group consisting of people mainly unknown to him came to the village, harassed him and shot at his house; one night the group including the accused came to his house and beat him up. He then realized that he had to hide in the nearby woods which lasted until mid-June when he was arrested and taken to the Elementary School Hasan Veletovac. Some of the people fleeing towards Žepa told him that Boban Šimšić had inquired about him and told him “run, Boban’s group is coming”. In his opinion, the men who arrested him in the woods were the men of Boban Šimšić.

The witness **Cura Gluščević** testified that until the war she had lived in the village of Žlijeb from which Muslims were persecuted on 17 June 1992. She remembers that on that day the armed persons arrived: Radoje Milićević, Goran Milićević, Spasoje Milićević, Miloje Novaković, Cvele and Ljubo, as well as Boban Šimšić, some of them wearing uniforms, others not. They started shooting at Muslim houses and said that within an hour they had to leave the village. All Muslim inhabitants gathered at the Carine site. Boban Šimšić was also there. From that place they went to Obranje where they loaded them into trucks and drove them in front of the Firehouse in Višegrad.

The witness **Vasvija Gluščević** did not confirm that she had seen the accused when the Muslim inhabitants had been expelled from the village of Žlijeb under the threat of weapons, however although, as she said she did not recognize him personally then at the Carine site where they were ordered to gather, she heard about his presence at that place from Derviš Softić and Avdija Nuhanović who are dead now.

The witness **H. H.** testified that she did not see Boban Šimšić, whom she did not know after all, on the critical day when she left the village of Žlijeb. She stated that she heard from other inhabitants (she concluded from what they said) and that he was the worst among them.

The witness **Ibrumša Agić** stated she knew Boban Šimšić well ever since he was a child, as well as his parents. At the beginning of the war, armed soldiers, whom she mostly did not know, used to come to the village of Žlijeb. The witness described that on one occasion a group of soldiers, among whom she did not see Boban, arrived and gathered approximately 150 inhabitants and transported them in trucks to the Firehouse in Višegrad.

The witness **Hana Softić** stated that the Muslim inhabitants had left the village of Žlijeb when shooting started that night from all sides. They directed them towards Višegrad, the Firehouse, wherein they were detained for 5-6 days and then on to Olovo and when the truck broke down on Lijeska they returned them to Višegrad, the elementary school. She is categorical in saying that Boban Šimšić was not present while they were taken away from the village. As neighbors they had good relations with him and he made no harm to anyone.

Her husband **Ismet Softić**, who was examined on 10 August 2005 in the capacity of a witness by the Preliminary Proceedings Judge within the securing of evidence by the Court (Article

273/1 of the CPC of BiH), and whose statement was reproduced from a compact disc at the main trial since the witness deceased in the meantime, stated that the inhabitants of the village of Žlijeb were taken on 15 July 1992 first to Obranje where they were loaded into the trucks and then to the Firehouse in Višegrad.

Like his wife, this witness also claims that Boban Šimšić was not among the members of the patrol that took them out of the village.

After the evaluation of the stated witnesses' testimonies, starting from the testimonies of the witnesses Ibrumša Agić, Hana Softić and Ismet Softić, who stated that they had not seen the accused at all when the civilians were taken away from the village to the testimonies of Vasvija Gluščević and H. H. who did not see him on that occasion, but who had heard from others that the accused was among the soldiers on that critical day, and finally of Cura Gluščević, who only testified that she had seen the accused armed in the village, together with the other soldiers (she was also the only one who listed by names the soldiers who were in the village), who had ordered them to leave the village in an hour, the Panel was not able to conclude, beyond any reasonable doubt, that the accused participated in the attack on the village of Žlijeb. The testimony of the witness Cura Gluščević, as evaluated with regard to the testimonies of the other witnesses, was not sufficient so as to draw such factual conclusion, and it was not confirmed to a decisive extent by the testimony of the witness Nail Ramić either, considering the contradiction between his statement and his evaluation presented during his giving evidence, which have no connection whatsoever with an objective observation (when asked by the defense counsel how he knew that the people who had arrested him in the woods were members of the Boban Šimšić's group, the witness responded that it was in his opinion). In addition to this, this witness did not give his specific statement regarding the attack on the village of Žlijeb, because he was personally arrested in the woods where he had hid himself, while his statements that "it was known to him" that the accused participated in the inhabitants persecution from the village, and that he was "one of the leaders of that", do not have a big evidentiary value so as to establish the facts regarding this Count of the Indictment.

Bearing in mind the foregoing, and from the results of the evidence adduced, the Panel was not able to draw an indisputable conclusion regarding the responsibility of the accused for this Count of the Indictment, due to which the accused was acquitted of the charges for the commission of the described criminal actions.

Furthermore, on the basis of the adduced evidence, the Panel also could not establish beyond any reasonable doubt that on an unidentified date in the second half of June 1992, the accused took out from the premises where Bosniak civilians were detained in the Firehouse in Višegrad, five girls and five younger women, including H. H., and took them to the adjacent room, then together with two Serb soldiers hit them with batons and kicked them first, and thereafter, after all girls and women were upon his order stripped naked, raped them taking turns which lasted for two or three hours, and on that occasion, H. H. sustained injuries of her head in the form of hematoma and bumps, and also the injuries of her genital organs in the form of bleeding (Count 4.a of the amended Indictment).

In testifying about the events in the Firehouse, the witness Timka Kapetanović stated, *inter alia*, that there were cases of abuse of young women and girls in the Firehouse, that one H. was taken out even three times per night, she had two children, a father-in-law, the children would stay with the mother-in-law, cried, and when she would come back, in a miserable

condition and with their hair ruffled, and when asked where she had been, she did not dare answer. To wit, this witness does not correlate the accused with taking this young woman away, nor does the witness Vasvija Gluščević either, who stated that she had stayed only for four-five days in the Firehouse, that they would come and abuse them every night, Milan Lukić used to come every day, every night they took away, they said “Come on, H., get up”, and the woman thereafter returns in a miserable condition, raped. The witness Ibrumša Agić stated that in the Firehouse, Lukić used to take away her cousin’s wife every night, but she did not see that Boban took her away, whom generally she saw in the Firehouse only once. It ensues from the statement of the witness **Muniba Gluščević** given for the record with the police in Goražde in 2004 that during her detention in the Firehouse in Višegrad, the same evening after she had been punched with a fist by Mitar Vasiljević, and after she had regained her consciousness, she was told by other women that some of them had been raped, which was happening every night during her seven-days detention in the Firehouse. This witness also does not bring the accused into connection with the alleged rapes of women.

Finally, the witness **H. H.** states in her testimony that seven years before the war broke out, she lived in the village of Žlijeb, with her father-in-law, husband and three children. Her husband got killed. She heard from her neighbors that Boban was the worst of all, although she does not know the names of the neighbors who said that to her. She did not see Boban on the day when she left the village but she saw him down there in Višegrad, in the Firehouse to where they were transported by trucks and imprisoned. Before her arrival in the Firehouse, she did not see Boban Šimšić around and the people said it was Boban Šimšić, and he stayed there for a short while and then returned. She described him as being neither big nor small, she does not remember if he was armed or how he was dressed – as she was scared. She states that, apart from the accused, Milan Lukić was also in the Firehouse. She was raped in the Firehouse, Boban Šimšić raped her and was beating her with some baton and she suffers from consequences, in her head. She explained that the accused had taken her to the upper floor, to a room which was unfurnished and where she had to undress, and he did whatever he wanted to. She adds that, on three occasions, he took them out, five women and five girls on each occasion, and that it was Boban Šimšić who took them all away and that, except for him, she did not see anyone else on the upper floor. She said that he also beat other women with a baton and raped them. He previously asked them to strip naked, which they did. She is certain that Boban Šimšić raped them. When he took them away for the second time, two other soldiers accompanied him and she could not recognize them. On that occasion, the accused ordered them to undress and to dance around him. During the sexual intercourse the accused used a baton, and the other two soldiers participated in the rape, the witness said “well yes, of course they did”, they also stripped naked. However, she cannot remember the names of the girls and women except that they were from the villages of Kuke and Vlahovići. She does not know if any of them knew him. They stayed in the room for two to two and a half hours. Her sexual organ was bleeding. He was beating her in the head whenever she refused to undress. While he was taking them to be raped for the third time, she did not see if anyone else was with him. At the main trial, the witness was not able to identify the accused. She stated that she could not recall as she had forgotten his appearance. She saw the accused Boban only in the Firehouse, she had not seen him before her arrival at the Firehouse – the School. She married a man from the village of Žlijeb and came to live there in 1984, and she had stayed there all the time until they left the village. She cannot remember any of the persons who took

them away, including the way in which a person whom they called Boban Šimšić was dressed. She remembers that he was standing guard one whole day in the Firehouse.

Evaluating the statement of the witness H.H. in its entirety, the Panel observes a series of illogical facts in it, starting from the fact that this witness did not know the accused Šimšić Boban at all, although she had lived for 7 years before the war in the village from which the accused was, that she did not remember who was taken with her from the village to the Firehouse, that after all that she had experienced by the accused in the Firehouse, according to her statement, she could not recognize him in the courtroom (she forgot his appearance), that she does not know names of any other women of 9 women who were raped together with her, to the statement that the accused raped 10 women on three occasions (first time alone, the second time with another two soldiers, and the third time she did not see whether anyone else participated with him?).

The Panel did not find any reasonable explanation whatsoever for such an unconvincing testimony of the witness. It was only possible to draw a conclusion that this was a fabricated construction, without any realistic, objective ground, and when it is taken into account that none of other examined witnesses confirms such testimony, the Panel could not bring the accused into connection with the alleged rapes, because of which the accused was acquitted of the charges that he committed the criminal offense as described in Count 4a) of the amended Indictment.

Furthermore, under Count 4c) of the amended Indictment, the accused is charged that on 18 June 1992, together with Milan Lukić, in the Firehouse in Višegrad, from the room in which they were unlawfully imprisoned, he singled out Bosniak civilians, namely: Mujo Gluščević, Hasan Gluščević, Hasib Gluščević, Meho Agić, Emin Agić, Meho Softić, Samir Softić, Mustafa Šabanović, Avdija Nuhanović, Sead Hodžić, Adem Kozić, Dželal Hodžić, Dževad Hodžić, Salko Sućeska, Huso Bulatović, Husein Vilić, Hamed Kešmer, Ibrahim Kešmer, and thereafter took them away from the Firehouse, and who have been unaccounted for ever since, except for Mujo Gluščević, Ibrahim Kešmer, Hamed Kešmer, Samir Softić, Emin Agić, Hasib Gluščević, Sead Hodžić, Huso Bulatović, Dželal Hodžić and Adem Kozić, whose corpses were found during the exhumation at the location of Slap Žepa.

The fact that out of 18 men who were taken away from the Firehouse on that critical occasion, the corpses of the aforementioned persons were exhumed, and that the others, whose names were also mentioned, have been reported as persons unaccounted for, is not disputable for this Court considering the irrefutable material evidence – Records on the Exhumations and Identifications as well as testimonies given by expert witnesses – forensic pathologists.

The Cantonal Court in Sarajevo, Number: Kri:3577/00 of 9 October 2000, produced an on-site Record on the Exhumation between 9 and 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 10). The body exhumed from the gravesite marked with number 10 has been identified as Hamed Kešmer (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2515/00, Subject: exhumation, post-mortem examination and identification Kri: 347/00 G.S. 64, Site: Rogatica,

Žepa, Slap, Date of photographing: 11 October 2000. Photograph 1 shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – the corpse photographed while in the grave. Photograph 3 – the corpse photographed after being taken out of the grave. Photograph 4 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 5 – the corpse photographed after the anthropological re-association of the body parts. No injuries on the bones of the corpse have been recorded.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 9 October to 14 October 2000. In the period from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 364/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 09 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 88). The body exhumed from the gravesite marked with number 88 has been identified as Mujo Gluščević (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2526/00, Subject: exhumation, post-mortem examination and identification Kri: 358/00 G.S. 9, Site: Rogatica, Žepa, Slap, Date of photographing: 11 October 2000. Photograph 1 - shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – same as the previous photograph, taken from a closer distance. Photograph 3 – wedges found on the occasion of digging up the graves are marked with arrows. Photograph 4 - the corpse photographed while in the grave. Photograph 5 – the corpse photographed after being taken out of the grave. Photograph 6 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 7 – the corpse photographed after the anthropological re-association of the body parts. Photograph 8 – arrows on the photograph point at an injury on the right 8th rib and at dilacerated vertebrae T6 and 7.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 9 October to 14 October 2000. In the period from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 358/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 9 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 9). The body exhumed from the gravesite marked with number 9 has

been identified as Ibrahim Kešmer (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2532/00, Subject: exhumation, post-mortem examination and identification Kri: 364/00 G.S. 88, Site: Rogatica, Žepa, Slap, Date of photographing: 11 October 2000. Photograph 1 shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – the corpse photographed while in the grave. Photograph 3 – the corpse photographed after being taken out of the grave. Photograph 4 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 5 – the corpse photographed after the anthropological re-association of the body parts. No injuries on the bones of the corpse have been recorded.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 9 October to 14 October 2000. In the period from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 335/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 09 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 73). The body exhumed from the gravesite marked with number 73 has been identified as Huso Bulatović (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2616/00, Subject: exhumation, post-mortem examination and identification Kri: 448/00 G.S. 100, Site: Rogatica, Žepa, Slap, Date of photographing: 13 October 2000. Photograph 1 - shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – the corpse photographed while in the grave. Photograph 3 – the corpse photographed after being taken out of the grave. Photograph 4 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 5 – the corpse photographed after the anthropological re-association of the body parts. Photograph 6 – arrows on the photograph point at fractures of the 4th, 9th, 10th right ribs and fracture of 5th left rib inflicted by firearm. Photograph 7 – arrows on the photograph point at a semicircular hole, 1 cm in diameter, in the left 5th rib in the anterior axillary line coming from the inside. Photograph 8 – an arrow on the photograph points at two round bullet holes, 0.4 cm in diameter each. Photograph 9 – a close-up photograph of round bullet holes.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from

9 October to 14 October 2000. In the period from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 448/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 9 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with number 100). The body exhumed from the gravesite marked with number 100 has been identified as Sead Hodžić (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2503/00, Subject: exhumation, post-mortem examination and identification Kri: 335/00 G.S. 73, Site: Rogatica, Žepa, Slap, Date of photographing: 10 October 2000. Photograph 1 - shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – same as the previous photograph – a photograph taken from short distance. Photograph 3 - the corpse photographed while in the grave. Photograph 4 – the close-up photograph of the gravesite number. Photograph 5 – the corpse photographed after being taken out of the grave. Photograph 6 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 7 – the corpse photographed after the anthropological re-association of the body parts. Photograph 8 – arrows on the photograph point at the fracture of the left transversal xiphoids from 2nd to 7th thoracic vertebrae.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 9 October to 14 October 2000. Within the period of time from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 347/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 9 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 64).

The body exhumed from the gravesite marked with number 64 has been identified as Hasib Glušević (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2525/00, Subject: exhumation, post-mortem examination and identification Kri: 357/00 G.S. 10, Site: Rogatica, Žepa, Slap, Date of photographing: 11 October 2000. Photograph 1 - shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 - wedges found on the occasion of digging up the grave are marked with arrows. Photograph 3 - the corpse photographed while in the grave. Photograph 4 – the corpse photographed after being taken out of the grave. Photograph 5 – the corpse photographed at

the dissecting room prior to post-mortem examination. Photograph 6 – the corpse photographed after the anthropological re-association of the body parts. The autopsy did not indicate the existence of any injuries on the bones of the corpse.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 9 October to 14 October 2000. Within the period of time from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 334/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 9 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 72). The body exhumed from the gravesite marked with number 72 has been identified as Dželal Hodžić (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2502/00, Subject: exhumation, post-mortem examination and identification Kri: 334/00 G.S. 72, Site: Rogatica, Žepa, Slap, Date of photographing: 10 October 2000. Photograph 1 - shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – same as the previous photograph, taken from short distance. Photograph 3 – the corpse photographed while in the grave. Photograph 4 – the corpse photographed after being taken out of the grave. Photograph 5 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 6 – the corpse photographed after the anthropological re-association of the body parts. Photograph 7 – arrows on the photograph points at injuries of the right clavicle and of sternum. Photograph 8 – an arrow on the photograph points at the injury of 6th, 7th and 8th thoracic vertebrae.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 9 October to 14 October 2000. In the period from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 367/00, Sarajevo, 9 October 2000, produced an on-site Record on the Exhumation in the period from 9 to 14 October 2000, at the locality of the village of Slap-Žepa, with regard to the exhumation of several individual gravesites (gravesite marked with 91). The body exhumed from the gravesite marked with number 91 has been identified as Emin Agić (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2500/00, Subject: exhumation, post-mortem examination and identification Kri: 334/00 G.S. 72, Site: Rogatica, Žepa, Slap, Date of photographing: 10 October 2000. Photograph 1 - shows a broader view of the site where 1 corpse was exhumed in the place of Slap, Žepa, Municipality of Rogatica. Photograph 2 – the corpse photographed while in the grave. Photograph 3 – the corpse photographed after being taken out of the grave. Photograph 4 – the corpse photographed at the dissecting room prior to post-mortem examination. Photograph 5 – the corpse photographed after the anthropological re-association of the body parts. Photographs 6 and 7 – show the firearm skull injuries. Photographs 8 and 9– show a long-established Perthes disease of both hips, with extremely flattened part of femur heads. Photograph 10 – a bullet fragment in the remains photographed next to a ruler.

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Drawing of the crime scene, number: 2493/00 – 2625/00, Subject: exhumation, Site: Žepa Slap, Municipality of Rogatica, Date of photographing: from 09 October to 14 October 2000. In the period from 2 October 2000 to 14 October 2000, bodies of the murdered Bosniaks, who were buried in the place called Žepa Slap, Municipality of Rogatica, were exhumed.

The Cantonal Court in Sarajevo, number: Kri 493/00, Sarajevo, 14 November 2000, produced an on-site Record on the Exhumation on 14 November 2000 at the locality of Kameničko Točilo II, Municipality of Višegrad, with regard to the exhumation of mortal remains of unidentified persons. Mortal remains which have been marked with number 1 and which belong to a male skeletised corpse have been identified as Hasan Glušević. Mortal remains marked with number 2, which belong to a male sceletised corpse, have not been identified. Mortal remains marked with number 3, which belong to a male skeletised corpse, have been identified as Kasim Fehrić. Mortal remains marked with number 4 (a skull only), have not been identified. (Ibrahim Hadžić, Investigating Judge) (Hamza Žujo, Forensic Pathologist).

MoI, Crime Investigation Police Sector, Unit for Crime Scene Investigation Techniques – Sarajevo produced the following: Photo-documentation number: 2863/00, Subject: exhumation, post-mortem examination and identification Kri: 493/00, Site: Višegrad, Točionik, Luke, Točilo; Date of photographing: 14 November 2000. Photograph 1 - shows a broader view of the exhumation site in the place of Luke Točilo, Točionik, Municipality of Višegrad. Photograph 2 – same as the previous photograph, a close-up photograph. Photograph 3 – the grave photographed from another angle. Photograph 4 – a close-up photograph of the grave. Photograph 5 – the corpse marked with number 1 photographed while in the grave. Photograph 6 – the corpse skull photographed while in the grave. Photograph 7 – the corpse photographed in the dissecting room prior to post-mortem examination. Photograph 8 – shows fracture of 7th and 8th thoracic vertebrae. Photograph 9 – objects found during the post-mortem examination. Photograph 10 – appearance of the site where two corpses were found. Photograph 11 – a close-up photograph of the exhumation site. Photograph 12 – corpses photographed after detecting the grave – marking of corpses. Photograph 13 – skulls of corpses photographed while in the grave. Photograph 14 – a corpse marked with number 2 photographed while in the grave. Photograph 15 – a corpse marked

with number 2 photographed after the anthropological re-association of the body parts. Photograph 16 – shows the injuries on the skull's forehead during the lifetime. Photographs 17 and 18 – show a perforating wound through the skull, entry wound on the left side of the temporal bone, and exit wound on the right side. Photograph 19 – a corpse marked with number 3 photographed while in the grave. Photograph 20 – a corpse marked with number 3 photographed in the dissecting room prior to post-mortem examination. Photograph 21 – a corpse marked with number 3 photographed after the anthropological re-association of the body parts. Photograph 22 – a pocket watch found with the corpse during the post-mortem examination. Photograph 23 – a part of the skull marked with number 4 found in the close vicinity of the grave. Photograph 24 – a skull photographed from another angle. Photograph 25 – a close-up photograph of the skull. Photograph 26 – a skull photographed after the marking. Photograph 27 – same as the previous photograph, a close-up photograph. Photograph 28 – a skull photographed prior to post-mortem examination. Photograph 29 – a close-up photograph of the skull. Photograph 30 – a skull photographed after re-association.

The Institute of Forensic Medicine, Faculty of Medicine at the University of Sarajevo, produced a Record on Autopsy, Višegrad, Točilovo No. 1, number: Kri:493/00, Judge: Ibrahim Hadžić, Date of exhumation: 14 November 2000, Date of autopsy: 25 January 2001. Conclusion: Death was violent and caused by injuries of the thoracic organs. Destruction of 7th and 8th thoracic vertebrae was caused by a firearm missile. (Hamza Žujo, Forensic Pathologist).

While giving his testimony at the main trial on 8 May 2006, John Clark (55), Forensic Pathologist from Great Britain (Scotland), in his capacity as Forensic Pathologist who performed his duty in various countries and who also gave his expert evaluation with regard to the ICTY cases on two occasions, maintained the stated results of autopsy at the locality of Slap. Stating his position on the cause of death of the exhumed bodies, he confirmed that in most cases the wounds originated from firearms. Also, Prof. Dr. Hamza Žujo, confirmed in his testimony the findings related to the exhumation of bodies at the locality of Žepa. The Court gave full credence to these forensic experts holding that their expertise and conclusions were scientifically grounded and that they were experienced forensic experts were.

However, with this indisputable fact that the men were taken away from the Firehouse, and that the bodies of some of them were found, while nothing has been known about the others to this date, what is proved disputable is the participation of the accused in the take away of those men – civilians, that is, the act of perpetration by the accused himself which would cause his criminal responsibility for the crime concerned. The Court examined a number of witnesses in order to establish that.

The witness H. H. states that on the said occasion she saw that Boban Šimšić, as she specified, singled out three men within one hour, came back and did that again, and that the taking of men away lasted for two days. When the time came for him to take out her man, whose mortal remains were found at a later point in time at the locality of Slap, her mother-in-law, now deceased, said: “Boban, do not take my son out. Who will provide for their children?”, he responded by cursing their bialia mother and by saying that it was not him who had made

them. Previously, when the Prosecutor asked the witness if anyone had been taking the men out from the Firehouse, the witness stated that she could not remember. In explaining what the accused was doing after taking the men away, the witness said: “He took them away and killed them”, and when asked how she knew that the accused had killed them, the witness said: “Yes he did, who else but him. He killed them all”.

The Panel has already stated its opinion regarding the credibility of this witness when it considered her testimony with regard to the previous Count, and it should be only added here that the witness drawing conclusions based on the assumptions she presents does not contribute in any way to the credibility and authenticity of this testimony.

The witness Vasvija Gluščević also testified about the men being taken away from the Firehouse. She stated that the morning after their arrival, Milan Lukić and Mitar Vasiljević came to the Firehouse and started taking men out, three by three, and when they took out all 18 of them, they said that they would take them for exchange. There were additional 5-6 masked men with Lukić and Vasiljević, while her husband and her 14.5 years old son were among the men taken away. She did not state that the accused Boban Šimšić was also among the ones who had taken them away, and the witness Hajra Kapetanović did not state that either. She stated that she had not seen Boban coming in, if he had been at the door, but that he did not come in among them. She recognized Milan Lukić who had taken out the detained men, two by two, including Sifet Mufterić, Mujo, Emin Agić, Meho Agić, Meho Softić and his grandson Emir, Husein Vilić, Mustafa Šabanović, Salko Sućeska, Mujo Gluščević, Hasib Gluščević, a 14 years old child. Out of all the men, only Ismet remained. It seems to her that in total 18 men were taken.

She heard when Hana jumped up and said “Ask for Boban, Ismet got a heart attack”. They did not take away Hana’s husband Ismet Softić. Boban protected him and he stayed. Boban did not enter the Firehouse, Lukić did, and when Hana asked them to look for Boban, he must have been at the door.

The witness Cura Gluščević, in testifying about this event in the Firehouse, also does not state that Boban Šimšić was present when the men were taken away. She stated that after the arrival to the Firehouse in Višegrad, on 17 June 1992, Milan Lukić and Sredoje Lukić made a list of them in front of the Firehouse, in the manner that Sredoje made a list of women and Milan made a list of men, on two occasions. Next day, on 18 June 1992, about 15:00 hrs., Milan Lukić, Sredoje Lukić, Mitar Vasiljević and Dragan Lakić came and took the men away, two by two, to interrogate them – as they said and, they have never seen them again. On that occasion, the witness enumerated 16 persons who had been taken away, as follows: her husband Mujo Gluščević, Sifet Gluščević, Hasib Gluščević, Hasan Gluščević, Meho Agić, Emin Agić, Sead Hodžić, Dželal Hodžić, Huso Bulatović, Husein Vilić, Hamed Kešmer, Ibrahim Kešmer, Salko Sućeska, Adem Kozić, Mustafa Šabanović and Avdija Nuhanović. Half an hour later, Boban Šimšić appeared at the door. Fata Kešmer and Vasvija Gluščević, but not the witness, asked him if he could bring their men back. He made a dismissive hand gesture and told them to get lost. Her husband Mujo’s body was found in Žepa, at a later point in time. He was thrown into the water and she was present at the identification of his body.

Therefore, it follows from the statement of this witness that the accused Boban Šimšić was not present at the time when the aforesaid Bosniak civilians were taken away.

In relation to the same event, the witness **Ibrumša Agić** stated that after they had loaded them like cattle onto the trucks and transported to Višegrad, to the Firehouse, after they got out of the trucks, they listed down their surnames, and Milan Lukić and several other persons came there and cursed them, and then they were taken to the upper floor where Lukić placed one bag for money and another for golden jewellery. The accused Boban came on the second or the third day and Fata Agić approached him asking him to bring them some bread. She states that she did not see the accused save once; Boban went to school with her daughter; she grew up with his father and she does not know what Boban was doing with that Army. As for (Milan) Lukić, he deserved to suffer for what he had done to them. When asked why she stated in the investigation that after the money appropriation, Milan Lukić, accompanied by Boban Šimšić, had entered the sport hall and singled out 16 men, including her husband, the witness literally responded: "I did not see Boban. All the women said that they had seen Boban". On that occasion, she said precisely that Vasvija and other women said that they had seen him standing at the door. She explains that she was making a statement before a person Bakira and that she had told her - you must do this, you must do that and, in response to his question as to what that meant and who was Bakira and whether she was persuading her what to state during her testimony, Ibrumša Agić said word for word: "I do not know, from TV. Yes, she was persuading me to have to say what other women stated. I said: "Bakira, I cannot say what I have not seen. Do not persuade me to do that". She said: "If you do not want to say that, I shall have your pension cancelled". "You can cancel my pension. I have lost everything, my loved ones". The witness also stated that the accused did not make any harm to her and her husband.

The Court finds the testimony of this witness honest and convincing, and the explanation as to why she changed her statement given in the investigation acceptable in its entirety, and therefore the Court did not find proved on the basis of this witness testimony either that the accused participated together with Milan Lukić in the taking 18 men away from the Firehouse.

The witness **Timka Kapetanović's** testimony supports such conclusion. She states that she was born in the village of Žlijeb, that she knows Boban Šimšić from his childhood, and that he was her neighbor. From the time when the war broke out, she saw Boban for the first time in the Firehouse in Višegrad where more than 100 persons from Žlijeb were placed. Lukić and Vasiljević took 18 men away from the Firehouse and after that they have been unaccounted for. Female detainees begged Boban Šimšić to keep their men safe, and he only kept silent and did nothing to help them.

During the investigation (Record of the Prosecutor's Office dated 30 May 2005) and with regard to the circumstance of taking the men away from the Firehouse, this witness stated that Milan Lukić, Mitar Vasiljević and Dragan Lukić used to come there every night and take men away, three by three between themselves, but that she had not noticed Boban Šimšić on that occasion. He appeared at the door only on the third day of their stay there, he said nothing and he was only watching them. In the night before the day on which he appeared at the door, 18 men had been taken away. When Boban appeared at the door, many women, including herself, approached him asking about the men, in terms of what happened to them, were they alive, imprisoned – and he only kept silent.

In evaluating this testimony, the Court observes that what is important and common with the testimonies of the aforementioned witnesses is the fact that the accused Boban Šimšić did not participate in the taking the men away, but that he appeared in front of the Firehouse only after that.

Such conclusion of the Panel is also confirmed by the witnesses Ismet Softić and Hana Softić, who also testified with regard to this Count of the Indictment. In his testimony, which was audio and video reproduced at the main trial held on 14 April 2006, within the Court securing the evidence, the witness Ismet Softić states that they took away 18 men from his village, that they wanted to take him away too, but that he was lucky to stay alive because Boban Šimšić came by. He states that he was taken out from the room only to the door, that his wife addressed Boban, that Boban listened to her and said “Ismet, go to your place. Nobody must touch you”. Boban only appeared at the door and they did not see him again. This was confirmed by his wife **Hana Softić** too, when she stated in her testimony that she saw Boban after they had taken 18 men away. She explained that they took her husband too, and when they brought him to the door to take him away, Boban came and prevented that. She states that the women rushed toward Boban to beg him for their husbands, but it was late. Boban told them not to be afraid, that they would come back.

Also, the protected witness **V.G.105**, whose statement, as given in the *Prosecutor v. Mitar Vasiljević* case at the hearing before the ICTY on 24 September 2001, was read at the main trial, denies the presence of the accused when the men were taken away from the Firehouse, and states that Lukić and Vasiljević, no one else, took away 18 men from the Firehouse, namely on the third day after their arrival, and that they were all taken away on the same day.

Finally, during his examination in the witness capacity, in his statement regarding this event in the Firehouse, the accused himself stated that during his regular patrolling around the town, that is, in the area 1 in Višegrad, he was passing by the Firehouse and saw familiar persons on the door of the Firehouse. He came up to the door and saw persons from his village: Hana Softić, Ibrumša Agić, Fata Kešmer, Vasvija Gluščević, Šuhra Gluščević, and a few others. There were children among them, as well. He stayed there for 5-10 minutes and exchanged several sentences with them. He did not notice that the husbands of other women were there, save Hana Softić’s husband who was on the door taken somewhere by some persons. He told Ismet that he was not to make any statement, to go back and Ismet immediately returned to the Firehouse. He notes that Hana begged him for Ismet, and that those ones obeyed him. He talked to Fata Kešmer and Hana Softić, but he could not remember what they were talking about. He stopped by the Firehouse because he was patrolling in his area, that on that occasion he did not know that people were imprisoned in the Firehouse, and that he quite accidentally dropped by and saw some persons he knew.

By evaluating the testimonies of the witnesses in their entirety and bringing them in mutual correlation with regard to the events concerning this Count of the Indictment, the Panel finds that it was not proved that the accused participated in taking away of the men from the Firehouse, namely that the evidence adduced does not constitute the basis for the finding as in the factual allegations of the Indictment. Almost all examined witnesses confirmed that the accused did not enter the Firehouse (some of them do not mention him at all), that he came only at a later point in time, when the men had already been taken away (the witness Cura

Gluščević says it was a half an hour after their taking away), and that therefore he cannot be brought into connection with the group of Milan Lukić which took the men in an unknown direction. With regard to this issue, particularly convincing for the Court is the testimony of the witness Vasvija Gluščević, who does not even mention the accused Boban Šimšić in her statement regarding this segment of the events in the Firehouse. Considering that her husband and her 14 years old son were taken away on that occasion, had the accused also been present on that occasion, she would have certainly mentioned that in her testimony.

Under Count 5g) of the amended Indictment, the accused is charged with the beating of unlawfully imprisoned civilians on the premises of the primary school “Hasan Veletovac” in the second half of June 1992, about 20 of them, including: Ramo Hurem, Ibrišim Hadžić, Hamer Hadžić, Avdo Ferić, Mustafa Smajić, Nail Ramić, who were ordered to beat each other with a wooden stick (a wooden shaft holding a pick) over all the parts of their bodies due to which many of them were falling down. Every night they particularly beat Nail Ramić whom, on the first day of his imprisonment, they placed under the basket when a group of Serb soldiers, together with the accused, were playing basketball targeting alternatively the basket and Nail's head with the ball so strongly that Nail was fainting repeatedly. One of the following nights, the accused and several Serb soldiers led Nail and four other prisoners out of the prison room and beat them up in another room, punching them and kicking them with their military boots, beating them with rifle butts in the heads and backs and tore out their hair due to which Nail fainted. Due to receiving punches in the area of his eyes, his eyes were completely closed. During the search and appropriation of money from Mehmed Spahić, the accused beat him up by hitting him repeatedly with the rifle butt over his chest, his head and the back between the shoulder joints due to which he could not walk and some detainees carried him on their arms back to the room in which they were imprisoned.

In testifying with regard to this Count of the Indictment, the witness Rusmira Bulatović stated that there were elderly people, that the men were forced to beat each other with wooden sticks in the evening after the lights were switched off, and if one did not hit another strongly enough, Boban used to take over the stick and to demonstrate how they should hit each other. Basically, Rusmira also stated that during the investigation but, she did not state indeed a detail according to which Boban was demonstrating how they should hit each other. However, in her statement made to the police in Goražde on 5 May 2004, Rusmira did not make any statement about this incident at all.

The witness **Poljo Fatima** learnt about Boban Šimšić from other people during her stay in the school. She states that Hasib Šabanović, Mehmed Hadžić, Abid Hurem and Ragib Hurem died due to the consequences of being beaten up. She explains that Boban, the Lukić brothers, Cvijović, Ćiro from Loznica and Miloje were standing, but that they told the men to hit each other, and if one was not hit strongly, then he would hit that person in the head with a rifle, and the man falls down unconscious”. She stated in the cross-examination that they were all elderly people “he hits him with a club into his head, then he says it was not good, hit harder, you make the man bleed and then he hits you with his rifle in your back”.

In testifying with regard to this event, the witness Š. F. stated that one evening Boban Šimšić and Milan Lukić came to the door and took all men to slit their throats. All men, including her

two children, were taken out to the courtyard. She told her mother-in-law that she would herself go after them to be slaughtered, too. She stopped in the corridor for a moment and looked through the windows. She could not see her children as it was dark, but she saw what was going on. They gave some sticks to the men to hit each other, she could see that Ramo Hurem fell down on the ground, she could see that because of the lights, she saw her father-in-law Hasib, and when she saw that they were coming back, she rushed into the sport hall to the place where she previously had been.

Analyzing the testimony of this witness, the Court concludes that it has no logic and thereby the credibility considering that the witness states that due to the darkness outside

she could not see her children, but that she saw everything else that happened, including her father-in-law, Ramo Hurem falling down on the ground. The witness, probably being aware of that lack of logic herself states that she could see that because of the light, but she does not explain which light and where that light came from.

The witness H. L. states that Boban was present there while she was in the school for 4 days. With regard to the men being beating up, she stated that the men were forced to stand on one foot in the middle of the gym, that they beat them while they were arranged in a circle, while Nail Ramić was the one who was beaten the most. He was all swollen, his eyes closed, he was all blue, he could not move. Nail's wife and daughters begged Boban for protection, but no one could get protection from him, as he was the one who was ordering who will be taken for the beating.

The witness Ibro Memić testifies that upon their return to Višegrad, they were placed in the sport hall in which they were exposed to maltreatment and beating, and that Nail Ramić, Mustafa Smajić and he, the witness himself, had suffered the most. He stated that, upon the arrival of the Lukić brothers, one evening they took out all men in the yard and told the women that they would kill all the men if they did not give them every single mark they had. Milan was with the women, Sredoje with the men, and as soon as Abid Hurem said "either let us go, or kill us" Sredoje started hitting him. Milan came and took a cane from Ibrišim Hadžić, the oldest man among the Bosniak civilians, and gave it to him (the witness) to beat other people, but he said that he could not do that stating that his arm was injured. Milan took the cane and gave it to Ramo Hurem who was hitting them in the head. During that time, they had to sing the Chetnik songs while Milan used to turn a radio set on and asked someone on the line if they could hear them singing the songs. After that, they were told that they could return to the sport hall.

With regard to the incident of the beating of the men, the witness Asmir Spahić states that he was among some 15 children younger than 14 years of age, for whom they asked the ransom to be paid. That was the night on which Lukić intended to shoot him. Lukić said that all men were to be shot, they lined them up two by two, forced them to sing Chetniks songs and they had to go through two corridors to come out in front of the school. There, they were lined up into three ranks on the stairs and Milan and Sredoje were standing in front of them. Apart from the two of them, he did not see anyone else there nor did he see anybody else while they were being taken through the corridors. Milan started interrogating people who were older

than 65, and then he began to hit them with a wooden stick. As some people still gave money and gold, children were spared from further troubles.

In testifying with regard to these events, the witness Nail Ramić stated that he had been beaten up every night in the school in which he was detained, and that it lasted for ten –twelve days. He was beaten up by soldiers, even the civilians who used to come there. One night when they took him out into the corridor with five more men, the light was switched off, and they lighted up some torches, leaned them against the wall with their back opposite to the wall, and started beating them relentlessly, kicking them with their boots on, hitting them with rifles, pulling hairs from their heads. In addition to him, there were also Medo Liska, Hurem Ramo and some two – three men whom he did not know. One of the men who were beating them told him “you have fallen into my hands, I am now a big shot for you”, he recognized the voice of Boban Šimšić. He was beaten up so much that he could see on his eyes. On one occasion he begged Boban Šimšić for help, but he only laughed.

He stated that they played basketball in the sport hall where they were interned, that he was under the basket, and they were hitting him strongly in the head whenever they missed the basket until he lost his consciousness. Boban was on duty that evening, but he did not play basketball, he only watched.

He saw Milan and Sredoje Lukić on several occasions in the prison, and they were beating him so much that he remained permanently disabled. They forced the witness to run in circles around the sport hall until he fell down and then they were beating him up until he lost his consciousness. Boban Šimšić was present, and he was on duty “if he was not watching behind a corner, normally that he was watching, I was half fainted”. The witness also stated that one night they took 10-15 men outside since the order came that all women should collect money, otherwise the men would be taken to the Drina River and their throats would be slit. Outside they told them to stand in circle, they brought a stick and offered any of them to hit each other in the head, the back, “and if the first one did not want to do it, then someone else had to take the stick and beat the other one, thus they all had to use the baton incessantly”.

The witness concluded that Boban was certainly setting him up to be beaten more than the others, because when he begged him to help the accused, he did not want so, although he could do it.

Once his statement given in the investigation on 26 May 2005 was presented to him, where he stated that the first day upon his arrival, a group of Chetniks came to play basketball, including Boban Šimšić, who played basketball together with them, the witness explained that Šimšić had come with that group, that he let the men play basketball, that he held the prison keys, and that he allowed all that to happen to them, while in the end he said that Šimšić was watching all from the sideline.

In analyzing the stated evidence regarding the part of the Indictment concerning the beatings of the unlawfully detained Bosniak civilians, with a wooden shaft, the Court could not conclude beyond any reasonable doubt, based on the evidence adduced, that the accused Boban Šimšić participated in that beating up. The witnesses Ibro Memić and Asmir Spahić do not mention him in their testimonies, that is, they specifically state Milan and Sredoje Lukić as

the persons who did so. In describing that segment of the event, even the witness Nail Ramić does not mention him, although in his testimony this witness blamed the accused Boban Šimšić for everything bad that happened to him in that school.

Bearing in mind the statements of those witnesses, who were the victims of the beatings, and nevertheless do not charge the accused with that, the testimonies of the witnesses Rusmira Bulatović, Fatima Poljo and Š. F. appear questionable, and the Court therefore could not give them full credence, because their testimonies did not constitute a sufficient ground for establishing the facts on which the criminal responsibility of the accused could be based.

With regard to the part of the Indictment concerning the beating up of Nail Ramić, there is no doubt for the Court that he was exposed to severe beatings and physical maltreatment while detained in the Primary School “Hasan Veletovac”, since this was confirmed by almost all witnesses heard who were detained together with him in the school concerned.

To wit, describing the manner in which the Serb soldiers played basketball, the witness states in the investigation that the accused also played basketball with the others, while at the main trial (after the Court’s intervention), he states that the accused, contrary to the factual description referred to in the Indictment, was standing on the sideline and watched them. In general, playing basketball in the sport hall in which civilians were detained, in the manner as described by this witness, was not confirmed by any other examined witness, although almost all of them testified about the beating of Nail Ramić, even the witness N. A., which only deepens the lack of credibility of this evidence. Also, the testimony of Nail Ramić with regard to the event in the corridor when he was beaten up together with five more men and when he recognized the accused by his voice as one of those who had beaten him, is not confirmed by any other examined witness. In addition to this, even Ramić himself is not convinced, but he thinks that the accused also beat him.

In addition to this, the statement of the witness that he thinks that the accused had set him up all that also brings into question the credibility of this testimony, because in this manner he expresses an open arbitrariness with regard to the accused, even hostility, and therefore an indisputable conclusion on the criminal responsibility of the accused with regard to the criminal actions referred to in the Nail Ramić testimony could not be drawn.

Therefore, the Court could not establish with certainty the participation of the accused Boban Šimšić in the beating of Nail Ramić and other persons mentioned , beyond the actions included in the section 2.c of the convicting part of the Verdict.

Under Count 5f) of the Indictment, the accused is charged that in June 1992, together with other members of the Serb army and police, he participated in the forcible seizure of money and golden jewellery from several hundreds Bosniak civilians detained in the Primary School „Hasan Veletovac“, and on that occasion searched the civilians ordering them to strip naked, and forcing out money from them by taking a group of men outside the prison premises, and in return demanded that their mothers and wives collect money for their ransom in order to return them alive.

Commenting this Count of the Indictment, the witness **Š. F.** states that on that occasion 320 persons, including children and the elderly, were detained in one room with her. She used to see Boban Šimšić in the school every day and every night. Milan Lukić, Sredoje Lukić and Dragan Lukić would also come with him, and upon the arrival, their first words were money, gold, foreign currency, all they had, and if they find it on someone, they would kill him instantly. They had to surrender their money, but it was not enough since they had to strip naked. The most difficult was when her 6 years old daughter had to strip in front of Milan Lukić and Boban Šimšić.

The Court did not give credence to the assertions of the witness that she used to see Boban Šimšić every day and night, because what would otherwise be the purpose of the day and night police shifts, which were, *inter alia*, mentioned by the Defense witness, Goran Milićević, also a reserve policeman who was present in the school.

The witness Rusmira Bulatović also states that Boban Šimšić together with Milan and Sredoje Lukić requested that the money be surrendered, that she had money on her, gold, jewellery, that they took it all from her, while her sister was beaten so much by them that she lost her sight because she had no money, that the ear-rings were removed from the girls' ears, and that Boban Šimšić did it. She confirmed at the main trial that the accused had kicked her sister Fatima in her back when she did not surrender the money, while she stated for the record in the Goražde police that she had remembered that when her sister Fatima Poljo, after she had refused to surrender money since she did not have any, one soldier whom she did not know, kicked her in her back. Explaining the change of her statement, the witness responds that this was because that soldier had a cap and a stocking on his head, and with relation to her statement at the main trial that it was Boban, she states that she was told so by her sister when she asked her who beat her. In the opinion of the Court, it is obvious that such Rusmira's explanation of the difference in her statements is the expression of her finding a way out more than giving a convincing response.

The witness **Hasena Bajramović** stated that the accused had a bag like a shirt-made envelope in which he had put money and gold, and when her turn came, she told him that she neither had money nor gold, then Boban told her to strip naked and to give him money, which she had to do, while Milan and Sredoje Lukić and other Serbs were there. Sredoje said "Since that woman had no money, let her go", and Boban cursed her balia mother and told her impudently to get out.

Contrary to Rusmira and Hasena, the witness **Sajma Šabanović** testifies that Sredoje Lukić collected the money in the sport hall, that he held a freezer bag and a pistol in his hand, while Milan Lukić stood in the corridor. When she came in with her daughter and mother-in-law, Sredoje cocked the pistol, and said – money and gold. Since she had only the ear-rings, she took them off and put in the bag. Since the accused Boban was there on first night, she thinks that he was present also on that occasion on the guard. The witness **Ibro Memić** states consistently with Sajma that Milan and Sredoje Lukić were taking money by singling them out, one by one, or two to the other room, and told them "money in 5 minutes", he held the pistol in his right hand saying that he would shoot, but this witness does not mention Boban Šimšić at all. **Kada Spahić** also testifies, consistently with Sajma and Ibro, at the main trial held on 3 February 2006 when stating that both Lukić brothers collected jewellery and money

from the detainees, in the manner that Sredoje held the gun and Milan the bag, that is, Kada does not mention the accused explicitly with regard to this segment of the events in the primary school, except that she thinks that he was at the door, as stated by Sajma. The witness **Haša Hadžić** states that they were plundered the first night upon their arrival to the school, namely Lukić, who held the pistol and a bag, one unknown person and Boban Šimšić, while in the record given in the Prosecutor's Office on 25 May 2005 she did not state that Boban Šimšić had been present on that occasion. Contrary to the other witnesses, **Šefka Šehić** asserts that the accused plundered them by bringing his gun to them, demanding money, gold and that Miloje had said that Mala Gostilja was wealthy, that they striped her naked (the same term used by Hasena), that the gold was in her bread. However, in her statement given for the record in the Gorazde police on 5 May 2004, this witness does not mention Boban Šimšić at all with regard to the episode of the money and gold seizure, and she even does not mention any other person on that occasion, but she only states that in that room they were putting gold, money and foreign currencies into three bags which were on the table. She maintained such statement when she was interviewed in the BiH Prosecutor's Office on 25 May 2005, when she reiterated that during the search, she was forced to strip naked, that is, in front of several Chetniks so that they could find money and gold, when she again does not mention in any way the participation of the accused in all that. Not only due to the observed inconsistency in her testimony, but also due to the incoherence and lack of clarity of her thoughts in the responses, the Court could not give credence to this witness in any way. The witness **A. N.** states that during the detention in the school, they had to collect money and gold in order that they return male children to them who had been taken away prior to that. She states that this was demanded by Milan Lukić, and that the accused Boban and Momir Savić were with him. Asmir Spahić also testified with regard to that, but this witness denies the presence of Boban Šimšić, stating that Milan and Sredoje Lukić requested money and gold for the children, and that nobody except them was present there.

Regarding this Count of the Indictment, the Panel is of the opinion that in addition to the fact that the testimonies of the witnesses are mutually contradictory, and that some of them are contradictory even to themselves, considering the differences in their statements given in the investigation and at the main trial, the arbitrarily set actions of commission that the accused was charged with constituted an additional aggravating circumstance for a correct establishment and proving of the state of facts. Regardless of the fact that the money and valuable items were indeed seized from the detainees, in relation to which, certain witnesses mentioned the accused as the co-perpetrator in those actions, it is indisputable that the accused was not present in the school every day. Therefore, the Court could not establish with certainty how frequently that happened, in terms of establishing the value of the seized property which must be significant or permanent and related to a larger number of persons so as to constitute a severe violation of international humanitarian law. Considering the impossibility to establish this fact in an undoubtful and credible manner, the Court acquitted the accused from the responsibility for the commission of the criminal acts described in this Count of the Indictment.

Bearing in mind that the Court could not conclude with certainty the necessary cause-and-effect relation between the acts of the accused and the consequences thereof, as stated in Counts 1b), 4a), 4c), 5f and 5g) of the Indictment, that is, since it has not been proved that the accused committed the stated acts within the criminal offense of Crimes against Humanity in

violation of Article 172 (1) of the Criminal Code of BiH, due to the stated reason and pursuant to Article 284 item c) of the CPC BiH, it acquitted the accused of those charges.

Record-taker

Željka Marenčić

**PRESIDENT OF THE PANEL
Judge**

Azra Miletić

NOTE ON LEGAL REMEDY: An appeal from this Verdict shall not be allowed.